

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
REQUEST FOR QUOTATION
VISITOR MANAGEMENT SYSTEM
RM-10-RFQ-038-BY0-THS**

The District of Columbia Department of Mental Health (DMH) is seeking Quotations from vendors and authorized resellers to purchase and install a Visitor Management System to the New Saint Elizabeths Hospital (SEH).

Opening Date: December 15, 2009

Closing Date: January 5, 2010

Closing Time: 12:00 PM EST

To obtain a copy of the Request for Quotation please contact Tornia Harrison-Samuels, Contract Specialist, at:

D.C. Department of Mental Health | Contracts and Procurement Administration
64 New York Avenue NE - 4th Floor Washington DC 20002
Tel: 202.671-3180 | Fax: 202.671-3395
tornia.harrison-samuels@dc.gov

All responses to this request are due by December 30, 2009 12:00PM EST, mailed or hand delivered in sealed envelope, marked with Solicitation Number and Name of Vendor submitting quote.

1. ISSUED BY/ADDRESS OFFER TO: DISTRICT OF COLUMBIA DEPARTMENT OF MENTAL HEALTH (DMH) CONTRACTS AND PROCUREMENT ADMINISTRATION 64 NEW YORK AVENUE NE, 4th FLOOR WASHINGTON, DC 20002	2. PAGE OF PAGES: 1 of 41
	3. CONTRACT NUMBER:
	4. SOLICITATION NUMBER: RM-10-RFQ-038-BY0-THS
	5. DATE ISSUED:
	6. OPENING/CLOSING TIME: December 15, 2009/January 5, 2009 @ 12:00 PM EST.

7. TYPE OF SOLICITATION: N/A <input checked="" type="checkbox"/> SEALED BID <input type="checkbox"/> NEGOTIATION (RFP)	8. DISCOUNT FOR PROMPT PAYMENT:
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NOTE: IN SEALED BID SOLICITATION "OFFER AND CONTRACTOR" MEANS "BID AND BIDDER"

10. INFORMATION CALL	NAME: Samuel J Feinberg, CPPO, CPPB Director, Contracts and Procurement Agency Chief Contracting Officer	TELEPHONE NUMBER: (202) 671-3188	B. E-MAIL ADDRESS: Samuel.Feinberg@dc.gov
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11. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
<i>PART I – The Schedule</i>				<i>PART II – Contract Clauses</i>			
x	A	Solicitation/Contract Form	1	x	I	Contract Clauses	34-43
x	B	Supplies/Services and Price/Costs	2-4	<i>PART III – List of Documents, Exhibits and Other Attach</i>			
x	C	Description/Specs/Work Statement	5-15	x	J	List of Attachments	44
x	D	Packaging and Marking	16-17	<i>PART IV – Representations and Instructions</i>			
x	E	Inspection and Acceptance	18-19		K	Representations, Certifications and other Statements of Contractors	
x	F	Deliveries or Performance	21-22		L	Instrs. Conds., & Notices to Contractors	
x	G	Contract Administration	23-26		M	Evaluation Factors for Award	
x	H	Special Contract Requirements	27-33				

OFFER (TO BE COMPLETED BY CONTRACTOR)

12. In compliance with the above, the undersigned agrees, if the offer is accepted within 180 calendar days (unless a different period is inserted by Contractor) from the date for receipt of offers specified above, that with respect to all terms and conditions by the DMH under "AWARD" below, this offer and the provisions of the RFQ/IFB shall constitute a Formal Contract. All offers are subject to the terms and conditions contained in the solicitation.

13. ACKNOWLEDGEMENT OF AMENDMENTS (Contractor acknowledge receipt of amendments to the SOLICITATION for Contractors and related documents numbered and dated):	AMENDMENT NO:	DATE:
14. NAME AND ADDRESS OF CONTRACTOR:	15. NAME AND TITLE OF PERSONAL AUTHORIZED TO SIGN OFFER: (Type or Print)	
14A. TELEPHONE NUMBER:	15A. SIGNATURE:	15B. OFFER DATE:
AREA CODE: NUMBER: EXT:		

AWARD (To be completed by the DMH)

16. ACCEPTED AS TO THE FOLLOWING ITEMS:	17. AWARD AMOUNT:
18. NAME OF CONTRACTING OFFICER: (TYPE OR PRINT) Samuel J. Feinberg, CPPO, CPPB Director, Contracts and Procurement Agency Chief Contracting Officer	19. CONTRACTING OFFICER SIGNATURE:
	20. AWARD DATE:

IMPORTANT NOTICE: AWARD SHALL BE MADE ON THIS FORM, OR ON DMH FORM 26, OR BY OTHER AUTHORIZED OFFICIAL WRITTEN NOTICE

SECTION B: SUPPLIES OR SERVICES AND PRICE

B.1 PURPOSE OF SOLICITATION

B.1.1 The Government of the District of Columbia, Department of Mental Health (DMH), is issuing this Request for Quote seeking quotations from vendors and authorized resellers to purchase and install a Visitor Management System to the New Saint Elizabeths Hospital (SEH) in accordance with the requirements as stated in Section C of this solicitation.

B.2 CONTRACT TYPE

B.2.1 This is a Firm Fixed Price Contract as outlined in the Pricing Schedule in Section B of this Contract.

B.2.2 The District requires the Bidder to provide pricing for each Contract Line Item Number (CLIN) listed in the tables below.

B.3 PERIOD OF PERFORMANCE

B.3.1 The Period of Performance (POP) under this Contract shall be from Date of Award through September 30, 2009.

B.5 PRICING SCHEDULE

B.5.1 The Contractor shall bid on all or none of the following Contract Line Items for Location A. (Section C.3.1)

NAME OF CONTRACTOR

Contract Line Item No. (CLIN)	Item Description	Quantity	Unit	Unit Price	Extended Price
0001	Kiosk Package (Section C.3.1)	2	Each	\$ _____	\$ _____
0002	Visitor Badges (Section C.3.2)	10	Cases	\$ _____	\$ _____
0003	Delivery & Installation	1	Each	\$ _____	\$ _____
0004	On-Site Training (C.3.3)	1	Each	\$ _____	\$ _____
0005	One Year Technical Support (C.3.4)	1	Each	\$ _____	\$ _____
0006	Extended Warranty	1	Each	\$ _____	\$ _____
Extended Total				\$ _____	\$ _____

B.5.2 GRAND TOTAL

B.5.2.1 The Contractor shall bid on all or none of the CLINS in Section B.5.1 and provide the Grand Total of all CLINS below.

