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|--|--------------|-------------------------------------|--|----------------------------|--|--------------------------------------|--|--|-------------------------------------|
| SOLICITATION, OFFER, AND AWARD  Government of the District of Columbia | | | 1. Caption | | | Page of Pages | | | |
| | | | Unattended Vending Services Federal Building | | | 1 | 70 | | |
| 2. Contract Number | | 3. Solicitation Number | | 4. Type of Solicitation | | 5. Date Issued | | 6. Type of Market | |
| | | DCJM-2015-B-0015 | | X | Sealed Bid (IFB) | | | | Open |
| | | | | | Sealed Proposals (RFP) | | | X | Set Aside |
| | | | | | Other | | | | Open with Sub-Contracting Set Aside |
| 7. Issued By: | | | | 8. Address Offer to: | | | | | |
| Department on Disability Services Office of Contracts and Procurement 1125 15 th Street NW, 4 th Floor Washington, DC 20005-2720 | | | | Same as Block 7 | | | | | |
| NOTE: In sealed bid solicitations "offer" and offeror" means "bid" and "bidder" | | | | | | | | | |
| SOLICITATION | | | | | | | | | |
| 9. Sealed offers in electronic format and for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried to the bid counter located at <u>1125 15th Street NW, 2nd Floor</u> until <u>2:00 p.m.</u> local time on February 20, 2015 | | | | | | | | | |
| CAUTION: Late Submissions, Modifications and Withdrawals: See 27 DCMR chapters 15 & 16 as applicable. All offers are subject to all terms & conditions contained in this solicitation. | | | | | | | | | |
| 10. For Information Contact | A. Name | | | B. Telephone Number | | | C. E-mail Address | | |
| | Monica Brown | | | 202 | 730-1861 | Fax 202-730-1514 | | Monica.Brown4@dc.gov | |
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| OFFER | | | | | | | | | |
| 12. The undersigned agrees, if this offer is accepted within <u>30</u> calendar days from the date for receipt of offers specified above to furnish any and 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"/> 15 C. Check if remittance address is different from above - Refer to Section G | | | 17. Signature | | 18. Offer Date | |
| (Area Code) | (Number) | (Ext) | | | | | | | |
| AWARD (TO BE COMPLETED BY GOVERNMENT) | | | | | | | | | |
| 19 Accepted as to Items numbered | | | 20. Amount | | | 21 Accounting and Appropriation Data | | | |
| 22. Name of Contracting Officer (Type or Print) | | | | | | | | | |
| 23. Signature of Contracting Officer (District of Columbia) | | | | | | 24. Award Date | | | |

SECTION B: CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE

B.1 The Government of the District of Columbia, Department on Disability Services (the “District”), Rehabilitation Services Administration, Randolph Sheppard Vending Facilities Program (RSVFP) (District) is seeking a contractor develop and operate unattended vending services through self-checkout kiosks at:

1. Thomas P. O'Neill, Jr. Federal Building at 2nd & C Streets, SW

Locations are to be operated in accordance to District of Columbia facilities Under Code of Federal Regulations 34, Part 395-Vending Facility Program for the Blind. This opportunity shall be at the vendor’s expense in exchange for the District’s right to provide the services authorized in support of the District’s RSVFP

B.3 PRICE SCHEDULE

B.3.1 BASE YEAR

| CLIN | Item Description | Unit | Percentage Offered to RSVFP above minimum of 10% |
|------|-----------------------------|--------------------------------------|--|
| 0001 | Unattended Vending Services | Percentage of net proceeds per month | |

B.3.2 An offeror responding to this solicitation must submit with its proposal, a notarized statement detailing any subcontracting plan required by law. For contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted in accordance with section H.22. Proposals responding to this IFB shall be deemed nonresponsive and shall be rejected if the offeror fails to submit a subcontracting plan that is required by law.

.SECTION C: SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE

1. Subject to local laws and ordinances, Contractor, at no expense to the District, shall apply for all required permits and licenses for the construction and operation of the Premises in the Facility.
2. Contractor has the exclusive right to provide cashless self-checkout kiosk services and to install vending and other related equipment (collectively, "the Equipment") to dispense food, beverage, and sundry products supplied by Contractor ("Products") at the sites and facilities described on the Permit. Contractor shall install, maintain, and service the equipment in a sanitary manner in accordance with industry standards and all federal, District of Columbia, and local laws. In the event that a piece of equipment is not generating an appropriate volume of Net Vending Sales or revenues, after consultation with the SLA, Contractor may: (i) remove such piece of equipment; (ii) implement a subsidy arrangement upon the mutual agreement of the parties; or (iii) the DC DDS/RSA will request the Provider to retrieve the vending machine(s) within thirty (30) days if the micromarket is unsuccessful. Contractor will maintain the areas immediately adjacent to the equipment in a sanitary manner in accordance with industry standards and all federal, District of Columbia, and local laws.
3. With the exception of weekends or federal holidays, Contractor shall do the following on a reasonably frequent basis as required by the new DC Workplace Wellness Act, they shall comply with the provisions of that act as it relates to stocking healthy food choices and labeling:
 - (a) Provide goods and services in accordance with Contractor's unattended vending product line;
 - (b) Maintain appropriate service and restocking of the Facility to provide the services herein;
 - (c) Keep equipment within the Premises adequately serviced and repaired, so as to be in good working order;
 - (d) Ensure the Contractor Unattended Vending Services location is properly stocked and available twenty- four (24) hours per day to customers;
 - (e) Order and supply all paper products that are necessary to provide the services under this Agreement, including but not limited to, plates, cups, utensils, napkins and paper towels in types consistent with that used at Contractor unattended vending locations;
 - (f) Ensure that its employees: (1) observe all health codes and food handling

- guidelines as prescribed by District of Columbia, state, and federal law; and (2) use all protective equipment as prescribed by District of Columbia, local and federal law;
- (g) Ensure that all employees providing Services at the Premises pass a federal criminal background investigation to access federal property, as necessary;
 - (h) Ensure the prices charged for the services and products are competitive and similar to retail services in and around the District of Columbia Metropolitan Area. If such prices are materially changed, the District shall be given notice of such change;
 - (i) Not hold the District responsible if an employee or customer becomes ill as a result of ingesting food supplied by Contractor except to the extent due to the negligent acts or omissions of the District;
 - (J) Communicate directly with the District concerning health reports, income statements reports, customer requests, survey results and complaints;
 - (k) Not assign this Agreement;
 - (l) Keep the Premises in good order and appearance, in a clean and sanitary condition, and free from trash and flammable materials. Contractor shall dispose of any and all food wastes generated in connection with its use of the Premises in compliance with applicable health regulations;
 - (m) Ensure that Contractor personnel at all times complies with host facility security procedures;
 - (n) Ensure that Contractor personnel have his or her photograph taken for the purpose of security if required by the host facility for personnel at the Facility. Identification badges shall be properly displayed whenever Contractor personnel are on the facility property. Contractor shall ensure that all identification badges issued to its personnel by the facility are returned when Contractor's personnel is dismissed or terminated. Contractor shall promptly notify the District when it becomes aware that an identification badge is lost; and
 - (o) Operate the agreement as set forth in the attached Operating Agreement, or during such reduced or expanded hours as agreed to by the District, host facility, and Contractor.
4. Contractor shall have the right to enter the Facility without charge (except as otherwise specified herein), for the purpose of developing the Contractor Unattended Vending Services location at the Premises.

C.1.2 APPLICABLE DOCUMENTS

The following documents are incorporated into the Contract by this reference. The Contractor shall comply with the most recent versions and future revisions to all applicable Federal and District of Columbia laws, court orders, related to the performance of the contract requirements.

| Item No. | Document Type | Title | Date | Document Location |
|----------|--|---------------------------------------|--------------------------------|--|
| 1. | Code of Federal Regulations 34, Part 395-Vending facility Program for the Blind on Federal and Other Properties | Randolph Shepard Act | 1936 amended 1954, 1977 | https://www2.ed.gov/pr ograms/rsa rsp/index.html |
| 2. | The Randolph Sheppard Act and the District of Columbia Municipal Regulations 29 Chapter 2 Blind Vendors Program | DDS Notice of final Rulemaking | 2012 | http://www.dcregs.dc.gov/notice/download |
| 3. | Fit Pick Guidelines | | | www.FitPick.org/about.php |
| 4. | DC Workplace Wellness Policy | | 2013 | |
| 5. | FDA US food & Drug Administration Calorie Disclosure rules Vending and Refreshment Services Industry | | 2014 | www.vending.org |
| 6. | NAMA National Automatic Merchandizing Assoc. | New Fit Pick Guidelines | 2014 | www.fns.usda.gov/cnd/governance/legislation/allfoods-flyer.pdf |

C.1.3 DEFINITIONS AND ACRONYMS

Act- means the Randolph-Sheppard Vending Stand Act (Pub's. 83-565 and Pub's. 93-516, 20 U.S.C., Ch. 6A, Sec.107.

Energy Star Standards: meeting the standards of the U.S. Environmental Protection Agency (EPA). Go to <http://www.energystar.gov>. for more information on Energy Star standards by the EPA.

Federal & District Property: any building, land or other real property owned, leased, or occupied by any department, agency or instrumentality of the United States (including the Department of Defense and the United States postal Service), or any other instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States.

Fit Pick Program: Lists products that meet the healthy food selections as defined by the American Heart Association, 2005 USDA Dietary Guidelines for Americans and Alliance for a Healthier Generation.

Gross Income: income paid to the District based on the value of sales before deducting customer discounts, allowances, returns, or other expenses. This income is collected from vendors located on federal and District Government properties under the jurisdiction of the SLA-RSVFP.

Prime Contractor - The vending company that is awarded this contract. A list of current vending machine service providers and their current assigned locations will be provided to the prime contractor to encourage subcontracting opportunities.

Rehabilitation Services Administration (RSA)-Randolph Sheppard Vending Facilities Program (RSVFP) - an administration within the Department on Disability Services that is the designated as the State Licensing Agency to manage the RSVFP.

