

Solicitation No. DOC222164
Caption: DHS FSA APS In Home Care Aide(s)

SOLICITATION, OFFER, AND AWARD				1. Caption In Home Care Aide(s)				Page of Pages	
								1	69
2. Contract Number		3. Solicitation Number		4. Type of Solicitation		5. Date Issued		6. Type of Market	
		Doc222164		Competitive Sealed Proposal (RFP)		9/4/2015		Open	
7. Issued By Office of Contracting and Procurement 441 - 4 th Street, N.W., Suite 700 South Washington, D.C. 20001				8. Address Offer to: Office of Contracting and Procurement 441 - 4 th Street, N.W., Suite 700 South Washington, D.C. 20001					
NOTE: In solicitations "offer" or "Offeror" means "bid or "bidder"									
SOLICITATION									
9. The sealed offers shall be submitted only in electronic format via the on-line solicitation software. Telephonic, hand-delivered, posted, e-mail, telegraphic and facsimile bids will not be accepted. All items accepted by the District, all pages of the Request for Proposal (RFP), all attachments and all documents containing the bidder's offer shall constitute the formal contract. The proposals can be submitted electronically until 10:00 a.m. local time 9/24/2015 (Hour) (Date)									
CAUTION: Late submission, Modifications and Withdrawals: See 27 DCMR chapters 15 & 16 and Section L.3.1 as applicable. All offers are subject to all terms & conditions contained in solicitation.									
10. For Information Contact	A. Name			B. Telephone			C. E-mail Address		
	Willandria Blount			(Area Code) 202		(Number) 671-4491		(Ext) Willandria.blount@dc.gov	
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12. In conjunction with the above, the undersigned agrees, if this offer is accepted within _____ calendar days from the 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			<input type="checkbox"/> C. Check if remittance address is different from above – Refer to section G				17. Signature		18. Award 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) Bernard M. Grayson, Jr.			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 Department of Human Services', Family Services Administration (FSA), Adult Protective Services (APS) program is seeking home care providers with offices in the District of Columbia or within a twenty-five (25) mile radius that are licensed by the District of Columbia, Department of Health having the capacity to accept referrals and provide direct home-based chore aide services, home health aide, personal care aide, nursing services and emergency chore aide services for vulnerable adults residing in the District. Home care service providers shall have at least five (5) years of experience providing home-based chore aide/homemaker/emergency caretaker services, to vulnerable adults in the District of Columbia or surrounding jurisdictions, including responding to emergencies. The District is not interested in agencies that function as staffing or registry agencies and don't provide training, supervision of aides, or assessment of cases. Chore aides and emergency caretakers must be employees of the Provider.
- B.2 The District will purchase its requirements of the articles or services included herein from the Contractor. The estimated quantities stated herein reflect the best estimates available. The estimate shall not be construed as a representation that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable. The estimated quantities shall not be construed to limit the quantities which may be ordered from the Contractor by the District or to relieve the Contractor of its obligation to fill all such orders.
- a) Delivery or performance shall be made only as authorized in accordance with the Ordering Clause, **G.5**. The District may issue orders requiring delivery to multiple destinations or performance at multiple locations. If the District urgently requires delivery before the earliest date that delivery may be specified under this contract, and if the Contractor shall not accept an order providing for the accelerated delivery, the District may acquire the urgently required goods or services from another source.
 - b) The District may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- B.3 The District Contemplates award of a Firm Fixed Price contract as a result of this solicitation.

B.3.1 BASE YEAR

Contract Line Item No. (CLIN) 0001-0001	Item Description	Service Unit	Proposed Maximum Total Price (Unit price x Maximum quantity)
CLIN 0001	In-Home Chore Aide Day time services as described in Section C.4.1	\$___ per Hour	\$_____
0002	In-Home Chore Aide Evening/Nights and Weekends services as described in Section C.4.1	\$___per Hour	\$_____
0003	In –Home Chore Aide Holiday services as described in Section C.4.1	\$___per Hour	\$_____
0004	In-Home Chore Aide Holiday-Evening/Night/Weekends services	\$___per Hour	\$_____
0005	Client Purchases & Local Travel	\$___ per Hour	
Total B.3.1			

B.3.2 COST REIMBURSABLE COMPONENT – MISCELLANEOUS CLIENT PURCHASES AND LOCAL SPECIAL TRANSPORTATION

The Provider shall provide and be reimbursed for miscellaneous customer purchases and local special transportation associated with the client e.g.-, Miscellaneous Purchases-emergency food, cleaning supplies, emergency medicine) and (i.e., Local Special Transportation Travel – cab service), as described in Section G.6.3.2. The total cost-reimbursement shall not exceed \$550.00 a year per client.

B.3.3 OPTION YEAR ONE

Contract Line Item No. (CLIN) 1001-1005	Item Description	Service Unit	Proposed Maximum Total Price (Unit price x Maximum quantity)
CLIN 1001	In-Home Chore Aide Day services as described in Section C.4.1	\$__ per Hour	\$ _____
1002	In-Home Chore Aide Evening/Nights and Weekends Services as described in Section C.4.1	\$__ per Hour	\$ _____
1003	In –Home Chore Aide Holiday Services as described in Section C.4.1	\$__ per Hour	\$ _____
1004	In-Home Chore Aide Holiday-Evening/Night/Weekends Services	\$__ per Hour	\$ _____
1005	Client Purchases & Local Travel	\$__ per Hour	\$ _____
Total B.3.3			

B.3.4 COST REIMBURSABLE COMPONENT – MISCELLANEOUS CLIENT PURCHASES AND LOCAL SPECIAL TRANSPORTATION

The Provider shall provide and be reimbursed for miscellaneous customer purchases and local special transportation associated with the client (e.g.-, Miscellaneous Purchases-emergency food, cleaning supplies, emergency medicine) and (i.e., Local Special Transportation Travel – cab service), as described in Section G.6.3.2. The total cost-reimbursement shall not exceed \$550.00 a year per client.

B.3.5 OPTION YEAR TWO

Contract Line Item No. (CLIN) 2001-2005	Item Description	Service Unit	Proposed Maximum Total Price (Unit price x Maximum quantity)
CLIN 2001	In-Home Chore Aide Day Services as described in Section C.4.1	\$__ per Hour	\$_____
2002	In-Home Chore Aide Evening/Nights and Weekends Services as described in Section C.4.1	\$__per Hour	\$_____
2003	In –Home Chore Aide Holiday Services as described in Section C.4.1	\$__per Hour	\$_____
2004	In-Home Chore Aide Holiday- Evening/Night/ Weekends Services	\$__per Hour	\$_____
2005	Client Purchases & Local Travel	\$__per Hour	\$_____
Total B.3.5			

B.3.6 COST REIMBURSABLE COMPONENT – MISCELLANEOUS CLIENT PURCHASES AND LOCAL SPECIAL TRANSPORTATION

The Provider shall provide and be reimbursed for miscellaneous customer purchases and local special transportation associated with the client (e.g., Miscellaneous Purchases-emergency food, cleaning supplies, emergency medicine) and (i.e., Local Special Transportation Travel – cab service), as described in Section G.6.3.2. The total cost-reimbursement shall not exceed \$550.00 a year per client.

B.3.7 OPTION YEAR THREE

Contract Line Item No. (CLIN) 3001A-3001AE	Item Description	Service Unit	Proposed Maximum Total Price (Unit price x Maximum quantity)
CLIN 3001A	In-Home Chore Aide Day Services as described in Section C.4.1	\$___ per Hour	\$ _____
3001	In-Home Chore Aide Evening/Nights and Weekends Services as described in Section C.4.1	\$___per Hour	\$ _____
3002	In –Home Chore Aide Holiday Services as described in Section C.4.1	\$___per Hour	\$ _____
3003	In-Home Chore Aide Holiday- Evening/Night/ Weekends Services	\$___per Hour	\$ _____
3004	Client Purchases & Local Travel	\$___per Hour	\$ _____
Total B.3.7			

B.3.8 COST REIMBURSABLE COMPONENT – MISCELLANEOUS CLIENT PURCHASES AND LOCAL SPECIAL TRANSPORTATION

The Provider shall provide and be reimbursed for miscellaneous customer purchases and local special transportation associated with the client (e.g., Miscellaneous Purchases-emergency food, cleaning supplies, emergency medicine) and (i.e., Local Special Transportation Travel – cab service), as described in Section G.6.3.2. The total cost-reimbursement shall not exceed \$550.00 a year per client.

B.3.9 OPTION YEAR FOUR

Contract Line Item No. (CLIN) 4001-4005	Item Description	Service Unit	Proposed Maximum Total Price (Unit price x Maximum quantity)
CLIN 4001	In-Home Chore Aide Day as described in Section C.4.1	\$___ per Hour	\$ _____
4002	In-Home Chore Aide Evening/Nights and Weekends as described in Section C.4.1	\$___per Hour	\$ _____
4003	In –Home Chore Aide Holiday as described in Section C.4.1	\$___per Hour	\$ _____
4004	In-Home Chore Aide Holiday-Evening/Night/Weekends	\$___per Hour	\$ _____
4005	Client Purchases & Local Travel	\$___per Hour	\$ _____
Total B.3.9			

B.3.10 COST REIMBURSABLE COMPONENT – MISCELLANEOUS CLIENT PURCHASES AND LOCAL SPECIAL TRANSPORTATION

The Provider shall provide and be reimbursed for miscellaneous customer purchases and local special transportation associated with the client (e.g.- Miscellaneous Purchases-emergency food, cleaning supplies, emergency medicine) and (i.e., Local Special Transportation Travel – cab service), as described in Section G.6.3.2. The total cost-reimbursement shall not exceed \$550.00 a year per client.

