

**WORKING COPY OF SETTLEMENT ORDER OF JANUARY 25, 1999,
INCLUDING ALL AMENDMENTS THROUGH JULY 30, 2001**

Prepared by Plaintiffs= Counsel

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

OSCAR SALAZAR, *et al.*, on behalf)
of themselves and all others)
similarly situated,)
)
Plaintiffs,)
)
v.)
)
THE DISTRICT OF COLUMBIA,)
et al.,)
)
Defendants.)
_____)

Civil Action No. 93-452 (GK)
In Forma Pauperis

ORDER MODIFYING THE AMENDED REMEDIAL ORDER OF MAY 6, 1997
AND VACATING THE ORDER OF MARCH 27, 1997

WHEREAS, the parties desire to resolve the pending appeals in this case,

WHEREAS, upon consideration of Plaintiffs' motion for entry of this Order Modifying the Amended Remedial Order of May 6, 1997, and Vacating the Order of March 27, 1997 (hereafter "Order"), and Defendants' response agreeing to the motion, the Court concludes that the modifications to the Amended Remedial Order of May 6, 1997, and the vacation of the Order of March 27, 1997, set forth herein are fair, reasonable and adequate,

IT IS, this 22nd day of January, 1998, ORDERED,
ADJUDGED AND DECREED AS FOLLOWS:

1. The Amended Remedial Order of May 6, 1997, and the Order of March 27, 1997, are vacated.

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I. Monitor

2. Thomas W. Chapman, M.P.H., FACHE, served as Monitor pursuant to Orders of the Court from March 10, 1997, to June 16, 1998. The parties understand that the Court is in the process of selecting a new Monitor. The Monitor shall have the duties and responsibilities set forth in this Order.

3. The function of the Monitor is to report, record, evaluate, observe, and provide recommendations, as appropriate, about Defendants= activities so as to achieve full compliance with the provisions of this Order. The Monitor shall remain neutral and objective in carrying out all monitoring duties. The Monitor shall receive reasonable compensation from the District of Columbia, as determined by the Court.

4. The Monitor shall be under the direct supervision and control of the Court, and shall not be empowered to direct Defendants to take or refrain from taking any specific action to achieve compliance with the provisions of this Order. The Monitor shall endeavor to work cooperatively with Defendants and Plaintiffs, and may recommend efficient and economical methods by which Defendants may achieve compliance.

5. From time to time, as directed by the Court or as provided in this Order, the Monitor shall prepare written reports to the Court, copies to counsel, indicating the status of Defendants= compliance with said Order, and the factors that affect such compliance. The parties shall have thirty (30) days thereafter within which to submit comments on such reports, and prior to the Court taking any action, unless otherwise stated in this Order or directed by the Court.

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II. Processing of Medicaid Applications (Claim 4)

6. (a) With respect to non-disability, non-foster care, non-Public Assistance Medicaid applications (hereafter, "application" or "applicant"), Defendants shall determine eligibility and mail a notice of decision within forty-five (45) days of the date of receipt of all applications.

(b) This paragraph shall apply to all applications including pending applications as of the date of entry of this Order.

(c) Provided, however, if an applicant submits the documentation and/or verification required for the District to determine the applicant's Medicaid eligibility more than 40 days after the receipt of the signed application by the District, the District shall have 5 days to process the application from the time that the applicant submits all the documentation and/or verification. The processing of an application within 5 days of the time the documentation and/or verification is submitted pursuant to this subparagraph shall be considered as timely. The processing of an application later than 5 days after the time the documentation and/or verification is submitted pursuant to this subparagraph shall be considered as untimely. This subparagraph shall only apply if the District has requested from the applicant, in writing, all the documentation and/or verification that is required and has not been submitted (a) within 5 days of the time the application is submitted; or (b) within 5 days of the applicant's submission of information or a document which first causes the need for additional documentation and/or verification.

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7. Each member of the plaintiff class has a right to a decision on an application within forty-five (45) days of making the application. This right may be asserted only by individuals invoking their right to a fair hearing.

8. Defendants shall be in compliance with paragraph 6 above, unless, averaged over any four (4) consecutive month period, Defendants fail to issue decisions on at least 95% of all applications within the time period provided in paragraph 6 above.

9. No month shall be considered in determining whether Defendants are in violation of paragraphs 6 and 8 above or in calculating the termination of Section II of this Order under paragraph 74 below in which an event beyond the reasonable control of Defendants causes Defendants to fail to comply with paragraphs 6 and 8. An "event beyond the reasonable control of Defendants" shall include, but not be limited to, a central computer breakdown, an unusually high number of employee resignations or terminations, a significant expansion of Medicaid eligibility criteria (based on changes in federal or District law or policy) such that new classes of persons are eligible, one or more employees having intentionally concealed from Income Maintenance Administration (IMA) management the fact that five (5) or more applications have not been processed, or a reduction in force (RIF) attributable to a substantial reduction in the budget of the Department of Human Services that affects a significant number of supervisors or employees who are necessary to the processing of applications. No event shall satisfy the requirements of this paragraph unless Plaintiffs' counsel is notified in writing of the claim and the justification for the claim (a) within fourteen (14) days of Defendants having actual notice that the event will cause

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failure to comply with this paragraph, or (b) within twenty-two (22) days of the end of the reporting month affected by the event, whichever is sooner.

10. (a) Defendants shall have the right to suspend the provisions of paragraphs 6 and 8 during the initial implementation of the State Children's Health Insurance Program (SCHIP). No month during which the provisions of paragraphs 6 and 8 are suspended may be used to justify termination of Section II of this Order under paragraph 74. Defendants may exercise this right for one continuous period at any time during the first twelve (12) months of the implementation of the SCHIP program. This paragraph shall not be applicable unless Defendants notify Plaintiffs within 30 days of the time the SCHIP program begins to be implemented and by the last day of the month as to which Defendants begin the suspension period.

(b) This paragraph discusses the SCHIP program solely with relation to its impact on Defendants' obligation to process Medicaid applications of presently recognized members of the plaintiff class within 45 days of submission. This Order is not intended to address, and does not decide, whether children receiving medical services under the SCHIP program are, or are not, members of any of the plaintiff sub-classes in this litigation. If Plaintiffs believe that applicants for or recipients of services under the SCHIP program are members of one or more of the plaintiff sub-classes, Plaintiffs may file a motion with the Court for a determination of this issue.

11. The 95% and 98% standards in paragraphs 8 above and 12 below shall be calculated each month on the basis of the total number of cases decided (i.e., approved or denied) in the month.

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The ratio shall be computed in the following manner: (number of cases decided in accordance with paragraph 6 above or paragraph 12 below) divided by (total number of cases decided in the month).

12. Any application pending on the 46th day after receipt by Defendants or on the 6th day after the applicant completes submission of all information reasonably requested by Defendants no more than five (5) days after the initial application or within five (5) days of the applicant's submission of information or a document which first causes the need for additional documentation and/or verification, whichever is later, shall receive an eligibility determination on the 46th day, or the 6th day, whichever is applicable. If an application is denied, Defendants shall inform Plaintiffs of the name and case number and shall state the reason for denial within thirty (30) days of the due date of the report required by paragraph 16 below. Defendants shall not be in violation of this paragraph so long as 98% of the applications receive eligibility determinations by the 60th day. Defendants shall not be in violation of this paragraph in any month in which an event beyond the reasonable control of Defendants causes Defendants to fail to comply with this paragraph. An "event beyond the reasonable control of Defendants" shall include, but not be limited to, a central computer breakdown, an unusually high number of employee resignations or terminations, a significant expansion of Medicaid eligibility criteria (based on changes in federal or District law or policy) such that new classes of persons are eligible, one or more employees having intentionally concealed from IMA management the fact that five (5) or more applications have not been processed, or a reduction in force (RIF) attributable to a substantial reduction in the budget of the Department of Human Services that affects a significant number of supervisors or employees who

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are necessary to the processing of applications. In such an event, such a month shall not be considered in determining compliance with this paragraph or the termination of Section II of this Order under paragraph 74 below. No event shall satisfy the requirements of this paragraph unless Plaintiffs' counsel is notified in writing of the claim and the justification for the claim (a) within fourteen (14) days of Defendants having actual notice that the event will cause failure to comply with this paragraph, or (b) within twenty-two (22) days of the end of the reporting month affected by the event, whichever is sooner.

13. In determining compliance under paragraphs 8 and 12 above, the following cases shall not be included:

(a) Spend down cases, meaning cases in which there has been a timely denial because the applicant is over-income for Medicaid and there is subsequent activity in the case relating to Defendants' determination whether the applicant has submitted adequate documentation to qualify for Medicaid under the spend down program. The initial determination on such applications shall be included in the reports required by paragraph 16 below and for determining compliance under paragraphs 8 and 12 above;

(b) Reopened cases where there has been a timely denial of a Medicaid application because of the applicant's failure to submit by the 45th day information or documents requested by Defendants in writing no later than five (5) days after the date of the application and there is subsequent activity in the case relating to whether the information or documents submitted by the applicant after the 45th day are adequate to qualify the applicant for Medicaid. The initial

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determination on the application and any subsequent application shall be included in the reports required by paragraph 16 below and for determining compliance under paragraphs 8 and 12 above;

(c) Family members added to an existing case where there has been a timely approval of some members of a household for Medicaid and there is a subsequent addition of one or more additional individuals to the household. The initial determination on the household's application and any subsequent application filed for other members of the household shall be included in the reports required by paragraph 16 below and for determining compliance under paragraphs 8 and 12 above; and

(d) Applicants for long-term care Medicaid who are receiving care in a nursing home or hospital, and for whom a delay in an application decision will not result in the applicant being denied medical services. This subparagraph shall only apply if Defendants have requested that the nursing home and/or hospital in which the applicant is receiving care not seek payment from Medicaid applicants while their Medicaid applications are pending. Defendants' request to nursing homes and hospitals may include a disclaimer by Defendants stating that Defendants do not accept liability for any Medicaid applicant's medical expenses until the application is approved. All other applicants for long-term care Medicaid who are not at the time of their application in a nursing home or hospital shall be included in determining compliance under paragraphs 8 and 12 above.

13A. *Added by Order of August 8, 2000:* Defendants shall continue their practice of informing Medicaid applicants in a notice issued 30 days after the application is received by Defendants (A30-day notice@) that particular information and/or documents are missing from the application. The 30-

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day notice shall continue to state that unless the missing information and/or documents are received within 15 days, the application will be denied. If either the 30th day after the application is received or the 15th day after the 30-day notice is sent falls on a non-business day, the decision on this application may be delayed one or more days after the 45th day. Applications in which the mailing of a decision notice is delayed beyond 45 days solely because (a) the 30th day after the application is received, or (b) the 15th day after the 30-day notice is sent falls on a non-business day, and the 30-day notice or the decision notice is sent on the next available business day, shall be considered timely in determining compliance under paragraphs 8 and 12 above.

14. Defendants shall include in a document provided at the time the application is made to each applicant (including those who mail in applications or submit them at a location other than a Department of Human Services service center), and in all written notices to applicants identifying information or documentation to be supplied to Defendants, a conspicuous statement that (a) Defendants must approve or disapprove the application within forty-five (45) days, and that (b) if the applicant has not received notice of approval or disapproval by the 45th day, the applicant is to call the social service worker to whom the application was submitted (i.e., the SSA or the SSR) and/or the SSR=s supervisor and request that such a determination be made.

15. Defendants shall include in a document provided at the time the application is made to each applicant (including those who mail in applications or submit them at a location other than a Department of Human Services service center), and in all written notices to applicants identifying information or documentation to be supplied to Defendants, a conspicuous statement that, if the

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eligibility of the applicant is not determined within forty-five (45) days of the application, the applicant may obtain free legal assistance concerning the application by contacting Plaintiffs' counsel. This statement shall give the name, address and telephone number of Plaintiffs' counsel. The reasonable time and expenses of Plaintiffs' counsel shall be deemed compensable monitoring of this Order under 42 U.S.C. § 1988.

16. *Revised by Order of August 8, 2000:* Beginning no later than August 15, 2000, and on the 15th day of each month thereafter, Defendants shall submit to the Monitor and Plaintiffs' counsel a monthly report or reports for the previous month for each DHS service center (reporting the Multinational Unit separately as long as it exists), listing in alphabetical order by name, case number, and Medicaid identification number (if any), the date each application was received, the date each application was approved or denied, the date of printing of a notice concerning the approval or denial of the application, the number of days between the date of receipt of the application and the date of printing of a notice concerning the approval or denial of the application, and all applications that were still pending more than forty-five (45) days after the date of application on the last day of the month. In addition, the report shall set forth in composite form the total number of applications received in the month, the number approved in the month, and the number denied in the month.

16A. *Added by Order of August 8, 2000:* Compliance with paragraph 6 above shall be computed by counting the number of days between the date of receipt of the application and the date of printing of a notice concerning the approval or denial of the application, plus one business day.

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16B. *Added by Order of August 8, 2000:* For purposes of determining compliance with the percentages in paragraphs 8 and 12 above, only decisions which are reported to a head of household in a notice will be counted. For example, if the District reports three separate decisions concerning a particular family, but there is only one notice issuance date, the three decisions would count as a single decision.

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III. Processing of Medicaid Recertifications (Claim 5)

17. With respect to non-Public Assistance, non-foster care, Medicaid recipients (including the disabled) (hereafter, "recipient"), beginning no later June 1, 1999, Defendants shall not terminate a recipient's eligibility for Medicaid benefits unless Defendants have sent the recipient a recertification form at least fifty-five (55) days prior to the end of the eligibility period, and either: (a) the recipient has not returned the recertification form and Defendants have sent an advance termination notice at least twenty-five (25) days prior to the end of the recipient's eligibility period; or (b) some or all of the information and/or documentation requested by Defendants in writing has not been received by Defendants after the recipient has been given a minimum of ten (10) days to produce the information or documentation requested and Defendants have determined to deny continued eligibility for Medicaid and a notice of termination of benefits has been mailed to the recipient fifteen (15) days prior to the actual termination of benefits; or (c) the recertification form, information and documentation have been received by the last day of the eligibility period and Defendants have determined that the recipient is no longer eligible for Medicaid and a notice of termination of benefits has been mailed to the recipient fifteen (15) days prior to the actual termination of benefits.

18. Each member of the plaintiff class has a right not to have Medicaid benefits terminated without advance notice and an opportunity for a hearing. This right may be asserted only by individuals invoking their right to a fair hearing.

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19. Defendants shall be in compliance with paragraph 17 above, unless, averaged over any four (4) consecutive month period, Defendants fail to process at least 95% of all recertifications in accordance with the requirements of paragraph 17.

20. No month(s) shall be considered in determining whether Defendants are in violation of paragraphs 17 and 19 above or in calculating the termination of Section III of this Order under paragraph 75 below in which an event beyond the reasonable control of Defendants causes Defendant to fail to comply with paragraph 17 and 19. An "event beyond the reasonable control of Defendants" shall include, but not be limited to, a central computer breakdown, an unusually high number of employee resignations or terminations, one or more employees having intentionally concealed from IMA management the fact that five (5) or more recertifications have not been processed, or a reduction in force (RIF) attributable to a substantial reduction in the budget of the Department of Human Services that affects a significant number of supervisors or employees who are necessary to the processing of recertifications. No event shall satisfy the requirements of this paragraph unless Plaintiffs' counsel is notified in writing of the claim and the justification for the claim (a) within fourteen (14) days of Defendants having actual notice that the event will cause failure to comply with this paragraph, or (b) within twenty-two (22) days of the end of the reporting month affected by the event, whichever is sooner.

21. The 95% standard in paragraph 19 above shall be calculated each month on the basis of the total number of recertification cases in which a determination was made (i.e., approved or terminated) in the month. The ratio shall be computed in the following manner: (number of cases in

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which a determination was made after both (1) a timely recertification form has been sent to the recipient and (2) a timely and accurate notice of termination or continued eligibility has been sent) divided by (the total number of cases in which a determination was made in the month).

21A. *Added by Order of August 8, 2000:* As used in paragraph 21, the term Aa timely and accurate notice of * * * continued eligibility@ means that prior to the end of the Medicaid recipient=s eligibility period as stated on the recipient=s recertification form, the recipient has been mailed a notice which states either (a) that the recertification has been processed and the recipient will have continued Medicaid eligibility until a date certain; or (b) that Defendants have received the recipient=s completed recertification form and that the recipient will have continuing Medicaid eligibility until further notice from Defendants.

22. If, after the conclusion of the work of Maximus Inc. required by paragraph 24 below and Defendants, having made all reasonable efforts for one year thereafter to comply with the standard set forth in paragraph 19 above, calculated by the method set forth in paragraph 21 above, have not achieved the standards set forth in those paragraphs, Defendants may move the Court to set an alternate standard to show compliance. Defendants shall have the burden to show that the standard set forth in paragraph 19, calculated by the method set forth in paragraph 21, cannot be achieved by all reasonable efforts.

23. No later than February 1, 1999, Maximus Inc. shall conduct quality control testing to ensure that the computer changes that Defendants have promised to make and that are required to implement this portion of the Order are fully operational and provide a report of their conclusions to

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Plaintiffs and the Monitor. The report of Maximus Inc. shall report in detail the type of quality control testing done and the results of the testing. In the event that Maximus Inc. does not complete the testing and provide a report to Plaintiffs and the Monitor by February 1, 1999, the Monitor shall no later than March 1, 1999, start conducting independent quality control testing to ensure that the computer changes that Defendants have promised to make and that are required to implement this portion of the Order are fully operational. The Monitor shall use his or her best efforts to engage a consultant who is familiar with ACEDS or a similar public benefits computer system. The Monitor shall report in detail the type of quality control testing done and the results to the Court and counsel for the parties. Provided however, that the parties intend to conduct a meeting in good faith after the execution of this Order for the purpose of eliminating the need for and cost of the study required in this paragraph. If the parties agree that the study required by this paragraph is not necessary in light of their meeting, they will execute a subsequent agreement to be approved by the Court eliminating this paragraph.

24. Defendants have entered a contract with Maximus Inc., pursuant to which Defendants have instructed Maximus Inc. that Maximus Inc. must study and prepare a report and recommendations concerning the actions Defendants will need to take in processing recertifications to comply with paragraph 19 above. Defendants shall ensure that the work of Maximus Inc. is completed on an expedited basis and a report and recommendations submitted no later than February 1, 1999. Defendants shall provide Plaintiffs' counsel with a copy of the report and recommendations once completed within fifteen (15) days of receipt from Maximus Inc.

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25. Defendants shall include in a written notice to all Medicaid applicants, and in a written notice to all Medicaid recipients at the time of recertification, a conspicuous statement that, if the recipient returns the recertification form and all required information and documentation prior to the end of the eligibility period, the recipient's eligibility must be continued uninterrupted until the recipient receives a notice of termination that states Defendants' determination that the recipient is no longer eligible for Medicaid. The notice shall also include information about other rights such as the right to a hearing, if there is an adverse determination on eligibility.

25A. *Added by Order of August 8, 2000:* Beginning no later than August 15, 2000, Defendants shall promptly register the receipt of completed recertification forms received from Medicaid recipients in the ACEDS computer system. No later than three business days after the registration in ACEDS of a completed recertification form, Defendants shall mail the recipient a notice, in the form set forth in Attachment A hereto, informing the recipient that Defendants have received a complete recertification form, that the recipient continues to be covered by Medicaid and will not be terminated from Medicaid until further notice from Defendants.

25B. *Added by Order of August 8, 2000:* Beginning no later than September 30, 2000, Defendants shall provide written notice to Medicaid recipients in the recertification form, in the form set forth in Attachment B hereto, informing the recipient that once Defendants have received a complete recertification form, the recipient will receive a written notice from Defendants.

26. The notice required in paragraph 25 above shall include a conspicuous statement that if the recipient's Medicaid eligibility is terminated without advance notice or after notice that

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erroneously states that the recipient did not return the recertification form or all information and/or documentation requested, the applicant may obtain free legal assistance by contacting Plaintiffs' counsel. This statement shall give the name, address and telephone number of Plaintiffs' counsel. The reasonable time and expenses of Plaintiffs' counsel shall be deemed compensable monitoring of this Order under 42 U.S.C. ' 1988.

27. *Revised by Order of August 8, 2000:* Beginning no later than August 15, 2000, and on the 15th day of each month thereafter, Defendants shall submit to the Court, the Monitor, and Plaintiffs' counsel, a monthly report for each DHS service center handling recertifications (reporting the Multinational Unit separately as long as it exists). The monthly report shall include the following information for each recipient whose Medicaid eligibility was determined as a result of a recertification (i.e., approved or terminated) during the previous month: (a) in alphabetical order, the name, address, telephone number (if known), and Medicaid identification number for each such recipient; (b) the date any recertification form(s) was mailed to the recipient; (c) the date the recipient's then current eligibility period began; (d) the date the recipient's then current eligibility period expires; (e) the date that the completed recertification form is registered in the ACEDS computer system; (f) the date Defendants mailed any notice to the recipient that a complete recertification form had been received; (g) the date that Defendants determined (i.e., approved or terminated) the recipient's eligibility; and (h) the date that any advance notice(s) of termination or continued eligibility was mailed to the recipient. In addition, the report shall set forth in composite

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form the total number of recertification forms received back from recipients in the month, the number approved in the month, and the number terminated in the month.