State Licensing Agency (SLA): the State agency designated by the Secretary of the US Department of Education under the Act to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

Vending Machine: a machine that accepts coin, currency and credit card and/or bank debit cards for the purchase of food and beverages.

C.2 BACKGROUND

C.2.1 The RSVFP is a business enterprise for legally blind licensed managers. Vending income provides management support to the SLA/RSVFP functions, pension

income for the program participants and monthly income to the program participants.

- C.2.2** The Program operates under the auspices of DDS, RSA. Under Code of Federal Regulations 34, Part 395-Vending Facility Program for the Blind on Federal and Other Properties, the Randolph Sheppard Act and the District of Columbia Municipal Regulations 29 Chapter 2 Blind Vendors Program. The RSA is authorized by the U.S. Department of Education as the SLA to administer the Randolph Sheppard Vending Facilities Program. The Program provides business opportunities, training and remunerative employment for the legally blind individuals who are assigned to vending facilities (including but not limited to snack bars, cafeterias, card shops, dry cleaners, and newsstands) located on Federal and District properties.
- C.2.3** Currently, the RSVFP engages in Full Service Vending Agreements with nineteen vending machine providers to service RSVFP designated buildings. Currently there are 34 Randolph Sheppard businesses located on federal and district properties throughout the District which operate as grab n go snack bars, card shops and delicatessens. Within 45 business days of the prior month closing, the vending companies mail a vending commission report and check to the RSVFP based on the negotiated commission rate from the Full Service Vending Agreement.
- C.2.4** DDS/RSA is in need of vending company services for the devolvement of an unattended self-service vending market concept for various locations that been offered to the SLA as possible Randolph-Sheppard sites. These facilities are located in sites that have a building population of 600 or less; or in buildings where the majority of the employees work night shifts or the building is open 24 hours. Such sites would not be economically viable for vendors to operate as employee manned locations.

C.3 **REQUIREMENTS**

The Contractor shall develop and operate unattended vending services through self-checkout kiosks as described herein. Contractor shall perform the services upon the terms and conditions set forth herein. This Agreement governs the provision of the services performed from the Effective Date through the end of the Term (as defined hereinafter).

C.3.1 Premises

The Contractor shall be responsible for utility charges and services required for the operation of the facilities including, but not limited to, the Premises (e.g., heating, air conditioning, gas, oil, water, sewer, electricity), trash removal costs, common area maintenance costs, and other

maintenance costs, parking lot and sidewalk repair and maintenance costs (including without limitation snow and ice removal).

C.3.2. Remuneration

- C.3.2.1** Contractor shall pay The District a Program Fee totaling the percentage specified in Section B.3, Price Schedule, of the net sales of snacks and beverages per month upon receipt of the fully executed Agreement ("Program Fee"). "Net Sales" shall mean the reported units sold multiplied by the Initial Unit Selling Prices (excluding cold food machine sales) less applicable sales taxes, California Redemption Value (if applicable), returns, spoilage, and container deposits. Payments of Program Fee will be made at the Notice address herein or such other place as may from time to time be designated to Contractor in writing. Program Fee shall be computed monthly (based on Contractor's fiscal calendar) based upon Net Vending Sales on the Premises. The report detailing Program Fees shall be forwarded within 45 business days of month end. Costs of providing cashless payment options (e.g. credit and debit card readers) including, but not limited to wireless communication charges, bank or credit card fees, shall be deducted from Client Program Fees earned. Contractor shall mail a check in the amount of the negotiated rate of the RSVFP Fee.
- C.3.2.2** The Contractor shall mail payment by check to the DC Randolph-Sheppard Vending Facility Program 1125 15th St NW Washington DC 20005 along with the vending commission report.
- C.3.2.3** Contractor shall include a vending commission report with each check detailing the gross and net sales generated per month.
- C.3.2.4** Contractor shall provide The District a copy of any monthly or quarterly sales reports of the gross sales sent to the District of Columbia government when such forms are provided to the government.
- C.3.2.5** Contractor shall allow the District to review Contractor's records, for the previous twelve (12) months only, to audit Contractor's non-confidential and non-proprietary books and records (as pertaining to the Premises only) to verify the accuracy of the amount of gross sales, during regular business hours, and

provided that reasonable written notice is first given to Contractor and further provided that.

C.3.2.6 In the event that the audit shows that Contractor has underreported gross sales, Contractor shall pay the Program Fee pertaining to the underreported amount of gross sales to Randolph Sheppard Manager(s) within fifteen (15) days of notification of the underreporting.

C.3.3 Operation of Facility

C.3.3.1 Contractor shall use the Premises for the operation of a Contractor Unattended Vending Services facility, for the sale of food items and beverages as approved by Contractor, for on or off Premises consumption and for no other purpose.

C.3.3.2 Contractor shall keep the Premises in good condition, and shall redecorate, paint and renovate the Premises as may be necessary to keep them in repair and good appearance consistent with common practice under this Agreement for the Premises.

C.3.3.3 Contractor shall maintain, and, if necessary, replace and repair its equipment and lighting fixtures. Contractor shall quit and surrender the Premises at the end of the Term in good and orderly condition and repair (reasonable wear and tear and damage or destruction by casualty or other unavoidable causes excepted) as the reasonable use thereof will permit.

C.3.3.4 Contractor shall report to host facility any need to repair or replace light bulbs, tubes and ballasts in all common areas of the Facility and to report all other necessary repairs to the Facility, including repairs to the mechanical, which is heating, ventilation, and air conditioning ("HVAC"), electrical, plumbing and all other systems in or serving the Facility including, but not limited to, the Premises.

C.3.4 Alterations and Improvements

C.3.4.1 Any alterations, renovations, additions, or improvements, if structural and/or mechanical (HVAC), proposed by Contractor shall be submitted in writing to the District and the host facility at least thirty (30) days in advance of such alterations or renovations, and shall be accompanied by a written statement specifying in detail the proposed work to be performed. Such statement shall be accompanied by detailed plans and specifications for the construction of such alterations and all such alterations and renovations shall be subject to the written approval of the District and the host facility;

C.3.4.2 All erections, alterations, additions and improvements, whether temporary or permanent in character, which may be made upon the Premises and, pursuant to advance approval (if required by the terms of this Agreement) by Contractor, except furniture or movable trade fixtures and equipment installed at the expense of Contractor, shall be the property of the host facility and shall remain upon and be surrendered with the Premises as a part thereof at the termination of this Agreement, without compensation to Contractor. All erections, alterations, additions and improvements, when approved, shall comply with all federal, District of Columbia, state and local Enforcement Codes.

C.3.4.3 In the event the District or host facility desire to make structural improvements to the Facility or the Premises that will require the demolition and/or rebuilding of all or part of the Premises or the Facility, The District agrees to have it done in a manner that will not result in the reduction of the square footage, footprint, visibility or accessibility to the Contractor Unattended Vending Services facility at the Premises and Contractor shall have the right to:

- (a) Occupy the rebuilt Premises, which Contractor shall rebuild to Contractor then-current standards, at Contractor's sole cost and expense, or
- (b) Terminate this Agreement upon ninety (90) days' prior written notice to the District, whereupon this Agreement shall terminate and be of no further force or effect at the end of such ninety (90) day period.

C.3.5. Right to Inspect and Exhibit

The Contractor shall allow The District or its agents the right to enter the Premises, upon prior reasonable notice to Contractor, at reasonable hours in the day or night to examine the same, or to make such repairs, additions or alterations as it shall deem necessary for the safety, preservation or restoration of the Facility or to ensure compliance with the provisions of this Agreement. Any such inspection will be conducted in a manner that does not interfere with the operation of the Contractor Unattended Vending Services facility at the Premises. Notwithstanding the foregoing, The District may enter the Premises at any time without notice if The District in their sole reasonable discretion determines that an emergency or hazardous situation exists.

C.3.6 Damage by Fire, Explosion, the Elements or Otherwise

C.3.6.1 In the event of the destruction of the Premises or the Facility by fire, explosion, the elements or otherwise during the Term, or previous thereto, or such partial destruction thereof as to render the Premises wholly unfit for occupancy, or should the Premises be so badly damaged that the same cannot be repaired within ninety (90) days from the happening of such damage, then and in such case, the Term hereby created shall, at the option of Contractor, cease and become null and void from the date of such damage or destruction, and Contractor shall promptly surrender the Premises and all Contractor's interest therein to the District, and Contractor shall have no further liability to the District.

C.3.6.2 Should the Premises be rendered unfit for occupancy, but yet be repairable within ninety (90) days from the happening of said damage, Contractor may enter and repair the same with reasonable speed, and remuneration shall not accrue after said damage and while repairs are being made, but shall recommence immediately after the Contractor reopens the Premises for business. Contractor shall immediately notify the District in case of fire or other damage to the Premises.

C.3.7. Observation of Laws, Ordinances, Rules and Regulations

Contractor shall agree to observe and comply with all laws, ordinances, rules and regulations of the Federal, District of Columbia, County and Municipal authorities applicable to the business conducted by Contractor at the Facility. Contractor shall each be responsible for making such structural alterations to the Facility as may be required from time to time in order to ensure that the Facility complies with any such laws, ordinances, rules and regulations during the Term of this Agreement.

C.3.8. Default, Breach and Termination

C.3.8.1 Default: After written notice of any default, Contractor shall have fifteen (15) days to cure a default for non-payment and thirty (30) days to cure a non-financial default. In the event the non-financial default cannot reasonably be cured within thirty (30) days but Contractor is diligently pursuing cure of the default, Contractor shall be not deemed in default. In the event of a default, which is not cured as provided for above, the District shall have the right to terminate the Agreement by providing written notice to the Contractor.

C.3.8.2 Non-waiver of Breach: The waiver by either party of a breach of any provision of this Contract shall not operate or be construed as a waiver of any subsequent breach thereof or the waiver of any breach of any other provision of this Agreement.

C.3.8.3 Any change in law that affects the priority granted to the District to operate vending facilities pursuant to the Act, or that prohibits The District from operating the facility; or (e) Mutual agreement of the parties hereto upon ninety (90) days advance written notice, The District may terminate this Contract upon ninety (90) days prior written notice to the Contractor.

