

GOVERNMENT OF THE DISTRICT OF COLUMBIA



January 15, 2020

Mr. George S. Willie, Manager Partner
Bert W. Smith, Jr. & Co., Chartered
1090 Vermont Avenue, N.W., Suite 250
Washington, DC 20005

RE: Contract No.: DCHBX-2020-C-0005
Programmatic Audit

NOTICE OF CONTRACT AWARD

Dear Mr. Willie:

Enclosed for your records is Contract Number DCHBX-2020-C-0005, for Programmatic Audit. This contract, including all documents incorporated by reference, shall constitute this award. The Proceed Date to begin the services stated herein is 1/16/2020.

The Contract Administrator (CA) as specified in Section E.3 in the contract and primary point of contact is:

Health Benefit Exchange Authority
Alexander Alonso
Associate General Counsel & Policy Advisor
202-741-0827 (office)
Alexander.Alonso@dc.gov

We will contact you soon to schedule a post-award meeting. Thank you for your participate in this procurement and we welcome your continued interest in future contracting opportunities with the District of Columbia Government.

Sincerely,

A handwritten signature in blue ink that reads "Annie L. White".

Annie White
Contracting Officer
Health Benefit Exchange Authority



DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY (DCHBX) CONTRACT/AWARD

1. Contract Number DCHBX-2020-C-0005		2. Effective Date See Block 13C Below		3. Requisition/Purchase Request/Project No. Page 1 of 24	
4. Name and Address of Contractor: Bert Smith & Company 1090 Vermont Avenue, N.W., Suite # 250 Washington, D.C., 20005 Tel-202-939-5600			5. Delivery Address: DC Health Benefit Exchange Authority 1225 "I" Street, NW, 4th Floor Washington, DC 20005		
			6. Contractor shall submit all invoices to: http://vendorportal.dc.gov		
7. Reserved for future use			8. Accounting and Appropriation Data		
9A. Item	9B. Supplies/Services	9C. Quantity	9D. Unit	9E. Unit Price	9F. Total
0001	Programmatic Audit	1	Year	\$89,557.00	\$89,557.00
Contracting Officer will Complete Item 10 or 11 as Applicable: Item 10 is Applicable					
<input type="checkbox"/> 10. CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)			<input type="checkbox"/> 11. AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number including the additions or changes made by you which additions or changes are set forth in full above is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) The Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.		
12A. Name and Title of Signer (Type or print) George S. Willie, Managing Partner			13A. Name of Contracting Officer Annie R. White		
12B.		12C. Date 1/11/2020	13B. District of Columbia 	13C. Date 1/15/2020	
	(Authorized Representative's Signature)		(Contracting Officer's Signature)		

SECTION B

CONTRACT TYPE AND PRICE SCHEDULE

B.1 OPEN MARKET

The District of Columbia Health Benefit Exchange Authority (DCHBX) requires Bert Smith and Company to perform a programmatic audit of DCHBX activities as required by the US Department of Health and Human services. This program audit will be performed in conformity with generally accepted government auditing standards (GAGAS), and will include an assessment of the DCHBX's policies and procedures and internal controls.

B.2 This is a Firm Fixed Price Contract.

B.3 PRICE SCHEDULE

PROGRAMMATIC AUDIT YEAR	FIRM FIXED PRICE
Base Year Audit	\$89,557.00
Option Year One Audit	\$91,796.00
Option Year Two Audit	\$94,091.00
Option Year Three Audit	\$96,443.00
Option Year Four Audit	\$98,854.00

B.4 This contract may be modified to reflect changes in applicable laws and regulations, including but not limited to, modifications to the statement of work, reduction in scope, and adjustments to the contract price or the contractor's price schedule. In particular, the requirements of the programmatic audit may be reduced based on amendments to 45 C.F.R. § 155.1200, including proposed changes found in the Notice of Proposed Rulemaking published in the *Federal Register* by the Centers for Medicare & Medicaid Services (CMS) on November 9, 2018, which would revise paragraph C.4.1.2 of the contract statement of work to include only subparts D and E.

SECTION C
STATEMENT OF WORK

C.1 SCOPE

The District of Columbia Health Benefit Exchange Authority (DCHBX) requires Bert Smith and Company to perform a programmatic audit of DCHBX activities as required by the US Department of Health and Human services. This program audit will be performed in conformity with generally accepted government auditing standards (GAGAS), and will include an assessment of the DCHBX's policies and procedures and internal controls.