28. Defendants have contracted with Maximus Inc. to issue a report and recommendations concerning the production of the reports required by paragraph 27 above. Upon receipt and review of that report, Plaintiffs agree to engage in good-faith negotiations with Defendants concerning whether the reports required by paragraph 27 can be made less burdensome to Defendants while still meeting Plaintiffs' legitimate information needs. If Defendants propose a modification to the reports required by paragraph 27 and the parties cannot agree, Defendants may submit the matter to the Court for resolution. Defendants shall have the burden of proof to show that Plaintiffs' need for the particular information in order to enforce this Order is outweighed by the costs of providing such a report.

IV. Eligibility Verification System (EVS)

29. Defendants shall not operate the Eligibility Verification System (EVS) in a manner that causes eligible Medicaid recipients' benefits to be terminated, suspended, or interrupted without advance notice or an opportunity for a hearing. Defendants shall instruct its providers that they must call the EVS backup system if EVS reports ineligibility. Defendants shall state in the Rights and Responsibilities sheet that providers have been so instructed.

30. Defendants shall include in a document provided at the time the application is made to each applicant (including those who mail in applications or submit them at a location other than a Department of Human Services service center), in notices of eligibility, and in recertification forms

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or accompanying written materials, a conspicuous statement that, if, during a period when they are eligible for Medicaid, EVS informs the recipient or a provider is informed that the recipient is not eligible for Medicaid, the recipient may obtain free legal assistance by contacting Plaintiffs' counsel. This statement shall give the name, address and telephone number of Plaintiffs' counsel. Defendants shall provide this same information, at least annually, to all Medicaid providers and require the providers to provide Medicaid recipients with this same information if EVS reports them as ineligible for Medicaid during a period when they are eligible. The reasonable time and expenses of Plaintiffs' counsel shall be deemed compensable monitoring of this Order under 42 U.S.C. § 1988.

31. On the 15th of each month, Defendants shall submit to the Monitor, and Plaintiffs' counsel, a monthly report of all systemic problems experienced by EVS, including but not limited to, breakdowns and failures of the system to provide needed information in a timely manner.

32. Defendants shall conduct quality control of the EVS system and make monthly reports to the Monitor and Plaintiffs' counsel regarding the results of the quality control. Defendants shall be deemed in compliance with this portion of this Order only if they can establish through a statistically valid sampling method that the verification system, including both EVS and the back-up system, accurately confirms the eligibility status of at least 98% of all requests for eligibility verification in any given month.

33. Defendants shall maintain a consistently accurate back-up system that can be used when EVS and/or its replacement states that a person is ineligible. The back-up system shall include

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a telephone information service that shall provide Medicaid recipients and providers with all eligibility information provided by EVS or its replacement, twenty-four (24) hours a day, three hundred and sixty-five (365) days a year. Defendants shall direct providers to use the back-up system whenever EVS reports ineligibility. Defendants shall notify recipients of the existence and purpose of the back-up system and its telephone number in the notices approving the recipient's eligibility and recertification. Defendants shall notify providers of the existence and purpose of the back-up system and its telephone number in a Transmittal at least annually.

34. If the reports submitted by Defendants under paragraph 32 above show that the verification system, including both EVS and the back-up system, accurately confirms the eligibility status of at least 98% of all requests for eligibility verification for twenty-two (22) of twenty-four (24) consecutive months, and accurately confirms the eligibility status of at least 95% of all requests for each of the other two (2) months, Defendants shall no longer be required to submit the reports required by paragraphs 31 and 32 above. These consecutive months shall begin with the first report showing at least 98% accuracy, including any such months before the effective date of this Order. However, after Defendants cease producing such reports on a monthly basis, Plaintiffs may choose one month per calendar year for Defendants to produce the reports required by paragraphs 31 and 32. If the single month's report shows compliance with the 98% standard, no further reports may be required until the subsequent calendar year. If the single report shows that the 98% standard is not being met, Defendants shall produce the monthly reports required by paragraphs 31 and 32 until Defendants have shown six (6) consecutive months of compliance with the 98% standard.

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Defendants shall not be in violation of this paragraph in any month in which an event beyond the reasonable control of Defendants causes Defendants to fail to comply with this paragraph, such as a central computer breakdown. In such an event, such a month shall not be considered in determining compliance with this paragraph or the termination of this paragraph under paragraph 76 below. No event shall satisfy the requirements of this paragraph unless Plaintiffs' counsel is notified in writing of the claim and the justification for the claim (a) within fourteen (14) days of Defendants having actual notice that the event will cause failure to comply with this paragraph, or (b) within twenty-two (22) days of the end of the reporting month affected by the event, whichever is sooner.

35. If Defendants fail to meet the deadlines or other requirements set forth in paragraphs 29, 30 and 32-34 above, Defendants shall submit to Plaintiffs, within fourteen (14) days, a report specifically describing the failure, the reasons for the failure, a schedule for correcting the failure, and the measures that will be taken to prevent the failure in the future. If Defendants fail to submit the report or Plaintiffs notify the Monitor that they are not satisfied with the report, the Monitor shall study the reasons for such failure and possible remedies and submit recommendations to the Court for implementation by Defendants. The parties shall have thirty (30) days thereafter within which to submit comments on the Monitor=s recommendations, and prior to the Court taking any action.

V. EPSDT Services (Claim 6)^{1/}

36. Defendants shall provide or arrange for the provision of early and periodic, screening, diagnostic and treatment services (EPSDT) when they are requested by or on behalf of children.

^{1/}The following provisions in this Section of the Order shall relate to all Medicaid recipients under the age of twenty-one (21) (hereafter Achild@ or Achildren@).

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37. Within thirty (30) days after the effective date of each contract, Defendants shall ensure that the Managed Care Organizations (MCO's) with which it contracts to provide EPSDT services to children maintain a tracking system for all children that shows:

(a) by name and Medicaid identification number, whether each child has obtained the screens, as defined in 42 U.S.C. 1396d(r)(1)(B), and laboratory tests set forth in the District of Columbia periodicity schedule issued in accordance with 42 U.S.C. 1396d(r)(1)(A)(i), 1396d(r)(2)(A)(i), 1396d(r)-(3)(A)(i), 1396d(r)(4)(A)(i), at the times set forth in that schedule, including lead blood screens, mental health screens, dental services, and vision and hearing tests (hereafter "screens and laboratory tests");

(b) by name and Medicaid identification number, whether each child has received age-appropriate immunizations in accordance with the immunization schedule of the Centers for Disease Control Advisory Committee on Immunization Practices (hereafter "immunization schedule");

(c) by name and Medicaid identification number, whether and on what date(s) each child has been referred for corrective treatment determined to be necessary as a result of an EPSDT screen or laboratory test;

(d) by name and Medicaid identification number, whether and on what date each child referred for corrective treatment as a result of an EPSDT screen or laboratory test has obtained the corrective treatment for which the child was referred;

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(e) by name and Medicaid identification number, the date on which each of the outreach activities set forth in paragraphs 38 and 39 below were undertaken with respect to the child.

38. The contracts that Defendants are entering into with MCO's in 1998 require that the MCO's:

shall conduct outreach activities to assist enrollees make and keep EPSDT appointments for eligible children. The outreach activities shall include every reasonable effort, including telephone calls, scheduling of appointments for recipients, mailed reminders and personal visits, to contact parents, guardians of children, or the children themselves, if appropriate, based on the child's age, who are due for, or who have failed to keep appointments for, EPSDT screens and laboratory tests set forth in the District's periodicity schedule, immunizations, or follow-up treatment to correct or ameliorate a defect identified during an EPSDT screen or laboratory test, or have otherwise not obtained EPSDT screens[,] laboratory tests, immunizations, follow-up treatment or other services, in order to assist them to obtain such services.

Defendants shall monitor these activities and enforce these contractual provisions in order to assure that they are fully carried out.

39. Defendants shall require all MCO's in all contracts entered, renewed, extended and/or modified after January 1, 1999, to make every reasonable effort to contact parents, guardians of children, or the children themselves, if appropriate, based on the child's age, who are due for, or who have failed to keep appointments for, EPSDT screens and laboratory tests set forth in the District of Columbia periodicity schedule issued in accordance with 42 U.S.C. 1396d(r)(1)(A)(i), 1396d(r)(2)(A)(i), 1396d(r)(3)(A)(i), 1396d(r)(4)(A)(i), immunizations, or follow-up treatment to

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correct or ameliorate a defect identified during an EPSDT screen or laboratory test, or have otherwise not obtained EPSDT screens, laboratory tests, immunizations, follow-up treatment or other services, in order to assist them to obtain such services. Such contracts shall provide that "every reasonable effort" shall include, at a minimum, a telephone call or mailed reminder prior to the due date of each visit, scheduling of appointments for recipients, and, in the case of a missed appointment, a telephone call or mailed reminder for the first missed appointment and, if there is no response, a personal visit to urge the parent or guardian to bring the child for his or her EPSDT appointment. The contracts may provide that a personal visit need not be made if the MCO determines that the specific neighborhood or apartment building is dangerous for such a visit during the particular time of day involved and the MCO retains documents that state the specific reasons why no personal visit was made. The contracts need not (a) require the MCO's to make useless efforts to contact Medicaid recipients using these methods, such as telephone calls need not be made if it is known that the recipients have no telephone or mailings need not mailed or personal visits attempted if an address for the recipient cannot be ascertained after reasonable efforts to obtain it, or (b) preclude the MCO's from taking other actions to contact Medicaid recipients. The contracts shall also require MCO's to maintain records showing the information set forth in paragraph 37 above and the efforts made to assist recipients to obtain EPSDT services that are set forth in this paragraph. Plaintiffs' counsel shall have access to these records through Defendants' counsel to ensure that MCO's are complying with this paragraph. While these requirements shall be explicitly set forth in the contract, the contract need not include the exact language of this paragraph. Defendants shall

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monitor these activities and enforce these contractual provisions in order to ensure that they are fully carried out.

40. If the definition of "every reasonable effort" set forth in paragraph 39 above proves infeasible or ineffective after two years under contracts including that definition, either party may inform the other party and the parties shall attempt in good faith to agree on an alternate definition. If the parties' efforts are not successful after thirty (30) days, either party may bring the issue to the Monitor. The Monitor shall report to the Court on the issue. Each party shall have thirty (30) days from the date of the Monitor's report to comment before the Court takes any action.

41. Defendants shall ensure that the MCO's train all EPSDT providers, during the first year of the contract and at least biannually thereafter, about the current requirements for EPSDT and shall develop a monitoring program for the purpose of ensuring, on at least a biannual basis, that each physician providing EPSDT services has the necessary equipment and knowledge to perform such services in accordance with standard medical practice. Defendants shall send any HCFA directions or guidance relevant to an MCO's obligation to implement the EPSDT program to each MCO within a reasonable time after receipt, not to exceed thirty (30) days unless unusual circumstances (such as the need to seek clarification from HCFA) make such transmittal in thirty (30) days unreasonable. Defendants shall direct each MCO to provide such information, when relevant, to each EPSDT provider within the MCO's network within ten (10) days of receipt by the MCO. Defendants shall report the activities of the monitoring program to the Court, the Monitor and Plaintiffs' counsel, annually, with the first report due no later than June 1, 1999.

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42. Defendants shall provide each physician participating in the EPSDT program with a list of specialists to whom referrals may be made for screens, laboratory tests and corrective treatment. Defendants shall operate a telephone information service that functions during normal business hours to respond to inquiries from providers and EPSDT recipients or their parents or guardians concerning EPSDT referrals.

43. The contracts that Defendants are entering into with MCO's in 1998 provide that:

(a) the MCO shall meet a 75% participant ratio, as defined by the HCFA State Medicaid Manual, Section 5360.B and computed in accordance with the HCFA State Medicaid Manual, Section 2700.4 (hereafter "participant ratio") for 1998 for all children enrolled with the MCO.

(b) the MCO shall meet an 80% participant ratio for 1999 for all children enrolled with the MCO.

(c) Each screen, laboratory test and immunization must be conducted within sixty (60) days of its due date, based on the child's age, under the periodicity schedule or immunization schedule for all children over the age of two (2) years and within thirty (30) days of its due date for all children under the age of (2) two years.

44. The contracts that Defendants are entering into with MCO's in 1998 further provide that:

b. If Provider fails to meet or show progress toward meeting the EPSDT performance standards in paragraph "a" of this section or ensure that children have their age-appropriate screens updated for missed opportunities, the District shall take any or all of the following

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actions (depending on the extent of the failure to comply or to demonstrate progress with the standards):

- (1) require the Provider to develop and implement a corrective action plan, that is approved by the District and is designed to increase Provider's EPSDT participation ratio;
- (2) require the Provider to utilize the Department's EPSDT case management program; or
- (3) withhold an amount from the Provider's payment, pursuant to Article 11, section A.3 at a rate of \$45 for each enrollee that is required to be added to the numerator in Provider's EPSDT participation ratio to comply with the performance standards in paragraph "a" of this section.

If any MCO fails to comply with the participant ratio percentage set forth in paragraph 43 above,

Defendants shall take the following actions:

(a) In fiscal year 1998, if the MCO has a participant ratio of less than 65%, it shall be required to develop and implement an effective corrective action plan;

(b) In fiscal year 1999, if the MCO has a participant ratio of less than 70%, it shall be required to develop and implement an effective corrective action plan and, if the MCO has a participant ratio of less than 60%, it shall also be required to pay Defendant at a rate of \$45 for each enrollee that is required to be added to the numerator in the MCO's EPSDT participant ratio to meet the 70% requirement in the contract.

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Plaintiffs' counsel shall have the opportunity to comment within 15 days of their receipt of any corrective action plan before approval by Defendants. Defendants shall enforce these contractual requirements and the corrective action plans.

Defendants shall inform the MCO of the date that they have provided the corrective action plan to plaintiffs. Plaintiffs shall keep any such corrective action plans confidential for a period of 15 days after receipt. During those 15 days, if the MCO believes that the corrective action plan contains confidential information, it may move this Court for an Order that the confidential portions of the corrective action plan be subject to a protective order. If such a motion is made by the MCO, plaintiffs shall keep the corrective action plan confidential until the resolution of the motion. The foregoing procedures concerning claims to confidentiality by MCO's do not affect defendants' obligations under the District of Columbia Freedom of Information law, D.C. Code ' 1-1521, et seq.

45. In all contracts entered, renewed, extended and/or modified with MCO's on or after January 1, 1999, Defendants shall, at a minimum, require the MCO's:

(a) to provide each EPSDT screen, laboratory test and immunization within sixty (60) days of its due date, based on the child's age, under the periodicity schedule or immunization schedule for all children over the age of two (2) years and within thirty (30) days of its due date for all children under the age of two (2) years.

(b) to meet an 80% participant ratio for fiscal year 1999 and thereafter for all children enrolled with the MCO.

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(c) In fiscal year 2000, to develop and implement an effective corrective action plan if the MCO has a participant ratio of less than 75% and, if the MCO has a participant ratio of less than 65%, it shall also be required to pay Defendants at least at a rate of \$45 for each enrollee that is required to be added to the numerator in the MCO's EPSDT participant ratio to meet the 80% requirement.

(d) In fiscal year 2001, to develop and implement an effective corrective action plan if the MCO has a participant ratio of less than 80% and, if the MCO has a participant ratio of less than 70%, it shall also be required to pay Defendants at least at a rate of \$45 for each enrollee that is required to be added to the numerator in the MCO's EPSDT participant ratio to meet the 80% requirement.

(e) In fiscal year 2002 and any year thereafter, to develop and implement an effective corrective action plan if the MCO has a participant ratio of less than 80% and, if the MCO has a participant rate of less than 75%, it shall also be required to pay Defendants at least at a rate of \$45 for each enrollee that is required to be added to the numerator in the MCO's EPSDT participant ratio to meet the 80% requirement.

Plaintiffs' counsel shall have the opportunity to comment on any corrective action plan before approval by Defendants. Defendants shall enforce these contractual requirements and the corrective action plans.

(f) If in soliciting bids or negotiating modifications to the contracts described in this paragraph, Defendants cannot secure such contracts or such modifications without an increase in

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cost above the federal upper payment limit for capitation rates as a result of the requirements set forth in this paragraph and paragraph 39, Defendants may move the Court to modify the requirements set forth in this paragraph and in paragraph 39. In making any such motion, Defendants shall bear the burden to show that the requirements of this paragraph and paragraph 39 are the provisions which caused the upper payment limit to be exceeded.

46. Defendants shall comply with the HCFA State Medicaid Manual, Section 2700.4, in completing the HCFA Form 416. Defendants shall ensure that MCO's comply with the HCFA State Medicaid Manual, Section 2700.4, in providing information to be used in the HCFA Form 416 relating to whether the participant ratios in paragraphs 43, 44, and 45 above have been complied with. Defendants shall include a provision in the contracts with MCO's that requires the MCO's to submit to Defendants adequate information for Defendants to produce the reports required by paragraph 47 below. Defendants shall use an independent party to verify annually the data from each MCO used to compile the HCFA Form 416 used by Defendants to determine the participant ratios in paragraphs 43, 44, and 45. Defendants shall provide the results of the verification and the data for each MCO to Plaintiffs' counsel.

46A. Defendants shall direct the MCO=s to prepare any corrective action plan required pursuant to terms of this Order no later than April 1 of the year following the fiscal year completed on September 30 in which the MCO=s performance gives rise to the requirement to prepare a corrective action plan. Defendants shall direct the MCO=s to submit a corrective action plan required pursuant to terms of this Order no later than 30 days following the date that Defendants

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inform the MCO that a corrective action plan is required, *i.e.*, by May 1. [46a Added by Order of October 18, 2000]

47. Defendants shall provide quarterly reports to the Court, the Monitor, and Plaintiffs on the provision of EPSDT services. The reports shall contain the following information for each MCO:

(a) Number of individuals eligible for EPSDT enrolled with the managed care organization (MCO). The total unduplicated number of individuals under age 21 determined to be eligible for Medicaid, distributed by age (as defined in the line 1 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4). Unduplicated means that an eligible individual is reported only once, although he or she may have had more than one period of eligibility during the reporting period.

(b) Number of individuals receiving at least one initial or periodic screening service from the MCO. The unduplicated count of individuals, distributed by age, who received one or more documented initial or periodic screenings (as defined in the line 7 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4) during the quarter.

(c) Actual Number of Initial and Periodic Screening Services. The number of initial and periodic EPSDT child health screening examinations during the quarter (as defined in the line 10 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4).

(d) Number of individuals referred for corrective treatment. The unduplicated count, distributed by age, of individuals who, as the result of at least one health problem identified during an EPSDT child health screening, excluding vision, dental, and hearing services, were scheduled for another appointment with the screening provider or referred to another provider for further needed diagnostic or treatment service (as defined in the line 12 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4). This does not include correction of health problems during the screening examination or referrals for vision, dental, and hearing services.

(e) Number of individuals receiving corrective treatment. The unduplicated count, distributed by age, of EPSDT-eligible individuals who received corrective treatment from a specialist.

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(f) Number of individuals receiving vision assessments. The unduplicated count, distributed by age, of individuals who received an assessment to determine the need for diagnosis and treatment for defects in vision (as defined in the line 13 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4).

(g) Number of individuals receiving dental assessments. The unduplicated count, distributed by age, of individuals who received preventive dental services (as defined in the line 14 instructions for the HCFA Form 416 set forth at HCFA State Medicaid Manual, Section 2700.4).

(h) Number of individuals receiving hearing assessments. The unduplicated count, distributed by age, of individuals who received an assessment to determine the need for diagnosis and treatment for defects in hearing (as defined in the line 15 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4).

The first report shall be due on October 1, 1998, and shall cover April 1, 1998, through June 30, 1998. Thereafter, reports shall be due one hundred and twenty (120) days after the conclusion of each quarter. In addition, Defendants shall produce to Plaintiffs the HCFA Form 416 for each year within fourteen (14) days of its submission to the federal government.

48. (a) The covenants, corrective action plans, and penalties set forth in paragraphs 44 and 45 above are intended as the actions reasonably required of Defendants for assuring that the MCO's, as far as possible, will attain a participant ratio of 75% for 1998 and 80% for 1999 and thereafter. However, the parties and the Court recognize that they do not have sufficient information and experience to be certain that these ratios can be attained, even if the MCO's and Defendants take such actions. It may be that the participant ratios required in paragraphs 43(a) and (b) and 45(b) are

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attainable through the enforcement mechanisms prescribed in paragraphs 44 and 45, but they may be unattainable despite such enforcement mechanisms. This paragraph is therefore intended to provide a mechanism to determine whether the actions of Defendants and the MCO's under this Order constitute a reasonable effort, consistent with this Order, to achieve the participant ratios required under the MCO contracts and this Order. When such participation deficits occur, the Court will scrutinize Defendants' performance in achieving the specified participant ratios if, but only if, the participant ratios achieved are under 60% in 1999, 65% in 2000, 70% in 2001, 75% in 2002 and 80% in 2003 and each year thereafter.