C.3.8.4 In the event of a termination of this Contract, the SLA shall not be bound to the terms of this Agreement, or any other oral or written agreements between The District and Contractor.

C.3.9. Notices

C.3.9.1 All notices and demands, legal or otherwise, incidental to this Contract, or the occupation of the Premises, shall be in writing. If The District or their agent desires to give or serve upon Contractor any notice or demand, it shall be sufficient to send a copy thereof by certified mail, return receipt requested, or by overnight courier, addressed to Contractor at the address set forth on Page 1, in Section 8 of the Contractors offer. Notices from Contractor to The District shall be sent by certified mail, return receipt requested, or by overnight courier, and delivered to address set forth on Page 1, Section 7.

C.3.9.2 Contractor shall promptly provide The District and SLA with an address and telephone number to be used in the event of an emergency, and shall update that information from time to time as reasonably required.

C.3.10 Closure

C.3.10.1 Should the Permit be revoked or the Facility or any part thereof be closed by the host facility agency, the Contractor or The District shall have the option to terminate this Contract for convenience if the closure is of such character as to impair or prevent Contractor from conducting its business substantially as theretofore conducted, provided said election shall be made within thirty (30) days after the receipt of notice of said closure.

C.3.10.2 In the event that the property managing official revokes the Permit or closes any part of the Facility in violation of the Act, The District and Contractor shall work together to provide all information to the SLA as may be necessary to pursue appropriate remedies pursuant to 34 C.F.R. §§ 395.36 and 395.37c, as specified in the Operating Agreement,II(C)(26).

C.3.10.3 The Contractor shall acknowledge that The District hereby represents to Contractor that, as of the date the District sign this Agreement, The District will have no actual or constructive knowledge of any proposed revocation of the Permit or closure of any part of the Facility.

C.3.11. Contractor Additional Agreements

Contractor agrees to the following:

C.3.11.1 Contractor shall not permit the distribution or posting of any notices, handbills or other solicitations at or about the Premises. Except for Contractor point of purchase marketing materials, which may be displayed at the Premises, The District reserves the right, in their commercially reasonable discretion, to require the removal of any signs, advertisements or other materials posted in or on the windows and/or doors of the Premises, Facility and federal property.

C.3.11.2 Upon termination of this Agreement, Contractor will be responsible for any such changes to the Premises and will effectively distinguish the Premises from its former appearance (collectively, "De-Image") and immediately remove and transport all goods bearing any Contractor marks. If Contractor fails to De-Image the Premises within thirty (30) days of the termination date, then the District shall have the right to De-Image the Premises and discard Contractor property without prejudice to Contractor's other rights and remedies.

C.3.12 Independent Business Relationship

It is understood that Contractor operates an independent business. Nothing in this contract shall be construed as reserving or granting The District or any other party the right to exercise any control over Contractor's business or the manner in which the same shall be conducted, but the control and direction of such business and operations shall be and remain in Contractor, subject only to Contractor's performance of the obligations of this Contract.

C.3.13 Limitation of Liability

The Contractor shall acknowledge that in no event shall the District be liable to Contractor or any other person or entity for any consequential, indirect, incidental, or special damages of any kind under any cause of action arising out of or related to this Agreement (including its termination), including, without limitation, loss of use of facilities, loss of business, profits or information, or other economic loss, except for matters arising directly or indirectly out of District negligence, willful misconduct and/or breach of the terms of this Agreement.

C.3.14. Warranties

A. Contractor Warranties

1. Contractor hereby represents and warrants that:

(a) The services will be performed in a professional and workmanlike manner, and the resulting products will conform in all respects to the requirements of this contract;

(b) Contractor has expertise, experience, and familiarity with the services described in this Agreement necessary to perform the services rendered hereunder by the highest standards;

(c) Contractor shall secure and pay for all permits and government fees, licenses and inspections necessary to permit themselves to carry out their obligations under this contract. Contractor shall provide The District with a copy of such licenses;

(d) Contractor has and shall maintain during the term of this contract the full ability, power, right and authority to enter into and perform its obligations under this Agreement, and that Contractor agrees to observe all laws applicable to its use and occupancy of the Facility at the Premises and its provision of the services. For purposes of this Agreement, laws shall include all statutes, ordinances, regulations, and other requirements of any federal, District of Columbia or municipal government or any department, agency, bureau or division thereof.

Contractor assumes sole responsibility for any cleanup, remediation, prevention and abatement of nuisances, violations or other grievances, to the extent caused by acts or omissions of Contractor, its agents, or employees, or otherwise arising out of Contractor's performance of this Agreement. Contractor further agrees to observe all fire prevention, fire safety, security rules and other safety and security rules enforced at the federal property about which Contractor has received prior written notice.

2. The foregoing representations and warranties shall be in addition to, and not in limitation of any other warranty, guarantee, or remedy provided by law or by this Agreement. The provisions of this section shall survive expiration or termination of this Agreement.

C.3.15.MISCELLANEOUS PROVISIONS

C.3.15.1. Property Rights

Contractor acknowledges that neither this Agreement, nor the presence and operation of a Contractor Unattended Vending Services facility in the Premises located within the Randolph-Sheppard Vending Facility, establishes any property rights or property interests in the physical location of the Contractor facility, nor the Randolph-Sheppard Vending Facility, or program.

C.3.15.2. Use of Proprietary Names and Marks

The District acknowledge that the names, logos, service marks, trademarks, trade dress, trade names, and patents, whether or not registered, now or hereafter owned by or licensed to Contractor or its affiliated and parent companies (collectively, Marks) are proprietary Marks of Contractor. The District will not use the Marks for any purpose except as expressly permitted in writing by Contractor. Upon termination of this Agreement, The District shall immediately and permanently discontinue the use and display of any Marks. Nothing in this Agreement shall impair Contractor's right to its trademarks and trade dress.

C.3.15.3. Cost of Contractor Unattended Vending Services Facility

Contractor agrees to assume all financial and performance risks and expenses associated with its responsibilities under this contract. Without limiting the foregoing or any of its other obligations under the contract, Contractor shall be responsible for incurring and paying all costs, fees and other expenses associated with performing its responsibilities under this contract, including but not limited to cost for food and supply inventories.

C.3.15.4. Remedies Not Exclusive

The rights and remedies of The District and Contractor contained in this Agreement shall not be construed as exclusive and shall be in addition to every other right or remedy now or hereafter existing at law, in equity or by statute. The failure to exercise one or more rights or remedies shall not be taken to exclude or waive the exercise of any other right or remedy. All such rights or remedies may be exercised and enforced concurrently and whenever and as often as a party may deem desirable. The consent or approval by either party to any act by the other party of a nature requiring consent or approval shall not be waived or rendered unnecessary by consent to or approval of any subsequent similar act or waiver of the requirement to consent in advance to any previous act.

C.3.15.5. Excusable Delay

Contractor shall not be required to perform any term, condition or covenant of this contract, so long as such performance is delayed or prevented by, or results from, an act of God, war, terrorism, government, civil commotion, fire, casualty, union action which results in the closure of the Facility or the Premises or cessation of construction or operation of the Facility or the Premises, or such other cause beyond the reasonable control of a party to this Agreement and which is not the fault of the party.

C.3.15.6. Mediation

All remedies under this contract are cumulative, and are in addition to all rights and remedies available at law and in equity. The parties agree to negotiate in good faith to resolve any

dispute(s) arising out of this contract. In the event that the parties reach an impasse after good faith negotiations have commenced for fifteen (15) days, the parties agree that any unresolved disputes between the parties shall be resolved through mediation. A written request for mediation shall be filed with the Director of SLA. The request for mediation will contain a brief statement of the issue(s) in dispute and a recommended solution. Mediation will be scheduled by the Director of SLA at a location in District of Columbia that is convenient to all parties, and shall be conducted by a qualified and impartial mediator trained in effective mediation techniques. During mediation, all parties may submit evidence and information which supports their positions. Any agreement reached through mediation will be documented in a written agreement. The parties to this contract shall share equally the cost of the mediator's services and any facility or location costs. Each party shall be responsible for the costs it incurs during mediation, including its own attorney fees.

C.3.15.7. Subcontract Binding on Successors

All of the terms, covenants and conditions of this contract shall inure to the benefit of and be binding upon Randolph Sheppard Managers' successors as designated by the SLA for the balance of the Term of this Agreement. Ownership of the Facility and the Permit are vested in the SLA pursuant to 34 C.F.R. §§ 395.6 and 395.16.

SECTION D: PACKAGING AND MARKING

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

*****NOTHING FOLLOWS ON THIS PAGE*****

SECTION E: INSPECTION AND ACCEPTANCE

E.1 INSPECTION OF WORK PERFORMED

The inspection and acceptance requirements for the resultant Contract shall be governed by the Inspection of Services Clause in Section 6 of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007, Attachment J.1.

E.2 RIGHT TO ENTER PREMISES

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

*****NOTHING FOLLOWS ON THIS PAGE*****

SECTION F: DELIVERY OR PERFORMANCE

F.1 TYPE OF CONTRACT

This is a hybrid contract governed by the authorities granted to the District under the Randolph Sheppard Blind Vendor Act (the Act) whereby consideration is the District's right to establish vending facilities in the location. The contract shall be a requirements type contract with payment to the District based on the percentage of net profits set forth in the Price Schedule, Section B.3.

F.2 TERM OF CONTRACT

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

F.3 OPTION TO EXTEND THE TERM OF THE CONTRACT

F.3.1 The District may extend the term of the Contract for a period of four (4), one-year option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor a preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The 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.3.2 If the District exercises this option, the extended contract shall be considered to include this option provision.

F.3.3 The rate of payment to the District for the option period shall be as specified in the contract extension.

F.3.4 The total duration of the Contract, including all options under this clause, shall not exceed five (5) years.

F.4 REPORTING REQUIREMENTS

F.4.1.7 Ad Hoc Reports shall be submitted within three (3) working days after the date of request, unless otherwise specified by the CA.

F.4.2 Failure to submit timely, accurate reports may result in Sanctions and sanctions being imposed as described in Section G.10.