C.2 APPLICABLE DOCUMENTS

Item No.	Title/Use	Date
<i>45 CFR§ 155.1200 (c) & (d)</i>	HHS Independent External Audit Requirements - Program Integrity Rules & Oversight Requirements	October 30, 2013
<i>Generally Accepted Governmental Auditing Standards (GAGAS)</i>	Framework for conducting high-quality audits with competence, integrity, objectivity, and independence. For use by auditors of government entities, entities that receive government awards, and other audit organizations performing Yellow Book audits.	http://www.gao.gov/yellowbook/overview
<i>Generally Accepted Accounting Principles (GAAP)</i>	Authoritative source of GAAP developed by the Federal Accounting Standards Advisory Board (FASAB) for Federal Entities pertaining to financial statements and other financial data.	http://www.fasab.gov/accouting-standards/authoritative-source-of-gaap/
<i>OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations).</i>	Standards for obtaining consistency and uniformity among Federal agencies for the audit of states, local governments, and non-profit organizations expending Federal awards, and review of previous audits.	http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf
<i>Independent External Audit FAQs</i>	FAQs released by CCIIO related to the annual independent external audit required for all approved and conditionally approved SBMs.	https://servis.cms.gov/resources/document_detail?doc_detail_id=a0317364-6788-cld6-b0e8-53b30f002d47

BACKGROUND

- C.3** On March 23, 2010, President Obama signed into law the Affordable Care Act (ACA). This new law represents the most significant overhaul of the health care system in decades. The ACA puts into place comprehensive reforms that improve access to affordable health coverage for everyone. It aims to protect consumers from unfair health insurance practices and allows all Americans to make health insurance choices that work best for them. At the same time, it guarantees access to care and provides new ways to lower costs and improve the quality of care.
- C3.1** As one of the key components of the ACA, each state is required to make available a health insurance exchange for individuals and small businesses to compare and purchase health insurance plans. These exchanges, also known as "marketplaces" were to be established and managed by individual states, by the federal government for a state, or through a federal-state partnership. The District of Columbia decided to establish its own state-based health insurance market place to ensure it meets the needs of District residents and small businesses.
- C3.2** The DC Health Benefit Exchange Authority (DCHBX) was established as a requirement of Section 3 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 3, 2012 (D.C. Law 19-0094). The Authority is governed by an Executive Board.
- C3.3** To ensure that District residents have access to affordable health care, the Authority implemented and continues several ongoing initiatives, including:
1. A website, DCHealthLink.com, where consumers and small businesses can shop, compare, and select health plans for enrollment;
 2. A Call Center providing information and assistance to consumers;
 3. Standards for qualified health plans to promote high-quality, affordable coverage;
 4. Coordinating with other District agencies regarding eligibility determinations for Medicaid and other public insurance programs; and
 5. In-person assister and Navigator programs that provide public education on health care plans, assist with determining program eligibility, completing applications, and facilitating enrollment.
- C3.4** Every year DCHBX completes a detailed financial audit as part of the District of Columbia Comprehensive Annual Financial Report (CAFR). Therefore, the scope of this engagement will be limited to a programmatic review.

C.4 REQUIREMENTS

- C.4.1.1** DCHBX requires the services of an independent auditor that specializes at a high level - program integrity audits. The auditor should have demonstrable experience conducting program integrity audits which include, but are not limited to, performance monitoring and proper oversight, accurate accounting, and identification of fraud, waste, and abuse in all

programs, policies, and processes. The audit should specifically address processes and procedures designed to prevent improper eligibility determinations and enrollment transactions, as well as identification of errors that have resulted in incorrect eligibility determinations. Suggested elements to review for these areas include eligibility and enrollment policies and procedures, internal and system controls, results of internal auditing and monitoring of the eligibility and enrollment processes, and corrective actions.

C.4.1.2 The specific areas and elements for the review, based on subparts of Part 155 of Title 45 of the Code of Federal Regulations (45 C.F.R. Part 155) are as follows.