(b) Defendants shall calculate the participant ratio for fiscal year 1998, which shall become the base year. If, in any subsequent year, the percentage ratio for that year set forth in subparagraph (a) above is not met and the ratio is also less than the 1998 base year ratio plus 5% for each subsequent year (but not more than 80%) (e.g., for 2000, the figure is the 1998 participant ratio, plus 10%), Defendants shall by June 15 of the following year, provide a detailed explanation to Plaintiffs of (i) the actions taken by the MCO's in 1998 and subsequent years through the year in issue to meet the relevant participant ratio in paragraphs 43(a) and (b) and 45(b), and (ii) whether it would be reasonable and effective to direct Defendants to require the MCO's to take further actions that are consistent with the MCO contracts. *[48(b) Revised by Order of October 18, 2000]*

(c) If Plaintiffs are satisfied with Defendants' explanation, Defendants shall be deemed in compliance with the participant ratio for that year. If Plaintiffs are not satisfied with Defendants' explanation, they may prepare a written response and present it, along with Defendants' explanation,

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to the Monitor. The Monitor will then consult with the parties and prepare a report to the Court addressing whether it would be reasonable and effective to direct Defendants to require the MCO's to take further actions consistent with the MCO contracts. The Monitor's report shall be due within 30 days of the issue being presented to the Monitor.

(d) The parties shall have thirty (30) days after submission of the Monitor's report to the Court within which to submit comments on such report. If the Court determines that it would be reasonable and effective, in order to achieve a participant ratio meaningfully higher than in the previous year, to direct Defendants to require the MCO's to take further actions consistent with the MCO contracts, the Court shall determine what relief, if any (other than contempt sanctions), shall be afforded to Plaintiffs. If, on the other hand, the Court determines that directing further actions consistent with the MCO contracts would be either unreasonable or ineffective in achieving a participant ratio meaningfully higher than in the previous year, Defendant shall be deemed in compliance with the participant ratio for that year. However, in this latter event, if the Court concludes that there are further actions that would be reasonable and effective in achieving such a meaningfully higher participant ratio, but that such actions are unavailable under the terms of the MCO contracts, Plaintiffs may, upon motion, seek further relief from the Court that Defendants, under the circumstances, could reasonably be expected to provide.

49. Defendants' periodicity schedule shall require dental services at least annually for children age six (6) through twenty (20).

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50. Defendants shall follow the federal requirements set forth in the HCFA State Medicaid Manual, Section 2700.4, in reporting line 12 on the HCFA Form 416 concerning referrals or comparable provisions in future forms for treatment of conditions discovered in the course of EPSDT screens and laboratory tests.

51. *Revised by Order of July 25, 2000:* Beginning no later than the date of entry of this Order, Defendants shall offer scheduling and transportation assistance prior to the due date of each eligible child's periodic screening, laboratory tests and immunizations as required by the HCFA State Medicaid Manual, Section 5150. The offer of scheduling and transportation assistance may be made in conjunction with another communication prior to the due date of each eligible child's periodic screening, laboratory tests and immunizations.

52. Beginning no later than the date of entry of this Order, Defendants shall assure that children and their parents or guardians shall be provided assistance, when requested and necessary, with transportation to EPSDT appointments.

53. Beginning no later than the effective date of each of the MCO contracts Defendants shall ensure that the MCO's provide case management services, as described in the HCFA State Medicaid Manual ' 4302 and as defined by 42 U.S.C. 1396n(g)(2), to children with a need for such services under the EPSDT program. No later than January 15, 1999, and no later than July 15, 1999, Defendants shall report to the Monitor and Plaintiffs' counsel concerning the implementation of case management services to children with a need for such services under the EPSDT program.

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Defendants shall consider in good faith any comments by Plaintiffs' counsel concerning its provision of case management services under the EPSDT program.

VI. EPSDT Notice (Claim 7)^{1/}

54. Defendants shall effectively inform all pregnant women, parents, child custodians, and teenagers who are sui juris and who have been determined to be eligible for Medicaid benefits, including individuals who are blind or deaf, or who are illiterate, of the availability of early and periodic, screening, diagnostic, and treatment services (hereafter AEPSDT@) and the need for age-appropriate immunizations against vaccine-preventable diseases. Notice shall be provided to all such individuals, to all applicants for Medicaid, and to all Medicaid recipients, at least annually, in writing. In addition, oral notice must be given at least annually if such individual meets with a social service representative. The oral and written notice shall use clear and non-technical language, and shall be designed to effectively inform EPSDT-eligible individuals about the benefits of preventive care, the services available under the EPSDT program, where and how to obtain those services, the cost-free nature of the services, and the availability of necessary scheduling and transportation assistance.

^{2/}The following provisions in this Section of the Order shall relate to all Medicaid recipients under the age of twenty-one (21) (hereafter Achild@ or Achildren@).

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55. Defendants shall establish and maintain a helpline that explains EPSDT services in Spanish which is available whenever no Spanish-speaking DHS employee is available to give an oral explanation and the person to whom notice is to be given understands only Spanish.

56. Defendants shall develop a program, to be implemented by February 1, 1999, to provide adequate notice about the EPSDT program to eligible persons who are blind or deaf, and who cannot read or cannot understand English. Defendants submitted the plan to the Court, the Monitor and Plaintiffs' counsel on March 16, 1998, and Plaintiffs have provided Defendants and the Monitor with their response to the Plan. If the parties are unable to agree on the terms of the Plan and its implementation, the Monitor shall evaluate the Plan and submit a report on the Plan and its implementation to the Court and counsel. The parties shall have fifteen (15) days thereafter within which to submit comments on the report, and prior to the Court taking any action.

57. Defendants shall require all providers of Medicaid services to give all pregnant women, parents, child custodians, and teenagers who are sui juris, and who have been determined to be eligible for Medicaid benefits, including individuals who are blind or deaf, or who are illiterate, written material describing EPSDT services in simple terms when they first visit the provider and on subsequent visits, unless the provider has given the recipient such material within the preceding year. Defendants shall also require all providers of Medicaid services to explain the EPSDT program orally to such recipients at least annually to all recipients who use Medicaid services during the year, except that so long as the Defendants' periodicity schedule requires only biannual EPSDT screening for children over the age of six (6), such children, and/or their parents or guardians, need

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only be orally informed about EPSDT biannually. Defendants shall require providers to call the Spanish helpline described above whenever the person to whom notice is to be given understands only Spanish.

58. The written and oral notices set forth in paragraphs 54, 55 and 57 above shall include:

(a) An explanation of all EPSDT medical services, including screens, laboratory tests, immunizations and corrective treatment;

(b) An explanation of the importance of these services, and a strong recommendation that the services be utilized;

(c) An explanation of the right of the child to follow-up treatment to correct or ameliorate any medical need identified during a screen or laboratory test;

(d) An explanation of the right to scheduling assistance in order to make EPSDT appointments and the procedures for obtaining such assistance; and

(e) An explanation of the right to transportation assistance and the procedures for obtaining such assistance for EPSDT appointments.

In addition, Defendants shall provide EPSDT eligible applicants at the time of application and at least annually thereafter, a pocket-sized schedule of EPSDT screens, laboratory tests and immunizations.

59. Beginning no later than November 15, 1998, Defendants shall develop and implement effective coordination of EPSDT notice and outreach with the Department of Health, the District of Columbia public school system, Headstart programs, the Women, Infants and Children nutrition

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program, public housing programs, Title XX programs, and the District's Part H early intervention program. The plan for coordination shall be provided to the Court, the Monitor and Plaintiffs' counsel within ten (10) days of its completion. The Monitor shall submit, within fifteen (15) days thereafter, an evaluation of the coordination plan, and shall monitor its implementation.

60. Plaintiffs may submit to the Court at any time after October 15, 1998, information concerning the effectiveness of EPSDT notice in the District of Columbia. If the Court determines that Plaintiffs have raised a substantial issue as to such effectiveness, the Court shall request the Monitor to submit a report on appropriate measures to improve such effectiveness, including the need for, the feasibility and mechanics of, and the cost of a statistically valid study of the effectiveness of EPSDT notice in the District of Columbia. The parties shall have thirty (30) days after the submission of the Monitor's report within which to submit comments on such report, and prior to the Court taking any action. "Effectiveness of EPSDT notice" as used in this paragraph shall have the same meaning as the phrase "to inform effectively all EPSDT eligible individuals (or their families) about the EPSDT program" as set forth in 42 C.F.R. 441.56(a).

VII. Reimbursement Procedure for Class Members= Expenses

61. Defendants' Medicaid State Plan shall allow for corrective payments to Medicaid recipients who have incurred out-of-pocket medical expenses that, but for Defendants' error, should have been paid by Medicaid.

62. Defendants shall provide corrective payments to Medicaid recipients who have incurred out-of-pocket medical expenses that should have been paid by Medicaid to all current and

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future Medicaid recipients and all those who were Medicaid recipients or were eligible for Medicaid at any time since March 2, 1990. Reimbursement of class members shall be made when the class member presents reasonable and reliable documentation or other evidence of their out-of-pocket expenses.

63. In an Order dated September 15, 1997, after considering the Monitor's report and the positions of the parties, the Court issued a Reimbursement Procedures Order setting forth the procedures for reimbursing Medicaid recipients for out-of-pocket expenses incurred since March 2, 1990. In an Order Partially Modifying the Reimbursement Procedures of the Amended Remedial Order of May 6, 1997, and the Reimbursement Procedures Order of September 15, 1997, entered on July 30, 1998, the Court set forth further procedures concerning reimbursement.

VIII. Monitoring Fees to Plaintiffs' Counsel

64. Plaintiffs' counsel may respond to all calls which come to their office and make reasonable inquiry to determine whether the caller is a member of the plaintiff class. If the caller is a member of the plaintiff class, Plaintiffs' counsel may provide the caller with legal assistance. The reasonable time and expenses of Plaintiffs' counsel in making such inquiry and providing such legal assistance shall be deemed compensable monitoring of this Order under 42 U.S.C. § 1988 and applicable law interpreting that statutory provision. The hourly rate for handling the claims of individual class members shall be \$75/hour, regardless of the experience level of the lawyer who performs the work. This hourly rate shall be adjusted annually, beginning on January 1, 1999, based on the U.S. Department of Commerce Consumer Price Index for Legal Services.

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65. Other reasonable attorney time by Plaintiffs' counsel in monitoring Defendants' compliance with this Order shall be compensated at the rate of \$315/hour for the time of Bruce J. Terris and Lynn Cunningham, and \$265/hour for the time of Kathleen L. Millian and Jane Perkins. Reasonable paralegal time shall be compensated at the rate of \$75/hour. If attorneys other than those mentioned specifically in this paragraph perform monitoring work, the parties shall use their best efforts to agree to an hourly rate for the attorney, which shall not exceed \$200/hour. These hourly rates shall be adjusted annually, beginning on January 1, 1999, based on the U.S. Department of Commerce Consumer Price Index for Legal Services.

66. The rates set forth in paragraphs 64 and 65 above for Plaintiffs' monitoring of Defendants' compliance with this Order were based on compromise and the parties do not intend these rates to apply for any purpose other than those set forth in paragraphs 64 and 65. Defendants take the position that the reasonable rates for Plaintiffs' counsel are lower than those set forth in paragraphs 64 and 65 and Plaintiffs take the position that the reasonable rates are higher.

67. Plaintiffs may make an application for monitoring fees and expenses no more frequently than every six (6) months. If the parties cannot agree on the amount of fees and expenses, Plaintiffs may make a motion to the Court thirty (30) days after submission of the fees application to Defendants. The first such application may be submitted at any time after July 1, 1998. In addition to the costs of monitoring Defendants' compliance with this Order, the first application shall include all other fees incurred in this action since January 1, 1998, excluding those specified in paragraph 69(b) below.

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68. ~~Deleted by Order of July 30, 2001: Beginning on May 15, 1997, and continuing thereafter, Plaintiffs' counsel shall provide Defendants' counsel with a monthly statement of their fees and expenses associated with monitoring Defendants' compliance with the Remedial Order.~~

IX. Attorneys' Fees and Expenses through December 31, 1997

69. In full settlement of all claims by Plaintiffs for attorneys' fees and expenses through December 31, 1997, except as specifically stated below, Defendants agree to pay Plaintiffs a total of \$1,600,000. The Court vacates the Judgment for \$1,028,059.70 entered on March 12, 1998. Of the sum of \$1,600,000, \$611,940.30 was paid pursuant to the Consent Judgments of September 3, 1996, and January 14, 1997, and the Judgment of March 12, 1998. Defendants agree to pay Plaintiffs the remaining \$988,059.70 within forty-five (45) days of the date of entry of the Consent Judgment submitted with this Order. This sum of \$988,059.70 shall bear interest, as provided in 28 U.S.C. 1961, from March 12, 1998, until paid. The sum of \$1,600,000 does not include the following:

(a) Payments made to Plaintiffs under the Consent Judgment Orders entered on June 2, 1997 (\$18,968.75, plus interest), and September 15, 1997 (\$15,100, plus interest);

(b) Plaintiffs' claim for reimbursement of their fees and expenses for monitoring the Partial Settlement Agreement of July 12, 1996, and the Agreement Pursuant to Paragraph 49 of the July 10, 1996, Partial Settlement Agreement, dated May 22, 1997, which have been incurred since May 8, 1997.

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Prepared by Plaintiffs= Counsel

X. Future Change in Applicable Law and Motions for Modification

70. If Defendants believe that a change of law resulting in the elimination or reduction in federal funding or in the amendment or elimination of legal requirements affects any provision of this Order, and Defendants desire a modification of this Order, Defendants shall notify Plaintiffs' counsel. The notice shall specify the modification desired and the reasons therefor. If the parties cannot come to an agreement regarding the modification to this Order, the parties shall jointly move the Court, within ten (10) days of the District's notice to Plaintiffs, to determine the extent to which modification shall be made. The joint motion shall request that the Court establish an expedited briefing schedule and determination of this motion.

71. Except as provided in paragraph 70 above, either party shall have the right to move the Court for a modification of this Order at any time for any reason.

72. In determining motions for a modification of this Order under paragraphs 70 and 71 above, the general body of federal law governing motions to modify orders in contested matters pursuant to Rule 60(b) of the Federal Rules of Civil Procedure shall apply.

73. Defendants shall take no action contrary to this Order based on a proposed modification to this Order under paragraphs 70 and 71 above until this Court has determined the joint motion filed under paragraphs 70 and 71. If Defendants take or threaten to take such an action, Plaintiffs may seek injunctive relief from the Court. The only exception shall be if the federal government has eliminated or reduced funding to the District for a program subject to this Order and, as a result, the District has legally eliminated or reduced such program. In that event,

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Defendants shall notify Plaintiffs that they propose to take such action at least five (5) days prior to the effective date of Defendant's proposed action.

XI. Termination of this Order

74. *Revised by Order of August 8, 2000:* As to Section II of this Order (Processing of Medicaid Applications (Claim 4)), this Order shall terminate when Defendants have satisfied the compliance standards set forth in paragraphs 8 and 12 above for three (3) consecutive years. The parties do not agree as to whether Defendants should receive credit against the three (3) consecutive years of compliance for the time period prior to July 1, 2000, the date that the revised format reports are to be prepared pursuant to paragraph 16 above. At a time when Defendants believe that their compliance has satisfied this paragraph=s requirements for termination of the Order, they shall inform plaintiffs in writing. The parties agree to negotiate in good faith concerning whether Defendants= record demonstrates compliance with this paragraph. If the parties cannot agree, Defendants may move the Court for a determination as to whether they have complied with this paragraph.

75. As to Section III of this Order (Processing of Medicaid Recertifications (Claim 5)), this Order shall terminate when Defendants have satisfied the compliance standard set forth in paragraph 19 above for three (3) consecutive years.

76. As to Section IV of this Order (Eligibility Verification System (EVS)(Claim 5)), this Order shall terminate when Defendants have shown that the verification system, including both EVS and the back-up system, have accurately confirmed the eligibility status of 98% of all requests for eligibility verification for twenty-two (22) of twenty-four (24) consecutive months and accurately

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confirmed the eligibility status of at least 95% of all requests for each of the other two (2) months as provided in paragraph 34 above and have accurately confirmed the eligibility status of at least 98% of all requests for the one (1) month in the following calendar year chosen by Plaintiffs. If Defendants do not achieve at least 98% compliance in the month chosen by Plaintiffs, Section IV shall not terminate until Defendants have shown at least six (6) consecutive months of compliance with the 98% standard.

77. As to Sections V and VI of this Order (EPSDT Services (Claim 6) and EPSDT Notice (Claim 7)), this Order shall terminate when Defendants have complied for three (3) consecutive years beginning no earlier than fiscal year 1999 with the provisions of Sections V and VI and the participant ratio of the District of Columbia has been no less than 75% for the last year. Defendants may move to terminate Sections V and VI of this Order at any time after fiscal year 2001 if Defendants have complied for three (3) consecutive years with all the provisions of Sections V and VI, except those setting forth a particular participant ratio, even though they have not achieved a participant ratio of 75% for the last year, if they can show, based on persuasive evidence as to the actions taken by MCO's and Defendants, that a higher participant ratio cannot be achieved by further reasonable efforts. Defendants shall have the burden of proof.

78. All other provisions of this Order shall conclude at the same time as the last of the Sections identified in paragraphs 74-77 above.

XII. Continuing Jurisdiction

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79. The Court shall retain jurisdiction of this matter to make any necessary orders enforcing or construing this Order.

80. Before any party moves the Court to enforce or construe this Order, or pursuant to any provision in this Order, except for paragraph 73 above, it shall give the other party 10 days' notice of its intention. During that 10-day period, the parties shall negotiate in good faith in an effort to resolve the dispute without seeking a decision from the Court.

XIII. Construction of This Order

81. This Order shall be construed by its own terms. The presence or absence of a provision in the Court's previous orders or in any draft of this Order shall not be relevant to the meaning of the provisions of this Order.

XIV. Other Matters

82. All references to the HCFA State Medicaid Manual shall be to the current manual at the time of the event involved.

83. The Court recognizes that computer software programs which are date dependent may experience failures in operations as the year 2000 commences, the so-called Y2K disruption, despite the Defendants taking reasonable efforts to identify and correct such problems in advance. Should such disruptions prevent the Defendants from complying with any requirement of this Order, despite Defendants taking reasonable efforts to identify and correct such problems in advance, upon notice to the Court, the Monitor, and Plaintiffs, Defendants shall have the right to suspend the provisions of the Order affected during the first six (6) months of 2000. No month during which

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such provisions are suspended may be used to justify termination under Section XI of this Order as to the provisions suspended. If Defendants invoke this suspension, they must, within 30 days of giving the required notice, report to the Court, the Monitor and Plaintiffs of the efforts they have taken to date and any planned in the future to identify and correct the Y2K disruption.

AGREED:

Date: 1/8/99

Date: 1/8/99

/s/
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Counsel for Defendants

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INCLUDING ALL AMENDMENTS THROUGH JULY 30, 2001**

Prepared by Plaintiffs= Counsel

APPROVED AND ENTERED AS AN ORDER OF THIS COURT THIS 22nd DAY OF
January, 19989.

/s/

GLADYS KESSLER
United States District Judge

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Prepared by Plaintiffs= Counsel

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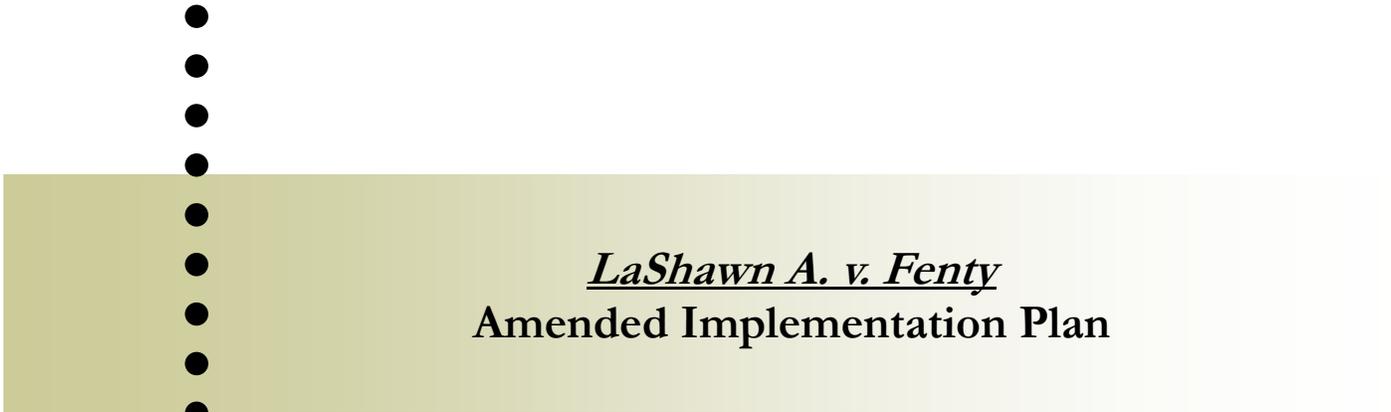
Prepared by Plaintiffs= Counsel

ATTACHMENT A

Your completed recertification for Medicaid/DC Healthy Families/Medical Charities/QMB was received on _____. Medical Assistance for your household will continue without change until further notice from this agency. When a decision is made concerning your household=s continued eligibility, you will receive a notice informing you of the results.