F.4.3 The Contractor shall prominently mark reports that contain information about individuals that are protected by privacy laws as "CONFIDENTIAL". The

Contractor shall submit these reports in a fashion that ensures that unauthorized individuals do not have access to the information. The Contractor shall not make such reports available to the public, unless requested by DDS or required by Federal or District law.

F.5 DELIVERABLES

The Contractor shall perform its tasks and produce the required Deliverables by the due dates presented in the tables below.

F.5.1 Contract Deliverables

| | Deliverable | Frequency | Method |
|----|---|----------------------------------|---|
| 1. | Copy of Vending Commission Report 30 days after close out | Within 30 days of contract award | mail to RSVFP |
| 2. | Documentation that Orientation Training for customer base | Within 60 days of contract award | Electronic via email to COTR |
| 3. | Documentation of Customer loyalty reward program. | Within 60 days of contract award | Hard copy and Electronic via email to RSVFP |
| . | | | |
| | | | |

F.5.2 FIRST SOURCE EMPLOYMENT REPORTS

Any reports that are required pursuant to the 51% of District Resident New Hires Requirements and First Source Employment Agreement clause under Section H.4 are to be submitted to the District as a deliverable. If the reports are not submitted as part of the deliverables, final payment to the Contractor will not be paid.

F.6 NOTICE OF DISAPPROVAL

F.6.1 The CA shall provide written notice of disapproval of a Deliverable to the Contractor within fourteen (14) days of submission if it is disapproved.

F.6.2 The notice of disapproval shall state the reasons for disapproval as specifically as is reasonably necessary and the nature and extent of the corrections required for meeting the Contract requirements.

F.7 RESUBMISSION WITH CORRECTIONS

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

F.8 NOTICE OF APPROVAL/DISAPPROVAL OF RESUBMISSION

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

F.9 FAILURE TO RESPOND TO RESUBMISSION

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

SECTION G: CONTRACT ADMINISTRATION DATA

G.1 RENUMERATION PAYMENT

Contractor shall mail a check in the amount of the negotiated rate of the RSVFP Fee.

G.1.1 The Contractor shall mail payment by check to the DC Randolph-Sheppard Vending Facility Program 1125 15th St NW Washington DC 20005 along with the vending commission report.

G.1.2 Contractor shall include a vending commission report with each check detailing the gross and net sales generated per month.

G.1.3 Contractor shall provide The District a copy of any monthly or quarterly sales reports of the gross sales sent to the District of Columbia government when such forms are provided to the government.

G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT

G.3.1 For contracts subject to the 51% District Residents New Hires Requirement and First Source Employment Agreement, final request for payment must be accompanied by the report or a waiver of compliance discussed in Section H.4.5.2.

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

G.4 METHOD OF PAYMENT

CONTRACTOR SHALL MAIL PAYMENT BY CHECK

G.5 CONTRACTING OFFICER

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

Marsha Robinson
Contracting Officer
1125 – 15th Street NW, 4th Floor
Washington, DC 20005-2717
Telephone Number: (202) 730-1628
E-Mail: Marsha.Robinson@dc.gov

G.6 AUTHORIZED CHANGES ONLY BY THE CONTRACTING OFFICER

G.6.1 A Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract, notwithstanding provisions contained elsewhere in this Contract.

G.6.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed by a Contracting Officer, or pursuant to specific authority otherwise included as part of this Contract.

G.6.3 In the event the Contractor effects any change at the direction of any person other than a Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

G.7 CONTRACT ADMINISTRATOR (CA)

G.7.1 The CA will have the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

G.7.1.1 Keeping the Contracting Officer (CO) fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

G.7.1.2 Coordinating site entry for Contractor personnel, if applicable;

G.7.1.3 Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

G.7.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

G.7.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoices/vouchers.

G.7.2 The address and telephone number of the Contracting Officer's Technical Representative will be identified in the resulting contract.

G.7.3 It is understood and agreed, in particular, that the CA shall NOT have the authority to:

G.7.3.1 Award, agrees to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments, or modifications;

G.7.3.2 Grant deviations from or waive any of the terms and conditions of the contract;

G.7.3.3 Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract, or authorize the expenditure of funds by the Contractor;

G.7.3.4 Change the period of performance; or

G.7.3.5 Authorize the furnishing of District property, except as specified under the contract.

G.7.4 The Contractor may be held fully responsible for any change not authorized in advance, in writing, by the Contracting Officer, and may be denied compensation or other relief for any additional work performed that is not so authorized, any may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

G.8 CORRECTIVE ACTION

In addition to its rights under the Default Clause under the Standard Contract Clauses, if the District determines that the Contractor has failed to comply with terms of the Contract or has violated applicable Federal or District law, regulation or court order, the District may request corrective action within the time frame established by the District. The Contractor shall complete all steps necessary to correct the identified violation. Upon the Contractor's failure to comply with an approved corrective action plan the District may terminate the contract for default.

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 DOES for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified applicants, trainees, and other workers in the implementation of employment goals contained in this clause.

H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS

Unless the Living Wage Act of 2015 requires a higher wage, the Provider shall be bound by the U.S. Department of Labor Wage Determination No. 2005-2103, Revision No. 14, dated July 25, 2014 and subsequent revisions issued by the U.S. Department of Labor in accordance with the Service Contract Act of 1965, as amended (41 U.S.C. 351-58), and incorporated into this contract. The Contractor shall be bound by the wage rates for the term of the contract. If an option is exercised, the Contractor shall be bound by the applicable wage rate at the time of the option. If the option is exercised and the Contracting Officer obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable price adjustment.

H.3 FREEDOM OF INFORMATION ACT

The District of Columbia Freedom of Information Act, at D.C. Official Code § 2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the CA designated in subsection G.9 who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor

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

H.4 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT

H.4.1 The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code, sec. 2-219.01 et seq. (“First Source Act”).

H.4.2 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:

H.5.2.1 The first source for finding employees to fill all jobs created in order to perform this contract shall be the Department of Employment Services (“DOES”); and

H.5.2.2 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.4.3 The Contractor shall submit to DOES, no later than the 10th each month following execution of the contract, a First Source Agreement Contract Compliance Report (“contract compliance report”) verifying its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:

H.4.3.1 Number of employees needed;

H.4.3.2 Number of current employees transferred;

H.4.3.3 Number of new job openings created;

H.4.3.4 Number of job openings listed with DOES;

H.4.3.5 Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and

H.4.3.6 Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:

H.4.3.6.1 Name;

H.4.3.6.2 Social Security number;

H.4.3.6.3 Job title;

H.4.3.6.4 Hire date;

H.4.3.6.5 Residence; and

- H.4.3.6.6** Referral source for all new hires.
- H.4.4** 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.4.5** With the submission of the Contractor's final request for payment from the District, the Contractor shall:
- H.4.5.1** Document in a report to the Contracting Officer its compliance with the section H.4.4 of this clause; or
- H.4.5.2** Submit a request to the Contracting Officer for a waiver of compliance with section H.4.4 and include the following documentation:
- H.4.5.2.1** Material supporting a good faith effort to comply;
- H.4.5.2.2** Referrals provided by DOES and other referral sources;
- H.4.5.2.3** Advertisement of job openings listed with DOES and other referral sources; and
- H.4.5.2.4** Any documentation supporting the waiver request pursuant to section H.4.6.
- H.4.6** The Contracting Officer may waive the provisions of section H.4.4 if the Contracting Officer finds that:
- H.4.6.1** A good faith effort to comply is demonstrated by the Contractor;
- H.4.6.2** 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, Culpepper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.
- H.4.6.3** The Contractor enters into a special workforce development training or placement arrangement with DOES; or
- H.4.6.4** 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.4.7** Upon receipt of the contractor's final payment request and related documentation pursuant to sections H.4.5 and H.4.6, the Contracting Officer shall determine

whether the Contractor is in compliance with section H.4.4 or whether a waiver of compliance pursuant to section H.4.6 is justified. If the Contracting Officer determines that the Contractor is in compliance, or that a waiver of compliance is justified, the Contracting Officer shall, within two business days of making the determination forward a copy of the determination to the Agency Chief Financial Officer and the CA.

H.4.8 Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to section H.4.5, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. The Contractor may appeal to the D.C. Contract Appeals Board as provided in the contract any decision of the Contracting Officer pursuant to this section H.4.8.

H.4.9 The provisions of sections H.4.4 through H.4.8 do not apply to nonprofit organizations.

H.5 PROTECTION OF PROPERTY

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

H.6 AMERICANS WITH DISABILITIES ACT OF 2009(ADA)

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

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

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

H.8 DISTRICT RESPONSIBILITIES

The District, will provide the following:

H.8.1 Orientation for the Contractor relative to the terms of the contract and program mandates.

H.8.2 Continuous contract performance evaluations and program monitoring.

- H.8.3** Preparing any response or request for additional information or clarification from the Contractor as it pertains to the Contractor's compliance or noncompliance within ten (10) business days of submission of deliverables.
- H.8.4** Monitor and evaluate Contractor compliance with the requirements of this Contract, and impose sanctions when necessary.
- H.8.5** Conduct a timely review of all materials submitted to the agency by the Contractor as required.
- H.8.6** Maintain adequate liaison and cooperation with the Contractor, including providing timely management decisions and approvals of forms and procedures to enable the Contractor to properly perform contractual duties.
- H.8.7** Attend required meetings with the Contractor to discuss issues, changes, deliverables' status, and specific agenda items proposed by the District or the Contractor.
- H.8.8** Review and approve all reports and publications prior to public release as required.
- H.8.9** The District agrees to cooperate with Contractor to help facilitate obtaining such permits. Move to Section H.
- H.8.10** At reasonable times and upon reasonable notice, The shall have the right to conduct and document inspections of the Premises and Contractor services and products as required by relevant health and safety laws. Inspection will be conducted in a manner that does not interfere with the operation of the Contractor Unattended Vending Services facility at the Premises.