B.3.11 SUMMARY

Period of Performance	Amount
Base Year	\$
Option Year One	\$
Option Year Two	\$
Option Year Three	\$
Option Year Four	\$
Grand Total	\$

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 H9.1.

SECTION C: SPECIFICATIONS/WORK STATEMENT

SECTION C – HUMAN CARE SERVICE DESCRIPTION AND SCOPE OF SERVICE

C.1 Background

C.1.1 This is a recurring service.

C.1.2 The Department of Human Services', Family Services Administration (FSA), is required to investigate allegations of abuse, neglect, exploitation and self-neglect of vulnerable adults who are unable to protect themselves and provide protective services to remediate risk when reports are substantiated. Services are provided through the Adult Protective Services (APS) program in FSA. APS social workers conduct the investigations and provide case management and support services to remediate risk, connect clients to services to meet unmet needs, and help clients develop safe long term care plans.

The Adult Protection Services (APS) division provides a variety of social services to assist vulnerable adults to reduce risk and establish safe long-term care plans. Services include the provision of direct emergency services, counseling, case management services, referral for entitlement services, assistance with medical evaluation and treatment, referral for homemaker services, assistance with developing safe long-term care plans, placement into long-term care facilities, referral for legal services, and assisting in the process to obtain guardians and conservators for clients when necessary.

The services required for this Contract (HCA) pertains to provisions of chore aide and emergency chore aide services in the homes of vulnerable adults. APS social workers will determine the need for the in-home chore aide and/or emergency caretaker services; develop a plan for use of the chore aide and/or emergency caretaker services. A Provider will provide in-home support services to assist vulnerable adults with activities of daily living, basic housekeeping services, and personal care services.

C.1.3 Chore aide services are provided to adults protected by one or more of the following legal mandates.

C.1.3.1 D.C. Law 5-506, Adult Protective Services Act of 1984.

C.1.3.2 The Karyn Barquin Adult Protective Services Self Neglect Expansion Amendment Act of 2006 D.C. Code §§7-1901-1013.

C.2 Scope of Services

C.2.1 Subject to the availability of funds, the District may purchase and the provider shall provide the services specified in subsection 2.2.

C.2.2 The Department of Human Services', Family Services Administration (FSA), Adult Protective Services (APS) program is seeking home care providers with offices in the District of Columbia or within a twenty-five (25) mile radius that are licensed by the District of Columbia, Department of Health having the capacity to accept referrals and provide direct home-based chore aide services, personal care aide, nursing services and emergency chore aide services for vulnerable adults residing in the District. Home care service providers shall have at least five (5) years of experience providing home-based chore aide/homemaker/emergency caretaker services, to vulnerable adults in the District of Columbia or surrounding jurisdictions, including responding to emergencies. The District is not interested in agencies that function as staffing or registry agencies and don't provide training, supervision of aides, or assessment of cases. Chore aides and emergency caretakers must be employees of the Provider.

C.3 **Definitions**

C.3.1 **At-Risk Client** – Adults whose life of well-being is threatened if left alone or left without assistance in the home.

C.3.2 **Chore Aide** – An employee of a home care agency who has completed at least 75 hours of home health aide required training, works in the homes of clients to complete work assigned by a supervisor, and is regularly supervised by an appropriate professional. Possible activities include housekeeping services, personal care services (i.e. assisting with bathing, grooming, and dressing, feeding, and accompanying clients to a doctor or other appointment).

C.3.3 **Client** – A District resident who has an active care with Adult Protective Services within the Department of Human Services or an "at-risk" adult who is referred for services by APS.

C.3.4 **Emergencies** – include but are limited to: severe illness, death, non-receipt of benefit checks, shut-off (or threatened shut off) of utilities, threatened eviction, violence, alone, vulnerable adults left alone, etc.

C.3.5 **Emergency Caregiver Service** – Home care service provided when a crisis arises that leaves an APS client or an "at risk" adult without a caregiver. It is intended to be short term until a more permanent plan is developed and implemented for the "at risk" adult. These services must be provided within three (3) hours after the request for service is initiated.

C.3.6 **Contract** – means a written agreement for the procurement of chore aide an emergency care services as authorized by APS to assist and protect vulnerable adults in their own homes. The limitation of the human care agreement is specified in Section D.2.

C.3.7 **Personal Care Services** – include, but may not be limited to: assistance with grooming, toileting, dressing, bathing, ambulation, feeding, escorting clients to medical appointments, and prompting clients to self-administer medication.

C.3.8 **Professional Employees** – for purposes of this agreement, professional employees are defined as employees who are licensed under the Health Occupations Revision Act of 1986 and specifically refer to registered nurses and licensed social workers.

- C.3.9** **Provider** – means an accredited home care agency located in the District of Columbia that provides chore aide services in the homes of vulnerable adults that enters into a contract with the District.
- C.3.10** **Overnight Service** – Planned chore aide service provided through the night and up to 24-hours a day in the homes of adults to ensure that clients are not left at risk when other care plans are either not available or are being developed. This service is for a temporary, but unspecified, number of days.
- C.3.11** **Significant Changes** – include but are not limited to: a sick person’s recovery; a disabled person’s achievement of sufficient ability to care for himself or household, wholly or partially; worsening of an illness or disability so that more assistance is needed; the presence in the home of an additional person; departures of family members from the home; hospitalization of the client, etc. This information must be presented in a written report.
- C.3.12** **Support Services** – Home care services which include basic housekeeping services and personal care services of a level which does not require nursing supervision.
- C.3.13** **Purchase Order** – means an order for services placed against an established human care agreement.
- C.3.14** **Unusual Incident** – any significant occurrence or extraordinary event which is different from the regular routine or which varies from established procedures. Examples of unusual incidents include, but are not limited to, physical abuse, sexual abuse/relations, serious injury (deliberate or accidental), absconders, contraband, serious complaints from family or visitors, criminal acts, etc).
- C.4** **Service Requirements**
- C.4.1** The Provider shall provide trained and supervised chore or personal care aides to provide support services in the homes of vulnerable adults to assist in meeting their needs and to protect them from risk. Services shall normally be provided between the hours of 8:00 a.m. – 6:00 p.m. Monday through Friday, but services may also be required on weekends, holidays, evenings, and overnight.
- C.4.2** The Provider shall be able to accept referrals for chore/personal care aide services 24-hours per day, seven days per week, including holidays.
- C.4.3** The Provider shall provide 24-hour “live-in” chore/personal aide service when deemed necessary to ensure the safety and well-being of a vulnerable adult.
- C.4.4** The Provider shall provide 24 hour “live-in” chore aide services to meet the needs of vulnerable adults during an emergency. Emergency home care services may be needed at any time of day or night and emergency caretakers must report to the assigned home within four (4) hours of receiving the call for service.

- C.4.5** The Provider shall provide client services in accordance with instructions provided by the District through the referral completed by the Adult Protective Service (APS) social worker. Changes in service plans (the number of days and/or hours of service) must be authorized by the APS Supervisory Social Worker and the APS Chief.
- C.4.6** The Provider shall be willing and capable of providing services to any client referred by the District, regardless of geographic area, quadrant or neighborhood.
- C.4.7** The Provider shall have staff capable of effectively communicating with and providing services to culturally diverse, non-English speaking, or hearing impaired clients referred by APS.
- C.4.8** Most clients speak English but there are also clients who may speak only another language (e.g., Spanish, Chinese) and there may be deaf or hearing impaired clients. The Provider shall have staff capable of providing services to these individuals.
- C.4.9** All chore and personal care aides and professional staff that assist and interact with clients in their homes shall have an agency issued photo identification (I.D.) cards that must be worn at all times for the duration of their assigned shift.

C.5 **Provider Specific Requirements**

C.5.1 **Pre-Bid Conference**

A pre-bid conference will be held on Thursday, September 17, 2015 at 10:00am in the following location:

**Department of Human Services
District of Columbia Government
64 New York Avenue, N.E., Logan Circle – Conference Room
Washington, DC 20002**

Prospective Offerors will be given an opportunity to ask questions regarding this solicitation at the conference. The purpose of the conference is to provide a structured and formal opportunity for the District to accept questions from Offerors on the solicitation document as well as to clarify the contents of the solicitation. Attending Offerors must complete the pre-bid conference Attendance Roster at the conference so that their attendance can be properly recorded.

Impromptu questions will be permitted and spontaneous answers will be provided at the Districts' discretion. Verbal answers given at the pre-proposal conference are only intended for general discussion and do not represent the District's final position. All oral questions must be submitted in writing through e-Sourcing Message Board following the close of the pre-proposal conference but no later than five days after the pre-proposal conference in order to generate an official answer. Official answers will be provided in writing to all prospective Offeror's who are listed on the official Offeror's list as having received a copy of the solicitation. Answers will be posted on the OCP website at www.ocp.dc.gov.