ATTACHMENT B

You will receive a notice from us when we receive your completed recertification form, letting you know that we have received it.



LaShawn A. v. Fenty
Amended Implementation Plan

February 2007

Center for the Study of Social Policy
1575 Eye Street, NW, Suite 500
Washington, DC 20005

LaShawn A. v. Fenty
Amended Implementation Plan
February 2007

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LaShawn A. v. Fenty
Amended Implementation Plan
February 2007

PREAMBLE

The parties previously having submitted and the Court having entered for judicial enforcement the April 2003 Implementation Plan ("IP") as developed by the Court Appointed Monitor in consultation with the parties pursuant to Section XX.B of the Modified Final Order ("MFO") in LaShawn v. Williams, C.A. No. 89-1754;

The IP having set forth certain interim performance benchmarks together with interim compliance dates and further having set final performance benchmarks to be met by Defendants with respect to the enforceable requirements of the MFO and IP no later than December 31, 2006; and Defendants having not met all of those benchmarks by that date;

The parties hereby submit this Amended Implementation Plan ("AIP"), which includes Outcomes to be Achieved, Outcomes to be Maintained and a Strategy Plan with Action Steps to Achieve Critical Safety, Permanence and Well-Being Outcomes, as developed by the Court Appointed Monitor in consultation with the parties pursuant to Section XX.B of the MFO. Upon approval by the Court of this AIP, it shall be judicially enforceable and shall govern implementation of child welfare reform under the Court's Modified Final Order through December 31, 2008. The final performance benchmarks as set forth in the IP are reincorporated in the AIP. The Monitor shall prepare and submit to the Court every 180 days an interim performance report setting forth (1) aggregate performance determinations in relation to the Outcomes to be Achieved and Outcomes to be Maintained and (2) findings regarding whether Defendants are making acceptable progress toward the final performance benchmarks. In executing and agreeing to this Amended Implementation Plan, Defendants and Plaintiffs reserve whatever rights and objections they have previously asserted in response to the May 2003 Implementation Plan.

**SECTION I:
OUTCOMES TO BE ACHIEVED BY DECEMBER 31, 2008
TO ENSURE CHILD SAFETY PERMANENCY AND
WELL-BEING AND SYSTEM ACCOUNTABILITY**

A. GOAL: CHILD SAFETY

1. *Investigations*

- a. Investigations of alleged child abuse and neglect shall be initiated within 48 hours. Initiation of an investigation includes seeing the child and talking with the child outside the presence of the caretaker. When children are not immediately located, documented good faith efforts to see the child within the first 48 hours shall include visiting the child's home, school and day care in an attempt to locate the child as well as contacting the reporter, if known, to elicit additional information about the child's location; contacts with the police shall be made for all allegations that involve moderate and high risk cases.
- b. Investigations of alleged child abuse and neglect shall be completed within 30 days.
- c. Reports of abuse and neglect in foster homes and institutions shall be comprehensively investigated; investigations in foster homes shall be completed within 30 days and investigations involving group homes, day care settings or other congregate care settings shall be completed within 60 days.

2. *Acceptable Investigations*

CFSA shall routinely conduct investigations of alleged child abuse and neglect. Evidence of acceptable investigations shall include:

- a. Use of CFSA's screening tool in prioritizing response times for initiating investigations, and use of risk assessment protocol in making decisions resulting from an investigation;
- b. A full and systematic analysis of a family's situation and the factors placing a child at risk;
- c. Appropriate interviews with needed collateral contacts and with all children in the household outside the presence of the caretaker, parents or caregivers, or shall include documentation, by the worker, of good-faith efforts to see the child and that the worker has been unable to locate the child; and

- d. Medical and mental health evaluations of the children or parents when the worker determines that such evaluations are needed to complete the investigation.

3. *Services to Families and Children*

Appropriate services, including all services identified in a child or family's case plan, shall be offered and children/families shall be assisted to use services, to support child safety, permanence and well-being.

4. *Social Worker Visits to Families with In-Home Services*

A CFSA worker or a qualified worker from a service provider authorized by CFSA shall make twice-monthly visits to families in which there has been substantiated abuse or neglect, with a determination that each child can be maintained safely in the home with services. At least one visit per month shall be in the home, but the second can be at the child's school, day care or elsewhere. Workers are responsible for assessing the safety of each child at every visit and each child must be separately interviewed at least monthly outside of the presence of the caretaker.

5. *Social Worker Visits to Children in Out-of-Home Care*

- a. CFSA or contract social workers with case management responsibility shall make twice-monthly visits to each child in out-of-home care (foster family homes, group homes, congregate care, independent living programs, etc.). At least one visit per month shall be in the home, but the second can be at the child's school, day care or elsewhere.
- b. Workers are responsible for assessing the safety of each child at every visit and each child must be separately interviewed at least monthly outside of the presence of the caretaker.

6. *Social Worker Visits to Children Experiencing a New Placement or a Placement Change*

- a. CFSA or contract agency social workers with case responsibility shall make weekly visits during the first four weeks of placement and twice monthly visits thereafter to each child newly placed in out-of-home care (foster family homes, group homes, congregate care, independent living programs, etc.) or moved to a new placement.
- b. Workers are responsible for assessing the safety of each child at every visit and each child must be separately interviewed at least monthly outside of the presence of the caretaker.

B. GOAL: PERMANENCY

7. *Relative Resources*

CFSA shall investigate relative resources in all cases requiring removal of children from their homes.

8. *Placement of Children in Most Family-like Setting*

- a. Children in out-of-home placement shall be placed in the least restrictive, most family-like setting appropriate to his or her needs.
- b. No child shall stay overnight in the CFSA Intake Center or office building
- c. No child shall remain in an emergency, short-term, or shelter facility or foster home for more than 30 days.

9. *Placement of Young Children*

- a. Children under 12 shall not be placed in congregate care settings for more than 30 days unless the child has special treatment needs that cannot be met in a home-like setting and unless the setting has a program to treat the child's specific needs.
- b. CFSA shall place no child under six years of age in a group care non-foster home setting, except for those children with exceptional needs that cannot be met in any other type of care.

10. *Visits Between Parents and Workers or Providers*

For children with a permanency goal of reunification, in accordance with the case plan, the assigned worker or designated family services provider should meet with the parent(s) no less frequently than twice a month in the first three months post-placement unless there is documentation that the parent(s) is(are) unavailable or refuses to cooperate with the Agency.

11. *Visits Between Parents and Children*

There shall be weekly visits between parents and children with a goal of reunification unless clinically inappropriate and approved by the Family Court. In cases in which visitation does not occur, the Agency shall demonstrate and there shall be documentation in the case record that visitation was not in the child's best interest, is clinically inappropriate or did not occur despite efforts by the Agency to facilitate it.

12. *Appropriate Permanency Goals*

Children shall have permanency planning goals consistent with the Federal Adoption and Safe Families Act (ASFA) and District law and policy guidelines.

13. *Reduction of Multiple Placements for Children in Care*

- a. Of all children served in foster care during the fiscal year (2007 and subsequent years), and who were in care at least 8 days and less than 12 months, 88 percent shall have two or fewer placements.
- b. Of all children served in foster care during the fiscal year (2007 and subsequent years), and who were in care for at least 12 months but less than 24 months, 65% shall have had two or fewer placement settings.
- c. Of all children served in foster care during the fiscal year (2007 and subsequent years), and who were in care for at least 24 months, 50% shall have had two or fewer placement settings since October 1, 2004 or entry into care (if entry was after October 1, 2004).

14. *Timely Approval of Foster/Adoptive Parents*

- a. CFSA shall have in place a process for recruiting, studying and approving families interested in becoming foster or adoptive parents that results in the necessary training, home studies, and decisions on approval being completed within 120 days of beginning training.
- b. CFSA should ensure training opportunities are available so that interested families may begin training within 30 days of inquiry.

15. *Legal Action to Free Children for Adoption*

Children with a permanency goal of adoption shall have legal action initiated to free them for adoption within 45 days of their permanency goal becoming adoption.

16. *Timely Adoption*

- a. Children with a permanency goal of adoption should be in an approved adoptive placement within nine months of their goal becoming adoption.
- b. Within 95 days of a child's permanency goal becoming adoption, CFSA shall convene a permanency planning team to develop a child-specific recruitment plan which may include contracting with a private adoption agency for those children without an adoptive resource.

- c. CFSA shall make all reasonable efforts to ensure that children placed in an approved adoptive home have their adoptions finalized within twelve (12) months of placement in the approved adoptive home.

17. Case Planning Process

- a. CFSA shall, with the family, develop timely, comprehensive and appropriate case plans in compliance with District law requirements and permanency timeframes, which reflect family and children's needs, are updated as family circumstances or needs change, and CFSA shall deliver services reflected in the current case plan.
- b. Case plans shall be developed within 30 days of the child entering care and shall be reviewed and modified as necessary at least every six months thereafter, and shall show evidence of appropriate supervisory review of case plan progress.
- c. Every reasonable effort shall be made to locate family members and to develop case plans in partnership with youth and families, the families' informal support networks, and other formal resources working with or needed by the youth and/or family.
- d. Case plans shall identify specific services, supports and timetables for providing services needed by children and families to achieve identified goals.

18. Placement Licensing

Children shall be placed in foster homes and other placements that meet licensing and other MFO placement standards and have a current and valid license.

C. GOAL: CHILD WELL-BEING

19. *Community-based Service Referrals for Low & Moderate Risk Families*

Families who have been the subject of a report of abuse and/or neglect that is determined to be low or moderate risk and needing additional supports shall be referred to an appropriate Collaborative or community agency for services and supports.

20. *Sibling Placement and Visits*

- a. Children in out-of-home placement should be placed with some or all of their siblings.
- b. Children placed apart from their siblings should have at least twice monthly visitation with some or all of their siblings.

21. *Placement within 100 Miles of the District*

No more than 82 children shall be placed more than 100 miles from the District of Columbia. (Children placed in kinship or pre-adoptive family-based settings under the ICPC shall be exempt from this requirement.)

22. *Assessments for Children Experiencing a Placement Disruption*

CFSA shall ensure that children in its custody whose placements are disrupted are provided with a comprehensive and appropriate assessment and follow-up action plans to determine their service and re-placement needs no later than within 30 days of re-placement.

23. *Services to Promote Stability*

CFSA shall provide for or arrange for services required by the MFO through operational commitments from District public agencies and/or contracts with private providers. Services shall include (a) services to enable children who have been the subject of an abuse/neglect report to avoid placement and to remain safely in their own homes; (b) services to enable children who have been returned from foster care to parents or relatives to remain with those families and avoid replacement into foster care; (c) services to avoid disruption of an adoptive placement that has not been finalized and avoid the need for replacement; and (d) services to prevent the disruption of a beneficial foster care placement and avoid the need for replacement.

24. *Health and Dental Care*

- a. Children in foster care shall have a health screening prior to placement.
- b. Children in foster care shall receive a full medical and dental evaluation within 30 days of placement.
- c. CFSA shall provide caregivers with documentation of Medicaid coverage within 5 days of every placement and Medicaid cards within 30 days.
- d. Medicaid coverage shall remain active for the entire time a child is in foster care.

**D. GOAL: RESOURCE DEVELOPMENT AND
SYSTEM ACCOUNTABILITY**

25. Financial Support for Community-Based Services

The District shall provide evidence of financial support for community- and neighborhood-based services to protect children and support families.

26. Resource Development Plan

The District shall implement the CFSA Resource Development Plan, which is to be developed by June 30 each year. The Resource Development Plan shall include all of the components listed in Item 15b of the Outcomes to be Maintained section of this document.

27. Post-Adoption Services

CFSA shall make available post-adoption services necessary to preserve families who have adopted a child committed to CFSA.

28. Caseloads

- a. The caseload of each worker¹ conducting investigations of reports of abuse and/or neglect shall not exceed the MFO standard, which is 1:12 investigations.
- b. The caseload of each worker providing services to children and families in which the child or children in the family are living in their home shall not exceed 1:15 families.
- c. The caseload of each worker providing services to children in placement, including children in Emergency Care and children in any other form of CFSA physical custody, shall not exceed 1:15 children for children in foster care.
- d. The caseload of each Permanency Specialist shall not exceed 30 children with the goal of adoption/guardianship. An implementation assessment shall be completed to determine effectiveness.
- e. The caseload of each worker having responsibility for conducting home studies shall not exceed 30 cases.

¹ All requirements apply to both CFSA workers and private agency workers. All CFSA contracts with private agencies providing foster care services shall include performance expectations for visitation of children in foster care in compliance with MFO visitation requirements.

- f. There shall be no cases unassigned to a social worker for more than five business days, in which case, the supervisor shall provide coverage but not for more than five business days.

29. *Supervisory Responsibilities*

- a. Supervisors who are responsible for supervising social workers who carry caseloads shall be responsible for no more than six workers, including case aides, or five caseworkers.
- b. No supervisor shall be responsible for the on-going case management of any case.

30. *Training for New Workers and Supervisors*

- a. New workers shall receive the required 80 hours of pre-service training through a combination of classroom and on-the-job training in assigned training units.
- b. New supervisors shall receive a minimum of 40 hours of pre-service training on supervision of child welfare workers within three months of assuming supervisory responsibility.

31. *Training for Previously Hired Workers, Supervisors and Administrators*

- a. Previously hired workers shall receive annually a minimum of 5 full training days (or a minimum of 30 hours) of structured in-service training geared toward professional development and specific core and advanced competencies.
- b. Supervisors and administrators shall receive annually a minimum of 24 hours of structured in-service training.

32. *Training for Foster Parents*

- a. CFSA and contract agency foster parents shall receive a minimum of 15 hours of pre-service training.
- b. CFSA and contract agency foster parents shall receive annually a minimum of 15 hours of in-service training

33. Quality Assurance

CFSA shall have a Quality Assurance system with sufficient staff and resources to assess case practice, analyze outcomes and provide feedback to managers and stakeholders. The Quality Assurance system must annually review a sufficient number of cases to assess compliance with the provisions of the MFO and good social work practice, to identify systemic issues, and to produce results allowing the identification of specific skills and additional training needed by workers and supervisors.

34. Special Corrective Action

- a. CFSA shall produce accurate monthly reports, shared with the Monitor, which identify children in the following categories:
 - i. All cases in which there have been four or more reports of neglect or abuse for a single child or family with the fourth report occurring in the last 12 months;
 - ii. All cases in which a child has been placed in four or more different placements, with the fourth or additional placement occurring in the last 12 months and the placement is not a permanent placement;
 - iii. All cases in which a child has had a permanency goal of adoption for more than one year and has not been placed in an adoptive home;
 - iv. All children who have been returned home and have reentered care more than twice and have a plan of return home at the time of the report;
 - v. Children with a permanency goal of reunification for more than 18 months;
 - vi. Children placed in emergency facilities for more than 90 days;
 - vii. Children placed in foster homes or facilities that exceed their licensed capacities or placed in facilities without a valid license
 - viii. Children under 14 with a permanency goal of APPLA; and
 - ix. Children in facilities more than 100 miles from the District of Columbia.
- b. CFSA shall conduct a child-specific case review by the Director or Director's designee for each child identified and implement a child-specific corrective action plan, as appropriate.

35. Performance Based Contracting

CFSA shall have in place a functioning performance based contracting system that (a) develops procurements for identified resource needs, including placement and service needs; (b) issues contracts in a timely manner to qualified service providers in accordance with District laws and regulations; and (c) monitors contract performance on a routine basis.

36. ICPC

CFSA shall continue to maintain responsibility for managing and complying with the ICPC for children in its care.

37. Licensing Regulations

CFSA shall have necessary resources to enforce regulations effectively for original and renewal licensing of foster homes, group homes, and independent living facilities.

38. Provider Payments

CFSA shall ensure payment to providers in compliance with DC's Quick Payment Act for all services rendered.

39. Budget and Staffing Adequacy

The District shall provide evidence that the Agency's annual budget complies with Paragraph 7 of the October 23, 2000 Order providing customary adjustments to the FY 2001 baseline budget and adjustments to reflect increases in foster parent payments and additional staff required to meet caseload standards, unless demonstrated compliance with the MFO can be achieved with fewer resources.

The District shall provide evidence of compliance with Paragraph 4 of the October 23, 2000 Order that CFSA staff shall be exempt from any District-wide furloughs and from any District-wide agency budget and/or personnel reductions that may be otherwise imposed.

SECTION II: OUTCOMES TO BE MAINTAINED

A. PROTECTIVE SERVICES

1. Entering Reports into Computerized System

CFSA shall immediately enter all reports of abuse or neglect into its computerized information systems and shall use the system to determine whether there have been prior reports of abuse or neglect in that family or to that child.

2. Maintaining 24 Hour Response System

CFSA shall staff and maintain a 24-hour system for receiving and responding to reports of child abuse and neglect, which conforms to reasonable professional standards.

3. Checking for Prior Reports

Child abuse and/or neglect reports shall show evidence that the investigator checked for prior reports of abuse and/or neglect.

4. Reviewing Child Fatalities

The District of Columbia, through the City-wide Child Fatality Committee, and an Internal CFSA Committee, shall conform to the requirements of the MFO regarding the ongoing independent review of child fatalities of members of the plaintiff class, with procedures for (1) reviewing child deaths; (2) making recommendations concerning appropriate corrective action to avert future fatalities; (3) issuing an annual public report; and (4) considering and implementing recommendations as appropriate.

B. EMERGENCY CARE AND GENERAL ASSISTANCE

5. Policies for General Assistance Payments

CFSA shall have in place policies and procedures for appropriate use of general assistance payments for the care of children by unrelated adults, including provision of any applicable oversight and supervision.

6. Use of General Assistance Payments

CFSA shall demonstrate that District General Assistance payment grants are not used as a substitute for financial supports for foster care or kinship care for District children who have been subject to child abuse or neglect.

C. PERMANENCY PLANNING AND PLACEMENT OF CHILDREN

7. Licensing and Placement Standards

- a. Children shall be placed in foster homes and other placements that meet licensing and other MFO placement standards.
- b. Children in foster home placements shall be in homes that (a) have no more than three foster children or (b) have six total children including the family's natural children; (c) have no more than two children under two years of age or (d) have more than three children under six years of age. The sole exception shall be those instances in which the placement of a sibling group, with no other children in the home, shall exceed these limits.
- c. No child shall be placed in a group-care setting with a capacity in excess of eight (8) children without express written approval by the Director or designee based on written documentation that the child's needs can only be met in that specific facility, including a description of the services available in the facility to address the individual child's needs.
- d. Children shall not be placed in a foster care home or facility in excess of its licensed capacity. The sole exception shall be those instances in which the placement of a sibling group, with no other children in the home, shall exceed the limits.

8. Appropriate Permanency Goals

No child under the age of 12 shall have a permanency goal of legal custody with permanent caretakers unless he or she is placed with a relative who is willing to assume long-term responsibility for the child and who has legitimate reasons for not adopting the child and it is in the child's best interest to remain in the home of the relative rather than be considered for adoption by another person. No child under the age of 12 shall have a permanency goal of continued foster care unless CFSA has made every reasonable effort, documented in the record, to return the child home, to place the child with an appropriate family member, and to place the child for adoption, and CFSA has considered and rejected the possibility of the child's foster parents assuming legal custody as permanent caretakers of the child.

9. Post-Adoption Services Notification

Adoptive families shall receive notification at the time that the adoption becomes final of the availability of post-adoption services.

D. CASE REVIEW SYSTEM

10. Administrative Reviews

- a. By September 30, 2005, CFSA shall have implemented an Administrative Case Review process, as defined in Section X.B.1(a-c) of the MFO, with sufficient staff resources to review foster care cases within 180 days of a child's entry into foster care and every 180 days thereafter.
- b. Foster care cases shall have had an Administrative Case Review within 180 days of the child entering care and every 180 days thereafter. The Administrative Case Review process shall:
 - i. Be staffed by qualified social workers
 - ii. Provide advance notification to social workers, parents, foster parents, youth, Guardians ad litem, and involved service providers as appropriate
 - iii. Be efficiently and conveniently scheduled to ensure maximum participation of involved parties, especially parents, as appropriate
 - iv. Provide for a comprehensive review of case progress, the appropriateness of permanency goals and placement, and adequacy of services to meet permanency goals and to promote the safety, permanence and well-being of the child; and
 - v. Be structured to provide feedback to CFSA management on compliance with agency policies and procedures, District of Columbia law and the MFO

11. Permanency Hearings

CFSA shall make every reasonable effort to ensure that children in foster care have a permanency hearing in Family Court no later than 14 months after their initial placement.