H.9 READINESS ASSESSMENT

The CA will conduct a readiness assessment of the new Contractor to ensure that the Contractor has all processes in place to meet the scope of work outlined in the Contract. The Contractor shall demonstrate evidence of readiness relative to each requirement and function in the scope of work prior to undertaking any of the services or functions of the Contract. Readiness assessments will begin immediately after the Contract is executed during the Start-up Period and prior to the start of services.

H.10 FRAUD, WASTE AND ABUSE PROVISIONS AND PROTECTIONS

H.10.1 Cooperation with the District

H.10.1.1 The Contractor is subject to all state and Federal laws and regulations relating to fraud, waste and abuse.

H.10.1.2 The Contractor shall cooperate and assist the District of Columbia and any state or Federal agency charged with the duty of identifying, investigating, or prosecuting suspected fraud, waste and abuse.

H.10.1.3 The Contractor shall provide originals and/or copies of all records and information requested and allow access to premises. All copies of records shall be provided free of charge.

H.10.1.4 The Contractor shall be responsible for promptly reporting suspected fraud, abuse, or violation of the terms of the Contract to the Contracting Officer, taking prompt corrective actions consistent with the terms of any subcontract, and cooperating with District investigations.

H.10.1.5 The Contractor shall allow the District to conduct private interviews of Contractor's employees, subcontractors, and their employees, witnesses, and patients. The Contractor shall honor requests for information in the form and the language specified.

H.10.1.6 The Contractor's shall ensure that its employees and its subcontractors and their employees shall cooperate fully and be available in person for interviews, consultation grand jury proceedings, pre-trial conference, hearings, trial and in any other process.

H.10.2 FINANCIAL REQUIREMENTS

The Contractor shall ensure through its contracts, subcontracts and in any other appropriate manner that the District is not held liable for Contractor's debts in the event of the Contractor's insolvency.

H.10.3 SOLVENCY AND FINANCIAL RESERVES

The Contractor shall maintain a positive financial net worth, and insolvency reserves or deposits that provide a sound financial foundation for the Contractor to perform the operations and services required under the Contract.

H.10.4 FIDUCIARY RELATIONSHIP

H.10.4.1 Any director, officer, employee, or partner of a Contractor who receives, collects, disburses, or invests funds in connection with the activities of such Contractor shall be responsible for such funds in a fiduciary relationship to the Contractor.

H.10.4.2 The Contractor shall maintain in force and provide evidence of a fidelity bond in an amount of not less than one hundred thousand dollars (\$100,000) per person for each officer and employee who has a fiduciary responsibility or duty to the organization.

H.10.5 MANAGEMENT INFORMATION SYSTEM

H.10.5.1 Confidentiality of Records

H.10.5.1.1 The Contractor shall treat all records as confidential and must use reasonable care to protect that confidentiality in compliance with Federal and District regulations. Any use of data for purposes other than those completing the duties under this Contract including the sale or offering for sale of data is prohibited.

H.10.5.1.2 The Contractor shall require its staff to sign a confidentiality statement. The Contractor will be liable for any fines, financial penalties, or damages imposed on the District as a result of the Contractor's systems, staff, subcontractors or other agents causing a breach of confidentiality.

H.10.5.1.3 A breach of confidentiality is a breach of the Contract and will constitute grounds for Contract termination and prosecution to the fullest extent permissible by law.

H.10.5.2 Use of Information and Data

H.10.5.2.1 The District agrees to maintain, and to cause its employees, agents or representatives to maintain on confidential basis information concerning the Contractor's relations and operations as well as any other information compiled or created by Contractor which is proprietary to Contractor and which Contractor identifies as proprietary to the District in writing.

H.10.6 SECURITY REQUIREMENTS

H.10.6.1 The Contractor's employees shall not bring into the facility any form of weapons or contraband; shall be subject to search; shall conduct themselves in a professional manner at all times; shall not cause any disturbance in the facility; and shall be subject to all other rules and regulations of the facility and DOH. The Contractor shall be provided a copy of all applicable rules and regulations of the facility to the employees. The Contractor shall ascertain that each employee is issued a copy of said rules and signs a statement acknowledging the receipt of

said rules. The Contractor shall maintain the acknowledgement of receipt in the individual employee's personnel folder.

H.10.7 DIVERSION, REASSIGNMENT AND REPLACEMENT OF KEY PERSONNEL

The key personnel specified in the contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified key personnel for any reason, the Contractor shall notify the Contract Administrator at least thirty calendar days in advance and shall submit justification (including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the contract. The Contractor shall obtain written approval of the Contracting Officer for any proposed substitution of key personnel. Please insert the names of the key personnel below:

H.10.8 OTHER CONTRACTORS

H.10.8.1 The Contractor shall not commit or permit any act, which will interfere with the performance of work by another District Contractor or by any District employee.

H.10.8.2 If another Contractor is awarded a future contract for performance of the required services, the Contractor shall cooperate fully with the District and the new Contractor in any transition activities, which the Contracting Officer deems necessary during the term of the contract

H.10.9 AUDITS AND RECORDS

H.10.9.1 As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

H.10.9.2 **Cost or pricing data.** If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to:

- a)The proposal for the contract, subcontract, or modification;
- b)The discussions conducted on the proposal(s), including those related to negotiating;
- c)Pricing of the contract, subcontract, or modification; or
- d)Performance of the contract, subcontract or modification.

H.10.10 Comptroller General

H.10.10.1. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

H.10.10.2 This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

H.10.11. Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating:

- a) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
- b) The data reported.

H.10.11.1 Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in clauses H.10.12 for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in the solicitation, or for any longer period required by statute or by other clauses of this contract. In addition:

- a) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
- b) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

H.10.11.2 The Contractor shall insert a clause containing all the terms of this clause, including this section, in all subcontracts under this contract that exceed the small purchase threshold of \$100,000, and:

- a) That are cost-reimbursement, incentive, time-and- materials, labor hour, or price-re-determination type or any combination of these;
- b) For which cost or pricing data are required; or
- c) That requires the subcontractor to furnish reports as discussed in H.10.10.2 of this clause.

H.11 SPECIAL INDEMNITY

The Contractor 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 as a consequence or result of any act, omission or default of the Contractor, its employees, agents or subcontractors in the performance of, or in connection with, any work required or performed under this contract.

H.12 PUBLICITY

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

H.13 DDS HIPAA BUSINESS ASSOCIATE COMPLIANCE (August 2013)

See Attachment J.3 for the full text of the clause required by the Health Insurance Portability and Accountability Act (HIPAA), as amended January 17, 2013 by the U.S. Department of Health and Human Services (HHS) in the release of the Final Omnibus Rule to increase HIPAA privacy and security protections by implementing Provisions of the Health Information Technology for Economic and Clinical Health Act (HITECH Act) and Genetic Information Nondiscrimination Act of 2008 (GINA).

H.14 WAY TO WORK AMENDMENT ACT OF 2006

H.14.1 Except as described in H.14.8 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 2015”), for contracts for services in the amount of \$100,000 or more in a 12-month period.

H.14.2 The Contractor shall pay its employees and subcontractors who perform services under the contract no less than the current living wage published in the Living Wage Fact Sheet.

H.14.3 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.14.4 The Department of Employment Services may adjust the living wage annually.

H.14.5 The Contractor shall provide a copy of the Fact Sheet to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice 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.14.6 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.14.7 The payment of wages required under the Living Wage Act of 2015 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 *et seq.*

H.14.8 The requirements of the Living Wage Act of 2015 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 2015;
- (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.14.9 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 2015.

H.15 PROHIBITED INFORMATION AND ACTIVITIES

H.15.1 In addition to its rights under the Default clause of the Standard Contract Provisions (Attachment J.10), sanctions may be imposed in accordance with Section G.10 if the District determines that the Contractor has violated applicable Federal law as specified in Sections 1903(m)(5)(A) and 1932(e)(1) of the Social Security Act and 42 CFR 422.208-210, §438.700-702, and 45 CFR 92.36(i)(1), including:

H.15.1.1 Acting to discriminate among Enrollees on the basis of their health status or need for health care services;

H.15.1.2 Misrepresenting or falsifying information the Contractor furnishes to CMS or the District;

H.15.1.3 Misrepresenting or falsifying information that the Contractor furnishes to an Enrollee or health care provider;

H.15.1.4 Distributing directly or indirectly through any agent or independent Contractor, materials that have not been approved by the District or that contain false or materially misleading information;

H.15.1.5 Violating any of the other applicable requirements of sections 1903(m) or 1932 of the Social Security Act and any implementing regulations; and

H.15.1.6 Violating District of Columbia law; or regulations or court orders including but not limited to Salazar v. the District of Columbia et.al.

H.16 RESERVED

H.17 RESERVED

H.18 RESERVED

H.19 RESERVED

H.20 INTELLECTUAL PROPERTY

The Contractor shall comply with Department on Disability Services' requirements and regulations pertaining to reporting and patient rights as well as all DDS requirements and regulations pertaining to copyrights and rights in data as set forth in clause at Section I.5.

H.21 ENERGY EFFICIENCY

The Contractor shall recognize mandatory standards and policies related to energy efficiency which are contained in the District's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-165, 42 U.S.C. § 6-201 et seq.).

H.22 SUBCONTRACTING REQUIREMENTS (Applicable to Open Market only)

H.22.1 Mandatory Subcontracting Requirements

H.22.1.1 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.22.1.2 If there are insufficient qualified small business enterprises to completely fulfill the requirement of paragraph H.22.1.1, 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.22.1.3 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.22.1.1 and H.22.1.2.

H.22.2 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 this section. 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 IFB 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.22.2.1** A description of the goods and services to be provided by SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises (CBE);
 - H.22.2.2** 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 CBE;
 - H.22.2.3** The names and addresses of all proposed subcontractors who are SBEs or, if insufficient SBEs are available, who are CBE;
 - H.22.2.4** 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.22.2.5** 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.22.2.6** 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.22.2.7** 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.22.2.8** 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.22.2.9** 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.22.3** 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.22.3.1** The dollar amount of the contract or procurement;
 - H.22.3.2** A brief description of the goods procured or the services contracted for;

H.22.3.3 The name of the business enterprise from which the goods were procured or services contracted;

H.22.3.4 Whether the subcontractors to the contract are currently certified business enterprises;

H.22.3.5 The dollar percentage of the contract awarded to SBEs, or if insufficient SBEs, to other certified business enterprises;

H.22.3.6 A description of the activities the Contractor engaged in, in order to achieve the subcontracting requirements set forth in its plan; and

H.22.3.7 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.22.4 Subcontractor Standards

H.22.4.1 A prime contractor shall ensure that subcontractors meet the criteria for responsibility described in D.C. Official Code § 2-353.01.