<p>Subpart B – General Standards Related to the Establishment of an Exchange</p>	<ul style="list-style-type: none"> • General Review
<p>Subpart C - General Functions of an Exchange</p>	<ul style="list-style-type: none"> • Processes and procedures for privacy and security of contractors and staff • Processes and procedures for privacy and security of navigators and in-person assisters • Processes and procedures for addressing complaints • Processes and procedures for providing assistance in culturally and linguistically appropriate manner • Training standards • Standards designed to prevent and mitigate any conflicts of interest, financial or otherwise. • Call center information provided to applicants in plain language and in a manner that is accessible to individuals with disability or individuals with limited English proficiency
<p>Subpart D - Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs</p>	<ul style="list-style-type: none"> • Standard operating procedures (SOPs) and processes for making accurate eligibility determinations in compliance with federal regulations (including resolution of inconsistencies) • Management review/internal controls associated with <ul style="list-style-type: none"> ○ prevention of incorrect eligibility determinations ○ compliance with confidentiality, disclosure, maintenance of records, and record use requirements • Current and fully executed agreements with other agencies specifying their respective responsibilities in connection with eligibility determinations • Data and record maintenance requirements

	related to eligibility determinations
Subpart E - Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans	<ul style="list-style-type: none"> • Use of streamlined applications; • Coverage transactions, including enrollments, plan changes, and terminations • SOPs and processes for making accurate enrollments in compliance with federal regulations, including: <ul style="list-style-type: none"> ○ Initial enrollments ○ Renewals ○ Plan changes ○ Terminations • Management review/internal controls associated with the prevention of improper enrollment transactions, including processes to ensure that enrollees are charged the proper premiums as well as receive accurate advance premium tax credits (APTCs) and Cost-Sharing Reductions (CSRs). • Compliance with CMS-issued Standard Companion Guides (e.x. ASC X12, 820, and 834) • Processes to reconcile enrollment information with QHP issuers, CMS, and Internal Revenue Service. • Data and records maintenance related to enrollment
Subpart F – Appeals of Eligibility Determinations for Exchange Participation and Insurance Affordability Programs	<ul style="list-style-type: none"> • General Review
Subpart G – Exchange Functions in the Individual Market: Eligibility Determinations for Exemptions	<ul style="list-style-type: none"> • General Review
Subpart K - Certification of Qualified Health Plans	<ul style="list-style-type: none"> • Certification, recertification, and decertification policies and processes;
Subpart M – Oversight and Program Integrity Standards for State Exchanges	<ul style="list-style-type: none"> • General Review • Accounting requirements specified in 45 CFR § 155.1200(a)(1)

C.4.1.2.1 The requirements of the programmatic audit may be reduced based on amendments to 45 C.F.R. § 155.1200, including the proposed changes found in the Notice of Proposed Rulemaking published in the *Federal Register* by CMS on November 9, 2018, which would change paragraph C.4.1.2 above to include only subparts D and E.

C.4.1.3 Upon completion of the above reviews, DCHBX shall address any areas of weaknesses or non-compliance, and document a corrective action plan, if necessary.

C.4.2 DELIVERABLES

Upon completion of its review, the contractor shall produce a written Compliance Report detailing the audit procedures undertaken, compliance with Generally Accepted Governmental Auditing Standards (GAGAS), and the findings of the audit, both as to compliance and non-compliance (if any).

The contractor, and HBX, shall adhere to the following timeline for ensure receipt of all deliverables.

Contractor Delivers Draft Compliance Report	Due May 8, 2020
HBX Delivers Responses to Findings and Corrective Action Plan(s) to Contractor	Due May 25, 2020
Contractor Delivers Final Compliance Report	Due May 29, 2020

C.5 TIMELINES AND GENERAL APPROACH OF ENGAGEMENT

C.5.1 The contractor shall be responsible for producing the deliverables outlined in Section C.4 during the term of the contract. Within seven (7) days of contract award, an entrance conference will be held during which a detailed project schedule above will be confirmed.

C.5.2 The contractor is expected to work closely with DCHBX throughout the engagement, with weekly (or otherwise defined periodic) communication on progress and expectations and thorough sharing of draft deliverables.

C.5.3 DCHBX must review and approve any change in scope, deliverables, or due dates established in the project schedule.

SECTION D

PERIOD OF PERFORMANCE & DELIVERABLES

D.1 TERM OF CONTRACT

The base term of the Contract shall be from the date of award through September 30, 2020.

D.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

D2.1 HBX may extend the term of this Contract for a period of four (4) one-year option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the Contract; provided that HBX will give the Contractor preliminary written notice of its intent to extend at least thirty (30) days before the Contract expires. The preliminary notice does not commit HBX to an extension. The exercise of an option is subject to the availability of funds. 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.

D2.2 If HBX exercises an option, the extended Contract shall be considered to include this option provision.