E. CASELOADS, STAFFING, AND WORKER QUALIFICATION

12. Use of MSWs and BSWs

Unless otherwise agreed, all social worker hires at CFSA shall have an MSW or BSW before being employed as trainees.

13. Social Work Licensure

All social work staff shall meet District of Columbia licensing requirements to carry cases independently of training units.

F. TRAINING

14. Training for Adoptive Parents

Adoptive parents shall receive a minimum of 30 hours of training, excluding the orientation process.

G. RESOURCE DEVELOPMENT

15. Needs Assessment and Resource Development Plan

- a. CFSA shall complete a needs assessment every two years, which shall include an assessment of placement support services, to determine what services are available and the number and categories of additional services and resources, if any, that are necessary to ensure compliance with the MFO. The needs assessment shall be a written report. The needs assessment, including the report, shall be repeated every two years. CFSA shall provide evidence of adequate Resource Development capacity within the Agency, with sufficient staff and other resources to carry out MFO resource development functions.

- b. The District shall develop a Resource Development Plan, which shall be updated annually by June 30th of each year. The Resource Development Plan shall: (a) project the number of emergency placements, foster homes, group homes, therapeutic foster homes and institutional placements that shall be required by children in CFSA custody during the upcoming year; (b) identify strategies to assure that CFSA has available, either directly or through contract, a sufficient number of appropriate placements for all children in its physical or legal custody; (c) project the need for community-based services to prevent unnecessary placement, replacement, adoption and foster home disruption; (d) identify how the Agency is moving to ensure decentralized neighborhood and community-based services; and (e) include an assessment of the need for adoptive families and strategies for recruitment, training and retention of adoptive families based on the annual assessment. The Plan shall specify the quantity of each category of resources and services, the time period within which they shall be developed, and the specific steps that shall be taken to ensure that they are developed. CFSA shall then take necessary steps to implement this plan.

16. Foster Parent Licensure

CFSA shall license relatives as foster parents in accordance with District law, District licensing regulations and ASFA requirements.

H. CONTRACT REVIEW

17. Maintaining Computerized System

- a. CFSA shall develop and maintain a unitary computerized information system and shall take all reasonable and necessary steps to achieve and maintain accuracy.
- b. CFSA shall provide evidence of the capacity of FACES Management Information System to produce appropriate, timely, and accurate worker/supervisor reports and other management reports that shall assist the Agency in meeting goals of safety, permanence and well-being and the requirements of the MFO.

18. Contracts to Require the Acceptance of Children Referred

CFSA contracts for services shall include a provision that requires the provider to accept all clients referred pursuant to the terms of the contract, except for a lack of vacancy.

19. Federal Revenue Maximization

CFSA shall demonstrate compliance with Sections A and B of Chapter XVIII of the Modified Final Order concerning federal revenue maximization and financial development.

20. Foster Parent Board Rates

There shall be an annual adjustment at the beginning of each fiscal year of board rates for all foster and adoptive homes to equal the USDA annual adjustment to maintain rates consistent with USDA standards for costs of raising a child in the urban south.

SECTION III: 2007 STRATEGY PLAN TO ACHIEVE CRITICAL SAFETY, PERMANENCE AND WELL-BEING OUTCOMES

CFSA will implement the following Annual Strategy Plan with identified action steps designed to achieve safety, permanency and well-being for children and to reach and sustain the performance goals of the Amended LaShawn Implementation Plan (AIP). The strategies and actions steps in this plan are in critical areas related to outcomes, including placements, investigations, visitation, case planning, and health and mental health services.

The Parties agree that the Defendant's Strategy Plan and actions steps are a means to achieving compliance with the required outcomes. The action steps are enforceable by the Court but can be changed or deleted with the approval of the Court Monitor. The Strategy Plan will be updated annually in consultation with the Plaintiffs and the Court Monitor and is subject to approval by the Court Monitor.

A. GOAL: CHILD SAFETY

1. Action Steps to Improve Child Protective Services

- a. Caseloads. CFSA will continue "overstaffing" in Child Protective Services (CPS) to maintain low investigator caseloads (not to exceed 1:12) and/or support creation of an assessment unit. Supervisors will assign new investigations to investigators according to a rotational schedule that includes two consecutive off-rotation days. Ongoing.
- b. Management. CFSA will maintain twice-daily screening panels to ensure those cases appropriate for investigation are accepted and that the Assessment Unit will evaluate allegations that may involve issues other than abuse or neglect. Ongoing.
- c. Hotline. The Hotline Supervisor and Program Manager will review regularly the Hotline recording system tapes to assess individual Hotline worker performance as well as overall Hotline functioning, and will implement improvements as needed. Ongoing.
- d. Quality of Investigations. CFSA workers will use **Structured Decision Making (SDM[®])** to assess child safety and family risk levels during investigations and throughout the life of a case. All families at low or moderate risk of abusing or neglecting their children will be referred to the Healthy Families/Thriving Communities Collaboratives for intervention and support designed to prevent entries into foster care. CFSA will review FACES reports to monitor workers'

contacts with collateral contacts during an investigation. See also section below on quality assurance. Ongoing.

- e. CPS training – CFSA will develop training curricula and provide training to address supervisory training needs as well as line worker training needs. Training will include forensic interviewing skill development for workers in the special abuse and institutional abuse units and documentation and critical thinking in child welfare assessment for all CPS workers. Complete by December, 2007.

B. GOAL: PERMANENCE

1. Action Steps to Enhance Placement Capacity

- a. Create appropriate placement capacity:
 - i. MTFC. CFSA will contract for family-based Multidisciplinary Treatment Foster Care (MTFC) for 20 youths with serious to severe emotional and behavior problems. Services available by May, 2007.
 - ii. Teen transitional services. CFSA will create 16 teen bridge services placements for older youths not yet ready to live independently but too old for traditional group homes. Services available by June 30, 2007.
 - iii. Placements for special-needs children. CFSA will award contracts to provide placement and supportive services to 40 children with serious medical and/or developmental disabilities. One contract will be for twenty new foster home beds; the second will be for 20 congregate care beds that are already available but are covered by a sole source contract, so the net gain will be 20 special needs placements. July, 2007.
 - iv. Placements for teens and large sibling groups: CFSA will develop and implement a plan with timelines to develop strategies regarding placement of teens who repeatedly experience disrupted placements and placement of large sibling groups. Plan with time frames for implementation developed by April 30, 2007.
 - v. STAR emergency beds: Create 4 additional emergency foster home beds in D.C. Maintain a total capacity of 10 STAR placements by March, 2007.
- b. Media campaign to create new foster and adoptive resources. CFSA will continue efforts to increase community awareness of the need for foster parents and to increase calls to the recruitment line. CFSA will launch a recruitment campaign to address sibling groups of all ages. CFSA will work with True Insight

Marketing through the Annie E. Casey Foundation to help address recruitment and retention and will implement the Adoptive and Foster home recruitment plan previously developed and submitted to the Court Monitor. Ongoing.

- c. Family Team Meetings. CFSA will conduct a Family Team Meeting (FTM) whenever a child is at risk of removal, has been removed from home, is removed from his/her current placement, or is at risk of placement disruption. CFSA will develop and implement FTM plan that includes how FTM will be used to inform the case planning process and shall develop a system to assure the implementation of case planning steps and the delivery of service needs identified in the FTM. Placement FTMs will be conducted within three days in cases of removals and Replacement FTMs before the placement disrupts. Where a placement has already disrupted or a child returns from abscondence, an FTM will be held within 7 days. Ongoing with a date for full implementation by December 31, 2007.

2. Action Steps to Reduce Multiple Placements and Improve Stability

- a. Improve interagency coordination. District leadership will convene a summit on increasing permanency and placement stability for youth in multiple systems that includes representatives from CFSA, DMH, DHS, DOH, Family Court, City Council, Court Monitor, placement providers, foster parents, Citizen Review Panel, the Collaboratives, youth, Casey Programs and others. CFSA and its partners will develop and execute agreements based upon strategies developed during summit. September 2007.
- b. Seek technical assistance from AECF, Casey Family Programs and/or national resource centers. CFSA will obtain technical assistance and develop work plan that restructures service system for youth, and creates a strong placement and service continuum that meets the needs of youth and strengthens permanency. February, 2007 and ongoing. Work plan developed by April 30, 2007.
- c. Family Finding/ Youth Connections. CFSA will implement Youth Connections to identify people who will remain permanent connections for youth and augment it with Family Finding, to identify extended family members with whom committed youth may have not had contact since they entered care but who may be interested in establishing permanent relationships. Training and pilot phase to begin by March, 2007, plan developed by April 30, 2007 with implementation by December, 2007.
- d. Enhance and target foster parent training and retraining and support. CFSA shall obtain technical assistance for skill building relating to recruiting the right mix of foster parents and in general recruiting, developing and supporting resource families. Assistance will be obtained in designing an effective campaign to meet CFSA recruitment and support needs. CFSA will continue pilot test of

Mockingbird Model for some CFSA homes and evaluate the results. A full time social worker will be assigned to support STAR homes. February 2007 and ongoing.

- e. Implement Levels of Care approach to foster parent reimbursement rates. Implement the Child Needs/Provider Interventions assessment instrument, a tool which social workers and foster parents complete together to identify a child's needs and the interventions/services they require and then which is rated by an independent reviewer who will match it with a pre-established actuarial scale of reimbursement rates based on identified needs. Implement in summer 2007 for CFSA case-managed children with beginning implementation in private child placement agencies by October, 2008. 2007 accomplishments will include development of the weighted rating scale and schedule of rates, development of training materials for foster parents and social workers, and the necessary FACES build.
- f. Expand placement with kin. CFSA will identify and reduce barriers to temporary licensing with kin in the District and continue work with Maryland concerning kin placements. CFSA will create specific kinship support resources to include: targeted in service training, dedicated kin foster parent support workers, access to respite services and to in home support services. CFSA shall publish an emergency amendment to foster home rules that will allow the Director, upon written application and for good cause, to waive foster home rules that do not adversely affect child safety. April, 2007 and ongoing.
- g. Acquire more specific data on the issue of multiple placements. CFSA will develop capacity to produce reliable cohort data in FACES; complete study of the experiences of girls 15-17 years old and develop and begin implementation of strategies that address the results of Fall 2006 QSRs that focused on teens. The teen and sibling placement work plan will include action steps to address multiple placements. Complete by December, 2007.

3. Action Steps to Enhance Case Practice

- a. Maintain caseloads at the following levels:
 - i. The caseload of each worker² conducting investigations of reports of abuse and/or neglect shall not exceed the MFO standard, which is 1:12 investigations.

² All requirements apply to both CFSA workers and private agency workers. All CFSA contracts with private agencies providing foster care services shall include performance expectations for visitation of children in foster care in compliance with MFO visitation requirements.

- ii. The caseload of each worker providing services to children and families in which the child or children in the family are living in their home shall not exceed 1:15 families.
 - iii. The caseload of each worker providing services to children in placement, including children in Emergency Care and children in any other form of CFSA physical custody, shall not exceed 1:15 children for children in foster care.
 - iv. The caseload of each Permanency Specialist shall not exceed 30 children with the goal of adoption/guardianship. An implementation assessment shall be completed to determine effectiveness.
 - v. The caseload of each worker having responsibility for conducting home studies shall not exceed 30 cases.
 - vi. There shall be no cases unassigned to a social worker for more than five business days, in which case, the supervisor shall provide coverage but not for more than five business days.
- b. Improve in-home practice. CFSA will develop and implement an in-home case practice model that reflects Agency practice model and that articulates specific expectations and protocols for serving children and families within their homes, and strengthens capacity of birth families to keep their children safe at home and provide adequately for their needs. June, 2007.
 - c. Use Data to Track Worker visits and case plans. Supervisors will use worker specific data to monitor visits and case plans. Ongoing.
 - d. Case planning. Using outside consultants, CFSA will train staff on the teaming process with families for development and implementation of case plans. September 30, 2007.
 - e. Creation of Permanency Specialists. CFSA will implement a model of permanency specialists who work with out-of-home care social workers to support concurrent permanency planning from the time a child enters foster care through reunification, guardianship, adoption, or living independently. Implementation of a pilot is underway and an evaluation of the redesign will run concurrent to the pilot. Ongoing.
 - f. Child specific recruitment staffings. CFSA will use contract agencies (i.e. Spalding) for child specific recruitment when initial recruitment efforts are not successful. Grant funds will be used to hire a specific recruiter that will use non-traditional recruitment methods for hard-to-place children. Ongoing; Child-specific recruiter to be hired by April 15, 2007.

- g. Development of post-permanence services. CFSA will create an array of post-permanency services including mental health services for children and youth and support services. Ongoing.

C. GOAL: CHILD WELL-BEING

1. Action Steps to Meet Children's Health and Dental Needs

- a. DC Kids Contract. CFSA will execute a new contract with DC Kids to include a community-based DC KIDS clinic for pre-placement medical and behavioral screenings and a comprehensive Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) examination within 30 days of entering care, care coordination and appointment scheduling and technology enhancements to ensure data transfer between CFSA and DC KIDS to capture fully the services children receive. Contract effective May 1, 2007; Implementation ongoing.
- b. Access to child's prior medical history. District of Columbia will implement new legislation that requires health professionals and others to provide access to medical records immediately upon request. Ongoing.
- c. Improved information exchange with MAA. CFSA will collaborate with MAA and the MCOs to develop a tracking and monitoring process that will provide the MCOs with alerts that youths under their care are receiving services from CFSA. CFSA will collaborate with MAA to determine the feasibility of CFSA's access to MAA's EPSDT registry, to learn from MAA whether a child receiving services from CFSA is current in the EPSDT examination. CFSA will ensure OCP staff have access to and are trained on the SPIS system. Ongoing; Feasibility assessment completed by August 31, 2007. SPIS training completed by April 1, 2007.
- d. Closing gaps in dental services. CFSA will finalize arrangements for services with "Small Smiles", a dental clinic in DC that serves Medicaid children ages 3 to 20 and includes Bilingual staff of dentists, hygienists and dental assistants. Assess capacity and develop and implement a referral process by March 31, 2007. Implementation by March 31, 2007.

2. Action Steps to Enhance Capacity of Mental Health Providers, Expand the Service Array and Improve Children's Mental Health Services Infrastructure at the Department of Mental Health

- a. Complete needs assessment of CFSA-involved children and youth's mental and behavioral health needs by March 31, 2007 and utilize the results to identify any additional specific service needs and enhancement strategies. Analysis will include whether Medicaid dollars can be used to fund identified services within the DMH MHRS structure and the amount of local dollars that are required to support the needed, non Medicaid-eligible services. Needs assessment by March 31, 2007; Plan to implement the Needs Assessment to be developed by May 15, 2007.
- b. Issue a Request for Information (RFI) for a dedicated network of 3-5 mental health providers to provide court ordered mental health assessments and meet service needs as identified in the needs assessment of CFSA clients/parents in the District of Columbia and Maryland. Providers will serve children in CFSA's custody and their parents and will be funded through MHRS dollars. Children and parents served by CFSA but not in its custody will be served by Medicaid managed care organizations (MCOs); with MAA, we will ensure the MCOs are prepared to serve children and families 24 hours/7 days per week. August 31, 2007.
- c. Amend DMH clinical criteria for prior authorization to provide that every child discharged from a psychiatric hospitalization or who experienced more than two placements in one twelve month period will qualify for community and home-based interventions through DMH's community-based intervention services. March 1, 2007.
- d. Ensure access to Automated Client Eligibility Determination System (ACEDS) by CFSA Behavioral Services to determine the name of the assigned MCO for the parent or the child upon entry into care to begin to access existing linkages early. March 1, 2007.
- e. Develop and implement community alternative wrap around services for District youth at risk for an out of home Residential Treatment Center (RTC) placement and for CFSA youth that have experienced multiple placements and/or hospitalizations. Medicaid State Plan Amendment will be submitted to CMS by September 30, 2007 and implementation will follow CMS approval.

- f. Develop crisis intervention services to support and stabilize a child's placement (in-home or in foster home) as follows: 1) by May, 2007, make available to foster and birth parents 1:1 support services by behavioral specialists and provide up to 3 days respite care; 2) by July 1, 2007, develop statement of work, budget and propose funding source and implementation steps for crisis intervention services program to be operational for FY 2008.
- g. Establish additional staffing at DMH to support enhanced children's mental health services to include a) systems coordinator/program manager for Medicaid eligible and non-Medicaid eligible services; b) a program analyst to analyze data and program effectiveness; c) CBI coordinator; d) A staff to coordinate all referrals from CFSA within the public mental health system in collaboration with the CFSA Behavioral Services Unit; and e) 1 psychologist and 1 clinical social worker to be assigned to CFSA's child protection unit under the direct supervision of CFSA's Behavioral Services Unit. DMH will review its staffing allocation to determine its current resource capacity and determine amount of additional funding, if any, needed for these positions. Plan completed by March 31, 2007 with staff to be hired no later than July 1, 2007.
- h. Issue RFP for Hurt Home for residential services for children ages 6-12 and for other specialized day programming. February 5, 2007 with expectation of contract for services by June 1, 2007.
- i. CFSA to determine the amount of funding needed to be maintained in CFSA budget for FY08 to purchase mental health services needed for CFSA-involved children and families and not available through DMH provided or contracted resources. Prior to FY 08 budget development.

D. GOAL: SYSTEM ACCOUNTABILITY

1. Continue Administrative Reviews, internal Fatality Reviews, and special studies of internal service delivery (sometimes done collaboratively with the Center for the Study of Social Policy). CFSA will implement monthly QSRs throughout the agency at the unit level in spring, 2007, share results and recommendations agency wide across the agency, and conduct agency-wide QSR annually. Ongoing.
2. Establish a Continuous Quality Improvement (CQI) system that engages both staff and external stakeholders in reviewing and improving practice. CFSA will update the Quality Assurance Plan completed in 2004 to incorporate specific outcomes and indicators for measuring them, building on practice standards in the Amended Implementation Plan. CFSA will develop a work plan and timetable that incorporate concrete strategies for embedding a CQI approach into the culture of the agency; an assessment of resources needed and a strategy to identify and provide those resources; engage external partners and stakeholders in CQI; include training for all participants; use existing and new quantitative and qualitative data for review and analysis; and systematically use results to improve policy, practice, and programs. CFSA will share reports and other results of these efforts with the public via our website. Revised QA Plan by April 30, 2007. Implementation ongoing.
3. Complete training on the flexible fund policy by March 1, 2007 and utilize requests made during the last six months of 2006 to project amount of 2008 fund. March, 2007 and ongoing.
4. Performance monitoring of private agencies CFSA will continue the use of Scorecards to monitor performance in the private agencies. Contracts with private agencies will include financial incentives and disincentives tied to performance, and CFSA will take all steps necessary to enforce the terms of private agency contracts, including the use of financial incentives and disincentives tied to performance. On-going.