Section	Extended Total
B.5.1	\$ _____
Grand Total	\$ _____
(LSDBE) Total	\$ _____

Print Name of Offeror

Print Name of Authorized Person

Title

Signature of Authorized Person

Date

***** END OF SECTION B *****

PART I - THE SCHEDULE

SECTION C

BACKGROUND/SCOPE OF SERVICES/ REQUIREMENTS

TABLE OF CONTENTS

CLAUSE NO.	CLAUSE TITLE	PAGE NO.
C-1	BACKGROUND	14
C-2	SCOPE OF SERVICES	14
C-3	GENERAL REQUIREMENTS/SPECIFICATIONS	15-18
C-4	WARRANTIES	18-19
C-5	STORAGE	20
C.6	CONTRACTOR'S QUESTIONS	20

SECTION C: BACKGROUND, SCOPE OF SERVICES AND REQUIREMENTS

C.1 BACKGROUND

C.1.1 The Department of Mental Health provides comprehensive mental health services to adults, children, youths and their families. Inpatient services are provided at Saint Elizabeth's Hospital. Saint Elizabeth's Hospital (SEH) was created in 1855 and serves as the District of Columbia's government-run psychiatric hospital.

In 2006 construction of a new modern 292 bed psychiatric hospital began. The new hospital shall consist of 2 stories with attic mechanical levels, including a central mechanical plant, auditorium, gymnasium, and commercial kitchen, located on the east campus of SEH.

C.2 SCOPE OF SERVICES

C.2.1 The Government of the District of Columbia Department of Mental Health (DMH), Saint Elizabeth's Hospital (SEH) is seeking bids from Vendors and authorized resellers to purchase, furnish and install Visitor Management System at:

Saint Elizabeths Hospital
1100 Alabama Avenue, SE
Washington, DC 20032
Main Lobby Loading Dock

The Contractor shall perform all services Monday through Friday, 10:00AM EST – 4:00 PM EST. During these times DMH shall ensure that the locations are available for service and provide a Representative to receive all equipment appropriately. If needed, DMH will provide 5 (five) padded elevators, 55 (fifty-five) feet wide. All Labor, equipment, tools and material charges shall be included in the Bid.

C.3 GENERAL REQUIREMENTS / SPECIFICATIONS

C.3.1 The Contractor shall purchase, deliver and install 2 (two) LobbyGuard Kiosk Packages to include but not limited to LobbyGuard Visitor Management Software v3 with LobbyGuard Kiosk hardware or brand equivalent to designated locations at SEH.

C.3.2 The Contractor shall purchase and deliver 10 (ten) cases of LobbyGuard Visitor Badges (Each case contains 50 rolls or 250 badges.) or brand equivalent to designated locations at SEH.

C.3.3 The Contractor shall provide on-site training conducted by a LobbyGuard Certified Technician on all hardware and software.

- C.3.4** The Contractor shall provide Annual Software Support and Update Contract, to include but not limited to, access to remote technical support and all upgrades and features added to LobbyGuard for a minimum of (1) year after installation.
- C.3.5** The Contractor shall be responsible for the entire job including all purchasing, delivery and installation.
- C.3.6** The Contractor shall work in accordance with all applicable building codes and standards to include but not limited to the hospital's policies and procedures when performing services.
- C.3.7** The Contractor shall, as needed, deliver all materials in good condition to the job sites in the manufacturer's original unopened containers that bear the name and brand of the manufacturer.
- C.3.8** The Contractor shall inspect all areas prior to installation of any new materials to determine any defects that might prevent proper installation of new material.
- C.3.9** The Contractor shall report conditions contrary to Contract requirements that would prevent proper installation. Do not proceed with the installation until unsatisfactory conditions have been corrected.
- C.3.10** The Contractor shall install all materials in strict accordance with the manufacturer's recommendations.
- C.3.11** The Contractor shall follow all manufacturer's recommendations and guidelines for pre and post installation.
- C.3.12** The Contractor shall protect all surfaces around the work areas.
- C.3.13** The Contractor must provided a copy of the Bill of Lading of all items being delivered at delivery time, all items listed in the Bill of Lading must match the item description stated in Contract.
- C.3.13.1** The Contractor must provide a signature line on the Bill of Lading for the DMH representative to sign at time of delivery.
- C.3.14** The Contractor shall install all equipment based on the manufacture's recommendations.
- C.3.15** The Contractor must provide DMH with a copy of all deliver's identification along with the license plate number of delivery vehicle within 5 (five) business days prior to delivery.
- C.3.16** The Contractor must ensure all delivery trucks are labeled with Company's name on the outside of the vehicle.

C.3.17 The Contractor shall remove and dispose of all trash and debris associated with the delivery and installation of all equipment to an off-site location.

C.3.18 The Contractor must be a direct provider or authorized reseller and demonstrate experience providing the good or services to large state or private institutions.

C C.4 WARRANTY AND MAINTENANCE REQUIREMENTS

C.4.1 The Contractor shall provide DMH with all manufactures' and extended warranties for all equipment in Section 3.1 at prior or at time of delivery.

C.4.2 The Contractor shall provide extended warranties for all equipment listed in Section 3.1 for the timeframe specified in Section B.3.

C.4.2.1 Pursuant to 27 DCMR Section 4026.1 as it applies to DMH Contracts and Procurement, the Director/Agency Chief Contracting Officer (Director/ACCO) shall ensure that each warranty in a District Contract clearly delineates the rights and obligation of the Contractor and the District for defective items and services and fosters quality performance.

The warranty shall provide the following:

- a) A Contractual right for the correction of defects, notwithstanding any other requirement of the Contract pertaining to acceptance of the supplies or service by the District; and
- b) A stated period of time or use, or the occurrence of a specified event, after acceptance by the District within which the District may assert a Contractual right for the correction of defects.