H.22.5 Enforcement and Penalties for Breach of Subcontracting Plan

H.22.5.1 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.22.5.2 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.22.5.3 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.

H.22.6 Offerors should seek potential sub-contractors through the Department of Small and Local Business Development website. (<https://lsdbe.dslbd.dc.gov/public/certification/search.aspx>)

H.23 DISTRICT FURNISHED PROPERTY

H.23.1 If Government-furnished property is provided to the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of

the property.

- H.23.2** The Government shall retain title to all Government-furnished property.
- H.23.3** The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.
- H.23.4** The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Title 27, District of Columbia Municipal Regulations (DCMR) Chapter 41, Section 4106, in effect on the date of this contract.
- H.23.5** The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government-furnished property in accordance with sound industrial practice and the applicable provisions of Title 27, District of Columbia Municipal Regulations (DCMR) Chapter 41, Section 4107.
- H.23.6** If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government will replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot affect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer.
- H.23.7** The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.
- H.23.8** The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.
- H.23.9** Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.
- H.23.10** The Contractor shall obtain the CA's approval to remove Government property from the premises at which the property is currently located. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage facility shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability under this contract

for such property.

H.23.11 The Contractor shall require its sub-contractors provided with government furnished property under this contract to comply with the requirements of Title 12, District of Columbia Municipal Regulations, Chapter 41, Section 4106 and 4107.

H.24 ORGANIZATIONAL CONFLICT OF INTEREST

H.24.1 Definition. An organizational conflict of interest means that because of other activities or relationships with other entities, an entity is unable or potentially unable to render impartial assistance or advice to the District, or its objectivity in performing the contract work is or might be otherwise impaired, or an entity has an unfair competitive advantage. It does not include the normal flow of benefits from incumbency.

H.24.2 The Contracting Officer has determined that significant potential organizational conflicts of interest may arise or exist due to the nature of the work the Contractor will perform under this contract. The Contractor shall be ineligible to act as a prime contractor, consultant, or subcontractor to supply services for any project where the Contractor has provided or is providing support as described in 27 DCMR 2220.1.

H.24.3 The Contracting Officer may make a determination to allow a Contractor to participate in an acquisition subject to the submission of an acceptable mitigation plan in accordance with paragraphs (1) and (2) below. This determination may not be appealed.

(1) The District's determinations regarding the adequacy of the mitigation plan or the possibility of mitigation are unilateral decisions made solely at the discretion of the District and are not subject to the Disputes clause of the contract. The District may terminate the contract for default if the Contractor fails to implement and follow the procedures contained in any approved mitigation plan.

(2) Any mitigation plan shall include: non-disclosure agreements to be executed by the Contractor and the Contractor's employees supporting the District, identification of the organizational conflict(s) of interest; reporting and tracking system; an organizational conflict of interest compliance/enforcement plan, to include employee training and sanctions, in the event of unauthorized disclosure of sensitive information; a plan for organizational segregation (e.g., separate reporting chains); and data security measures.

H.24.4 This clause shall remain in effect for one year after completion of this contract.

H.24.5 The Contractor's employees shall be trained and informed of 27 DCMR Chapter 22, Section 2220 and this contract provision, and shall execute a Contractor-Employee Personal Financial Interest/Protection of Sensitive Information Agreement as appropriate.

- H.24.6** The Contractor agrees that it will use all reasonable diligence in protecting proprietary data received by it. The Contractor further agrees it will not willfully disclose proprietary data to unauthorized parties without the prior permission of the District, and that proprietary data shall not be duplicated, used or disclosed, in whole or part, for any purpose other than to accomplish the contracted effort. This restriction does not limit the contractors right to use, duplicate or disclose such information if such information was lawfully obtained by the contractor from other sources.
- H.24.7** The Contractor agrees to enter into written agreements with all companies whose proprietary data it shall have access and to protect such data from unauthorized use or disclosure as long as it remains proprietary. The Contractor shall furnish to the Contracting Officer copies of these written agreements. The Contractor agrees to protect the proprietary data and rights of other organizations disclosed to the Contractor during performance of this contract with the same caution that a reasonably prudent Contractor would use to safeguard highly valuable property. The Contractor agrees to refrain from using proprietary information for any purpose other than that for which it was furnished.
- H.24.8** The Contractor shall not distribute reports, data or information of any nature arising from its performance under this contract, except as provided by this contract or as may be directed by the Contracting Officer.
- H.24.9** District Representatives shall have access to the Contractors premises and the right to inspect all pertinent books and records in order to insure that the contractor is in compliance with 27 DCMR Section 2220.
- H.24.10** The Contractor agrees that if after award it discovers a potential organizational conflict of interest, a prompt and full disclosure shall be made in writing to the Contracting Officer. This disclosure shall include a description of the actions the Contractor has taken or proposes to take, to avoid or mitigate such conflicts.
- H.24.11** The District may waive application of this clause when it is determined to be in the best interest of the District to do so.

H.25 ADVISORY AND ASSISTANCE SERVICES

This contract is a “nonpersonal services contract”. The Contractor and the Contractor’s employees: (1) shall perform the services specified herein as independent contractors, not as employees of the government; (2) shall be responsible for their own management and administration of the work required and bear sole responsibility for complying with any and all technical, schedule, financial requirements or constraints attendant to the performance of this contract; (3) shall be free from supervision or control by any government employee with respect to the manner or method of performance of the service specified; but (4) shall, pursuant to the government’s right and obligation to inspect, accept or reject work, comply with such general direction of the CO, or the duly authorized representative of the CO as is necessary to ensure accomplishment of the contract objectives.

H.26 BACKGROUND CHECK REQUIREMENT

H.26.1 A facility, long-term care facility or provider, shall not offer to employ or contract with any unlicensed person having direct patient, resident, or client access, or person licensed registered, or certified under Chapter 12 of Title 3 of the D.C. Official Code unless within a forty-five (45) day period immediately preceding the date of initial employment or initial commencement of contract services the following has occurred:

- (a) Pursuant to § 4701.2 and 4701.3, the person has undergone fingerprinting or live scan performed in the District of Columbia which has resulted in a criminal history, that reveals all convictions that have occurred within the District of Columbia and the fifty (50) states;
- (b) The Department of Health verifies that the person has not been convicted, within the seven (7) years before the criminal background check, of any of the offenses listed in § 4705.1;
- (c) The Department of Health and those facilities identified pursuant to § 4701.1 verify by means of a check, that the person's name is not on the Dru Sjodin National Sex Offender Public Website coordinated by the United States Department of Justice, or the Nurse Aide Abuse Registry of the District of Columbia or such registry in the state or states in which the person has lived or worked; and
- (d) The person provides a sworn statement affirming that there are no criminal matters pending against him or her.

H.26.2 Each facility, long-term care facility or provider, identified in § 4701.1 shall cause each prospective employee or contract worker who will have, or foreseeably may have direct patient, resident, or client access, to undergo a criminal background check that shall reveal the criminal history, if any, in the District of Columbia and the fifty (50) states. Fingerprinting or live scan shall be performed in the District of Columbia utilizing the Metropolitan Police Department (MPD) or a private agency. The criminal background check shall be performed, following fingerprinting or live scan, by the MPD and Federal Bureau of Investigation (FBI) in an FBI-approved environment. The results of the criminal background checks shall be forwarded to the Department of Health.

H.26.3 The results of the criminal background check shall disclose the criminal history, if any, of The prospective employee or contract worker for the previous seven (7) years before the check.

H.26.4 An employee or a contract worker shall be required to undergo a subsequent criminal Background check every four (4) years after the date of his or her initial background check provided that if the name of the employee appears in the FBI databank when the "rap back" system is implemented, the employee shall not be required to have a

subsequent criminal background check performed.

H.26.5 The Department of Health shall notify a facility, long-term care facility or provider That employs the subject of a criminal background check which returns positive results for and of the offenses listed in § 4705.1 within forty-five (45) days prior to the commencement of the subjects' employment.

H.26.6 A facility, long-term care facility or provider shall inform the Department of Health within ten (10) days of the resignation or termination of any employee subject to criminal background checks under this chapter whose resignation or termination was for criminal, unprofessional, or unethical conduct.

H.26.7 A contract worker shall not be considered resigned or terminated for purposes of §4701.6 as long as the employment contract with the facility is renewed within forty-five (45) days of its satisfaction.

H.26.8 Nothing in this section shall prohibit a facility from requiring, in a contract agreement, that the criminal background checks for contract workers be obtained by the contractor.

PART II - CONTRACT CLAUSES

SECTION I : CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

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 the “Standard Contract Provisions” incorporated by reference into this Contract, and shall govern the relationship of the parties as contained in this Contract. By signing this Contract, the Contractor agrees and acknowledges its obligation to be bound by the Standard Contract Provisions, and its requirements, as revised below.