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REGISTER OF WAGE DETERMINATIONS UNDER | U.S. DEPARTMENT OF LABOR
 THE SERVICE CONTRACT ACT | EMPLOYMENT STANDARDS ADMINISTRATION
 By direction of the Secretary of Labor | WAGE AND HOUR DIVISION
 | WASHINGTON D.C. 20210

| Wage Determination No.: 2005-2103
 William W.Gross Division of | Revision No.: 4
 Director Wage Determinations| Date Of Revision: 07/05/2007

States: District of Columbia, Maryland, Virginia

Area: District of Columbia Statewide
 Maryland Counties of Calvert, Charles, Frederick, Montgomery, Prince George's, St
 Mary's
 Virginia Counties of Alexandria, Arlington, Fairfax, Falls Church, Fauquier, King
 George, Loudoun, Prince William, Stafford

****Fringe Benefits Required Follow the Occupational Listing****

OCCUPATION CODE - TITLE	MINIMUM WAGE RATE
01000 - Administrative Support And Clerical Occupations	
01011 - Accounting Clerk I	13.79
01012 - Accounting Clerk II	15.49
01013 - Accounting Clerk III	18.43
01020 - Administrative Assistant	23.59
01040 - Court Reporter	18.43
01051 - Data Entry Operator I	12.67
01052 - Data Entry Operator II	13.82
01060 - Dispatcher, Motor Vehicle	16.50
01070 - Document Preparation Clerk	13.29
01090 - Duplicating Machine Operator	13.29
01111 - General Clerk I	13.72
01112 - General Clerk II	15.32
01113 - General Clerk III	18.74
01120 - Housing Referral Assistant	21.66
01141 - Messenger Courier	10.23
01191 - Order Clerk I	14.74
01192 - Order Clerk II	16.29
01261 - Personnel Assistant (Employment) I	15.60
01262 - Personnel Assistant (Employment) II	18.43
01263 - Personnel Assistant (Employment) III	21.66
01270 - Production Control Clerk	21.29

01280 - Receptionist	12.72
01290 - Rental Clerk	15.60
01300 - Scheduler, Maintenance	15.60
01311 - Secretary I	17.03
01312 - Secretary II	18.39
01313 - Secretary III	21.66
01320 - Service Order Dispatcher	15.82
01410 - Supply Technician	23.59
01420 - Survey Worker	18.43
01531 - Travel Clerk I	12.07
01532 - Travel Clerk II	13.01
01533 - Travel Clerk III	13.99
01611 - Word Processor I	13.76
01612 - Word Processor II	15.60
01613 - Word Processor III	18.43
05000 - Automotive Service Occupations	
05005 - Automobile Body Repairer, Fiberglass	25.26
05010 - Automotive Electrician	21.37
05040 - Automotive Glass Installer	20.14
05070 - Automotive Worker	20.14
05110 - Mobile Equipment Servicer	17.31
05130 - Motor Equipment Metal Mechanic	22.53
05160 - Motor Equipment Metal Worker	20.14
05190 - Motor Vehicle Mechanic	22.53
05220 - Motor Vehicle Mechanic Helper	16.81
05250 - Motor Vehicle Upholstery Worker	19.66
05280 - Motor Vehicle Wrecker	20.14
05310 - Painter, Automotive	21.37
05340 - Radiator Repair Specialist	20.14
05370 - Tire Repairer	14.43
05400 - Transmission Repair Specialist	22.53
07000 - Food Preparation And Service Occupations	
07010 - Baker	13.18
07041 - Cook I	11.97
07042 - Cook II	13.28
07070 - Dishwasher	9.76
07130 - Food Service Worker	10.25
07210 - Meat Cutter	16.07
07260 - Waiter/Waitress	8.59
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	18.05
09040 - Furniture Handler	12.78
09080 - Furniture Refinisher	18.39
09090 - Furniture Refinisher Helper	14.11
09110 - Furniture Repairer, Minor	16.31
09130 - Upholsterer	18.05
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	9.67
11060 - Elevator Operator	9.79
11090 - Gardener	15.70

11122 - Housekeeping Aide	10.89
11150 - Janitor	10.89
11210 - Laborer, Grounds Maintenance	12.07
11240 - Maid or Houseman	10.84
11260 - Pruner	11.37
11270 - Tractor Operator	14.19
11330 - Trail Maintenance Worker	12.07
11360 - Window Cleaner	11.31
12000 - Health Occupations	
12010 - Ambulance Driver	16.06
12011 - Breath Alcohol Technician	17.67
12012 - Certified Occupational Therapist Assistant	20.31
12015 - Certified Physical Therapist Assistant	19.99
12020 - Dental Assistant	16.90
12025 - Dental Hygienist	40.68
12030 - EKG Technician	24.34
12035 - Electroneurodiagnostic Technologist	24.34
12040 - Emergency Medical Technician	17.67
12071 - Licensed Practical Nurse I	18.60
12072 - Licensed Practical Nurse II	20.82
12073 - Licensed Practical Nurse III	21.79
12100 - Medical Assistant	14.23
12130 - Medical Laboratory Technician	18.04
12160 - Medical Record Clerk	14.96
12190 - Medical Record Technician	16.67
12195 - Medical Transcriptionist	16.46
12210 - Nuclear Medicine Technologist	28.93
12221 - Nursing Assistant I	9.75
12222 - Nursing Assistant II	10.96
12223 - Nursing Assistant III	12.99
12224 - Nursing Assistant IV	14.58
12235 - Optical Dispenser	16.67
12236 - Optical Technician	14.41
12250 - Pharmacy Technician	15.75
12280 - Phlebotomist	14.58
12305 - Radiologic Technologist	27.61
12311 - Registered Nurse I	24.92
12312 - Registered Nurse II	31.22
12313 - Registered Nurse II, Specialist	31.22
12314 - Registered Nurse III	37.77
12315 - Registered Nurse III, Anesthetist	37.77
12316 - Registered Nurse IV	45.28
12317 - Scheduler (Drug and Alcohol Testing)	18.04
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	18.55
13012 - Exhibits Specialist II	23.33
13013 - Exhibits Specialist III	28.11
13041 - Illustrator I	18.73
13042 - Illustrator II	23.42
13043 - Illustrator III	28.82

13047 - Librarian	25.45	
13050 - Library Aide/Clerk	12.52	
13054 - Library Information Technology Systems Administrator		22.99
13058 - Library Technician	17.88	
13061 - Media Specialist I	16.58	
13062 - Media Specialist II	18.55	
13063 - Media Specialist III	20.68	
13071 - Photographer I	14.67	
13072 - Photographer II	17.18	
13073 - Photographer III	21.52	
13074 - Photographer IV	26.05	
13075 - Photographer V	29.15	
13110 - Video Teleconference Technician		16.58
14000 - Information Technology Occupations		
14041 - Computer Operator I	16.72	
14042 - Computer Operator II	18.71	
14043 - Computer Operator III	20.86	
14044 - Computer Operator IV	23.18	
14045 - Computer Operator V	25.66	
14071 - Computer Programmer I (1)	21.60	
14072 - Computer Programmer II (1)	26.37	
14073 - Computer Programmer III (1)	27.62	
14074 - Computer Programmer IV (1)	27.62	
14101 - Computer Systems Analyst I (1)	27.62	
14102 - Computer Systems Analyst II (1)	27.62	
14103 - Computer Systems Analyst III (1)	27.62	
14150 - Peripheral Equipment Operator	16.72	
14160 - Personal Computer Support Technician		23.18
15000 - Instructional Occupations		
15010 - Aircrew Training Devices Instructor (Non-Rated)		34.39
15020 - Aircrew Training Devices Instructor (Rated)		42.72
15030 - Air Crew Training Devices Instructor (Pilot)		50.66
15050 - Computer Based Training Specialist / Instructor		31.26
15060 - Educational Technologist	29.09	
15070 - Flight Instructor (Pilot)	50.66	
15080 - Graphic Artist	24.95	
15090 - Technical Instructor	23.87	
15095 - Technical Instructor/Course Developer		29.19
15110 - Test Proctor	19.04	
15120 - Tutor	19.04	
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations		
16010 - Assembler	8.95	
16030 - Counter Attendant	8.95	
16040 - Dry Cleaner	12.21	
16070 - Finisher, Flatwork, Machine	8.95	
16090 - Presser, Hand	8.95	
16110 - Presser, Machine, Drycleaning	8.95	
16130 - Presser, Machine, Shirts	8.95	
16160 - Presser, Machine, Wearing Apparel, Laundry		8.95
16190 - Sewing Machine Operator	12.30	

16220 - Tailor	13.01	
16250 - Washer, Machine	9.81	
19000 - Machine Tool Operation And Repair Occupations		
19010 - Machine-Tool Operator (Tool Room)		18.95
19040 - Tool And Die Maker	23.05	
21000 - Materials Handling And Packing Occupations		
21020 - Forklift Operator	17.26	
21030 - Material Coordinator	21.29	
21040 - Material Expediter	21.29	
21050 - Material Handling Laborer	12.65	
21071 - Order Filler	13.21	
21080 - Production Line Worker (Food Processing)		17.28
21110 - Shipping Packer	14.46	
21130 - Shipping/Receiving Clerk	14.46	
21140 - Store Worker I	10.44	
21150 - Stock Clerk	14.35	
21210 - Tools And Parts Attendant	17.26	
21410 - Warehouse Specialist	17.26	
23000 - Mechanics And Maintenance And Repair Occupations		
23010 - Aerospace Structural Welder	25.68	
23021 - Aircraft Mechanic I	24.46	
23022 - Aircraft Mechanic II	25.68	
23023 - Aircraft Mechanic III	26.97	
23040 - Aircraft Mechanic Helper	16.61	
23050 - Aircraft, Painter	23.42	
23060 - Aircraft Servicer	18.71	
23080 - Aircraft Worker	19.90	
23110 - Appliance Mechanic	20.60	
23120 - Bicycle Repairer	14.43	
23125 - Cable Splicer	24.98	
23130 - Carpenter, Maintenance	20.36	
23140 - Carpet Layer	18.70	
23160 - Electrician, Maintenance	25.37	
23181 - Electronics Technician Maintenance I		22.08
23182 - Electronics Technician Maintenance II		23.44
23183 - Electronics Technician Maintenance III		24.70
23260 - Fabric Worker	17.90	
23290 - Fire Alarm System Mechanic	21.46	
23310 - Fire Extinguisher Repairer	16.50	
23311 - Fuel Distribution System Mechanic	22.81	
23312 - Fuel Distribution System Operator	19.38	
23370 - General Maintenance Worker	20.91	
23380 - Ground Support Equipment Mechanic	24.46	
23381 - Ground Support Equipment Servicer	18.71	
23382 - Ground Support Equipment Worker	19.90	
23391 - Gunsmith I	16.50	
23392 - Gunsmith II	19.18	
23393 - Gunsmith III	21.46	
23410 - Heating, Ventilation And Air-Conditioning Mechanic		21.96
23411 - Heating, Ventilation And Air Contditioning Mechanic (Research Facility)		

23.13		
23430 - Heavy Equipment Mechanic	21.46	
23440 - Heavy Equipment Operator	21.46	
23460 - Instrument Mechanic	21.46	
23465 - Laboratory/Shelter Mechanic	20.36	
23470 - Laborer	14.27	
23510 - Locksmith	19.76	
23530 - Machinery Maintenance Mechanic	21.77	
23550 - Machinist, Maintenance	21.52	
23580 - Maintenance Trades Helper	15.10	
23591 - Metrology Technician I	21.46	
23592 - Metrology Technician II	22.61	
23593 - Metrology Technician III	23.72	
23640 - Millwright	23.30	
23710 - Office Appliance Repairer	21.00	
23760 - Painter, Maintenance	20.36	
23790 - Pipefitter, Maintenance	22.76	
23810 - Plumber, Maintenance	20.99	
23820 - Pneudraulic Systems Mechanic	21.46	
23850 - Rigger	21.46	
23870 - Scale Mechanic	19.18	
23890 - Sheet-Metal Worker, Maintenance	21.46	
23910 - Small Engine Mechanic	20.05	
23931 - Telecommunications Mechanic I	25.22	
23932 - Telecommunications Mechanic II	26.58	
23950 - Telephone Lineman	24.43	
23960 - Welder, Combination, Maintenance	21.46	
23965 - Well Driller	21.46	
23970 - Woodcraft Worker	21.46	
23980 - Woodworker	16.50	
24000 - Personal Needs Occupations		
24570 - Child Care Attendant	11.58	
24580 - Child Care Center Clerk	16.15	
24610 - Chore Aide	9.58	
24620 - Family Readiness And Support Services Coordinator	12.95	
24630 - Homemaker	16.75	
25000 - Plant And System Operations Occupations		
25010 - Boiler Tender	24.98	
25040 - Sewage Plant Operator	20.23	
25070 - Stationary Engineer	24.98	
25190 - Ventilation Equipment Tender	17.56	
25210 - Water Treatment Plant Operator	20.23	
27000 - Protective Service Occupations		
27004 - Alarm Monitor	17.66	
27007 - Baggage Inspector	11.51	
27008 - Corrections Officer	19.83	
27010 - Court Security Officer	23.26	
27030 - Detection Dog Handler	17.66	
27040 - Detention Officer	19.83	
27070 - Firefighter	22.39	

27101 - Guard I	11.51	
27102 - Guard II	17.66	
27131 - Police Officer I	23.94	
27132 - Police Officer II	26.60	
28000 - Recreation Occupations		
28041 - Carnival Equipment Operator	12.35	
28042 - Carnival Equipment Repairer	13.30	
28043 - Carnival Equipment Worker	8.40	
28210 - Gate Attendant/Gate Tender	13.01	
28310 - Lifeguard	11.59	
28350 - Park Attendant (Aide)	14.56	
28510 - Recreation Aide/Health Facility Attendant		10.62
28515 - Recreation Specialist	18.04	
28630 - Sports Official	11.59	
28690 - Swimming Pool Operator	16.85	
29000 - Stevedoring/Longshoremen Occupational Services		
29010 - Blocker And Bracer	20.55	
29020 - Hatch Tender	20.55	
29030 - Line Handler	20.55	
29041 - Stevedore I	19.18	
29042 - Stevedore II	21.64	
30000 - Technical Occupations		
30010 - Air Traffic Control Specialist, Center (HFO) (2)		34.71
30011 - Air Traffic Control Specialist, Station (HFO) (2)		23.94
30012 - Air Traffic Control Specialist, Terminal (HFO) (2)		26.36
30021 - Archeological Technician I	17.06	
30022 - Archeological Technician II	19.03	
30023 - Archeological Technician III	23.76	
30030 - Cartographic Technician	24.85	
30040 - Civil Engineering Technician	22.19	
30061 - Drafter/CAD Operator I	17.92	
30062 - Drafter/CAD Operator II	20.06	
30063 - Drafter/CAD Operator III	22.36	
30064 - Drafter/CAD Operator IV	27.51	
30081 - Engineering Technician I	20.19	
30082 - Engineering Technician II	22.67	
30083 - Engineering Technician III	25.37	
30084 - Engineering Technician IV	31.43	
30085 - Engineering Technician V	38.44	
30086 - Engineering Technician VI	46.51	
30090 - Environmental Technician	21.36	
30210 - Laboratory Technician	22.36	
30240 - Mathematical Technician	26.31	
30361 - Paralegal/Legal Assistant I	20.03	
30362 - Paralegal/Legal Assistant II	24.82	
30363 - Paralegal/Legal Assistant III	30.35	
30364 - Paralegal/Legal Assistant IV	36.73	
30390 - Photo-Optics Technician	24.85	
30461 - Technical Writer I	20.69	
30462 - Technical Writer II	25.30	

30463 - Technical Writer III	30.61	
30491 - Unexploded Ordnance (UXO) Technician I		22.06
30492 - Unexploded Ordnance (UXO) Technician II		26.69
30493 - Unexploded Ordnance (UXO) Technician III		31.99
30494 - Unexploded (UXO) Safety Escort		22.06
30495 - Unexploded (UXO) Sweep Personnel		22.06
30620 - Weather Observer, Combined Upper Air Or Surface Programs (2)	22.14	
30621 - Weather Observer, Senior (2)	23.98	
31000 - Transportation/Mobile Equipment Operation Occupations		
31020 - Bus Aide	11.99	
31030 - Bus Driver	17.54	
31043 - Driver Courier	12.71	
31260 - Parking and Lot Attendant	9.06	
31290 - Shuttle Bus Driver	13.89	
31310 - Taxi Driver	13.98	
31361 - Truckdriver, Light	13.89	
31362 - Truckdriver, Medium	17.09	
31363 - Truckdriver, Heavy	18.40	
31364 - Truckdriver, Tractor-Trailer	18.40	
99000 - Miscellaneous Occupations		
99030 - Cashier	10.03	
99050 - Desk Clerk	10.45	
99095 - Embalmer	21.77	
99251 - Laboratory Animal Caretaker I	10.47	
99252 - Laboratory Animal Caretaker II	10.85	
99310 - Mortician	27.25	
99410 - Pest Controller	14.54	
99510 - Photofinishing Worker	11.59	
99710 - Recycling Laborer	15.73	
99711 - Recycling Specialist	18.72	
99730 - Refuse Collector	14.01	
99810 - Sales Clerk	11.87	
99820 - School Crossing Guard	11.37	
99830 - Survey Party Chief	19.76	
99831 - Surveying Aide	12.28	
99832 - Surveying Technician	18.78	
99840 - Vending Machine Attendant	12.61	
99841 - Vending Machine Repairer	16.37	
99842 - Vending Machine Repairer Helper	12.61	

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$3.16 per hour or \$126.40 per week or \$547.73 per month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; 3 weeks after 5 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or

successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year, New Year's Day, Martin Luther King Jr's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4174)

THE OCCUPATIONS WHICH HAVE PARENTHESES AFTER THEM RECEIVE THE FOLLOWING BENEFITS (as numbered):

1) Does not apply to employees employed in a bona fide executive, administrative, or professional capacity as defined and delineated in 29 CFR 541. (See CFR 4.156)

2) **AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY:** If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**** UNIFORM ALLOWANCE ****

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition, April 2006, unless otherwise indicated. Copies of the Directory are available on the Internet. A links to the Directory may be found on the WHD home page at <http://www.dol.gov/esa/whd/> or through the Wage Determinations On-Line (WDOL) Web site at <http://wdol.gov/>.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. {See Section 4.6 (C)(vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation) and computes a proposed rate).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title), a Federal grade equivalency (FGE) for each proposed classification), job description), and rationale for proposed wage rate), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour decision to the contractor.
- 6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.

YOUR LETTERHEAD

EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY STATEMENT

_____ SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, OR PHYSICAL HANDICAP.

_____ AGREES TO AFFIRMATIVE ACTION TO ENSURE THAT APPLICANTS ARE EMPLOYED, AND THAT EMPLOYEES ARE TREATED DURING EMPLOYMENT, WITHOUT REGARD TO THEIR RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, OR PHYSICAL HANDICAP. THE AFFIRMATIVE ACTION SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING: (A) EMPLOYMENT, UPGRADING, OR TRANSFER; (B) RECRUITMENT OR RECRUITMENT ADVERTISING; (C) DEMOTION, LAYOFF, OR TERMINATION; (D) RATES OF PAY, OR OTHER FORMS OF COMPENSATION; AND (E) SELECTION FOR TRAINING AND APPRENTICESHIP.

_____ AGREES TO POST IN CONSPICUOUS PLACES THE PROVISIONS CONCERNING NON-DISCRIMINATION AND AFFIRMATIVE ACTION.

_____ SHALL STATE THAT ALL QUALIFIED APPLICANTS WILL RECEIVE CONSIDERATION FOR EMPLOYMENT PURSUANT TO SUBSECTION 1103.2 THROUGH 1103.10 OF MAYOR'S ORDER 85-85; "EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS IN CONTRACTS."

_____ AGREES TO PERMIT ACCESS TO ALL BOOKS PERTAINING TO ITS EMPLOYMENT PRACTICES, AND TO REQUIRE EACH SUBCONTRACTOR TO PERMIT ACCESS TO BOOKS AND RECORDS.

_____ AGREES TO COMPLY WITH ALL GUIDELINES FOR EQUAL EMPLOYMENT OPPORTUNITY APPLICABLE IN THE DISTRICT OF COLUMBIA.

_____ SHALL INCLUDE IN EVERY SUBCONTRACT THE EQUAL OPPORTUNITY CLAUSES, SUBSECTION 1103.2 THROUGH 1103.10 SO THAT SUCH PROVISIONS SHALL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

AUTHORIZED OFFICIAL AND TITLE

AUTHORIZED SIGNATURE

FIRM/ORGANIZATION NAME

DATE

YOUR LETTERHEAD

ASSURANCE OF COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

MAYOR'S ORDER 85-85, EFFECTIVE JUNE 10, 1985, AND THE RULES IMPLEMENTING MAYOR'S ORDER 85-85, 33 DCR 4952, (PUBLISHED AUGUST 15, 1986), "ON COMPLIANCE WITH EQUAL OPPORTUNITY REQUIREMENTS IN DISTRICT GOVERNMENT CONTRACTS," ARE HEREBY INCLUDED AS PART OF THIS BID/PROPOSAL. THEREFORE, EACH BIDDER/OFFEROR SHALL INDICATE BELOW THEIR WRITTEN COMMITMENT TO ASSURE COMPLIANCE WITH MAYOR'S ORDER 85-85 AND THE IMPLEMENTING RULES. FAILURE TO COMPLY WITH THE SUBJECT MAYOR'S ORDER AND THE IMPLEMENTING RULES SHALL RESULT IN REJECTION OF THE RESPECTIVE BID/PROPOSAL.

I, _____, THE AUTHORIZED REPRESENTATIVE OF _____, HEREINAFTER REFERRED TO AS "THE CONTRACTOR," CERTIFY THAT THE CONTRACTOR IS FULLY AWARE OF ALL OF THE PROVISIONS OF MAYOR'S ORDER 85-85, EFFECTIVE JUNE 10, 1985, AND OF THE RULES IMPLEMENTING MAYOR'S ORDER 85-85, 33 DCR 4952. I FURTHER CERTIFY AND ASSURE THAT THE CONTRACTOR WILL FULLY COMPLY WITH ALL APPLICABLE PROVISIONS OF THE MAYOR'S ORDER AND IMPLEMENTING RULES IF AWARDED THE D.C. GOVERNMENT REFERENCED BY THE CONTRACT NUMBER ENTERED BELOW. FURTHER, THE CONTRACTOR ACKNOWLEDGES AND UNDERSTANDS THAT THE AWARD OF SAID CONTRACT AND ITS CONTINUATION ARE SPECIFICALLY CONDITIONED UPON THE CONTRACTOR'S COMPLIANCE WITH THE ABOVE-CITED ORDER AND RULES.

CONTRACTOR

NAME

SIGNATURE

TITLE

CONTRACT NUMBER

DATE

EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER INFORMATION REPORT

GOVERNMENT OF THE DISTRICT OF COLUMBIA DC Office of Contracting and Procurement Employer Information Report (EEO)	Reply to: Office of Contracting and Procurement 441 4 th Street, NW, Suite 700 South Washington, DC 20001
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Instructions:
 Two (2) copies of DAS 84-404 or Federal Form EEO-1 shall be submitted to the Office of Contracting and Procurement.
 One copy shall be retained by the Contractor.