Assessment of Cases

C.5.1.1 The Provider’s professional staff shall be responsible for assessment and reassessment of APS clients and development of Care Plans. The Care Plan shall include information about the client’s health, limitations and assistance that is needed to meet the client’s instrumental tasks of daily living. The Care Plan shall include a plan for provision of services that details the schedule for chore services and a list of specific tasks and duties to be completed by the chore aide. If the Care Plan differs from the plan included in the referral for chore aide services completed by the APS social worker, the Provider shall contact the APS social worker to discuss the differences and recommend adjustments in the authorized plan. The APS social worker and APS supervisor in consultation with the Provider will make the final determination and approve of any recommended adjustment in the client’s Care Plan. A copy of the Provider’s Care Plan must be submitted to APS for each client within 3 business days of an assessment or reassessment. The Care Plan shall be filed in the client’s case record maintained by the Provider agency and APS.

C.5.1.2 The Provider’s professional staff must complete an initial assessment for each client within 3 business days. Complete a reassessment of the client’s condition, the quality of the service, and the adequacy of the service plan at least twice a year for each client if services continue and more frequently if the client’s situation changes or problems develop that require a reassessment. If there is a change in the client’s needs based on the reassessment, the Provider shall contact the APS social worker to discuss the recommended changes. The APS social worker and APS supervisor will make the final determination and approve any recommended changes prior to implementation of any changes to the client’s Care Plan.

C.5.1.3 The Provider can return the referral if the initial assessment indicates that the request for service is beyond the scope of the Contract.

C.5.1.4 The Provider’s professional staff shall document case activity in a client case record and maintain the record in accordance with C.6.1.

C.5.2 **Provision of Services**

C.5.2.1 The Provider shall assign a chore aide that can work regularly for the client and shall arrange for a substitute aide so there is no interruption of service in cases in which the client would be left at risk without the service (e.g. a bedridden client left alone). In cases where the regular aide will be absent for more than a week, APS must be notified prior to a substitute aide being provided.

C.5.2.2 The Provider may be required to appear in court to provide testimony about the client’s situation and ability to manage in the home. The aides and/or professional staff may be called as witnesses to testify about their observations of the client’s situation in the home and their assessment of the client’s needs.

C.5.3 **Standards of Service Provided**

C.5.3.1 Cleaning and laundry shall be done well enough to be considered satisfactory by the client and/or APS social worker. Cleaning shall be performed often enough to maintain a generally clean,

organized physical environment in the home. Laundry shall be done frequently enough to ensure sufficient clean clothing and linens for a daily change of clothing and at least a weekly change of bed linens, or a more frequent change of bed linens if needed.

- C.5.3.2** Other tasks shall be accomplished to the client's satisfaction if possible. When the client expresses dissatisfaction with the performance of a non-visible task, such as cooking, the Provider shall make an effort to satisfy the client within 10 days by re-instructing the aide, doing the work over, or substituting another aide.
- C.5.3.3** If the client expresses dissatisfaction with the chore aide's personality, courtesy, work habits, or other intangible factors, the Provider shall make an effort to resolve the problems by counseling the aide, consult with the APS social worker, or substituting another aide.
- C.5.3.4** If the Provider determines that service cannot be rendered for reasons beyond its control (e.g. the client refuses services or refuses entry, the family interferes with the service), the Provider shall contact the APS social worker for instructions.

C.5.4 **Miscellaneous Expenses**

C.5.4.1 The Provider shall make readily available to the chore aide a small cash fund that can be used when an aide must purchase emergency supplies (i.e. client food, cleaning products, and client medicines) or pay for special travel transportation (i.e. cab fare) in regards to the client. Expenditures shall be reported to the District and reimbursed to the Provider in the next regular invoice.

C.5.4.2 The Provider shall attempt to obtain approval from the APS supervisor or APS Chief before expenditures are made. If authorization cannot be obtained in an emergency, the Provider shall purchase what is necessary; and report by phone the expenditures to APS within 72 hours and again at time of billing

C.5.5 **Staffing Requirements**

C.5.5.1 Staffing by the Provider shall be sufficient to provide the level of service and supervision necessary for the safety of all clients referred by APS. The Provider shall notify the District immediately whenever the Provider is unable to comply with the provision of services.

C.5.5.2 **Professional Staff**

C.5.5.2.1 The Provider shall provide social work and nursing supervision of chore aides by employing professional staff licensed under the District of Columbia Health Occupations Revisions Act of 1986 which at a minimum indicates that all social workers licensed at either the associate or the graduate level must be supervised by a licensed clinical social worker.

C.5.5.2.2 The Provider shall provide resumes, position descriptions, and copies of licenses for all professional staff and position description for chore aides. The Provider shall have resumes and certification of the completion of training for all aides available to the District for review upon request.

- C.5.5.2.3** The Provider shall employ professional staff which will be responsible for providing training and supervision for chore and personal care aides as well as conduct case assessments for clients.
- C.5.5.2.4** The Provider shall employ, at a minimum at least one person who is a licensed registered nurse and a graduate of an accredited school of nursing **and** at least one person who is a licensed social worker and holds a Master’s degree in Social Work or holds a Bachelor’s degree in Social Work with at least three years of social work experience.
- C.5.5.2.5** The Providers shall employ sufficient professional staff to meet contract specifications for the training and supervision of chore aides and the assessment of cases. In addition, professional staff must be available to provide supervision as needed for aides who are providing service outside of regular working hours including service for 24-hour cases.
- C.5.5.2.6** The Provider’s professional staff shall provide supervision for chore aides and emergency caretakers, which minimally includes:
- a. Monitoring the quality of services provided;
 - b. Identifying and resolving of problems that interfere with the quality of services provided;
 - c. Conducting regular, formal evaluations for chore aides annually;
 - d. Completing at least two face-to-face supervisory conferences with each aide annually; and
 - e. Executing appropriate actions to identify and resolve personnel problems.
- C.5.5.2.7** The Provider shall document supervisory actions, conferences, personnel evaluations, and any other pertinent information in employee personnel records. If this action was a direct result of the employee’s performance while servicing a client, APS shall be notified immediately.
- C.5.6** **Direct Care Service Staff**
- C.5.6.1** The Provider shall employ chore aides that are certified home health care aides with a minimum of 75 hours of initial training and at least 12 hours of annual in-service training in subsequent years required to maintain certification; or personal care aides with commensurate training.
- C.5.6.2** The Provider shall employ certified home health care aides that meet the training requirements specified in C.5.6.1, and as trained provide appropriate safety response in emergency situations such as after-hours placement in the home of a vulnerable adult, etc.
- C.5.6.3** The Provider shall ensure that all chore/personal care aides and professional staff that assist and interact with clients in their homes shall wear uniforms and an agency issued photo identification (I.D.) badge which must be worn at all times for the duration of their assigned shift.
- C.5.7** **Conflict of Interest**
- C.5.7.1** Through training and supervision, the Provider shall ensure that every effort is made to make aides aware of the need to avoid a conflict of interest. The Provider shall maintain policies and procedures and provide training to ensure that clients and aides are not involved in situations in

which conflicts-of -interest may develop and will make reasonable efforts to ensure that situations in which problems may develop are avoided. Examples of inappropriate activities include, but are not limited to: aides residing in the homes of clients for whom they work, aides accepting gifts from clients, aides accepting loans or personal property from clients, and aides engaging in outside business activities in the homes of clients.

C.5.7 Personnel Files

C.5.7.1 The Provider shall maintain confidential personnel files for each staff person, including all chore aides, emergency caretakers, and professional staff assigned to this agreement. The file shall contain:

- a. The application of employment, health certificates and references;
- b. Documentation supporting completion of initial and in-service training requirements, as appropriate;
- c. Applicable professional credentials/certifications;
- d. Documentation supporting at least two supervisory conferences each year for aides;
- e. Documentation of actions taken to resolve problems or correct inadequacies, including notation of any allegations of professional or other misconduct and the Provider's actions with respect to the allegations;
- f. Follow-up of all allegations of theft or other criminal allegations, conclusions drawn, and actions taken;
- g. Copies of the regular formal evaluations;
- h. Personnel actions; and
- i. Any other information the Provider chooses to include.

C.6 Client Case Records

C.6.1 The Provider shall maintain confidential case records for each client. Case records shall include at a minimum the:

- a. DHS Authorization Form (DHS 815) and Notices of Change Form (DHS 816);
- b. An assessment form that describes the client's needs, how they will be addressed as well as any information that identifies changes in the client condition or situation;
- c. A Care Plan and evidence that services are provided in accordance with the plan;
- d. Documentation of significant contacts with the client, the Department and others;
- e. An explanation of problems and how problems are resolved; and
- f. Any other information needed to ensure dependable, appropriate service.

C.7. Reports

C.7.1 Monthly Activity Reports

The Provider shall submit a monthly activity and written report for each APS client that describes observations, the number of active cases brought forward, the new referrals accepted for service, the total number of clients serviced, the number of cases closed during the month, the number of active cases carried forward, the number of hours of chore aide services provided during the current reporting month and a year-to-date total hours. The report shall also include a brief discussion of any other reports made during the month and a summary of any factors that impacted the provision of services.

C.7.2 Significant Changes and Emergencies Reports

C.7.2.1 The Provider shall report significant client changes and emergencies to APS on an ongoing basis. Significant changes are to be reported verbally within one (1) day and in writing within three (3) days. Emergencies must be reported by telephone to the APS social worker **immediately** with submission of a written report within 48 hours. Reports shall be provided to the APS social worker and/or supervisor.