D2.3 The price for the option period shall be as specified in Section B of the Contract.

D2.4 The total duration of this Contract, including the exercise of any options under this clause, shall not exceed five (5) years.

D.3 DELIVERABLES

D3.1 The Contractor, upon completion shall produce a written Compliance Report detailing the audit procedure undertaken, compliance with Generally Accepted Government Auditing Standards (GAGAS), and the findings of the audit, both as to compliance and non-compliance (if any) to the Contract Administrator (CA) identified in Section E.3.

Contractor Delivers Draft Compliance Report	Due May 8, 2020
HBX Delivers Responses to Findings and Corrective Action Plan(s) to Contractor	Due May 25, 2020
Contractor Delivers Final Compliance Report	Due May 29, 2020

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Bert Smith & Company
Programmatic Audit

D32 The Contractor shall submit to HBX, as a deliverable, the report described in Section F.6 that is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement.

SECTION E

CONTRACT ADMINISTRATION

E. CONTRACTING OFFICER

- E.1.1 Contracts will be entered into and signed on behalf of HBX only by the designated Contracting Officer (CO), whose contact information is:

Annie R. White
Contracting Officer
1225 I Street, N.W, 4th Floor
Washington, D.C. 20005
Tel: (202) 741-0846-0846

- E.1.2 The CO is the only person authorized to approve changes in any of the requirements of this Contract.
- E.1.3 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 executed by the CO.
- E.1.4 In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment may be made in the contract price to cover any cost increase incurred as a result thereof.

E.2 CHANGES

- E21 The CO may, at any time, by written order (and without notice to the surety, if any), make changes in the Contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of the Contract, or in the time required for performance, an equitable adjustment may be made. Any claim for adjustment for a change within the general scope must be asserted within ten (10) days from the date the change is ordered; provided, however, that if the CO determines that the facts justify such action, the CO may receive, consider and adjust any such claim asserted at any time prior to the date of final settlement of the Contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Section 36 (Disputes) of HBX Standard Contract Provisions 2016 (Attachment G.1).
- E22 HBX shall not require the Contractor, and the Contractor shall not require a subcontractor, to undertake any work that is beyond the original scope of the Contract or subcontract, including

work under an HBX-issued change order, when the additional work increases the contract price beyond the not-to-exceed price or negotiated maximum price of this Contract, unless the CO:

- i. agrees with the Contractor, and if the subcontractor if applicable, on a price for the additional work;
- ii. obtains an allocation of funding to pay for the additional work;
- iii. makes a written, binding commitment with the Contractor to pay for the additional work within 30-days after the Contractor submits a proper invoice; and
- iv. provide the Contractor with written notice of the funding allocation.

E.3 CONTRACT ADMINISTRATOR

E31 The Contract Administrator (CA) is responsible for general administration of the Contract and advising the CO as to the Contractor's compliance or noncompliance with the Contract. The contact information for the CA is:

Alexander Alonso
Associate General Counsel & Policy Advisor
DC Health Benefit Exchange Authority
1225 Eye Street, NW, 4th Floor
Washington, DC 20005
Tel-202-741-0827
Alexander.Alonso@dc.gov

E32 The CA has the responsibility of ensuring the work conforms to the requirements of the Contract and such other responsibilities and authorities as may be specified in the Contract. These include:

- i. keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the Contract;
- ii. coordinating site entry for Contractor personnel, if applicable;
- iii. 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;
- iv. 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 HBX payment provisions (Section E.4); and
- v. maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, and equipment) and invoices or vouchers.

E33 The CA shall NOT have the authority to:

- i. award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments, or modifications;
- ii. grant deviations from or waive any of the terms and conditions of the contract;
- iii. increase the dollar limit of the Contract or authorize work beyond the dollar limit of the Contract;
- iv. authorize the expenditure of funds by the Contractor;
- v. change the period of performance; or
- vi. authorize the use of HBX property, except as specified under the Contract.

E34 The Contractor: shall be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to HBX, to take all corrective action necessitated by reason of the unauthorized changes.

E.4 INVOICE SUBMITTAL AND PAYMENT

E41 The Contractor shall create and submit payment requests in an electronic format through the DC Vendor Portal, <https://vendorportal.dc.gov>.

E42 The Contractor shall submit proper invoice(s) on a monthly basis or as otherwise specified in the Contract or task or delivery order.

E43 To constitute a proper invoice, the Contractor shall enter all required information into the DC Vendor Portal after selecting the applicable purchase order number listed on the Contractor's profile.