Section A – TYPE OF REPORT

1. Indicate by marking in the appropriate box the type of reporting unit for which this copy of the form is submitted (MARK ONLY ONE BOX)

Single Establishment Employer (1) <input type="checkbox"/> Single-establishment Employer Report	Multi-establishment Employer: (2) <input type="checkbox"/> Consolidated Report (3) <input type="checkbox"/> Headquarters Report (4) <input type="checkbox"/> Individual Establishment Report (submit one for each establishment with 25 or more employees) (5) <input type="checkbox"/> Special Report
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1. Total number of reports being filed by this Company. _____

Section B – COMPANY IDENTIFICATION *(To be answered by all employers)*

1. Name of Company which owns or controls the establishment for which this report is filed	OFFICIAL USE ONLY
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Address (Number and street)	City or Town	Country	State	Zip Code	b.
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b. Employer Identification No.									
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2. Establishment for which this report is filed.	OFFICIAL USE ONLY
--	-------------------------

a. Name of establishment	c.
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Address (Number and street)	City or Town	Country	State	Zip Code	d.
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b. Employer Identification No.									
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3. Parent of affiliated Company	
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a. Name of parent or affiliated Company	b. Employer Identification No.								
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Address (Number and Street)	City or Town	Country	State	Zip Code
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Section C - ESTABLISHMENT INFORMATION

1. Is the location of the establishment the same as that reported last year? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Did not report last year <input type="checkbox"/> Report on combined basis	2. Is the major business activity at this establishment the same as that reported last year? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No report last year <input type="checkbox"/> Reported on combined basis	OFFICIAL USE ONLY
--	---	-------------------------

2. What is the major activity of this establishment? (Be specific, i.e., manufacturing steel castings, retail grocer, wholesale plumbing supplies, title insurance, etc. Include the specific type of product or service provided, as well as the principal business or industrial activity.	e.
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3. MINORITY GROUP MEMBERS: Indicate if you are a minority business enterprise (50% owned or 51% controlled by minority members). <div style="text-align: center;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div>	
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SECTION D – EMPLOYMENT DATA

Employment at this establishment – Report all permanent, temporary, or part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zero. *In columns 1, 2, and 3, include ALL employees in the establishment including those in minority groups*

JOB CATEGORIES	TOTAL EMPLOYEES IN ESTABLISHMENT			MINORITY GROUP EMPLOYEES								
	Total Employees Including Minorities (1)	Total Male Including Minorities (2)	Total Female Including Minorities (3)	MALE				FEMALE				
				Black (4)	Oriental (5)	American Indian (6)	Spanish Surname American (7)	Black (8)	Oriental (9)	American Indian (10)	Spanish Surname American (11)	
Officials and Managers												
Professionals												
Technicians												
Sales Workers												
Office and Clerical												
Craftsman (Skilled)												
Operative (Semi-Skilled)												
Laborers (Unskilled)												
Service Workers												
TOTAL												
Total employ reported in previous report												

(The trainee below should also be included in the figures for the appropriate occupation categories above)

Formal On-The-Job Trainee	White collar	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	Production											

1. How was information as to race or ethnic group in Section D obtained?
 a. Visual Survey c. Other Specify _____
 b. Employment Record _____
 2. Dates of payroll period used
 3. Pay period of last report submitted for this establishment. _____

Section E – REMARKS Use this Item to give any identification data appearing on last report which differs from that given above, explain major changes in composition or reporting units, and other pertinent information.

Section F - CERTIFICATION

- Check One 1. All reports are accurate and were prepared in accordance with the instructions (check on consolidated only)
 2. This report is accurate and was prepared in accordance with the instructions.

Name of Authorized Official	Title	Signature	Date
Name of person contact regarding This report (Type of print)	Address (Number and street)	City and State	Zip Code Telephone Number Extension

INFORMATION CITED HEREIN SHALL BE HELD IN CONFIDENCE.

DEPARTMENT OF HUMAN RIGHTS AND LOCAL BUSINESS DEVELOPMENT
CONTRACT COMPLIANCE UNIT

SUBCONTRACT SUMMARY FORM

This SUMMARY form is to be completed by the PRIME contractor.

BID NO.:	CCB NUMBER:	_____ of _____ pages
*NOTE: The standard for minority subcontracting is 25% of the TOTAL contract dollar amount to be subcontracted.		AMOUNT OF PRIME CONTRACT: \$ _____ AMOUNT OF ALL SUBCONTRACTS: \$ _____ equals _____% OF THE PRIME CONTRACT.
NAME OF PRIME CONTRACTOR:		ADDRESS:
TELEPHONE NO.:		
PROJECT NAME:		PROJECT DESCRIPTIONS:
ADDRESS:		
WARD NO.: _____		

SECTION II LIST ALL SUBCONTRACTORS THAT WILL BE UTILIZED ON THE ABOVE PROJECT

1. NAME OF SUBCONTRACTOR 2. ADDRESS 3. CONTACT PERSON 4. MBOC CERT. NO. 5. PHONE NO.	1. IS THIS A *MINORITY SUB? ____ YES ____ NO 2. TRADE OR BUSINESS PRODUCT THAT SUB WILL PROVIDE.	1. \$ AMOUNT OF SUBCONTRACT equals(=) 2. _____% (percent) OF TOTAL PRIME CONTRACT.
1. _____ 2. _____ 3. _____ 4. _____ 5. _____	1. MINORITY SUBCONTRACTOR ____ YES ____ NO 2. _____	1. \$ _____ equals(=) 2. _____%
1. _____ 2. _____ 3. _____ 4. _____ 5. _____	1. MINORITY SUBCONTRACTOR ____ YES ____ NO 2. _____	1. \$ _____ equals(=) 2. _____%
1. _____ 2. _____ 3. _____ 4. _____ 5. _____	1. MINORITY SUBCONTRACTOR ____ YES ____ NO 2. _____	1. \$ _____ equals(=) 2. _____%
1. _____ 2. _____ 3. _____ 4. _____ 5. _____	1. MINORITY SUBCONTRACTOR ____ YES ____ NO 2. _____	1. \$ _____ equals(=) 2. _____%
1. _____ 2. _____ 3. _____ 4. _____ 5. _____	1. MINORITY SUBCONTRACTOR ____ YES ____ NO 2. _____	1. \$ _____ equals(=) 2. _____%
1. _____ 2. _____ 3. _____ 4. _____ 5. _____	1. MINORITY SUBCONTRACTOR ____ YES ____ NO 2. _____	1. \$ _____ equals(=) 2. _____%
1. _____ 2. _____ 3. _____ 4. _____ 5. _____	1. MINORITY SUBCONTRACTOR ____ YES ____ NO 2. _____	1. \$ _____ equals(=) 2. _____%
1. _____ 2. _____ 3. _____ 4. _____ 5. _____	1. MINORITY SUBCONTRACTOR ____ YES ____ NO 2. _____	1. \$ _____ equals(=) 2. _____%
1. _____ 2. _____ 3. _____ 4. _____ 5. _____	1. MINORITY SUBCONTRACTOR ____ YES ____ NO 2. _____	1. \$ _____ equals(=) 2. _____%
1. _____ 2. _____ 3. _____ 4. _____ 5. _____	1. MINORITY SUBCONTRACTOR ____ YES ____ NO 2. _____	1. \$ _____ equals(=) 2. _____%
1. _____ 2. _____ 3. _____ 4. _____ 5. _____	1. MINORITY SUBCONTRACTOR ____ YES ____ NO 2. _____	1. \$ _____ equals(=) 2. _____%
1. _____ 2. _____ 3. _____ 4. _____ 5. _____	1. MINORITY SUBCONTRACTOR ____ YES ____ NO 2. _____	1. \$ _____ equals(=) 2. _____%

TOTAL DOLLAR AMOUNT SUBCONTRACTED TO *MINORITY BUSINESS ENTERPRISES. \$ _____

PERCENT OF PRIME CONTRACT. _____%

*D.C. LAW 1-95, as amended, defines a MINORITY BUSINESS ENTERPRISE as a business of which more than 50% is owned by members of a minority, and of which more than 50% of the net profit or loss accrues to members of a minority.

SOLICITATION NO: _____

PROJECTED GOALS AND TIMETABLES FOR FUTURE HIRING

MINORITY GROUP EMPLOYES GOALS					TIMETABLES				
JOB CATEGORIES	MALE				FEMALE				
	BLACK	ASIAN	AMERICAN INDIAN	HISPANIC	BLACK	ASIAN	AMERICAN INDIAN	HISPANIC	
OFFICIALS & MANAGERS									
PROFESSIONALS									
TECHNICIANS									
SALES WORKERS									
OFFICE AND CLERICAL									
CRAFTSMANS (SKILLELD)									
OPERATIVE (SEMI-SKILLED)									
LABORERS (UNSKILLED)									
SERVICE WORKERS									
TOTALS									
NAME OF AUTHORIZED OFFICIAL:				TITLE:			SIGNATURE:		
FIRM NAME:					TELEPHONE NO:		DATE:		
INDICATE IF THE PRIME UTILIZES A <u>“MINORITY FINANCIAL INSTITUTION”</u> _____ Yes _____ No NAME: ADDRESS: TYPE OF ACCOUNT/S:									

District of Columbia Register
GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

SUBJECT: Compliance with Equal Opportunity Obligations in Contracts

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by Section 422 of the District of Columbia self-government and Government Reorganization Act of 1973 as amended, D.C. Code section 1-242 (1981-Ed.), it is hereby ORDERED that Commissioner's Order No. 73-51, dated February 28, 1973, is hereby rescinded and reissued in its entirety to read as follows:

1. Establishment of Policy: There is established a policy of the District of Columbia Government to:
 - (a) provide equal opportunity in employment for all persons with respect to any contract by and with the Government of the District of Columbia.
 - (b) prohibit discrimination in employment because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap;
 - (c) provide equal opportunity to all persons for participation in all District of Columbia Government contracts, including but not limited to lease agreements, Industrial Revenue Bond financing, and Urban Development Action grants;
 - (d) provide equal opportunity to minority business enterprises in the performance of District of Columbia Government contracts in accordance with Mayor's Orders, District of Columbia laws, and rules and regulations promulgated by the Minority Business Opportunity Commission; and
 - (e) promote the full realization of equal employment through affirmative, continuing programs by contractors and subcontractors in the performance of contracts with the District of Columbia Government.
2. Delegation of Authority: The Director of the Office of Human Rights (hereinafter "Director") is delegated the authority vested in the Mayor to implement the provisions of this order as set forth herein, and any rules, regulations, guidelines, and procedures adopted pursuant thereto.
3. Responsibilities: The Director of the Office of Human Rights shall be responsible for establishing and ensuring agency compliance with the policy set forth in this Order, any rules, regulations, and procedures that may be adopted by the Office of Human Rights pursuant to this Order, and any other equal opportunity provisions as may be added as a part of any contract.
4. Powers and Duties: The Director of the Office of Human Rights shall have the following powers and duties:
 - (a) to establish standards and procedures by which contractors and subcontractors who perform under District of Columbia Government contracts shall comply with the equal opportunity provisions of their contracts; to issue all orders, rules, regulations, guidelines, and procedures the Director may deem necessary and proper for carrying out and implementing the purposes of this Order;
 - (b) to assume equal opportunity compliance jurisdiction over any matter pending before a contracting agency where the Director considers it necessary or appropriate for the achievement of the purposes of

this Order, keep the contracting agency informed of all actions taken, and act through the contracting agency to the extent appropriate and practicable;

- (c) to examine the employment practices of any District of Columbia Government contractor or subcontractor, or initiate the examination by the appropriate contracting agency to determine whether or not the contractual provisions specified in any rules and regulations adopted pursuant to this Order have been violated, and notify the contracting agency of any action taken or recommended;
- (d) to monitor and evaluate all District of Columbia Government agencies, including those independent agencies and commissions not required to submit the Affirmative Action Programs of their contractors to the Office of Human Rights for approval, to ensure compliance with the equal opportunity obligations in contracts;
- (e) to use his or her best efforts to cause any labor union engaged in work under District of Columbia Government contracts, any referral, recruiting or training agency, or any other representative of workers who are or may be engaged in work under contracts and subcontracts to cooperate in and to comply with the implementation of the purposes of this Order;
- (f) to notify, when appropriate, the concerned contracting agencies, the Office of Federal Contract Compliance Programs, the U.S. Department of Justice, or other appropriate Federal, State, and District agencies, whenever the Director has reason to believe that practices of any contractor, labor organization, lending institution, insurance firm, or agency violate provisions of Federal, State, or District, laws;
- (g) to enter, where the determinations are made by Federal, State, or District agencies, into reciprocal agreements with those agencies to receive the appropriate information;
- (h) to hold hearings, public or private, as necessary to obtain compliance with any rules, regulations, and procedures promulgated pursuant to this Order, and to issue orders relating thereto. No order to terminate or cancel a contract, or to withhold from any contractor further District of Columbia Government contractors shall be issued without affording the contractor an opportunity for a hearing. Any order to terminate or cancel a contract or to withhold from any contractor further District of Columbia Government contracts shall be issued in accordance with rules, and regulations pursuant to the Administrative Procedure Act, as amended and;
- (i) to grant waivers from the minimum standards for the employment of minorities and women in Affirmative Action Programs in exceptional cases, as circumstances may warrant.

5. Duties of Contracting Agencies: Each contracting agency shall have the following duties:

- (a) the initial responsibility for ensuring that contractors and subcontractors are in compliance with any rules, regulations, and procedures promulgated pursuant to this Order;
- (b) to examine the employment practices of contractors and subcontractors in accordance with procedures established by the Office of Human Rights, and report any compliance action to the Director of the Office of Human Rights;
- (c) to comply with the terms of this Order and of the orders, rules, regulations, guidelines, and procedures of the Office of Human Rights issued pursuant thereto in discharging their responsibility for securing contract compliance; and
- (d) to secure compliance with any rules, regulations, and procedures promulgated pursuant to this Order before or after the execution of a contract by methods, of conference, conciliation and persuasion. No enforcement proceedings shall be initiated, nor shall a contract be cancelled or terminated in whole or in part, unless such methods have first been attempted.

6. Procedures: The procedures to be followed in implementing this Order shall be those set forth in

Orders, rules, regulations, and guidelines as may be promulgated by the Office of Human Rights.

7. Severability: If any section, subsection, sentence, clause, phrase, or portion of the provisions in this Order is for any reason declared by any court of competent jurisdiction to be invalid or unconstitutional, such section, subsection, sentence, clause, phrase, or portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining provisions of this order.
8. Effective Date: This Order shall become effective immediately.

Signed by Marion Barry, Jr.
Mayor

ATTEST: Signed by Clifton B. Smith
Secretary of the District of Columbia

OFFICE OF HUMAN RIGHTS

NOTICE OF FINAL RULEMAKING

The Director of the Office of Human Rights hereby gives notice of the adoption of the following final rules governing standards and procedures for equal employment opportunity applicable to contractors and subcontractors under District of Columbia Government Contracts. Notice of Proposed Rulemaking was published for public comment in the D.C. Register on April 11, 1986 at 33 DCR 2243. Based on some the comments received and upon further review by the Office of Human Rights, minor revisions were made in the rules at the following subsections: 1104.1, 1104.2, 1104.4, 1104.13, 1104.17(e) (5), 1104.28, 1107.1, 1199.1, and at page 15 the definition of minority was written out in addition to citing its D.C. Code. None of the revisions change the intent of the proposed final rules. Final action to adopt these final rules was taken on August 4, 1986, and will be effective upon publication of this notice in the Register.

CHAPTER 11 EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS IN CONTRACTS

1100. PURPOSE

1100.1 These rules shall govern standards and procedures to be followed by contractors and subcontractors performing under District of Columbia Government contracts for goods and services, including construction contracts, for the purpose of assuring equal employment opportunity for minorities and women.

1100.2 These rules establish requirements for contractors and subcontractors regarding their commitment to observe specific standards for the employment of minorities and women and to achieve affirmative action obligations under District of Columbia contracts. These rules are not intended nor shall be used to discriminate against any qualified applicant for employment or employee.

1101 SCOPE

1101.1 Except as hereinafter exempted, the provisions of this chapter shall apply to all District of Columbia Government contracts subject to Mayor's Order No. 85-85, and any rules, regulations, and procedures promulgated pursuant to that Mayor's Order.

1102 COVERAGE

1102.1 The provisions of this chapter shall govern the processing of any matter before the Office Human Rights involving the following:

- (a) Discrimination in employment on grounds of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap by any District of Columbia Government contractor; and
- (b) Achievement of affirmative action obligations under District of Columbia contracts.

1103 CONTRACT PROVISIONS

1103.1 Each contract for goods and services, including construction contracts, except construction subcontracts for standard commercial supplies or raw materials, shall include as express contractual provisions the language contained in subsections 1103.2 through 1103.10.

1103.2 The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap.

- 1103.3 The contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to the following:
- (a) Employment, upgrading, or transfer;
 - (b) Recruitment or recruitment advertising;
 - (c) Demotion, layoff, or termination;
 - (d) Rates of pay, or other forms of compensation; and
 - (e) Selection for training and apprenticeship.
- 1103.4 The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections 1103.2 and 1103.3 concerning non-discrimination and affirmative action.
- 1103.5 The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in subsection 1103.2
- 1103.6 The contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Contracting Agency, advising each labor union or workers' representative of the contractor's commitments under this chapter, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 1103.7 The contractor agrees to permit access to all books, records, and accounts, pertaining to its employment practices, by the Director and the Contracting Agency for purposes of investigation to ascertain compliance with this chapter, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors, books, records, and accounts for such purposes.
- 1103.8 The contractor agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director, or any authorized official.
- 1103.9 The prime contractor shall include in every subcontract the equal opportunity clauses, subsections 1103.2 through 1103.10 of this section, so that such provisions shall be binding upon each subcontractor or vendor.
- 1103.10 The prime contractor shall take such action with respect to any subcontractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance; provided, however, that in the event the prime contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the prime contractor may request the District to enter into such litigation to protect the interest of the District.
- 1104 **AFFIRMATIVE ACTION PROGRAM**
- 1104.1 Each apparent low bidder for a construction contract shall complete and submit to the Contracting Agency, prior to the execution of any contract in the amount of twenty-five thousand dollars (\$25,000) or more, and each contractor covered under subsection 1105.1, an Affirmative Action Program to ensure equal opportunity which shall include specific standards for the utilization of minorities and women in the trades, crafts and skills to be used by the contractor in the performance of the contract.

- 1104.2 Each apparent low bidder or offeror for a non-construction contract shall complete and submit to the Contracting Agency, prior to the execution of any contract in the amount of ten thousand dollars (\$10,000) or more, and each contractor covered under subsection 1105.2, an Affirmative Action Program to ensure equal opportunity which shall include specific standards for the utilization of minorities in the job categories specified in subsection 1108.4.
- 1104.3 To ensure equal opportunity each Affirmative Action Program shall include the following commitments:
- (a) With respect to construction contracts, each contractor shall certify that it will comply with the provisions of this chapter, and submit a personnel utilization schedule for all the trades the contractor is to utilize, indicating the actual numbers of minority and female workers that are expected to be a part of the workforce performing under the contract; and
 - (b) With respect to non-construction contracts, each contractor shall certify that it will comply with the provisions of this chapter, and shall submit a personnel utilization schedule indicating by craft and skill, the minority composition of the workforce related to the performance of the work under the contract. The schedule shall include all workers located in the facility from which the goods and services are produced and shall include the same information for other facilities which have a significant relationship to the performance of work under the contract.
- 1104.4 If the experience of the contractor with any local union from which it will secure employees indicates that the union will not refer sufficient minorities or women to meet minority or female employment commitments, the contractor shall, not less than ten (10) days prior to the employment of any person on the project subject to the jurisdiction of that local union, do the following:
- (a) Notify the District of Columbia Department of Employment Services and at least two (2) minority and two (2) female referral organizations of the contractor's personnel needs, and request referral of minority and female workers; and
 - (b) Notify any minority and female workers who have been listed with the contractors as awaiting vacancies.
- 1104.5 If, within five (5) working days prior to commencement of work, the contractor determines that the Department of Employment Services or the minority or female referral organizations are unable to refer sufficient minorities or women to meet its commitments, the contractor may take steps to hire, by referral or otherwise, from the local union membership to fill the remaining job openings, provided that it notifies the local union of its personnel needs and of its employment commitments. Evidence of the notification shall be provided to the Contracting Agency.
- 1104.6 The contractor shall have standing requests for additional referrals of minority and female workers with the local union, the Department of Employment Services, and the other referral sources, until such time as the contractor has met its minority and female employment commitments.
- 1104.7 If the contractor desires to lay off some of its employees in a given trade on a construction site, it shall ensure that the required number of minority and female employees remain on the site to meet the minority and female commitments.
- 1104.8 No contractor shall refuse employment to any individual who has minimal facility to speak English except where the contractor can demonstrate that the facility to speak English is necessary for the performance of the job.