C.7.3 Suspected Abuse, Abuse or Exploitation Reports

C.7.3.1 The Provider shall report any suspected abuse, neglect, and/or exploitation of vulnerable adults. The Provider shall demonstrate knowledge of the reporting requirements under D.C. Law 5.156, Adult Protective Services Act of 1984. Reports shall be made in accordance with the legal requirements to the proper authorities and copies of the reports shall be made to the APS social worker and/or supervisor.

C.7.4 Unusual Incident Reports

C.7.4.1 The Provider shall report any “unusual incidents”. Unusual Incident reports shall be submitted in writing to the APS program coordinator and social worker within 24-hours and shall include a report of the incident as well as all actions taken by the Provider in response to the incident. A copy of all reports shall also be submitted to the APS program coordinator and social worker.

C.7.5 Progress Reports

C.7.5.1 The provider shall develop, implement, and describe in detail a system for customizing progress reports on the condition or situation of clients upon request of the APS social worker. These reports may include but are not limited to: a nursing assessment on the condition of a client, information about progress made toward reaching goals or attaining an improved level of functioning; and information about whether the use of the chore aide service is meeting a client’s needs. The APS social worker will provide instructions about the specific information needed in these reports when the request for a report is made.

C.7.6 Corrective Action Report

C.7.6.1 The Provider shall report any corrective actions taken after problems with the provision of service and/or compliance with provisions of the agreement are identified. The Provider shall respond in writing to poor and unsatisfactory monitoring reports given to the Provider by the APS, and shall prepare and send to the APS any other reports as requested.

C.7.7 Criminal Misconduct Reports

C.7.7.1 If a client accuses an aide of criminal misconduct, APS and the Provider shall both advise the client of his/her rights to report the incident to law enforcement officials and the APS will require the Provider to provide a report within 30 days. The report shall contain confirmation that the Provider made efforts to investigate the client’s complaint (e.g. called the aide in for supervisory conference, reviewed personnel records for possible prior complaints, interviewed the client) and conclusions that were drawn following the investigations. If the report involved a loss of property or money, the accused aide shall be suspended from servicing any additional clients until the investigation has been completed. The Provider shall reimburse the client for reasonable claims if there is reasonable indication that the Provider or its employees were at fault. The report shall also include information about what measures were taken to prevent similar complaints from recurring and information about the results of the police investigations, if there was one. Each such case shall be evaluated on its individual merits.

C.7.7.2 It is not mandatory to obtain a criminal conviction before reimbursing a client; the standard of “reasonable indication” shall prevail. Failure to comply with appropriate follow-up to allegations of criminal misconduct, will serve as justification for immediate termination of this Contract.

C.8 Deliverables

Attend a Mandatory Pre-Bid Conference. Thursday, September 17, 2015 Please see details in Provider Specific Requirements.

C.8.1 MONTHLY ACTIVITIES REPORTS

Deliverable	Method of Delivery	Due Date
Monthly Activity Reports & Invoice C.8.1	Two copies delivered electronically the APS Program Coordinator and APS Chief	By the 15 th business day of each month.
Significant Changes and Emergencies Report C.8.2	Significant changes reports must be made by telephone to the APS social worker assigned to the client within one (1) day of the change. Written reports of significant changes must be delivered electronically via email to the	Ongoing

	<p>APS social worker assigned to the client within three (3) days.</p> <p>Emergencies must be reported by telephone to the APS Social Worker assigned to the case immediately. Written reports of emergencies must be delivered electronically via email to the APS social worker and Program Coordinator assigned to the client within forty-eight (48) hours of the reported emergency.</p>	
Unusual Incident Reports C.8.3	Written reports of unusual incidents must be delivered electronically via email or by fax to the APS Program Coordinator within twenty-four (24) hours of the unusual incident.	Ongoing. Within twenty-four (24) hours of the incident.
Progress Reports C.8.4	Written reports of individual client progress shall be delivered electronically via email, in hard copy, or by fax to the APS social worker assigned to the client upon request.	Ongoing. Within three (3) business days of request.
Corrective Action Reports C.8.5	Written reports of corrective actions taken by the Provider shall be delivered electronically via email, in hard copy, or by fax to the APS Program Coordinator upon request.	Ongoing. Within ten (10) business days of request.
Criminal Misconduct Reports C.8.6	Written reports of criminal misconduct shall be delivered electronically via email, in hard copy, or by fax to the APS Program Coordinator and APS Chief within thirty (30) days of the reported misconduct.	Ongoing. Within thirty (30) calendar days of the reported misconduct.

C.9 District Responsibilities

C.9.1 The District shall develop the initial service plan through the Homemaker Service/Emergency Caretaker Referral Form (DHS 815) and submit it to the Provider to request chore aide services for APS clients and vulnerable "at risk" adults. The referral (DHS 815) shall include the services to be performed and the initial authorization for the number of days and hours of chore aide service that is being assigned. The referral will contain confidential social and medical information, which the Provider is to safeguard.

C.9.1.1 The District will assign an authorization number for each referral.

C.9.1.2 The District will suspend, reduce, increase, or terminate services as client situations evolve. Notification of changes in the authorized level of service shall be conveyed to the Provider by telephone and followed up with a DHS Adjustment of Homemaker/ Emergency Caretaker Services (DHS 816) form.

C.9.2 Monitoring

C.9.2.1 The Department shall monitor the quality of services provided.

C.9.2.2 Monitoring shall include, but is not limited to, random visits to the homes of clients by social workers, program analyst and social service assistants to check on the quality of services provided; site visits to the Provider agency to review case records, personnel files, and training curriculum; and investigation of reported problems and/or complaints received about the quality and/or provision of service.

C.10 Compliance With Service Rates

C.10.1 All human care services shall be provided, and the District shall only pay, in accordance with the service rates shown in the rate agreement. If any overpayment occurs, the provider shall repay the District the full amount of the overpayment.

C.11 Method of Delivery of Services

C.11.1 The District will perform the assessment of need (DHS 815 Referral Form) in all cases and make referrals to the provider.

C.11.2 The Provider shall provide no human care service unless a purchase order is issued to and the District makes an official referral to the Provider.

C.12 Service Plan

The Provider shall submit a written Service Plan that clearly and precisely describe their method of providing the required services stated in Sections C.4 through C.8.6. Provider shall include past experience, qualification of staff including resumes, licenses and certifications and job descriptions and an administrative chart outlining to whom each person reports (i.e., supervision of aides, initial assessments and reassessments of cases, training). The Provider

shall provide a price proposal justifying their proposed price.

C.13 **Eligibility**

Eligibility for services under this Agreement shall be determined and re-determined by the District, as applicable, in accordance with prescribed procedures. The Provider shall be subject to a written determination that it is qualified to provide the services and shall continue the same level of qualifications, subject to a review by the District, according to the criteria delineated in 27 DCMR Section 1905.6.

C.14 **Compliance With Laws**

As a condition of the District's obligation to perform under this Agreement, the Provider shall comply with all applicable District, Federal and other State and local governmental laws, regulations, standards, or ordinances and, where applicable, any other applicable licensing and permit laws, regulations, standards, or ordinances as necessary for the lawful provision of the services required of the Provider under the terms of this Agreement.

Solicitation No. DOC222164

Caption: DHS FSA APS In Home Care Aide(s)

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, date July 2010. (Attachment J.1)

Solicitation No. DOC222164

Caption: DHS FSA APS In Home Care Aide(s)

SECTION E: INSPECTION AND ACCEPTANCE

E.1 The inspection and acceptance requirements for this contract shall by clause number five (5) Inspection of Supplies and clause number six (6), Inspection of Services of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated July 2010. (Attachment J.1)

SECTION F: SERVICE DELIVERY AND PERFORMANCE

F.1 Term of Agreement

- F.1.1** The term of the contract shall be for a period of one (1) base year and four (4) option years subject to the availability of funds for any period beyond the end of the fiscal year in which the Agreement is awarded.
- F.1.2** If the Provider fails to perform its obligations under this Agreement in accordance with the Agreement and in a timely manner, or otherwise violates any provision of this Agreement, the District may terminate this Agreement for default or convenience of the District upon serving written notice of termination to the Provider in accordance with sections 7, 9 and 20 of the Government of the District of Columbia Standard Contract Provisions For Use With District of Columbia Government Supply and Services, dated march 2007, hereafter referred to as “Standard Contract Provisions.” (Attachment 2).
- F.1.3** The District reserves the right to cancel a task order issued pursuant to this Agreement upon thirty (30) days written notice to the Provider.

F.2 Agreement Not A Commitment of Funds or Commitment To Purchase

This Agreement is not a commitment by the District to purchase any quantity of a particular good or service covered under this Agreement from the Provider. The District shall be obligated only to the extent that authorized purchases are actually made by purchase order or task order pursuant to this Agreement.

F.3 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 (1) 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 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 sixty (60) months.
- F.2.5** Should the District exercise the contract option for option number three (3), the Provider will be required to complete a new Qualification Record.