C.4.3 WARRANTY TERMS AND CONDITIONS

The Contractor's obligations under a warranty shall extend to all defects discovered during the warranty period, but shall not include any damage caused solely by the District.

A warranty shall provide, at a minimum that the District may obtain an equitable adjustment of the Contract or direct the Contractor to repair or replace the defective item at the Contractor's expense.

If it is not practical to require the Contractor to make a repair or provide a replacement, or, because of the nature of the item, the repair or replacement does not afford an appropriate remedy to the District, the warranty may provide an alternative, such as allowing the District to do either of the following:

- a) Retain the defective item and reduce the Contract price by an amount equitable under the circumstances; or

- b) Arrange for the repair or replacement of the defective item by the District, or by another source, at the Contractor's expense.

The Director/Agency Chief Contracting Officer shall clearly specify the duration of the warranty after consideration of the following factors:

- a) The estimated useful life of the item;
- b) The nature of the item including storage or shelf-like; and
- c) Trade practice

The duration of the warranty shall not extend the Contractor's liability for patent defects beyond a reasonable time after acceptance by the District.

Each warranty shall specify a reasonable time for furnishing notice to the Contractor regarding the discovery of defects. The Director/Agency Chief Contracting Officer shall consider the following factors when establishing the notice period:

- a) Time necessary for the District to discover the defects;
- b) The time reasonably required for the District to take necessary administrative steps and make a timely report of discovery of the defects to the Contractor; and;
- c) The time required to discover and report defective replacements.

C.4.4 ONE-YEAR MANUFACTURERS WARRANTY

One-year parts and labor warranty, including telephone technical support for SEH facility personnel.

C.4.5 EXTENDED WARRANTY/MAINTENANCE CONTRACT

Upon the expiration of the one-year warranty, the District shall be offered an extended warranty and on-site maintenance Contract. This maintenance Contract shall include pricing for annual maintenance with a base period of up to one (1) year.

C.5 SAINT ELIZABETH'S HOSPITAL FACILITIES RESPONSIBILITY

C.5.1 SEH shall ensure that the Contractor has complete and obstruction-free access to all work areas, and that the areas below and adjacent to the work areas are obstruction free.

C.5.2 SEH shall make readily available all required electrical hookups in the specified areas.

C.5.3 SEH shall ensure that access shall be made available to all electrical and plumbing closets associated with this equipment.

C.5.4 SEH shall ensure that a member of the SEH Maintenance staff shall be readily available for assistance to the Contractor in the necessary operation of the buildings systems and work coordination should the need arise for the duration of these projects.

C.6 CONTRACTOR'S QUESTIONS

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

All Correspondence or inquiries related to this Contract or any modifications shall be addressed to:

Samuel J. Feinberg, CPPO, CPPB
Director, Contracts and Procurement
Agency Chief Contracting Officer
Department of Mental Health
64 New York Avenue – 4th Floor
Washington, DC 20002
(202) 671-3188 – Office/ (202) 671-3195
Email: Samuel.feinberg@dc.gov

***** END OF SECTION C *****

SECTION D
PACKAGING AND MARKING
TABLE OF CONTENTS

CLAUSE NO.	CLAUSE TITLE	PAGE NO.
D.1	SHIPPING INSTRUCTIONS	12

SECTION D: SHIPPING INSTRUCTIONS:

- D.1 The Contractor shall deliver all materials in good condition in the manufacturer's original unopened containers that bear the name and brand of the manufacturer.

Unless otherwise specified in this Invitation for Bids (IFB), each case, crate, barrel, package, etc., delivered under this Contract must be plainly stencil marked or securely tagged, stating the Contractor's name, Contract number and delivery address as noted in the Contract. In case of carload lots, the Contractor shall tag the car, stating Contractor's name and Contract number. Any failure to comply with these instructions shall place the material at the Contractor's risk. Deliveries by rail, water, truck or otherwise, must be within the working hours and in ample time to allow for unloading and if necessary, the storing of the materials or supplies before closing time. Deliveries at any other time shall not be accepted unless specific arrangements have been previously made with the contact person identified in the Contract at the delivery point.

***** END OF SECTION D *****

SECTION E
DELIVERY, INSPECTION AND ACCEPTANCE
TABLE OF CONTENTS

CLAUSE NO.	CLAUSE TITLE	PAGE NO.
E.1	GENERAL PROVISIONS	24
E.2	CONSESEQUENCES OF CONTRACTOR'S FAILURE TO PERFORM REQUIRED SERVICES	24
E.3	QUALITY	25
E.4	INSPECTIONS OF SUPPLIES	25-26

SECTION E: DELIVERY, INSPECTION AND ACCEPTANCE

E.1 GENERAL PROVISIONS

E.1.1 The inspection and acceptance requirements for the resultant Contract shall be governed by clause number six (5), Inspection of Supplies, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March, 2007.

E.2 CONSEQUENCES OF CONTRACTOR'S FAILURE TO PERFORM REQUIRED SERVICES

E.2.1 The Contractor shall be held to the full performance of the Contract. The District shall deduct from the Contractor's invoice or otherwise withhold payment for any non-conforming service as specified below.

E.2.2 A service task may be composed of several sub-items. A service task may be determined to be partially complete if the Contractor satisfactorily completes some, but not all, of the sub-items. In those cases, partial deductions may be taken from the Contractor's invoice.

E.2.3 The District shall give the Contractor written notice of deductions by providing copies of reports, which summarizes the deficiencies for which the determination was made to assess the deduction in payment for unsatisfactory work.

E.2.4 Therefore, in the case of non-performed work, the District:

E.2.4.1 Shall deduct from the Contractor's invoice all amounts associated with such non-performed work at the rate set out in Section B or provided by other provisions of the Contract;

E.2.4.2 May, at its option, afford the Contractor an opportunity to perform the non-performed work within a reasonable period subject to the discretion of the Director/ACCO and at no additional cost to the District;

E.2.4.3 May, at its option, perform the services by District personnel or other means.