E44 HBX will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in the contract (or task or delivery order), for supplies delivered and accepted or services performed and accepted, less any discounts, allowances, or adjustments provided for in the Contract.

E45 HBX will pay the Contractor on or before the 30th day after receiving a proper invoice from the Contractor.

E.5 QUICK PAYMENT ACT

E51 INTEREST PENALTIES TO CONTRACTORS

- E5.1.1** HBX will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code § 2-221.01 *et seq.*, as amended, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. No interest penalty shall be paid if payment for the completed delivery or service is made on or before the required payment date. The required payment date shall be the date on which payment is due under the terms of this Contract or not later than 30 calendar days, excluding legal holidays, after receipt of a proper invoice for the amount of the payment due.
- E5.1.2** Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

E.5.2 PAYMENTS TO SUBCONTRACTORS

In addition to subcontract provision required under Section 7(e) of HBX Standard Contract Provisions 2016 (Attachment G.1), the Contractor shall include in each subcontract under this Contract a provision that obligates the Contractor, at the election of the subcontractor, to participate in negotiation or mediation as an alternative to administrative or judicial resolution of a dispute between them.

E.6 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT

- E6.1** For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in Section F.6.5.
- E6.2** HBX shall not make final payment to the Contractor until the HBX Chief Financial Officer has received the CO's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

SECTION F

CONTRACT CLAUSES

F.1 APPLICABILITY OF HBX STANDARD CONTRACT PROVISIONS

HBX Standard Contract Provisions 2016 (Attachment A) are incorporated in and made a part of this Contract in relevant part. Provisions in Attachment A that have been superseded are stricken (denoted using ~~strikethrough~~) and incorporated in current form in relevant sections of the Contract.

F.2. HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

F2.1 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:

F2.2 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.

F2.3 The Contractor shall negotiate an Employment Agreement with the Department of Employment Services (DOES) for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

F3 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No. 2015-4281, Revision 15 dated 12/23/2019, issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. § 351, *et seq.* The Contractor shall be bound by the wage rates for the term of the Contract subject to revision as stated herein. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the exercise of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

F4 PREGNANT WORKERS FAIRNESS

F.4.1 The Contractor shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01, *et seq.* (PPWF Act).

F.4.2 The Contractor shall not:

- (a) Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the Contractor can demonstrate that the accommodation would impose an undue hardship;
- (b) Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee's conditions or privileges of employment, including failing to reinstate the employee when the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent:
 - (1) Pay;
 - (2) Accumulated seniority and retirement;
 - (3) Benefits; and
 - (4) Other applicable service credits;
- (c) Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding;
- (d) Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her duties;
- (e) Require an employee to take leave if a reasonable accommodation can be provided; or
- (f) Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.

F.4.3 The Contractor shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee's right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to the PPWF Act, to:

- (a) New employees at the commencement of employment;
- (b) Existing employees; and
- (c) An employee who notifies the employer of her pregnancy, or other condition covered by the PPWF Act, within 10 days of the notification.

- F.4.4 The Contractor shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.
- F.4.5 Violations of the PPWF Act shall be subject to civil penalties as described in the Act.

F.5 UNEMPLOYED ANTI-DISCRIMINATION

- F.5.1 The Contractor shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361, *et seq.*
- F.5.2 The Contractor shall not:
- (a) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or
 - (b) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:
 - (1) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or
 - (2) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.
- F.5.3 Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Act.

F.6 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT

- F.6.1 For contracts for services in the amount of \$300,000 or more, the Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 *et seq.* (First Source Act).
- F.6.2 The Contractor shall enter into and maintain during the term of the contract, a First Source Employment Agreement (Employment Agreement) with the District of Columbia Department of Employment Service's (DOES), in which the Contractor shall agree that:
- (a) The first source for finding employees to fill all jobs created in order to perform the contract shall be the First Source Register; and
 - (b) The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.

- F.6.3** The Contractor shall not begin performance of the contract until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.
- F.6.4** The Contractor agrees that at least 51% of the new employees hired to perform the Contract shall be District residents.
- F.6.5** The Contractor's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the Contract.
- F.6.6** The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the Contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.
- F.6.7** If the Contractor does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the Contract for each percentage by which the Contractor fails to meet its hiring requirements.
- F.6.8** Any contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.
- F.6.9** The contractor may appeal any decision of the CO pursuant to this clause to the D.C. Contract Appeals Board as provided in in Section 36 (Disputes) of HBX Standard Contract Provisions 2016 (Attachment G.1).
- F.6.10** The provisions of the First Source Act do not apply to nonprofit organizations which employ 50 employees or less.