SECTION G: ADMINISTRATION

G.1 Contracting Officer/Contract Administration

G.1.1 The Associate Procurement Officer/Contracting Officer is the only District official authorized to bind the District contractually through signing a contract or contract and all other documents relating to the contract or contract. All correspondence to the Assistant Procurement Officer/Contracting Officer shall be forwarded to:

Bernard M. Grayson, Jr. MA, CNP
Office of Contracting and Procurement
Department of Human Services
64 New York Ave., N.E., 6th Floor
Washington, D.C. 20002
Telephone Number: (202) 671-4493
Facsimile Number: (202) 671-4409
E-Mail: Bernard.grayson2@dc.gov

G.2 Contract Administrator

G.2.1 The Contracting Officer's Contract Administrator (CA) is the administrator responsible for the general administration of this contract and advising the Contracting Officer as to the compliance or noncompliance of the Provider with this Contract. In addition, the Contract Administrator is responsible for the day-to-day monitoring and supervision of this Agreement. The Contract Administrator is not authorized or empowered to make amendments, changes, or revisions to this agreement. The Contract Administrator shall be:

Robert Cosby, Program and Policy Analyst
D.C. Department of Human Services
Family Services Administration
64 New York Avenue, N.E.
Fourth Floor
Washington, D.C. 20002
Telephone: 202-671-4348
Fax: 202-478-9191
Cellular: 202-304-0745
E-Mail: robert.cosby3@dc.gov

G.2.3 Contact Person

For procurement information regarding this Contract contact:

Ms. Willandria Blount
Contract Specialist
64 New York Ave., NE 6th Floor
Washington, D.C. 20002
Telephone Number: (202) 671-4491
Facsimile Number: (202) 671-4409
E-mail Address: willandria.blount@dc.gov

G.3 Ordering and Payment

G.3.1 The Provider shall not provide services or treatment under this Agreement unless the Provider is in actual receipt of a purchase order or task order for the period of the service or treatment that is signed by a Contracting Officer.

G.3.2 All purchase orders or task orders issued in accordance with this Agreement shall be subject to the terms and conditions of this Agreement. In the event of a conflict between a purchase order or a task order and this Agreement, the Agreement shall take precedence.

G.3.3 If mailed, a purchase order or task order shall be considered “issued” by the District when deposited in the mail. Orders may be transmitted electronically.

G.4 INVOICE SUBMITTAL

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 30th day after receiving a proper invoice from the Contractor.

G.4.3 The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in Section G.4. Invoices shall be prepared in duplicate and submitted to the agency Chief Financial Officer with concurrent copies to the CA specified in Section G.9 below. The address of the CFO is:

Department of Human Services Family Services Administration (FSA)
Office of the Controller/Agency CFO
Department of Human Services (DHS)
64 New York Avenue, NE, 4th Floor
Washington, DC 20002
Attn: Steven Green
202-671-4221

G.4.4 To constitute a proper invoice, the Contractor shall submit the following information on the invoice:

- G.4.4.1** Contractor's name, federal tax ID and invoice date (date invoices as of the date of mailing or transmittal);
- G.4.4.2** Contract number and invoice number;
- G.4.4.3** Description, price, quantity and the date(s) that the supplies or services were delivered or performed;
- G.4.4.4** Other supporting documentation or information, as required by the Contracting Officer;
- G.4.4.5** Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;
- G.4.4.6** Name, title, phone number of person preparing the invoice;
- G.4.4.7** 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.4.4.8** Authorized signature.

G.5 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT

- G.5.1** 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.5.2** 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.6 PAYMENT

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

"Payment will be made on completion and acceptance of each item in accordance with the agreed upon delivery schedule."

G.7 ASSIGNMENT OF CONTRACT PAYMENTS

- G.7.1** 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.7.2** Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.

G.7.3 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.8 THE QUICK PAYMENT CLAUSE

G.8.1 Interest Penalties to Contractors

G.8.1.1 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.8.1.2 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.8.2 Payments to Subcontractors

G.8.2.1 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.8.2.2 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.8.2.3 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.8.2.4 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.8.3 Subcontract requirements

G.8.3.1 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.8.4 Cost reimbursement Ceiling

G.8.4.1 The costs for performing this Agreement shall not exceed the cost reimbursement ceiling specified in Section B of the Schedule as set forth in the Agreement.

G.8.4.2 The District is not obligated to reimburse the Provider for costs incurred in excess of the cost reimbursement ceiling specified in Section B listed in the Agreement and the Provider is not obligated to continue performance under this contract (including actions under the Termination clauses of this contract), or otherwise incur costs in excess of the cost reimbursement ceiling specified in Section B listed in the Agreement, until the Contracting Officer notifies the Provider, in writing, that the estimated cost has been increased and provides a revised cost reimbursement ceiling for performing this Agreement.

G.8.4.3 No notice, communication, or representation in any form from any person other than the Contracting Officer shall change the cost reimbursement ceiling. In the absence of the specified notice, the District is not obligated to reimburse the Provider for any costs in excess of the costs reimbursement ceiling, whether such costs were incurred during the course of the Agreement performance or as a result of termination.

G.8.4.4 If the cost reimbursement ceiling specified in Section B listed in the Agreement is increased, any costs the Provider incurs before the increase that are in excess of the previous cost reimbursement ceiling shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

G.8.5.5 A change order shall not be considered an authorization to exceed the applicable cost reimbursement ceiling specified in Section B as set forth in the Agreement, unless the change order specifically increases the cost reimbursement ceiling.

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

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

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

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

H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No. 2005-2103, Rev. 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 Section J.2. The Contractor shall be bound by the wage rates for the term of the contract subject to revision as stated herein and in accordance with Section 24 of the SCP. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

H.3 PUBLICITY

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

H.4 FREEDOM OF INFORMATION ACT

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

the CA within the timeframe designated by the CA. The FOIA Officer for the agency with programmatic responsibility will determine the release of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code §2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

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

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

H.5.2 The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement, (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 H.8.8 below, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 *et seq.*) (“Living Wage Act of 2006”), for contracts for services in the amount of \$100,000 or more in a 12-month period.
- H.8.2** The Contractor shall pay its employees and subcontractors who perform services under the contract no less than the current living wage published on the OCP website at www.ocp.dc.gov.
- H.8.3** The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate.
- H.8.4** The DOES may adjust the living wage annually and the OCP will publish the current living wage rate on its website at www.ocp.dc.gov.
- H.8.5** The Contractor shall provide a copy of the Fact Sheet attached as J.6 to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as J.5 in a conspicuous place in its place of business. The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.
- H.8.6** The Contractor shall maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for \$15,000 or more under the contract.
- H.8.7** The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 *et seq.*
- H.8.8** The requirements of the Living Wage Act of 2006 do not apply to:
- (1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;
 - (2) Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
 - (3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
 - (4) Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
 - (5) Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;
 - (6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25

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

- (7) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District;
- (8) Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));
- (9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and
- (10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

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

H.9 SUBCONTRACTING REQUIREMENTS

H.9.1 Mandatory Subcontracting Requirements

H.9.1.1 For contracts in excess of \$250,000, at least 35% of the dollar volume shall be subcontracted to certified small business enterprises; provided, however, that the costs of materials, goods, and supplies shall not be counted towards the 35% subcontracting requirement unless such materials, goods and supplies are purchased from certified small business enterprises.

H.9.1.2 If there are insufficient qualified small business enterprises to completely fulfill the requirement of paragraph H.9.1.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises; provided, however, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

H.9.1.3 A prime contractor which is certified as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections H.9.1.1 and H.9.1.2.

H.9.2 Subcontracting Plan

If the prime contractor is required by law to subcontract under this contract, it must subcontract at least 35% of the dollar volume of this contract in accordance with the provisions of section H.9.1. The prime contractor responding to this solicitation which is required to subcontract shall be required to submit with its proposal, a notarized statement detailing its subcontracting plan. Proposals responding to this RFP shall be deemed nonresponsive and shall be rejected if the Offeror is required to

subcontract, but fails to submit a subcontracting plan with its proposal. Once the plan is approved by the CO, changes to the plan will only occur with the prior written approval of the CO and the Director of DSLBD. Each subcontracting plan shall include the following:

- H.9.2.1** A description of the goods and services to be provided by SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;
 - H.9.2.2** A statement of the dollar value of the bid that pertains to the subcontracts to be performed by the SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;
 - H.9.2.3** The names and addresses of all proposed subcontractors who are SBEs or, if insufficient SBEs are available, who are certified business enterprises;
 - H.9.2.4** The name of the individual employed by the prime contractor who will administer the subcontracting plan, and a description of the duties of the individual;
 - H.9.2.5** A description of the efforts the prime contractor will make to ensure that SBEs, or, if insufficient SBEs are available, that certified business enterprises will have an equitable opportunity to compete for subcontracts;
 - H.9.2.6** In all subcontracts that offer further subcontracting opportunities, assurances that the prime contractor will include a statement, approved by the contracting officer, that the subcontractor will adopt a subcontracting plan similar to the subcontracting plan required by the contract;
 - H.9.2.7** Assurances that the prime contractor will cooperate in any studies or surveys that may be required by the contracting officer, and submit periodic reports, as requested by the contracting officer, to allow the District to determine the extent of compliance by the prime contractor with the subcontracting plan;
 - H.9.2.8** A list of the type of records the prime contractor will maintain to demonstrate procedures adopted to comply with the requirements set forth in the subcontracting plan, and assurances that the prime contractor will make such records available for review upon the District's request; and
 - H.9.2.9** A description of the prime contractor's recent effort to locate SBEs or, if insufficient SBEs are available, certified business enterprises, and to award subcontracts to them.
- H.9.3 Subcontracting Plan Compliance Reporting.** If the Contractor has an approved subcontracting plan required by law under this contract, the Contractor shall submit to the CO and the Director of DSLBD, no later than the 21st of each month following execution of the contract, a Subcontracting Plan Compliance Report to verify its compliance with the subcontracting requirements for the preceding month. The monthly subcontracting plan compliance report shall include the following information:
- H.9.3.1** The dollar amount of the contract or procurement;
 - H.9.3.2** A brief description of the goods procured or the services contracted for;

H.9.3.3 The name of the business enterprise from which the goods were procured or services contracted;

H.9.3.4 Whether the subcontractors to the contract are currently certified business enterprises;

H.9.3.5 The dollar percentage of the contract awarded to SBEs, or if insufficient SBEs, to other certified business enterprises;

H.9.3.6 A description of the activities the Contractor engaged in, in order to achieve the subcontracting requirements set forth in its plan; and

H.9.3.7 A description of any changes to the activities the Contractor intends to make by the next month to achieve the requirements set forth in its plan.