E.2.5 In the case of unsatisfactory work, the District:

E.2.5.1 Shall deduct from the Contractor's invoice all amounts associated with such unsatisfactory work at the rates set out in Section B or provided by other provisions of the Contract, unless the Contractor is afforded an opportunity to re-perform and satisfactory completed the work;

E.2.5.2 May, at its option, afford the Contractor an opportunity to re-perform the unsatisfactory work within a reasonable period subject to the discretion of the

Director/ACCO and at no additional cost to the District.

E.3 QUALITY

Contractor's workmanship shall be of the highest grade, and all materials provided under this Contract shall be new, of the best quality and grade, and suitable in every respect for the purpose intended.

E.4 INSPECTION OF SUPPLIES

(a) Definition. "Supplies," as used in this clause, includes, but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Contractor shall be responsible for the materials or supplies covered by this Contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notification of rejection. Upon the Contractor's failure to cure within ten (10) days after date of notification, the District may return the rejected materials or supplies to the Contractor at the Contractor's risk and expense.

(c) The Contractor shall provide and maintain an inspection system acceptable to the District covering supplies under this Contract and shall tender to the District for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with Contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the District during Contract performance and for as long afterwards as the Contract requires.

The District may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in manners that shall not unduly delay the Contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under this Contract.

(d) The District has the right to inspect and test all supplies called for by the Contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The District shall perform inspections and tests in a manner that shall not unduly delay the work. The District assumes no Contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in the Contract.

(e) If the District performs inspection or test on the premises of the Contractor or subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in

the Contract, the District shall bear the expense of District inspections or tests made at other than Contractor's or subcontractor's premises; provided, that in case of rejection, the District shall not be liable for any reduction in the value of Definition. "Services" as used in this clause includes services performed, workmanship, and material furnished or utilized in the performance of services.

(f) The Contractor shall provide and maintain an inspection system acceptable to the District covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the District during Contract performance and for as long afterwards as the Contract requires.

(g) The District has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. The District shall perform inspections and tests in a manner that shall not unduly delay the work.

(h) If the District performs inspections or tests on the premises of the Contractor or subcontractor, the Contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safety and convenient performance of these duties.

(i) If any of the services do not conform to the Contract requirements, the District may require the Contractor to perform these services again in conformity with Contract requirements, at no increase in Contract amount. When the defects in services cannot be corrected by performance, the District may require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements and reduce the Contract price to reflect value of services performed.

(j) If the Contractor fails to promptly perform the services again or take the necessary action to ensure future performance in conformity to Contract requirements, the District may (1) by Contract or otherwise, perform the services and charge the Contractor any cost incurred by the District that is directly related to the performance of such services, or (2) terminate the Contract for default.

***** END OF SECTION E *****

SECTION F
PERFORMANCE AND DELIVERABLES

TABLE OF CONTENTS

CLAUSE NO.	CLAUSE TITLE	PAGE NO.
F.1	PERIOD OF PERFORMANCE	28
F.2	DELIVERABLES	28-29

SECTION F: PERFORMANCE AND DELIVERABLES

F.1 PERIOD OF PERFORMANCE

F.1.1 The Period of Performance (POP) for this Contract shall be One (1) Year from Date of Award through September 30, 2009.

F.2 DELIVERABLES

The Contractor shall coordinate all deliveries with DMH representative listed below, the Contractor shall contact representative within 10 (ten) days after Contract award, the Contractor and DMH must agree on delivery and installation dates and times within 15 (fifteen) days after Contract award, the Contractor shall deliver and install all equipment within 45 (forty-five) days after Contract award:

Eric Trutenko, LEED AP
2700 Martin Luther King Ave.
Washington D.C. 20032
Tel (202) 645-1085
Fax (202) 373-0371
Cell (301) 325-2831

F.2.1 BILL OF LADING

<u>Deliverable</u>	Method of Delivery	Due Date
Bill of Lading See Section C.3.13	The Contractor shall provide DMH with a bill of lading.	At time of Delivery.

F.2.2 IDENTIFICATION

<u>Deliverable</u>	Method of Delivery	Due Date
Identification See Section C.3.15	The Contractor shall provide DMH with identification of all deliverers.	5 (five) days prior to delivery.

F.2.3 MANUFACTURER'S WARRANTY

<u>Deliverable</u>	Method of Delivery	Due Date
Manufacturer's Warranty See Section C. 4	The Contractor shall provide DMH with all manufacturers' warranties.	Prior to Delivery
Extended Warranty See Section C. 4	The Contractor shall provide DMH with all extended warranties.	Prior to Delivery

***** END OF SECTION F *****

SECTION G
CONTRACT ADMINISTRATION DATA
TABLE OF CONTENTS

CLAUSE NO.	CLAUSE TITLE	PAGE NO.
G.1	CONTRACT ADMINISTRATION	31
G.2	TYPE OF CONTRACT	31
G.3	MODIFICATIONS	32
G.4	AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR	32
G.5	DESIGNATION OF THE CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE	32
G.6	SUBMISSION OF INVOICES	32-33
G.7	CERTIFICATION OF INVOICES	33
G.8	PAYMENT	33
G.9	RESPONSIBILITY FOR AGENCY PROPERTY	33

SECTION G: CONTRACT ADMINISTRATION DATA

G.1 CONTRACT ADMINISTRATION

Correspondence or inquiries related to this Invitation for Bid (IFB) or any modifications shall be addressed to:

Samuel J. Feinberg, CPPO, CPPB
Director, Contracts and Procurement
Agency Chief Contracting Officer
Department of Mental Health
64 New York Avenue – 4th Floor
Washington, DC 20002
Office - (202) 671-3188
Fax (202)671-3395
Email: Samuel.feinberg@dc.gov

G.2 TYPE OF CONTRACT

- G.2.1 This shall be a Fixed Price Contract with fixed unit prices. Contractor shall be remunerated at a fixed unit rate indicated in Section B for service performed. In the event of termination under this IFB, the DMH shall only be liable for the payment of all services accepted during the hours of work actually performed.
- G.2.2 This IFB shall be a “non-personal services Contract”. It is therefore, understood and agreed that Contractor and/or 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 to bear sole responsibility for complying with any and all technical, schedule, financial requirements or constraints attendant to the performance of this IFB; (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 Director, Contracts and Procurement/Agency Chief Contracting Officer, or the duly authorized representative as the Contracting Officer’s Technical Representative (COTR) as is necessary to ensure accomplishment of the Contract objectives.
- G.2.3 By accepting this order or Contract Contractor agrees that the District, at its discretion, after completion of order or Contract period, may hire an individual who is performing services as a result of this order or Contract, with restriction, penalties or fees.