DELETE PROVISION 14, Disputes, and substitute the following:

14. Disputes (Interim PPRA Version, July 2011)

A. All disputes arising under or relating to this contract shall be resolved as provided herein.

B. Claims by a Contractor against the District:

Claim, as used in paragraph I.1.1.2 of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

- 1) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer (CO) for a decision. The Contractor’s claim shall contain at least the following:
 - a. A description of the claim and the amount in dispute;
 - b. Data or other information in support of the claim;
 - c. A brief description of the Contractor’s efforts to resolve the dispute prior to filing the claim; and
 - d. The Contractor’s request for relief or other action by the CO.
 - e. The CO may meet with the Contractor in a further attempt to resolve the claim by agreement.
 - f. The CO shall issue a decision on any claim within 120 calendar days after receipt of the claim. Whenever possible, the CO shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

- 2) The CO's written decision shall do the following:
 - a. Provide a description of the claim or dispute;
 - b. Refer to the pertinent contract terms;
 - c. State the factual areas of agreement and disagreement.
 - d. State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
 - e. If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
 - f. Indicate that the written document is the CO's final decision; and
 - g. Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board. Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- 3) Failure by the CO to issue a decision on a contract claim within 120 days of receipt of the claim will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as provided by D.C. Official Code § 2-360.04.
- 4) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.
- 5) Liability under Paragraph 4) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.
- 6) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

C. Claims by the District against a Contractor:

- 1) Claim as used in paragraph I.1.1.3 of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

- 2) The CO shall decide all claims by the District against a contractor arising under or relating to a contract. The CO shall send written notice of the claim to the Contractor. The CO's written decision shall do the following:
 - a. Provide a description of the claim or dispute;
 - b. Refer to the pertinent contract terms;
 - c. State the factual areas of agreement and disagreement;
 - d. State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
 - e. If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
 - f. Indicate that the written document is the CO's final decision; and
 - g. Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
 - 3) The CO shall support the decision by reasons and shall inform the Contractor of its rights as provided herein.
 - 4) Before or after issuing the decision, the CO may meet with the Contractor to attempt to resolve the claim by agreement
 - 5) The authority contained in this clause I.1.1.3 shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.
 - 6) This clause shall not authorize the CO to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- D.** Decisions of the CO shall be final and not subject to review unless the Contractor timely commences an administrative appeal for review of the decision, by filing a complaint with the Contract Appeals Board, as authorized by D.C. Official Code § 2-360.04.
- E.** Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

I.2 CONTRACTS THAT CROSS FISCAL YEARS

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

I.3 CONFIDENTIALITY OF INFORMATION

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

I.4 TIME

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

I.5 RIGHTS IN DATA

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

I.5.2 The term “Technical Data”, as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports,

catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

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

programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.

- I.5.4** The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.
- I.5.5** All data first produced in the performance of this Contract shall be the sole property of the District. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the District under this Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. The Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. The Contractor agrees not to assert any rights in common law or in equity in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.
- I.5.6** The District will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or as described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:
- I.5.6.1** Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any District installation to which the computer may be transferred by the District;
- I.5.6.2** Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;
- I.5.6.3** Copy computer programs for safekeeping (archives) or backup purposes; and modify the computer software and all accompanying documentation and manuals or instructional materials, or combine it with other software, subject to the provision that the modified portions shall remain subject to these restrictions.
- I.5.7** The restricted rights set forth in Section I.5.6 are of no effect unless:
- (i) the data is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

**Use, duplication, or disclosure is subject to restrictions stated in
Contract No. DCJM-2015-B-0015**

and,

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

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

I.5.9 Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, the Contractor shall use this clause, I.5, Rights in Data, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.

I.5.10 For all computer software furnished to the District with the rights specified in Section I.5.5, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope specified in Section I.5.5. For all computer software furnished to the District with the restricted rights specified in Section I.5.6, the District, if the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under this contract or any paid-up maintenance agreement, or if Contractor should be declared bankrupt or insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

I.5.11 The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights

of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

I.5.12 Nothing contained in this clause shall imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.

I.5.13 Paragraphs I.5.6, I.5.7, I.5.8, I.5.11 and I.5.12 above are not applicable to material furnished to the Contractor by the District and incorporated in the work furnished under contract, provided that such incorporated material is identified by the Contractor at the time of delivery of such work

I.6 OTHER CONTRACTORS

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

I.7 SUBCONTRACTS

I.7.1 The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior written consent of the Contracting Officer. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by the Contractor. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

I.8 ESTIMATED QUANTITIES

It is the intent of the District to secure a contract for all of the needs of the Department on Disability Services (DDS) only for services specified herein for which needs may occur during the contract term. The District agrees that it will purchase its requirements of the articles or services included herein from the Contractor. Articles or services specified herein have a history of repetitive use in the DDS. The estimated quantities stated in the IFB reflect the best estimates available. They shall not be construed to limit the quantities which may be ordered from the Contractor by the District or to relieve the Contractor of his obligation to fill all such orders. Orders will be placed from time to time if and when needs arise for delivery, all charges prepaid, to the ordering agency. The District does not guarantee to order any specific quantities of any item(s) or work hours of service.

I.9 INSURANCE

- A. **GENERAL REQUIREMENTS.** The Contractor shall acquire and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A-VIII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event the stated limit in the declarations page of the policy is reduced via endorsement or the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium.
1. **Commercial General Liability Insurance.** The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate; Bodily Injury and Property Damage including, but not limited to: premises-operations; broad form property damage; Products and Completed Operations; Personal and Advertising Injury; contractual liability and independent contractors. The policy coverage shall include the District of Columbia as an additional insured, shall be primary and non-contributory with any other insurance maintained by the District of Columbia, and shall contain a waiver of subrogation. The Contractor shall maintain Completed Operations coverage for five (5) years following final acceptance of the work performed under this contract.
 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: \$2,000,000 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 \$1,000,000 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 that 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.
8. **Employment Practices Liability.** The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the operations performed to cover the defense of employment related claims that the District of Columbia would be named as a co-defendant in claims arising from: Discrimination, Sexual Harassment, Wrongful Termination, or Workplace Torts. Policy shall include the Client Company Endorsement for Temporary Help Firms and the Independent Contractors Endorsement. The policy shall provide limits of \$1,000,000 for each wrongful act and \$1,000,000 annual aggregate for each wrongful act. The Contractor shall maintain this insurance for five (5) years following the District's final acceptance of the work performed under this contract.

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.

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 CO 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 CO.

G. CERTIFICATES OF INSURANCE. The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work.

Evidence of insurance shall be submitted to:

Monica Brown, Contract Specialist
Department on Disability Services
Office of Contracts and Procurement
1125 15th St, NW, 4th Floor
Washington, DC 20005-2720
(202) 730-1861
E-mail Monica.Brown4@dc.gov

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

I.11 EQUAL EMPLOYMENT OPPORTUNITY

The contractor shall comply and maintain compliance with affirmative action requirements set forth in the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985. Forms for completion of the Equal

Employment Opportunity Information Report are incorporated herein as Section J.16. An award cannot be made to any offeror who has not satisfied the equal employment requirements.

I.12 ORDER OF PRECEDENCE

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

- (1) Contract document
- (2) Standard Contract Provisions
- (3) Contract attachments other than the Standard Contract Provisions
- (4) IFB, as amended

I.13 CONTRACTS IN EXCESS OF ONE MILLION DOLLARS

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

I.14 GOVERNING LAW

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

SECTION J: ATTACHMENTS

The following list of attachments is incorporated into the solicitation by reference. *[However, include ONLY J.1, J.2, J.5, J.6 and J.9 in the final contract.]*

| Attachment Number | Document |
|--------------------------|--|
| J.1 | Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (March 2007) available at http://ocp.dc.gov/node/599822 click on “Solicitation Attachments” |
| J.2 | U.S. Department of Labor Wage Determination 2005-2013 dtd July 25, 2014 |
| J.3 | Office of Local Business Development Equal Employment Opportunity Information Report and Mayor’s Order 85-85 available at http://ocp.dc.gov/node/599822 |
| J.4 | Department of Employment Services First Source Employment Agreement available at http://ocp.dc.gov/node/599822 |
| 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 http://ocp.dc.gov/node/599822 |
| J.8 | Cost/Price Certification and Data Package available at http://ocp.dc.gov/node/599822 |
| J.9 | Bidder/Offeror Certification http://ocp.dc.gov/node/599822 |

SECTION K: REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF BIDDERS

K.1 TYPE OF BUSINESS ORGANIZATION

K.1.1 The bidder, by checking the applicable line, represents that

(a) It operates as:

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

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

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

K.2 CERTIFICATION AS TO COMPLIANCE WITH EQUAL OPPORTUNITY OBLIGATIONS

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

Bidder _____ Date _____

Name _____ Title _____

Signature _____

Bidder ____ has ____ has not participated in a previous contract or subcontract subject to the Mayor's Order 85-85. Bidder ____ has ____ has not filed all required compliance reports, and representations indicating submission of required reports signed by proposed

sub-bidders. (The above representations need not be submitted in connection with contracts or subcontracts which are exempt from the Mayor's Order.)

K.3 BUY AMERICAN CERTIFICATION

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

_____ EXCLUDED END PRODUCTS
_____ COUNTRY OF ORIGIN

K.4 DISTRICT EMPLOYEES NOT TO BENEFIT CERTIFICATION

Each bidder shall check one of the following:

- _____ No person listed in clause 13 of the SCP (Attachment J.1), "District Employees Not To Benefit" will benefit from this contract.
 - _____ The following person(s) listed in clause 13 of the SCP (Attachment J.1) may benefit from this contract. For each person listed, attach the affidavit required by clause 13
- _____
- _____

K.5 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

- (a) Each signature of the bidder is considered to be a certification by the signatory that:
 - 1) The prices in this contract have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any bidder or competitor relating to:
 - (i) those prices
 - (ii) the intention to submit a contract, or
 - (iii) the methods or factors used to calculate the prices in the contract.
 - 2) The prices in this contract have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before contract opening unless otherwise required by law; and

- 3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a contract for the purpose of restricting competition.
- (b) Each signature on the bid is considered to be a certification by the signatory that the signatory:
- 1) Is the person in the bidder's organization responsible for determining the prices being offered in this contract, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
 - 2) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above:

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

- (i) As an authorized agent, does certify that the principals named in subdivision (b)(2) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and
 - (ii) As an agent, has not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.
- (c) If the bidder deletes or modifies subparagraph (a)(2) above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

K.6 TAX CERTIFICATION

Each bidder must submit with its bid, a sworn Tax Certification Affidavit, incorporated herein as Attachment J.7.