H.9.4 **Subcontractor Standards**

H.9.4.1 A prime contractor shall ensure that subcontractors meet the criteria for responsibility described in D.C. Official Code § 2-353.01.

H.9.5 **Enforcement and Penalties for Breach of Subcontracting Plan**

H.9.5.1 If during the performance of this contract, the Contractor fails to comply with its approved subcontracting plan, and 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 clause of the Standard Contract Provisions.

H.9.5.2 There shall be a rebuttable presumption that a contractor willfully breached its approved subcontracting plan if the contractor (i) fails to submit any required monitoring or compliance report; or (ii) submits a monitoring or compliance report with the intent to defraud.

H.9.5.3 A contractor that is found to have willfully breached its approved subcontracting plan for utilization of certified business enterprises in the performance of a contract shall be subject to the imposition of penalties, including monetary fines of \$15,000 or 5% of the total amount of the work that the contractor was to subcontract to certified business enterprises, whichever is greater, for each such breach.

PART II

SECTION I: AGREEMENT CLAUSES

I.1 Standard Contract Provisions Incorporated By Reference

The Government of the District of Columbia Standard Contract Provisions For Use With District of Columbia Government Supply and Services, dated April 2010, hereafter referred to as the “Standard Contract Provisions” are incorporated into this Contract (F.1), and shall govern the relationship of the parties as contained in this Contract. By signing this Contract, the Provider agrees, and acknowledges its obligation to be bound by the Standard Contract Provisions, and its requirements.

I.2 Special Indemnity

The following provision supplements Section 10 of the Standard Contract Provisions:
The Provider shall indemnify and hold harmless the District and all its officers, agents and servants acting within the scope of their official duties against any and all assessments, fines or monetary penalties that may be imposed on the District by order or judgment of any court of competent jurisdiction, or required pursuant to the terms of a consent order, the Jerry M. Consent Decree or a consent agreement, as a consequence or result of any act, omission or default of the Provider, its employees, agents or subcontractors in the performance of, or in connection with, any work required or performed under this Contract.

I.3 Confidentiality

All services or treatment provided by the Provider through referrals by the District to the Provider shall be provided in a confidential manner and the Provider shall not release any information relating to a recipient of the services or otherwise as to the provision of those services or treatment to any individual other than an official of the District connected with the provision of services under this Contract, except upon the written consent of the individual referral, or in the case of a minor, the custodial parent or legal guardian of the individual referral.

I.4 Access to Records

- I.4.1** The Provider shall retain all case records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to the contract for a period of five (5) years after termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the contract.
- I.4.2** The Provider shall assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, District, or other personnel duly authorized by the Contracting Officer.
- I.4.3** Persons duly authorized by the Contracting Officer shall have full access to and the right to examine any of the Provider’s contract and related records and documents, regardless of the form in which kept, at all reasonable times for as long as records are retained.

I.5 Amendments

This Contract, applicable documents and attachments incorporated by reference constitutes the entire Agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Agreement are superseded by this Contract. The Contracting Officer may, at any time, by written order and without notice to a surety, if any, make amendments or changes in the agreement within the general scope, services, or service rates of the Agreement. No amendment to this Agreement shall be valid unless approved in writing by the Contracting Officer, subject to any other approvals required in accordance with the District regulations at 27 DCMR. Except that the Contracting Officer may make purely clerical or administrative revisions to the Agreement with written notice to the Provider.

I.6 Tax Compliance Certification

In signing and submitting this Contract, the Provider certifies, attests, agrees, and acknowledges that the Provider is in compliance with all applicable tax requirements of the District of Columbia and shall maintain that compliance for the duration of the Agreement.

I.7 Subcontracts

The Provider shall not subcontract any of the work or services provided in accordance with this Agreement to any subcontractor without the prior written consent of the Contracting Officer. Any work or service that may be subcontracted shall be performed pursuant to a written subcontract agreement, which the District shall have the right to review and approve prior to its execution. Any such subcontract shall specify that the Provider and the subcontractor shall be subject to every provision of this Contract. Notwithstanding any subcontract approved by the District, the Provider shall remain solely liable to the District for all services required under this Contract.

I.8 Provider Responsibility

I.8.1 The Provider bears responsibility for ensuring that the Provider fulfills all its Contract requirements under any task order or purchase order that is issued to the Provider pursuant to this Contract.

I.8.2 The Provider shall notify the CA immediately whenever the Provider does not have adequate staff, financial resources, or facilities to comply with the provision of services under this Contract.

I.9 INSURANCE:

A. GENERAL REQUIREMENTS. The Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the Contracting Officer giving 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 Contracting Officer. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed

and have an A.M. Best Company rating of A-VIII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein. The Contractor shall ensure that all policies provide that the Contracting Officer shall be given thirty (30) days prior written notice in the event 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 Contracting Officer with ten (10) days prior written notice in the event of non-payment of premium.

1. Commercial General Liability Insurance. The Contractor shall provide evidence satisfactory to the Contracting Officer 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.
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.
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.

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.

4. Umbrella or Excess Liability Insurance. The Contractor shall provide umbrella or excess liability (which is excess over employer's liability, general liability, and automobile liability) insurance as follows: \$1,000,000 per occurrence, including the District of Columbia as additional insured.
5. Professional Liability Insurance (Errors & Omissions). The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per occurrence for each wrongful act and \$3,000,000 annual aggregate.

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

6. Crime Insurance (3rd Party Indemnity). The Contractor shall provide a 3rd Party Crime policy to cover the dishonest acts of Contractor's employees which result in a loss to the District. The policy shall provide a limit of \$50,000 per occurrence. This coverage shall be endorsed

to name the District of Columbia as joint-loss payee, as their interests may appear.

7. Sexual/Physical Abuse & Molestation. The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate. The policy coverage shall include the District of Columbia as an additional insured. This insurance requirement will be considered met **if the general liability insurance includes sexual abuse and molestation coverage for the required amounts.**

- B. DURATION. The Contractor shall carry all required insurance until all contract work is accepted by the District, and shall carry the required General Liability; any required Professional Liability; and any required Employment Practices Liability insurance for five (5) years following final acceptance of the work performed under this contract.
- C. LIABILITY. These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE, WILL NOT IN ANY WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.**
- D. CONTRACTOR'S PROPERTY. Contractor and subcontractors 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 and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.

- I.9.1** CERTIFICATES OF INSURANCE. The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in Section F.10 prior to commencing work. Evidence of insurance shall be submitted to:

Bernard M. Grayson, Jr. – Senior Contract Specialist
Office of Contracting and Procurement (OCP)
Office of Contracting and Procurement
DC Department of Human Services
Office of the Director
64 New York Ave., NE 6th Floor
Washington, DC 20001
Telephone Number: (202) 671-4493
Facsimile Number: (202) 671-4409
E-Mail: bernard.grayson2@dc.gov

- E. 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.
- F. NOTIFICATION. The Contractor shall immediately provide the Contracting Officer with written notice in the event that its insurance coverage has or will be substantially changed, canceled or not renewed, and provide an updated certificate of insurance to the Contracting Officer.

I.10 Department Of Labor Wage Determinations

The Provider is bound by the U.S. Department of Labor Wage Determination No. 2005-

2104, Revision 13, dated June 19, 2013 issued by the U.S. Department of Labor in accordance with the Service Agreement Act of 1965, as amended (41 U.S.C. 351-58), and incorporated into this Agreement as Attachment 4. The applicable U.S. Department of Labor Wage Determinations for the regions in which the Agreement services are provided shall bind Providers located in regions not bound by the above stated Wage Determination.

I.11 Special Indemnity

The following provision supplements Section 10 of the Standard Contract Provisions: The Provider shall indemnify and hold harmless the District and all its officers, agents and servants acting within the scope of their official duties against any and all assessments, fines or monetary penalties that may be imposed on the District by order or judgment of any court of competent jurisdiction, or required pursuant to the terms of a consent order, the Jerry M. Consent Decree or a consent agreement, as a consequence or result of any act, omission or default of the Provider, its employees, agents or subcontractors in the performance of, or in connection with, any work required or performed under this Contract.

I.12 HIPAA PRIVACY COMPLIANCE

I.12.1 HIPAA BUSINESS ASSOCIATE COMPLIANCE

For the purpose of this agreement Department Youth Rehabilitation Services, 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 ("HIPAA Regulations") and Cornell Corrections of California, Inc., as a recipient of Protected Health Information or electronic Protected Health Information from Department Youth Rehabilitation Services, 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.