G.3 MODIFICATIONS

G.3.1 Any changes, additions or deletions to this IFB shall be made in writing by a formal Modification to this IFB and shall be signed by the Director, Contracts and Procurement/Agency Chief Contracting Officer only.

G.4 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

G.4.1 DMH's obligation for performance of this Invitation for Bid (IFB) beyond that date is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of the DMH for any payment may arise for performance under this IFB beyond September 30, 2009, until funds are made available to the Director, Contracts and Procurement/Agency Chief Contracting Officer for performance and until Contractor receives notice of availability of funds, to be confirmed in writing by the Agency's Chief Financial Officer.

G.5 DESIGNATION OF THE CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE

G.5.1 The Director, Contracts and Procurement/Agency Chief Contracting Officer shall designate a Contracting Officer's Technical Representative (COTR) who shall, among other duties relating to this IFB, have direct responsibility to assign work to Contractor, review Contractor's performance during the term of this IFB and make recommendations to the Director, Contracts and Procurement/Agency Chief Contracting Officer. The COTR shall also review, approve and sign all invoices prior to payment by DMH. The COTR for this procurement is:

Richard Warsh shall serve as the Contracting Officer's Technical Representative (COTR) for this Contract.

Richard Warsh
Director of Facilities Planning
64 New York Avenue, NE 5th Floor
Washington, DC 20002
(202) 673-7050 (direct)
(202) 558-8769 (Cell)
Richard.warsh@dc.gov

G.6 SUBMISSION OF INVOICE

G.6.1 Contractor shall submit an original and three copies of the invoice on a monthly basis to the Contracting Officer's Technical Representative (COTR). The invoices shall include Contractor's name and address, invoice date, Contract number, Contract line items numbers (CLINS), description of the services, quantity, unit price and extended prices, terms of any prompt payment discounts offered, name

and address of the official to whom payment is to be sent and the name, title and phone number of the person to be notified in the event of a defective invoice. Payment shall be made within forty-five (45) days after the COTR receives a proper and certified invoice from Contractor, unless a discount for prompt payment is offered and payment is made within the discount periods. Any invoices deemed improper for payment shall be returned, **UNPAID** and shall be resubmitted as indicated in this clause.

G.7 CERTIFICATION OF INVOICE

G.7.1 Contracting Officer's Technical Representative shall perform certification of Contractor's invoice. The invoices shall be certified for payment and forwarded to the Chief Financial Officer within five (5) working days after receipt of a satisfactory invoice.

G.8 PAYMENT

G.8.1 In accordance with the Quick Payment Act, D.C. Official Code § 2-221.02, payment shall be made within forty five (45) days from the date of receipt of a properly submitted invoice, after all approvals are completed as required by the PASS system. DMH shall only pay Contractor for performing the services under this IFB at the prices stated in Section B.

G.9 RESPONSIBILITY FOR AGENCY PROPERTY

G.9.1 Contractor shall assume full responsibility for and shall indemnify the DMH for any and all loss or damage of whatsoever kind and nature to any and all Agency property, including any equipment, supplies, accessories, or part furnished, while in Contractor's custody during the performance of services under this IFB, or while in Contractor's custody for storage or repair, resulting from the negligent acts or omissions of Contractor or any employee, agent, or representative of Contractor or Subcontractors'. Contractor shall do nothing to prejudice the DMH's right to recover against third parties for any loss, destruction of, or damage to DMH property and upon the request of the Director, Contracts and Procurement/Agency Chief Contracting Officer shall, at the DMH's expense, furnish to the DMH all reasonable assistance and cooperation, including assistance in the protection of suit and the execution of instruments of assignment in favor of the DMH recovery.

***** END OF SECTION G *****
SECTION H

SPECIAL CONTRACT REQUIREMENTS

TABLE OF CONTENTS

CLAUSE NO.	CLAUSE TITLE	PAGE NO.
H.1	CONTRACTOR LICENSE/ CLEARANCES	28
H.2	PRIVACY AND CONFIDENTIALITY COMPLIANCE	28-32
H.3	COST OF OPERATION	32
H.4	LIQUIDATED DAMAGES	32-33

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H.1 CONTRACTOR LICENSE/CLEARENES

Contractor shall maintain documentation that he/she possesses adequate training, qualifications and competence to perform the duties to which he/she is assigned and hold current licenses or certification as appropriate.

H.2 PRIVACY AND CONFIDENTIALITY COMPLIANCE

H.2.1 Definitions

- (a) "Business Associate" shall mean Contractor.
- (b) "DMH" shall mean the District of Columbia, Department of Mental Health
- (c) "Confidentiality law" shall mean the requirements and restrictions contained in Federal and District law concerning access to child welfare information, including D.C. Official Code §§ 4-1302.03, 1302.08, 1303.06 and 130-3.07.
- (d) "Designated Record Set" means:
 - 1. A group of records maintained by or for DMH that is:
 - (i) The medical records and billing records about individuals maintained by or for a covered health care provider;
 - (ii) The enrollment, payment, claims adjudication and case or medical management record systems maintained by or for a health plan; or
 - (iii) Used, in whole or in part, by or for DMH to make decisions about individuals.
 - 2. For purposes of this paragraph, the term record means any items, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for DMH.
- (e) Individual shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (f) Privacy Rule. "Privacy Rule" shall mean the requirements and restrictions contained in 45 CFR part 160 and part 164, subparts A and E, as modified by any District of Columbia laws, including the Mental Health Information Act of 1978, that may have preemptive effect by operation of 45 CFR part 160, subpart B.
- (g) "Protected information" shall include "protected health information" as defined in 45 CFR 164.501, limited to the protected health information created or received by Business Associate from or on behalf of DMH, information required to be kept confidential pursuant to the confidentiality law and confidential information concerning DMH or its employees.