K.7 CERTIFICATION OF ELIGIBILITY

The bidder's signature shall be considered a certification by the signatory that the bidder, or any person associated therewith in the capacity of owner, partner, director, officer, principal, or any position involving the administration of funds:

- A. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility under any federal, District or state statutes;
- B. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal, District or state agency within the past three (3) years;
- C. does not have a proposed debarment pending; and

D. has not been indicted, convicted, or had a civil judgment rendered against it or them by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

Indicate below any exception to your certification of eligibility and to whom it applies, their position in the bidder's organization, the initiating agency, and dates of action. Exceptions will not necessarily result in denial of award, but will be considered in determining responsibility of the bidder. Providing false information may result in criminal prosecution or administrative sanctions.

SECTION L: INSTRUCTIONS, CONDITIONS AND NOTICES TO BIDDERS

L.1 METHOD OF AWARD

- L.1.1** The District reserves the right to accept/reject any/all bids resulting from this solicitation. The Contracting Officer may reject all bids or waive any minor informality or irregularity in bids received whenever it is determined that such action is in the best interest of the District.
- L.1.2** The District intends to award a single contract resulting from this solicitation to the responsive and responsible bidder who has the highest bid.

L.2 PREPARATION AND SUBMISSION OF BIDS

- L.2.1** Bidders shall submit a signed original and a soft copy. The District will not accept a facsimile copy of a bid as an original bid. All items accepted by the District, all pages of the Invitation for Bids (IFB), all attachments and all documents containing the bidder's offer shall constitute the formal contract. **Each bid shall be submitted as specified in Section A.3 in a sealed envelope conspicuously marked: "Bid in Response to Solicitation No. DCJM-2015-B-0015, Unattended Vending Services Federal Bldg"**.
- L.2.2** The original bid shall govern if there is a variance between the original bid and the copy submitted by the bidder. Each bidder shall return the complete solicitation as its bid.
- L.2.3** The District may reject as non-responsive any bid that fails to conform in any material respect to the IFB.
- L.2.4** The District may also reject as non-responsive any bids submitted on forms not included in or required by the solicitation. Bidders shall make no changes to the requirements set forth in the solicitation.
- L.2.5** The bidder must bid on all CLINs to be considered for this award. Failure to bid on all CLINs in section B.3 will render the bid non-responsive and disqualify a bid.

L.3 FAMILIARIZATION WITH CONDITIONS

Bidders shall thoroughly familiarize themselves with the terms and conditions of this solicitation, acquainting themselves with all available information regarding difficulties which may be encountered and the conditions under which the work is to be accomplished. Bidders will not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required herein due to their failure to investigate the conditions or to become acquainted with all information, schedules and liability concerning the services to be performed.

L.4 BID SUBMISSION DATE AND TIME

Bids must be submitted no later than *2 p.m.* local time on *February 20, 2015* as specified in Section A.9.

L.5 WITHDRAWAL OR MODIFICATION OF BIDS

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

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

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

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

L.6.2 Postmarks

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

L.6.3 Late Submissions

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

L.6.4 Late Modifications

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

L.6.5 Late Bids

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

L.7 HAND DELIVERY OR MAILING OF BIDS

Bidders must deliver or mail their bids to the Department on Disability Services, Attention: Office of Contracts and Procurement, 2nd Floor Mailroom, 1125 15th Street, NW, Washington, DC 20005.

L.8 ERRORS IN BIDS

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

L.9 QUESTIONS ABOUT THE SOLICITATION

If a prospective bidder has any questions relative to this solicitation, the prospective bidder shall submit the questions in writing to the CO. The prospective bidder shall submit questions no later than ten (**10**) days prior to the closing date and time indicated for this solicitation. The District will not consider any questions received less than **seven (7)** days before the date set for submission of bids. The District will furnish responses promptly to all prospective bidders. An amendment to the solicitation will be issued, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to any prospective bidders. Oral explanations or instructions given before the award of the contract will not be binding.

L.10 FAILURE TO SUBMIT BIDS

Recipients of this solicitation not responding with a bid should not return this solicitation. Instead, they should advise the CO, by letter or postcard whether they want to receive future solicitations for similar requirements. It is also requested that such recipients advise the Contracting Officer, Department on Disability Services, of the reason for not submitting a bid in response to this solicitation. If a recipient does not submit a bid and does not notify the CO, Department on Disability Services, that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

L.11 BID PROTESTS

Any actual or prospective bidder or contractor who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than 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 prior to bid opening or the time set for receipt of

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

L.12 SIGNING OF BIDS

L.12.1 The bidder shall sign the bid and print or type its name on the Solicitation, Offer and Award form of this solicitation. Each bid must show a full business address and telephone number of the bidder and be signed by the person or persons legally authorized to sign contracts. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the Contracting Officer.

L.12.2 All correspondence concerning the bid or resulting contract will be mailed to the address shown on the bid in the absence of written instructions from the bidder or contractor to the contrary. Any bid submitted by a partnership must be signed with the partnership name by a general partner with authority to bind the partnership. Any bid submitted by a corporation must be signed with the name of the corporation followed by the signature and title of the person having authority to sign for the corporation. Bidders shall complete and sign all Representations, Certifications and Acknowledgments as appropriate. Failure to do so may result in a bid rejection.

L.13 ACKNOWLEDGMENT OF AMENDMENTS

The bidder shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose in Section A, Solicitation, Offer and Award form; or (c) by letter, telegram or e-mail from an authorized representative. The District must receive the acknowledgment by the date and time specified for receipt of bids. A bidder's failure to acknowledge an amendment may result in rejection of its bid.

L.14 BIDS WITH OPTION YEARS

The bidder shall include option year prices in its bid. A bid may be determined to be nonresponsive if it does not include option year pricing.

L.15 LEGAL STATUS OF BIDDER

Each bid must provide the following information:

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

L.15.2 A copy of each District of Columbia license, registration or certification that the bidder is required by law to obtain. This mandate also requires the bidder to provide a copy of the executed "Clean Hands Certification" that is referenced in D.C. Official Code §47-2862, if the bidder is required by law to make such certification. If the bidder is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the bid shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and

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

L.16 BID OPENING

The District shall publicly open bids submitted in response to this IFB. The District shall read aloud or otherwise make available the name of each bidder, the bid price, and other information that is deemed appropriate.

L.17 CERTIFICATES OF INSURANCE

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

*Marsha Robinson
1125 15th Street, NW 20005
Phone Numbe: (202) 730-1628/E-mail Address:Marsha.Robinson@dc.gov]*

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 the documentation listed below, within five (5) days of the request by the District.

L.18.1 Evidence of adequate financial resources, credit or the ability to obtain such resources as required during the performance of the contract.

L.18.2 Evidence of the ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.

L.18.3 Evidence of the necessary organization, experience, accounting and operational control, technical skills or the ability to obtain them.

- L.18.4** Evidence of compliance with the applicable District licensing and tax laws and regulations.
- L.18.5** Evidence of a satisfactory performance record, record of integrity and business ethics.
- L.18.6** Evidence of the necessary production, construction and technical equipment and facilities or the ability to obtain them.
- L.18.7** Evidence of other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.
- L.18.8** If the prospective contractor fails to supply the information requested, the CO shall make the determination of responsibility or nonresponsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the CO shall determine the prospective contractor to be nonresponsible.

L.19 PRE-BID CONFERENCE:

Due to the nature of the procurement, there will be a pre-bid conference on February 9, 2015, at 11 a.m. Attendance is not required, but it is highly recommended and encouraged that vendors that are not familiar with Randolph Sheppard Blind Vending attend. The pre-bid conference will also allow for interested vendors to schedule site visits. The Pre-Bid conference will be held at DDS' location at 1125 15th Street, NW, Washington, DC 20005.

SECTION M: EVALUATION FACTORS

M.1. Preferences for Certified Business Enterprises

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

M.1.1. Application of Preferences

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

- M.1.1.1** Any prime contractor that is a small business enterprise (SBE) certified by the Department of Small and Local Business Development (DSLBD) will receive a three percent (3%) reduction in the bid price for a bid submitted by the SBE in response to this Invitation for Bids (IFB).
- M.1.1.2** Any prime contractor that is a resident-owned business (ROB) certified by DSLBD will receive a five percent (5%) reduction in the bid price for a bid submitted by the ROB in response to this IFB.
- M.1.1.3** Any prime contractor that is a longtime resident business (LRB) certified by DSLBD will receive a five percent (5%) reduction in the bid price for a bid submitted by the LRB in response to this IFB.
- M.1.1.4** Any prime contractor that is a local business enterprise (LBE) certified by DSLBD will receive a two percent (2%) reduction in the bid price for a bid submitted by the LBE in response to this IFB.
- M.1.1.5** Any prime contractor that is a local business enterprise with its principal offices located in an enterprise zone (DZE) certified by DSLBD will receive a two percent (2%) reduction in the bid price for a bid submitted by the DZE in response to this IFB.
- M.1.1.6** Any prime contractor that is a disadvantaged business enterprise (DBE) certified by DSLBD will receive a two percent (2%) reduction in the bid price for a bid submitted by the DBE in response to this IFB.
- M.1.1.7** Any prime contractor that is a veteran-owned business (VOB) certified by DSLBD will receive a two percent (2%) reduction in the bid price for a bid submitted by the VOB in response to this IFB.

M.1.1.8 Any prime contractor that is a local manufacturing business enterprise (LMBE) certified by DSLBD will receive a two percent (2%) reduction in the bid price for a bid submitted by the LMBE in response to this IFB.

M.1.2 Maximum Preference Awarded

Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise is entitled under the Act is twelve per cent (12%) for bids submitted in response to this IFB. There will be no preference awarded for subcontracting by the prime contractor with certified business enterprises.

(iii) **M.1.3 Preferences for Certified Joint Ventures**

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

M.1.4 Verification of Bidder's Certification as a Certified Business Enterprise

M.1.4.1 Any vendor seeking to receive preferences on this solicitation must be certified at the time of submission of its bid. The CO will verify the bidder's certification with DSLBD, and the bidder should not submit with its bid any documentation regarding its certification as a certified business enterprise.

M.1.4.2 Any vendor seeking certification or provisional certification in order to receive preferences under this solicitation should contact the:

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

M.1.4.3 All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

M.2 EVALUATION OF OPTION YEARS

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