1. 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:
 - i. 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
 - ii. 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;
 - i. Is created or received by a health care provider, health plan, employer, or health care clearinghouse;
 - ii. 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
 - iii. 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 District’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:

- i. Transmitted by, created or maintained in electronic media; or
- ii. Transmitted or maintained in any other form or medium.

PHI 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 PHI or ePHI (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 HealthACT (February 18, 2010) ("HITECH"), to maintain the security of the PHI and to prevent use or disclosure of such PHI 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.F.R. § 164 is as follows:

Solicitation No. DOC222164

Caption: DHS FSA APS In Home Care Aide(s)

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 PHI 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 PHI not permitted or required by this HIPAA Compliance Clause or other incident or condition arising out the Security Rule, including breaches of unsecured PHI 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 PHI received from the Business Associate, PHI created by the Business Associate, or PHI 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 PHI 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 PHI 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 PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 in a format as directed by the District Privacy Official or agency Privacy Officer 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 PHI 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 Identity And Procedure Verification Policy, attached hereto as Exhibit A and incorporated by reference.

- l. The Business Associate agrees to record authorizations and log such disclosures of PHI 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 PHI 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 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 PHI 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 PHI, relating to the use and disclosure of PHI received from the Business Associate, or created, or received by the Business Associate on behalf of the Covered Entity, available to the Covered Entity, or to the Secretary, within five (5) business days of their request and at a mutually agreed upon location, during normal business hours, and in a format designated by the District Privacy 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 PHI, to verify compliance.
 - q. The Business Associate may aggregate PHI in its possession with the PHI 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 PHI 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 PHI 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 PHI 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 PHI 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 § 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 PHI 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 PHI 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 PHI 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 PHI 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 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 PHI 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 PHI, to the extent that such changes may affect the use or disclosure of PHI by the Business Associate.
- c. The Covered Entity shall notify the Business Associate of any restriction to the use or disclosure of PHI 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 PHI by the Business Associate.

7. Permissible Requests by Covered Entity

Covered Entity shall not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule and Subpart E of 45 CFR § 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 debarred 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 PHI 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 Contract;
 - 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 PHI 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 PHI 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 PHI, 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 PHI 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, PHI 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.

c. **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.

d. **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 all PHI 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 PHI that is in the possession of all subcontractors, agents or workforce members of the Business Associate. The Business Associate shall retain no copies of PHI in any form.
- ii. In the event that the Business Associate determines that returning or destroying the PHI 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 PHI is infeasible, the Business Associate shall extend the protections of this HIPAA Compliance Clause to such PHI and limit further uses and disclosures of such PHI for so long as the Business Associate maintains such PHI. Additionally, the Business Associate shall:

- (1) Retain only that PHI 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 PHI 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 ePHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
- (4) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at section f which applied prior to termination; and
- (5) Return to covered entity or, if agreed to by covered entity, destroy the PHI 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 the sections of the Standard Contract Provisions for use with the District of Columbia Government Supply and Services Contracts covering Default and Termination for the Convenience of the District 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 PHI 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 PHI, 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 PHI by the Business Associate, its workforce, any of its subcontractors, agents, or any third party who has received PHI 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.

Attachment

Exhibit A - Identity and Procedure Verification. Please reference the HIPAA Privacy Compliance Policy at www.ocp.dc.gov, click on OCP Policies and Procedures under the heading e-Library, then click on HIPAA Privacy Compliance Policy Clause.

I.13 Access to Records

- I.13.1** The Provider shall retain all case records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to the contract for a period of five (5) years after termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the contract.
- I.13.2** The Provider shall assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, District, or other personnel duly authorized by the Contracting Officer.
- I.13.3** Persons duly authorized by the Contracting Officer shall have full access to and the right to examine any of the Provider's contract and related records and documents, regardless of the form in which kept, at all reasonable times for as long as records are retained.

SECTION J: ATTACHMENTS

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

Attachment Number	Document
J.1	Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (July 2010) available at www.ocp.dc.gov click on "OCP Solicitation" "Required Documents"
J.2	U.S. Department of Labor Wage Determination No. <i>2005-2103 Revision 16</i> , dated 7/08/2015
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 "OCP Solicitation" "Required Documents"
J.4	Department of Employment Services First Source Employment Agreement available at www.ocp.dc.gov click on "OCP Solicitation" "Required Documents"
J.5	Way to Work Amendment Act of 2006 - Living Wage Notice
J.6	Way to Work Amendment Act of 2006 - Living Wage Fact Sheet
J.7	Tax Certification Affidavit
J.8	Bidder/Offeror Certifications available at www.ocp.dc.gov click on "OCP Solicitation" "Required Documents"
J.9	Past Performance Evaluation Questionnaire

Solicitation No. DOC222164

Caption: DHS FSA APS In Home Care Aide(s)

SECTION K: REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

Bidder/Offeror Certification Form

available at www.ocp.dc.gov click on “OCP Solicitation” “Required Documents”

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 contracts resulting from this solicitation to the responsible offerors 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.

1. It is anticipated that multiple award(s) will be made from this solicitation and that the award(s) will be made on/about September 30, 2014.
2. It is anticipated that the award(s) from this solicitation will be a multiple-year Fixed-Price type contract with a Period of Performance of one (1) base period, and four (4) option periods, for a total period not to exceed sixty (60) months.

L.1.2 SELECTION OF NEGOTIATION PROCESS

In accordance with 27 DCMR §1632, after evaluation of the proposals using only the criteria stated in the RFP and in accordance with weightings provided in the RFP, the contracting officer may elect to proceed with any method of negotiations, discussions or award of the contract without negotiations, which is set forth in subsections (a), (b), (c), or (d) of section 1632.1.

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.2.4** 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 offerors shall complete, sign and submit all Representations, Certifications and Acknowledgments as appropriate.

L.2.7 The District will reject any offer that fails to include a subcontracting plan that is required by law.

L.2.8 Technical Proposal

L.2.8.1 Technical Approach

The Offeror shall provide the information contained in this section which shall facilitate the evaluation of the Offeror's technical approach and methodology to provide the required services described in Section C.5, C.6 and C.7; this factor examines all elements of the technical approach and the interdependency of each element in the successful delivery of the required services. The Offeror shall provide at a minimum the following information:

L.2.8.1.1 A written narrative including evidence of the offeror's understanding of the technical components of the requirements and an awareness of the scope and complexity of services to be provided;

L.2.8.2 Technical Expertise

This factor considers the technical expertise of the offeror to perform the District's requirements as described in Sections C of this solicitation. This factor encompasses all components of the offeror's staff and staff related activities including the offeror's organizational structure, the qualifications and expertise of the offeror's proposed staff. This factor considers the importance of the interrelationships of each staff component toward the contribution of performing the service requirements. This factor also encompasses the offeror's technical capacity to perform the required services as described in Sections C, a system to track deliverables, and the scheduling, coordination and documentation of the requirements. This factor examines the technical capacity of the offeror and of the techniques and processes the offeror shall use in the fulfilling the requirements as described in Section C of this solicitation.

L.2.8.2.1 A narrative describing the collective qualifications, experience, skills, and capabilities of the Offeror's proposed staff, the relevance and the benefit of the Offeror's staff qualifications, experience, and skills to successfully provide the required services described in Section C;

L.2.8.2.2 Specify your type of business or organization (for profit, not-for-profit, other). Be specific, and list the jurisdiction in which your organization is registered or licensed for business.

L.2.8.2.3 Give a brief history of your organization stating, at minimum, the number of years that you have been in this business and the services that you offer that are germane to this solicitation.

L.2.8.2.4 An organizational chart illustrating the Offeror's staffing plan that clearly delineates at a minimum the following: a. Each staff member to perform services under this contract and the corresponding position/title b. Reporting Lines clearly showing the lines of accountability. The overall program manager, who shall be the District's point of contact shall be identified.

L.2.8.2.3 The Offeror shall provide the following information for EACH staff position/title appearing on the Offeror's Organizational Chart: a. Resumes, Certifications, and Licenses, as applicable b. Position Description c. Years of relevant work experience on similar projects

L.2.8.2.4 Persons in the offeror's proposal that exhibit the offeror's ability to schedule, coordinate and document the delivery of services and deliverables.

L.2.8.3 Past Performance and Experience

The information contained in this section shall facilitate the evaluation of the Offeror's past performance and previous experience to perform services similar in size and scope as those described in Sections C. The Offeror shall provide at a minimum the following information:

L.2.8.3.1 A narrative that describes the Offeror's organizational history and past and current experience in performing services similar in size and scope as the required services described in Sections C. The Offeror's narrative shall address lessons learned and barriers overcome in previous experiences delivering services similar in size and scope as the required services described in Section C. and how this experience shall enable the Offeror to better perform the required services.

L.2.8.3.2 Offeror shall submit at a minimum three completed (3) Performance Evaluation Forms provided as Attachment Section J from the list of contracts identified in Section L.2.7.3.1 above. Discuss your performance on each contract in some detail.

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 Price Proposal

Shall include all line items including price per additional language with maintenance support per language.