- (h) "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by the Business Associate from or on behalf of DMH.
- (i) "Required by law" shall have the same meaning as the term "required by law" in 45 CFR 164.501, except to the extent District of Columbia laws have preemptive effective by operation of 45 CFR part 160, subpart B, or, regarding other protected information, required by District or federal law .
- (j) "Secretary" shall mean the Secretary of the Department of Health and Human Services or designee.

H.2.2 Obligations and Activities of Business Associate

- (a) The Business Associate agrees to not use or disclose protected information other than as permitted or required by this Section H.2 or as required by law.
- (b) The Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the protected information other than as provided for by this Section H.2.
- (c) The Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of protected information by the Business Associate in violation of the requirements of this Section H.2.
- (d) The Business Associate agrees to report to DMH any use or disclosure of the protected information not provided for by this Section H.2 of which it becomes aware.
- (e) The Business Associate agrees to ensure that any agent, including a subContractor, to whom it provides protected information received from, or created or received by the Business Associate on behalf of DMH, agrees to the same restrictions and conditions that apply through this Agreement to the Business Associate with respect to such information.
- (f) The Business Associate agrees to provide access, at the request of DMH and in the time and manner prescribed by the Director, Contracts and Procurement/Agency Chief Contracting Officer, to protected information in a Designated Record Set, to DMH or, as directed by DMH, to an individual in order to meet the requirements under 45 CFR 164.524.
- (g) The Business Associate agrees to make any amendment(s) to protected information in a Designated Record Set that DMH directs or agrees to pursuant to 45 CFR 164.526 at the request of CFSA or an Individual and in the time and manner prescribed by the Director, Contracts and Procurement/Agency Chief Contracting Officer.
- (h) The Business Associate agrees to make internal practices, books and records, including policies and procedures and protected information, relating to the use and disclosure of protected information received from, or created or received by the Business Associate on behalf of DMH, available to the DMH, in a time and manner prescribed by the Director, Contracts and

Procurement/Agency Chief Contracting Officer, for purposes of the determining DMH's compliance with the Privacy Rule.

- (i) The Business Associate agrees to document such disclosures of protected health information and information related to such disclosures as would be required for DMH to respond to a request by an Individual for an accounting of disclosures of protected health information in accordance with 45 CFR 164.528.
- (j) The Business Associate agrees to provide to DMH or an Individual, in time and manner prescribed by the Director, Contracts and Procurement/Agency Chief Contracting Officer, information collected in accordance with Section (i) above, to permit DMH to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

H.2.3 Permitted Uses and Disclosures by Business Associate

- (a) Refer to underlying services agreement. Except as otherwise limited in this Section H.2, the Business Associate may use or disclose protected information to perform functions, activities, or services for, or on behalf of, DMH as specified in this Solicitation, provided that such use or disclosure would not violate the confidentiality law or privacy rule if done by DMH or the minimum necessary policies and procedures of DMH.
- (b) Except as otherwise limited in this Section H.2, the Business Associate may use protected information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (c) Except as otherwise limited in this Section H.2, the Business Associate may disclose protected information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it shall remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (d) Except as otherwise limited in this Section H.2, the Business Associate may use protected information to provide Data Aggregation services to DMH as permitted by 42 CFR 164.504(e)(2)(i)(B).
- (e) The Business Associate may use protected information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j) (1).

H.2.4 Obligations of DMH

- (a) DMH shall notify the Business Associate of any limitation(s) in its notice of privacy practices of DMH in accordance with 45 CFR 164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of protected information.
- (b) DMH shall notify the Business Associate of any changes in, or revocation of, permission by Individual to use or disclose protected information, to the extent that such changes may affect the Business Associate's use or disclosure of protected information.
- (c) DMH shall notify the Business Associate of any restriction to the use or disclosure of Protected information that DMH has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of Protected information.

H.2.5 Permissible Requests by DMH

- (a) DMH shall not request the Business Associate to use or disclose protected information in any manner that would not be permissible under the confidentiality law or privacy rule if done by DMH.

H.2.6 Term and Termination

- (a) Term. The requirements of this HIPAA Privacy Compliance Clause shall be effective as of the date of Contract award and shall terminate when all of the protected information provided by DMH to the Business Associate, or created or received by the Business Associate on behalf of DMH, is destroyed or returned to DMH, or, if it is infeasible to return or destroy Protected information, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) Termination for Cause. Upon DMH's knowledge of a material breach of this Section H.2 by the Business Associate, DMH shall either:
 - (1) Provide an opportunity for the Business Associate to cure the breach or end the violation and terminate the Contract if the Business Associate does not cure the breach or end the violation within the time specified by DMH;
 - (2) Immediately terminate the Contract if the Business Associate has breached a material term of this HIPAA Privacy Compliance Clause and cure is not possible; or
 - (3) If neither termination nor cure is feasible and the breach involves protected health information, DMH shall report the violation to the Secretary.
- (c) Effect of Termination.

- (1) Except as provided in Section H.2.6(c)(2), upon termination of the Contract, for any reason, the Business Associate shall return or destroy all protected information received from DMH, or created or received by the Business Associate on behalf of DMH. This provision shall apply to protected information that is in the possession of Subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of the protected information.
- (2) In the event that the Business Associate determines that returning or destroying the protected information is infeasible, the Business Associate shall provide to DMH notification of the conditions that make return or destruction infeasible. Upon determination by the Director, Contracts and Procurement/Agency Chief Contracting Officer that return or destruction of protected information is infeasible, the Business Associate shall extend the protections of this Agreement to such protected information and limit further uses and disclosures of such protected information to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such protected information.

H.2.7 Miscellaneous

- (a) Regulatory References. A reference in this Section H.2 to a Section in the Privacy Rule means the Section as in effect or as amended.
- (b) Amendment. The Parties agree to take such action as is necessary to amend this Section H.2 from time to time as is necessary for CFSA to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191.
- (c) Survival. The respective rights and obligations of the Business Associate under Section H.2.6 of this Clause and Sections 9 and 20 of the Standard Contract Provisions for use with District of Columbia Government Supply and Services Contracts, effective March 2007, shall survive termination of the Contract.
- (d) Interpretation. Any ambiguity in this Section H.2 shall be resolved to permit DMH to comply with the Privacy Rule.