F.7 MANDATORY SUBCONTRACTING REQUIREMENTS

- F.7.1** For all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).
- F.7.2** If there are insufficient SBEs to completely fulfill the requirement of paragraph F.7.1.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.
- F.7.3** A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections F.7.1.1 and F.7.1.2.
- F.7.4** Except as provided in F.7.1.5 and F.7.1.7, a prime contractor that is a CBE and has been granted a

proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

- F.7.5** If the prime contractor is a certified joint venture and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, the CBE member of the certified joint venture shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. If the CBE member of the certified joint venture prime contractor performs less than 50% of the contracting effort, the certified joint venture shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- F.7.6** Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.
- F.7.7** A prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

F.8 FAIR CRIMINAL RECORD SCREENING

- F.8.1** The Contractor shall comply with the provisions of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152) (the “Act” as used in this Section F.8). This section applies to any employment, including employment on a temporary or contractual basis, where the physical location of the employment is in whole or substantial part within the District of Columbia.
- F.8.2** Prior to making a conditional offer of employment, the Contractor shall not require an applicant for employment, or a person who has requested consideration for employment by the Contractor, to reveal or disclose an arrest or criminal accusation that is not then pending or did not result in a criminal conviction.
- F.8.3** After making a conditional offer of employment, the Contractor may require an applicant to disclose or reveal a criminal conviction.
- F.8.4** The Contractor may only withdraw a conditional offer of employment, or take adverse action against an applicant, for a legitimate business reason as described in the Act.
- F.8.5** This section and the provisions of the Act shall not apply:
- (a) Where a federal or District law or regulation requires the consideration of an applicant’s

- criminal history for the purposes of employment;
- (b) To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories;
- (c) To any facility or employer that provides programs, services, or direct care to, children, youth, or vulnerable adults; or
- (d) To employers that employ less than 11 employees.

F.8.6 A person claiming to be aggrieved by a violation of the Act may file an administrative complaint with the D.C. Office of Human Rights, and the Commission on Human Rights may impose monetary penalties against the Contractor.

F.9 EXCHANGE PRIVACY AND SECURITY COMPLIANCE

The Contractor shall comply in all respects with DCHBX Privacy and Security Compliance Addendum (Attachment G.3) to this Contract.

F.10 INSURANCE

A. GENERAL REQUIREMENTS. The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein.

All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 and CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad

and approved by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insured's clause applicable to the additional insured.

If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Grantee and subcontractors.

1. Commercial General Liability Insurance ("CGL") - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit.
2. Automobile Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor's commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
3. Workers' Compensation Insurance - The Contractor shall provide evidence satisfactory to the CO of 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 evidence satisfactory to the CO of 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.

All insurance required by this paragraph 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

4. Cyber Liability Insurance - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$5,000,000 per occurrence or claim, \$5,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.
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 claim or per occurrence for each wrongful act and \$2,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services.
6. Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) \$5,000,000 per occurrence and \$5,000,000 in the annual aggregate, following the form and in excess of all liability policies. All liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

B. PRIMARY AND NONCONTRIBUTORY INSURANCE

The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

C. DURATION. The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.

D. 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.**

E. 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.

F. 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.

G. NOTIFICATION. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if 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. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.

H. 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. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

Annie R. White
Contracting Officer
DC Health Benefit Exchange Authority
1225 I Street, NW, 4th Floor

DCHBX-2020-C-0005
Bert Smith & Company
Programmatic Audit

Washington, DC 20005
Tel: (202) 741-0846
Annie.White@dc.gov

The CO may request and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

- I. 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.
- J. CARRIER RATINGS. All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the in the District.

SECTION G

G.1 ATTACHMENTS

The following attachments are incorporated, either in whole, in relevant part, or by reference, and made a part of the Contract:

ATTACHMENT	DOCUMENT
A	HBX Standard Contract Provision

G.2 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 or in relevant part) and made a part of the Contract in the following order of precedence:

- (1) An applicable Court Order, if any
- (2) HBX Standard Contract Provisions 2016
- (3) Contract No: DCHBX-2020-C-0005
- (4) Contractor Proposal Date- December 9, 2019
- (5) Solicitation No: DOC483828