L.5 PROPOSAL SUBMISSION DATE AND TIME, AND LATE SUBMISSIONS, LATE MODIFICATIONS, WITHDRAWAL OR MODIFICATION OF PROPOSALS AND LATE PROPOSALS

L.5.1 Proposal Submission

- L.5.1.1** 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.5.1.2** Paper, telephonic, telegraphic, and facsimile proposals may not be accepted or considered for award.
- L.5.1.3** 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.5.2 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.5.3 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.5.4 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.6 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 14 days prior to the closing date and time indicated for this solicitation. The District may not consider any questions received less than 14 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.7 RESTRICTION ON DISCLOSURE AND USE OF DATA

- L.7.1** Offerors who include in their proposal data that they do not want disclosed to the public or used by the District except for use in the procurement process shall mark the title page with the following legend:

"This proposal includes data that shall not be disclosed outside the District and shall not be duplicated, used or disclosed in whole or in part for any purpose except for use in the procurement process.

If, however, a contract is awarded to this offeror as a result of or in connection with the submission of this data, the District will have the right to duplicate, use, or disclose the data to the extent consistent with the District's needs in the procurement process. This restriction does not limit the District's rights to use, without restriction, information contained in this proposal if it is obtained from another source. The data subject to this restriction are contained in sheets (insert page numbers or other identification of sheets)."

L.7.2 Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal."

L.8 PROPOSALS WITH OPTION YEARS

The offeror shall include option year prices in its price/cost proposal. An offer may be determined to be unacceptable if it fails to include pricing for the option year(s).

L.9 PROPOSAL PROTESTS

Any actual or prospective offeror or contractor who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than ten (10) business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent at the time set for receipt of initial proposals shall be filed with the Board prior to the time set for receipt of initial proposals. In procurements in which proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested no later than the next closing time for receipt of proposals following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 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.10 UNNECESSARILY ELABORATE PROPOSALS

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate artwork, expensive visual and other presentation aids are neither necessary nor desired.

L.11 RETENTION OF PROPOSALS

All proposal documents will be the property of the District and retained by the District, and therefore will not be returned to the offerors.

L.12 PROPOSAL COSTS

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

L.13 CERTIFICATES OF INSURANCE

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

Bernard M. Grayson, Jr.

Department of Human Services/Department of Contracting and Procurement

64 New York Avenue NE, 6th Floor

Washington, DC 20002

E-mail:bernard.grayson2@dc.gov

L.14 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.15 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.16 LEGAL STATUS OF OFFEROR

Each proposal must provide the following information:

L.16.1 Name, address, telephone number and federal tax identification number of offeror;

L.16.2 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.16.3 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.17 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.18 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.19.1 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.19.2 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 FOR AWARD

M.1 GENERAL INFORMATION

To be acceptable and eligible for evaluation, proposals must (1) be prepared in accordance with and comply with the instructions given in this solicitation and (2) address all of the requirements set forth in the SOW. Offerors who submit proposals which fail to address all of the requirements of the SOW, who inadvertently omit a particular requirement of the SOW, or which merely offer to conduct a program in accordance with the requirements of the Government's scope of work may be eliminated from further consideration/evaluation and will not be eligible for an award. Proposals which address all of the requirements of the SOW shall receive a complete and comprehensive evaluation.

M.2 AWARD WITHOUT DISCUSSIONS AND COMPETITIVE RANGE DETERMINATIONS

Offerors are advised that the Government may evaluate proposals and award a contract without discussions. Therefore, the Offeror's initial proposal should contain the Offeror's best terms from a cost or price and technical standpoint. The Government also reserves the right to conduct discussions if the Contracting Officer determines them to be necessary.

In the event discussions are held, a competitive range determination will be made. If the Contracting Officer determines that the number of proposals in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

M.3. AWARD

Selection of an Offeror for contract award will be based on an evaluation of the proposal against three factors. The factors in descending order of importance are:

- a. Technical
- b. Past Performance
- c. Cost/Price

Although technical factors are of paramount consideration in the award of the contract, past performance and cost/price are also important to the overall contract award decision. All evaluation factors, other than cost/price, when combined are significantly more important than cost/price. Award will be made to that Offeror whose proposal contains the combination of those criteria offering the best overall value to the Government. This determination will be made by comparing differences in technical merit and past performance with differences in cost to the Government. The Government, however, will not make an award at a significantly higher cost to achieve slightly superior technical merit and past performance.

The merit of proposals will be evaluated carefully. Each proposal must carefully document the feasibility of successful implementation of the requirements of this RFP. Offerors must submit information sufficient to evaluate their proposals based on the detailed criteria listed below.

M.4 TECHNICAL EVALUATION

(0 - 100 Points)

The following criteria will be used to technically evaluate proposals submitted in response to this solicitation. The merits of each proposal will be judged solely on the written material provided by the Offeror. The criteria are listed in descending order of importance:

M.4.1 Comprehensive Knowledge

(25 points)

The offeror demonstrates a strong understanding of the project will be based on the degree to which the offeror responds to the requirements of the Statement of Work, consistent with the objectives, purposes, and compliance with program requirements. This includes the offerors understanding of cellular systems analysis, design, integration, documentation and implementation of the work to be performed as well as any potential problems or constraints which may be encountered.

M.4.2 Approach

(10 points)

The technical approach should demonstrate the following:

The Offeror's approach shall be sufficient, logical in format and shall demonstrate a methodology consistent with the tasks to be accomplished. It shall include:

- A. A detailed description of how each of the tasks shall be accomplished. Examples of plans, agenda, forms, etc. shall be provided;
- B. Feasibility, practicability, and appropriateness of proposed methods for accomplishing the tasks and deliverables identified;
- C. An indication of the issues and problems that might occur in the implementation of the project and a discussion of how these issues and problems might be addressed or resolved.

M.4.3 Corporate Experience

(20 points)

The offer shall submit documentation displaying the years of service and the business focus for the technical area requested and a list of business contacts available. The offeror shall submit resumes of individuals proposed to work on this task. The resumes must address education and experience and include a narrative explaining how each individuals capabilities and experience will contribute to the success of this project.

M.4.4 Staff Capacity

(20 points)

The offeror shall submit information on committed physical and intellectual resources with specialization in technical knowledge and analysis of highly specialized telecommunications

applications and operational environments, high-level functional systems analysis, design, integration, documentation and implementation advice on exceptionally complex problems.

M.4.5 Management Plan

(10 points)

The offeror presents an organizational chart for the project team and explains clearly the roles of each proposed staff member. If subcontractors or consultants are proposed, their roles are clear. The management plan presented is likely to result in timely and high quality deliverables. Availability is documented for any subcontractors or consultants proposed (e.g. through the inclusion of letters of commitment).

M.5 PAST PERFORMANCE EVALUATION

(15 points)

M.5.1 General

The past performance evaluation will be based on information obtained from references provided by the Offeror, as well as other relevant past performance information obtained from other sources known to the Government.

When evaluating past performance, the Government will focus on the areas of Quality of Service, Timeliness of Performance, Price/Cost Control, and Customer Satisfaction

In the event the Government receives a technically acceptable proposal from an Offeror who does not have a past performance record, the Government will average the past performance rating of all Offerors submitting technically acceptable proposals and apply the average rating to the Offeror's proposal.

M.5.2 Evaluation Scheme

The Offeror shall provide past performance reference information indicating the quality of services performed in the past three years.

The Government will assess an overall past performance rating for each reference contacted. The overall ratings for each reference will then be averaged to arrive at a final past performance rating which will be assigned points based on the following rating scheme:

Definition

Description

Exceptional
++ (Plus-Plus)

The Contractor has demonstrated an excellent level of performance which exceeds the performance level described as "Excellent". It is expected that this rating will be used in those rare instances when Contractor performance clearly demonstrates a level of quality/innovation/performance well beyond the contract requirements warranting the assignment of the highest possible rating.

Excellent	The Contractor has demonstrated an excellent performance level in all categories. There have been no performance problems and the Contractor has demonstrated initiative to enhance/exceed contractual requirements and objectives. The Contractor also has maintained an excellent Contractor/Government relationship throughout contract performance.
Good	There are no quality or service problems; no cost/price issues; and no delays. Responses to inquiries and technical/service administrative issues are consistently effective and responsive. Nonconformance does not impact achievement of contract requirements.
Acceptable	Non-conformances are minor and have little impact in achievement of contract requirements; requires minor intervention by Government personnel to resolve issues.
Marginal	Non-conformances are impacting achievement of contract requirements, requires substantial intervention by Government personnel to resolve issues.
Unacceptable	Non-conformances are compromising the achievement of contract requirements, despite substantive intervention by Government personnel.

Note: As stated in this document, Offerors shall provide a thorough explanation of problems encountered and corrective actions taken. The Government will take the Offerors' comments into consideration when conducting its past performance evaluation. **Offerors MAY NOT BE GIVEN ANOTHER OPPORTUNITY TO ADDRESS PROBLEMS ENCOUNTERED IN PAST PERFORMANCE FOR REFERENCES PROVIDED AS A PART OF YOUR PROPOSAL.**

M.6 COST EVALUATION

Estimated cost is not a numerically weighted factor and will receive less consideration than technical merit and past performance when combined. Although estimated cost will not be point scored, it is important and its importance as an evaluation factor could increase as competing proposals become more equal in terms of technical merit and past performance.

The proposals will be evaluated on the basis of Best Value, which is the offer which provides the greatest overall benefit under the specified selection criteria.