H.3 COST OF OPERATION

All costs of operation under this Solicitation shall be borne by Contractor. This includes but is not limited to taxes, surcharges, licenses, insurance, transportation, salaries and bonuses.

H.4 LIQUIDATED DAMAGES

- H.4.1 When the Contractor fails to perform the tasks required under this Contract, DMH shall notify the Contractor in writing of the specific task deficiencies with a scheduled meeting and a Notice to Cure document with a cure period of Not to

Exceed Ten (10) Business Days. Upon receiving the Notice to Cure document, the Contractor shall provide DMH with their assessment of the identified deficiencies in order to reach an agreement on a proactive plan to resolve the matter. The assessment of Liquidated Damages as determined by the Director, Contracts and Procurement/Agency Chief Contracting Officer shall be in an amount of \$100.00 per day against the Contractor until such time that the Contractor has cured its deficiencies and is able to satisfactorily perform the tasks required under this Contract.

H.4.2 When Contractor is unable to cure its deficiencies in a timely manner and DMH requires a replacement Contractor to perform the required services, Contractor shall be liable for Liquidated Damages accruing until the time DMH is able to award said Contract to a qualified responsive and responsible Contractor. Additionally, if Contractor is found to be in default of said Contract under the Default Clause of the Standard Contract Provisions, the original Contractor is completely liable for any and all total cost differences between their Contract and the new Contract awarded by DMH to the replacement Contractor.

***** END OF SECTION H *****

SECTION I
CONTRACT CLAUSES
TABLE OF CONTENTS

CLAUSE NO.	CLAUSE TITLE	PAGE NO.
I.1	GOVERNING LAW	28
I.2	APPLICABILITY OF STANDARD CONTRACT PROVISIONS AND WAGE DETERMINATION	35
I.3	RESERVED	35
I.4	TIME	35
I.5	SUSPENSION OF WORK	35-36
I.6	STOP WORK ORDER	36-37
I.7	RESERVED	37
I.8	RESERVED	37
I.9	ANTI-KICKBACK PROCEDURES	37-38
I.10	INSURANCE	38-39
I.11	CONFIDENTIALITY OF INFORMATION	39
I.12	RIGHTS IN DATA	39-42
I.13	ORDER OF PRECEDENCE	42-43

SECTION I: CONTRACT CLAUSES

I.1 GOVERNING LAW

- I.1.1 This Contract shall be governed by and construed in accordance with the laws applicable in the District of Columbia.

I.2 APPLICABILITY OF STANDARD CONTRACT PROVISIONS AND WAGE DETERMINATION

- I.2.1 The Standard Contract Provisions for Use with District of Columbia Government Supply and Services Contracts, dated March 2007 (Attachment J-1), are incorporated by reference into this Contract. The Standard Provisions are attached hereto and can also be retrieved at <http://www.ocp.dc.gov/ocp/site/default.asp>; click on the "OCP Policies" link and then the link to "Standard Contract Provisions-Supply and Services Contracts."

- I.3 This Section is **RESERVED** for Future Use.

I.4 TIME

- I.4.1 Time, if stated in a number of days, includes all calendar days unless otherwise stated. Business days shall mean all days excluding Saturdays, Sundays, Holidays and other days in which District government is closed.

I.5 SUSPENSION OF WORK

- I.5.1 The Director, Contracts and Procurement/Agency Chief Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Contract for the period of time that the Director, Contracts and Procurement/Agency Chief Contracting Officer determines appropriate for the convenience of the District. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed or interrupted by an act of the Director, Contracts and Procurement/Agency Chief Contracting Officer in the administration of this Contract, or by the Director, Contracts and Procurement/Agency Chief Contracting Officer's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly.
- I.5.2 No adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.

I.5.3 A claim under this clause shall not be allowed for any costs incurred more than twenty (20) days before the Contractor shall have notified the Director, Contracts and Procurement/Agency Chief Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.

I.6 STOP WORK ORDER

I.6.1 The Director, Contracts and Procurement/Agency Chief Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period of ninety (90) days after the order is delivered to the Contractor and for any further period to which the parties may agree.

I.6.2 The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurring of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Director, Contracts and Procurement/Agency Chief Contracting Officer shall either cancel the stop-work order; or terminate the work covered by the order as provided in the Default or Termination for Convenience clauses in the Standard Contract Provisions (Attachment J-1).

I.6.3 If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Director, Contracts and Procurement/Agency Chief Contracting Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both and the Contract shall be modified, in writing, accordingly.

I.6.4 If the stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and the Contractor asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage; provided, that, if the Director, Contracts and Procurement/Agency Chief Contracting Officer decides the facts justify the action, the Director, Contracts and Procurement/Agency Chief Contracting Officer may receive and act upon the claim submitted at any time before final payment under this Contract.

I.6.5 If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the District, the Director, Contracts and Procurement/Agency Chief Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

I.6.6 If a stop-work order is not canceled and the work covered by the order is terminated for default, the Director, Contracts and Procurement/Agency Chief Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

I.7 This Section is **RESERVED** for Future Use

I.8 This Section is **RESERVED** for Future Use

I.9 **ANTI-KICKBACK PROCEDURES**

I.9.1 Definitions:

I.9.1.1 “Kickback,” as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subContractor, or subContractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime Contract or in connection with a subContract relating to a prime Contract.

I.9.1.2 “Person,” as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

I.9.1.3 “Prime Contract,” as used in this clause, means a Contract or Contractual action entered into by the District for the purpose of obtaining supplies, materials, equipment, or services of any kind.

I.9.1.4 “Prime Contractor” as used in this clause, means a person who has entered into a prime Contract with the District.

I.9.1.5 “Prime Contractor employee,” as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

I.9.1.6 “SubContract,” as used in this clause, means a Contract or Contractual action entered into by a prime Contractor or subContractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime Contract.

I.9.1.7 “SubContractor,” as used in this clause, means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime Contract or a subContract entered into in connection with such prime Contract and includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subContractor.

I.9.1.8 “SubContractor employee,” as used in this clause, means any officer, partner, employee, or agent of a subContractor.

- I.9.2 The Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58 (the Act), prohibits any person from:
- I.9.2.1 Providing or attempting to provide or offering to provide any kickback;
 - I.9.2.2 Soliciting, accepting, or attempting to accept any kickback; or
 - I.9.2.3 Including, directly or indirectly, the amount of any kickback in the Contract price charged by a prime Contractor to the District or in the Contract price charged by a subContractor to a prime Contractor or higher tier subContractor.
- I.9.3 The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph I-10.2 of this clause in its own operations and direct business relationships.
- I.9.4 When the Contractor has reasonable grounds to believe that a violation described in paragraph I-10.2 of this clause may have occurred, the Contractor shall promptly report in writing the possible violation to the Director, Contracts and Procurement/Agency Chief Contracting Officer.
- I.9.5 The Director, Contracts and Procurement/Agency Chief Contracting Officer may offset the amount of the kickback against any monies owed by the District under the prime Contract and/or direct that the Prime Contractor withhold from sums owed a subContractor under the prime Contract the amount of the kickback. The Director, Contracts and Procurement/Agency Chief Contracting Officer may order that monies withheld under this clause be paid over to the District unless the District has already offset those monies under this clause. In either case, the Prime Contractor shall notify the Director, Contracts and Procurement/Agency Chief Contracting Officer when the monies are withheld.

I.10 INSURANCE

The Contractor shall obtain the minimum insurance coverage set forth below prior to award of the Contract and within ten (10) calendar days after being called upon by the District to do so and keep such insurance in force throughout the Contract period.

- I.10.1 **Bodily Injury:** The Contractor shall carry bodily injury insurance coverage written in the comprehensive form of policy of at least \$500,000 per occurrence.
- I.10.2 **Property Damage:** The Contractor shall carry property damage insurance of a least (\$20,000) per occurrence.
- I.10.3 **Workers' Compensation:** The Contractor shall carry workers' compensation insurance covering all of its employees employed upon the premises and in

connection with its other operations pertaining to this Contract and the Contractor agrees to comply at all times with the provisions of the workers' compensation laws of the District.

- I.10.4 Employer's Liability: The Contractor shall carry employer's liability coverage of at least one hundred thousand dollars (\$100,000) per employee.
- I.10.5 Automobile Liability: The Contractor shall maintain automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the Contract. Policies shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage.
- I.10.6 All insurance provided by the Contractor as required by this Section, except comprehensive automobile liability insurance, shall set forth the District as an additional named insured. All insurance shall be written with responsible companies licensed by the District of Columbia's Department of Insurance and Securities Regulation with a certificate of insurance to be delivered to the District's Contracting Officer within fourteen (14) days of Contract award. The policies of insurance shall provide for at least thirty (30) days written notice to the District prior to their termination or material alteration.

I.11 CONFIDENTIALITY OF INFORMATION

- I.11.1 All information obtained by the Contractor relating to any employee or customer of the District shall 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.12 RIGHTS IN DATA

- I.12.1 "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.12.2 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.12.3** 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.12.4** 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.12.5** 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.12.6** The District shall have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this Contract, which the parties have agreed shall be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:
- I.12.6.1** 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.12.6.2 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.12.6.3 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.12.7 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. _____

With _____ (Contractor's Name); and

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

I.12.8 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.12.9 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.12.10 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.12.11 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.12.12 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.12.13 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.13 **ORDER OF PRECEDENCE**

I.13.1 A conflict in language or any inconsistencies in this Contract shall be resolved by giving precedence to the document in the highest order of priority which contains language addressing the issue in question. The following sets forth in descending order of precedence priority the documents that are incorporated into this Contract by reference and made a part of the Contract:

1. Consent Order dated December 12, 2003 in *Dixon, et al. v Fenty, et al.*, CA 74-285 (TFH) (Dixon Consent Order)

2. Settlement Agreement between the United States and the District of Columbia; the District of Columbia Department of Mental Health; and Saint Elizabeths Hospital
3. Contract Sections A through J of this Contract
4. Standard Contract Provisions for the Use with District of Columbia Government Supply and Services Contracts, March, 2007 (Attachment J.1)
5. Wage Determination No. 2005-2103 (Revision No. 6, May 29, 2008)
6. Invitation for Bid Submission Dated:

This Contract, including incorporated documents, constitutes the entire agreement between the parties. All previous discussions, writings and agreements are merged herein and shall not provide a basis for modifying or changing this written contract.

***** END OF SECTION I *****

SECTION J: LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

TABLE OF CONTENTS

<u>CLAUSE NO.</u>	<u>CLAUSE TITLE</u>
J.1	CONSENT ORDER DATED DECEMBER 12, 2003 in DIXON, ET AL. V FENTY, ET AL., CA 74-285 (TFH) (DIXON CONSENT ORDER). http://www.dmh.dc.gov/dmh/cwp/view,a,3,q,639222,dmhNav, 31262 .asp
J.2	SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES AND THE DISTRICT OF COLUMBIA; THE DISTRICT OF COLUMBIA DEPARTMENT OF MENTAL HEALTH; AND SAINT ELIZABETHS HOSPITAL http://www.dcmwatch.com/issues/health070510.htm
J.3	SECTIONS A THROUGH J OF THIS CONTRACT NUMBER:
J.4	STANDARD CONTRACT PROVISIONS FOR USE WITH DISTRICT OF COLUMBIA GOVERNMENT SUPPLY AND SERVICES CONTRACT, DATED MARCH 2007 http://ocp.dc.gov/ocp/frames.asp?doc=/ocp/lib/ocp/information/solatt/standard_contract_provisions_0307.pdf&open= 34644
J.5	WAGE DETERMINATION No. 2005-2103 (REVISIONS NO. 6, MAY 26, 2009) *
J.6	TAX CERTIFICATION AFFIDAVIT http://ocp.dc.gov/ocp/frames.asp?doc=/ocp/lib/ocp/information/solatt/tax_certification_affidavit.pdf&open= 34644
J.7	INVITATION FOR BID SUBMISSION DATED:

Contractor shall perform all services in accordance with the Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts, dated March 2007 and incorporated herein by reference.

***DOCUMENTS ATTACHED SEPARATELY**

*** END OF SECTION J ***