- 1104.9 No union with which the contractor has a collective bargaining agreement shall refuse to refer minority and female employees to such contractor.
- 1104.10 To the extent that contractors have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their equal opportunity obligations, those contractors shall not be considered to be in compliance with this chapter.
- 1104.11 The obligations of the contractor shall not be reduced, modified, or subject to any provision in any collective bargaining agreement with labor organization which provides that the labor organizations shall have the exclusive or primary opportunity to refer employees.
- 1104.12 When any contractor employs a minority person or woman in order to comply with this chapter, those persons shall be advised of their right to seek union membership, the contractor shall provide whatever assistance may be appropriate to enable that person to obtain membership, and the contractor shall notify the appropriate union of that person's employment.
- 1104.13 The contractor shall not discharge, refuse to employ, or otherwise adversely affect any minority person or woman because of any provision in any collective bargaining agreement, or any understanding, written or oral that the contractor may have with any labor organization.
- 1104.14 If at any time, because of lack of cooperation or overt conduct, a labor organization impedes or interferes with the contractor's Affirmative Action Program, the contractor shall notify the Contracting Agency and the Director immediately, setting forth the relevant circumstances.
- 1104.15 In any proceeding involving a disagreement between a labor organization and the contractor over the implementation of the contractor's Affirmative Action Program, the Contracting Agency and the Office of Human Rights may become a party to the proceeding.
- 1104.16 In determining whether or not a contractor is utilizing minorities and females pursuant to Section 1108, consideration shall be given to the following factors:
- (a) The proportion of minorities and women employed in the trades and as laborers in the construction industry within the District of Columbia;
 - (b) The proportion of minorities and women employed in the crafts or as operatives in non-construction industries within the District of Columbia;
 - (c) The number and ratio of unemployed minorities and women to total unemployment in the District of Columbia;
 - (d) The availability of qualified and qualifiable minorities and women for employment in any comparable line of work, including where they are now working and how they may be brought into the contractor's workforce;
 - (e) The effectiveness of existing training programs in the area, including the number who complete training, the length and extent of training, employer experience with trainees, and the need for additional or expanded training programs; and
 - (f) The number of additional workers that could be absorbed into each trade or line of work without displacing present employees, including consideration of present employee shortages, projected growth of the trade or line of work, and projected employee turnover.
- 1104.17 The contractor's commitment to specific standards for the utilization of minorities and females as required under this chapter shall include a commitment to make every good faith effort to meet

those standards. If the contractor has failed to meet the standards, a determination of “good faith” shall be based upon the contractor’s documented equal opportunity efforts to broaden its equal employment program which shall include, but may not necessarily be limited to, the following requirements:

- (a) The contractor shall notify the community organizations that the contractor has employment opportunities available and shall maintain records of the organizations’ responses;
- (b) The contractor shall maintain a file of the names and addresses of each minority and female worker referred to it and what action was taken with respect to each referred worker. If that worker was not sent to the union hiring hall for referral or if the worker was not employed by the contractor, the contractor’s file shall be documented and the reasons therefore;
- (c) The contractor shall notify the Contracting Agency and the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority or female worker originally sent to the union by the contractor for union registration, or the contractor has other information that the union referral process has impeded the contractor’s efforts to meet its goals;
- (d) The contractor shall participate in training programs related to its personnel needs;
- (e) The contractor shall disseminate its EEO policy internally by doing the following:
 - (1) Including it in any organizational manual;
 - (2) Publicizing it in company newspapers, annual report, etc.;
 - (3) Conducting staff, employee, and union representatives meetings to explain and discuss the policy;
 - (4) Posting; and
 - (5) Reviewing the policy with minority and female employees.
- (f) The contractor shall disseminate its EEO policy externally by doing the following:
 - (1) Informing and discussing it with all recruitment sources;
 - (2) Advertising in news media, specifically including news media directed to minorities and women;
 - (3) Notifying and discussing it with all known minority and women’s organizations; and
 - (4) Notifying and discussing it with all subcontractors and suppliers.

1104.18 The contractor shall make specific recruitment efforts, both written and oral, directed at all minority and women’s training organizations within the contractor’s recruitment area.

1104.19 The contractor shall encourage present employees to assist in the recruitment of minorities and women for employment.

1104.20 The contractor shall validate all qualifications, selection requirements, and tests in accordance with the guidelines of the Equal Employment Opportunity Commission.

- 1104.21 The contractor shall make good faith efforts to provide after school, summer and vacation employment to minority youths and young women.
- 1104.22 The contractor shall develop on-the-job training opportunities, and participate and assist in any association or employer group training programs relevant to the contractor's employee needs.
- 1104.23 The contractor shall continually inventory and evaluate all minority and female personnel for promotion opportunities.
- 1104.24 The contractor shall make sure that seniority practices, job classifications, qualifications, etc. do not have a discriminatory effect on minorities and women.
- 1104.25 The contractor shall make certain that all facilities and company activities are nonsegregated.
- 1104.26 The contractor shall continually monitor all personnel activities to ensure that its EEO policy is being carried out.
- 1104.27 The contractor may utilize minority banking facilities as depositories for funds which may be involved, directly or indirectly, in the performance of the contract.
- 1104.28 The contractor shall employ minority and female workers without respect to union membership in sufficient numbers to meet the minority and female employment standards, if the experience of the contractor with any labor union from which it will secure employees does not indicate that it will refer sufficient minorities and females to meet its minority and female employment standards.
- 1104.29 The contractor shall ensure that all of its employees as well as those of its subcontractors are made knowledgeable about the contractor's equal opportunity policy.
- 1104.30 [Reserved]
- 1104.31 Each contractor shall include in all bid invitations or other pre-bid communications, written or otherwise, with respect to prospective subcontractors, the standards, as applicable, which are required under this chapter.
- 1104.32 Whenever a contractor subcontracts a portion of the work in any trade, craft or skill it shall include in the subcontract, its commitment made under this chapter, as applicable, which shall be adopted by its subcontractors who shall be bound thereby and by the regulations of this chapter to the full extent as if it were the prime contractor.
- 1104.33 The prime contractor shall give notice to the Director and the Contracting Agency of any refusal or failure of any subcontractor to fulfill its obligations under this chapter.
- 1104.34 Failure of compliance by any subcontractor shall be treated in the same manner as a failure by the prime contractor.
- 1105 EXEMPTIONS
- 1105.1 Prospective construction contractors shall be exempt from submitting Affirmative Action Programs for contracts amounting to less than twenty-five thousand dollars (\$25,000); provided, that when a construction contractor accumulates contracts amounting to twenty-five thousand dollars (\$25,000) or more within a period of twelve (12) months that contractor shall be required to submit an Affirmative Action Program for each contract executed thereafter.
- 1105.2 Prospective non-construction contractors shall be exempt from submitting Affirmative Action Programs for contracts amounting to less than ten thousand dollars (\$10,000); provided, that when

a non-construction contractor accumulates contracts amounting to ten thousand dollars (\$10,00) or more during a period of twelve (12) months that contractor shall be required to submit an Affirmative Action Program for each contract executed thereafter.

1106 NONRESPONSIBLE CONTRACTORS

1106.1 If a bidder or offeror fails either to submit a complete and satisfactory Affirmative Action Program or to submit a revised Affirmative Action Program that meets the approval of the Director, as required pursuant to this chapter, the Director may direct the Contracting Officer to declare the bidder or offeror to be nonresponsible and ineligible for award of the contract.

1106.2 Any untimely submission of an Affirmative Action Program may, upon order of the Director, be rejected by the Contracting Officer.

1106.3 In no case shall there be any negotiation over the provision of specific utilization standards submitted by the bidder or offeror after the opening of bids or receipt of offer and prior to award.

1106.4 If any directive or order relating to nonresponsibility is issued under this section, the Director shall afford the bidder or offeror a reasonable opportunity to be heard in opposition to such action in accordance with subsection 1118.1, or in support of a request for waiver under section 1109.

1107 NOTICE OF COMPLIANCE

1107.1 Each Contracting Agency shall include, or require the contract bidder or offeror to include, in the invitation for bids or other solicitation used for a D.C. Government-involved contract, a notice stating that to be eligible for consideration, each bidder or offeror shall be required to comply with the provisions of this chapter for the trades, crafts and skills to be used during the term of the performance of the contract whether or not the work is subcontracted.

1108 MINIMUM STANDARDS FOR MINORITY AND FEMALE EMPLOYMENT

1108.1 The minimum standards for the utilization of minorities in the District of Columbia Government construction contracts shall be forty-two percent (42%) in each trade for each project, and an aggregate workforce standard of six and nine-tenths percent (6.9%) for females in each project. Any changes in Federal standards pertaining to minority group and female employment in Federally-involved construction contracts shall be taken into consideration in any review of these requirements.

1108.2 The construction contractor's standards established in accordance with subsection 1108.1 shall express the contractor's commitment of the forty-two percent (42%) of minority personnel who will be working in each specified trade on each of the contractor's District of Columbia Government projects, and the aggregate standard of six and nine-tenths percent (6.9%) for the employment of females in each District of Columbia Government contract.

1108.3 The hours for minority and female workers shall be substantially uniform throughout the entire length of the construction contract for each trade used, to the effect that the same percentage of minority workers in the trades used shall be working throughout the length of work in each trade on each project, and the aggregate percentage in each project for females.

1108.4 The minimum standard for the utilization of minorities in non-construction contracts shall be twenty-five percent (25%) in each of the following nine (9) job categories:

- (a) Officials and managers;
- (b) Professionals;

- (c) Technicians;
- (d) Sales workers;
- (e) Office and clerical workers;
- (f) Craftpersons (Skilled);
- (g) Operative (Semi-skilled);
- (h) Laborers (Unskilled); and
- (i) Service workers.

1108.5 With respect to non-construction contracts the contractor's standards established in accordance with subsection 1108.4 shall express the contractor's commitment of the twenty-five percent (25%) of minority personnel who will be working in each specified craft or skill in each contract.

1109 WAIVERS

1109.1 The Director may grant a waiver to a prospective contractor from the requirement to submit a set of minimum standards for the employment of minorities and women in a particular contract, if before the execution of the contract and approval of the Affirmative Action Program, the contractor can document and otherwise prove it is unable to meet the standards in the performance of the contract.

1110 SOLICITATION OF CONTRACT

1110.1 Each solicitation for contract covered by section 1104 shall contain a statement that contractors shall comply with the minimum standards established pursuant to these rules for ensuring equal opportunity.

1110.2 The contract solicitation shall require that each bidder or offeror certify that it intends to meet the applicable minimum standards in section 1108 in order to be considered for the contract.

1111 PRIOR TO EXECUTION OF CONTRACT

1111.1 Upon being designated the apparent low bidder or offeror, that contractor shall submit a detailed Affirmative Action Program that sets forth the following:

- (1) The composition of its current total workforce; and
- (2) The composition of the workforce by race, color, national origin, and sex to be used in the performance of the contract and that of all known subcontractors that will be utilized to perform the contract.

1111.2 The apparent low bidder or offeror shall submit an Affirmative Action Program in accordance with section 1104 describing the actions it will take to ensure compliance with this chapter which shall be subject, prior to the execution of any contract, to the approval of the Director.

1111.3 If the Office of Human Rights does not act within ten (10) working days after the receipt of the Affirmative Action Program sent for approval, the Contracting Agency may proceed on its own determination to execute the contract.

- 1111.4 The apparent low bidder or offeror shall submit an Affirmative Action Program within a period of time to specified by each Contracting Agency, but which shall not exceed ten (10) working days after becoming the apparent contractor.
- 1111.5 The apparent low bidder or offeror shall furnish all information and reports to the Contracting Agency as required by this chapter, and shall permit access to all books or records pertaining to its employment practices or worksites.
- 1111.6 No contract subject to section 1104 shall be executed by the Contracting Agency, if the apparent low bidder or offeror does not submit an Affirmative Action Program, or if the Program has been disapproved in writing by the Director.
- 1111.7 If there is disagreement between the contractor and the Contracting Officer as to the adequacy of the Affirmative Action Program, the matter shall be referred to the Director for a decision.
- 1112 AFTER EXECUTION OF CONTRACT
- 1112.1 Each contractor shall maintain throughout the term of the contract the minimum standards for the employment of minorities and women, as set forth in the approved Affirmative Action Program.
- 1112.2 Each contractor shall require that each subcontractor, or vendor under the contract comply with the provision of the contract and the Affirmative Action Program.
- 1112.3 Each contractor shall furnish all information as required by this chapter, and permit access to all books and records pertaining to the contractor's employment practices and work sites by the Director and the Contracting Agency for purposes of investigation to ascertain compliance with this chapter.
- 1113 MONITORING AND EVALUATION
- 1113.1 The Director shall, from time to time, monitor and evaluate all District of Columbia Government agencies, including those independent agencies and commissions not required to submit the Affirmative Action Program of their contractors, to ensure compliance with the equal opportunity obligations in contracts, as provided for in this chapter.
- 1114 AFFIRMATIVE ACTION TRAINING PROGRAM
- 1114.1 Each contractor, in fulfilling its affirmative action responsibilities under a contract with the District of Columbia Government, shall be required to have, as part of its Affirmative Action Program, an existing training program for the purpose of training, upgrading, and promotion of minority and female employees or to utilize existing programs. Those programs shall include, but not be limited to, the following:
- (a) To be consistent with its personnel requirements, the contractor shall make full use of the applicable training programs, including apprenticeship, on-the job training, and skill refinement training for journeymen. Recruitment for the program shall be designed to provide for appropriate participation by minority group members and women;
 - (b) The contractor may utilize a company-operated skill refinement training program. This program shall be formal and shall be responsive to the work to be performed under the contract;
 - (c) The contractor may utilize formal private training institutions that have as their objective training and skill refinement appropriate to the classification of the workers employed. When training is provided by a private organization the following information shall be supplied:

- (1) The name of the organization;
- (2) The name, address, social security number, and classification of the initial employees and any subsequent employees chosen during the course of the contract; and
- (3) The identity of the trades, and crafts or skills involved in the training.

1114.2 If the contractor relies, in whole or in part, upon unions as a source of its workforce, the contractor shall use its best efforts, in cooperation with unions, to develop joint training programs aimed toward qualifying more minorities and females for membership in the union, and increasing the skills of minority and female employees so that they may qualify for higher paying employment.

1114.3 Approval of training programs by the Contracting Agency shall be predicated, among other things, upon the quality of training, numbers of trainees and trades, crafts or skills involved, and whether the training is responsive to the policies of the District of Columbia and the needs of the minority and female community. Minority and female applicants for apprenticeship or training should be selected in sufficient numbers as to ensure an acceptable level of participation sufficient to overcome the effects of past discrimination.

1115 COMPLIANCE REVIEW

1115.1 The Director and the Contracting Agency shall review the contractor's employment practices during the performance of the Contract. Routine or special reviews of contractors shall be conducted by the Contracting Agency or the Director in order to ascertain the extent to which the policy of Mayor's Order No. 85-85, and the requirements in this chapter are being implemented and to furnish information that may be useful to the Director and the Contracting Agency in carrying out their functions under this chapter.

1115.2 A routine compliance review shall consist of a general review of the practices of the contractor to ascertain compliance with the requirements of this chapter, and shall be considered a normal part of contract administration.

1115.3 A special compliance review shall consist of a comprehensive review of the employment practices of the contractor with respect to the requirements of this chapter, and shall be conducted when warranted.

1116 ENFORCEMENT

1116.1 If the contractor does not comply with the equal opportunity clauses in a particular contract, including subsections 1103.2 through 1103.10 of this chapter, that contract may be cancelled in whole or in part, and the contractor may be declared by the Director or the Contracting Officer to be ineligible for further District of Columbia Government Contracts subject to applicable laws and regulations governing debarment.

1116.2 If the contractor meets its goals or if the contractor can demonstrate that it has made every good faith effort to meet those goals, the contractor will be presumed to be in compliance with this chapter, and no formal sanction shall be instituted unless the Director otherwise determines that the contractor is not providing equal employment opportunity.

1116.3 When the Director proceeds with a formal hearing she or he has the burden of proving that the contractor has not met the requirements of this chapter, but the contractor's failure to meet its goals shall shift to it the requirement to come forward with evidence to show that it has met the good faith requirements of this chapter.

1117 COMPLAINTS

1117.1 The Director may initiate investigations of individual instances and patterns of discriminatory conduct, initiate complaints thereupon and keep the Contracting Agency informed of those actions.

1117.2 If the investigation indicates the existence of an apparent violation of the non-discrimination provisions of the contract required under section 1103 of this chapter the matter may be resolved by the methods of conference, conciliation, mediation, or persuasion.

1117.3 If an apparent violation of the non-discrimination provisions of the contract required under section 1103 of this chapter is not resolved by methods of conference, conciliation, mediation, or persuasion, the Director of the Contracting Officer may issue a notice requiring the contractor in question to show cause, within thirty (30) days, why enforcement proceedings or other appropriate action should not be initiated.

1117.4 Any employee of any District of Columbia Government contractor or applicant for employment who believes himself or herself to be aggrieved may, in person or by an authorized representative, file in writing, a complaint of alleged discrimination with the Director.

1118 HEARINGS

1118.1 In the event that a dispute arises between a bidder, offeror or prospective contractor and the Director or the Contracting Officer as to whether the proposed program of affirmative action for providing equal employment opportunity submitted by such bidder, offeror or prospective contractor complies with the requirements of this chapter and cannot be resolved by the methods of conference, conciliation, mediation, or persuasion, the bidder, offeror or prospective contractor in question shall be afforded the opportunity for a hearing before the Director.

1118.2 If a case in which an investigation by the Director or the Contracting Agency has shown the existence of an apparent violation of the non-discrimination provisions of the contract required under section 1103 is not resolved by the methods specified in subsection 1117.2, the Director may issue a notice requiring the contractor in question to show cause, within thirty (30) days, why enforcement proceedings or other appropriate action should not be initiated. The contractor in question shall also be afforded the opportunity for a hearing before the Director.

1118.3 The Director may hold a hearing on any complaint or violation under this chapter, and make determinations based on the facts brought before the hearing.

1118.4 Whenever the Director holds a hearing it is to be held pursuant to the Human Rights Act of 1977, a notice of thirty (30) working days for the hearing shall be given by registered mail, return receipt requested, to the contractor in question. The notice shall include the following:

- (a) A convenient time and place of hearing;
- (b) A statement of the provisions in this chapter or any other laws or regulations pursuant to which the hearing is to be held; and
- (c) A concise statement of the matters to be brought before the hearing.

1118.5 All hearings shall be open to the public and shall be conducted in accordance with rules, regulations, and procedures promulgated pursuant to the Human Rights Act of 1977.

1119 SANCTIONS

- 1119.1 The Director, upon finding that a contractor has failed to comply with the non-discrimination provisions of the contract required under section 1103, or has failed to make a good faith effort to achieve the utilization standards under an approved Affirmative Action Program, may impose sanctions contained in this section in addition to any sanction or remedies as may be imposed or invoked under the Human Rights Act of 1977.
- 1119.2 Sanctions imposed by the Director may include the following:
- (a) Order that the contractor be declared ineligible from consideration for award of District of Columbia Government contracts or subcontracts until such time as the Director may be satisfied that the contractor has established and will maintain equal opportunity policies in compliance with this chapter; and
 - (b) Direct each Contracting Officer administering any existing contract to cancel, terminate, or suspend the contract or any portion thereof, and to deny any extension, modification, or change, unless the contractor provides a program of future compliance satisfactory to the Director.
- 1119.3 Any sanction imposed under this chapter may be rescinded or modified upon reconsideration by the Director.
- 1119.4 An appeal of any sanction imposed by order of the Director under this chapter may be taken pursuant to applicable clauses of the affected contract or provisions of law and regulations governing District of Columbia Government contracts.
- 1120 NOTIFICATIONS
- 1120.1 The Director shall forward in writing notice of his or her findings of any violations of this chapter to the Contracting Officer for appropriate action under the contract.
- 1120.2 Whenever it appears that the holder of or an applicant for a permit, license or franchise issued by any agency or authority of the Government of the District of Columbia is a person determined to be in violation of this chapter the Director may, at any time he or she deems that action the Director may take or may have taken under the authority of this chapter, refer to the proper licensing agency or authority the facts and identities of all persons involved in the violation for such action as the agency or authority, in its judgement, considers appropriate based upon the facts thus disclosed to it.
- 1120.3 The Director may publish, or cause to be published, the names of contractors or unions which have been determined to have complied or have failed to comply with the provisions of the rules in this chapter.
- 1121 DISTRICT ASSISTED PROGRAMS
- 1121.1 Each agency which administers a program involving leasing of District of Columbia Government owned or controlled real property, or the financing of construction under industrial revenue bonds or urban development action grants, shall require as a condition for the approval of any agreement for leasing, bond issuance, or development action grant, that the applicant undertake and agree to incorporate, or cause to be incorporated into all construction contracts relating to or assisted by such agreements, the contract provisions prescribed for District of Columbia Government contracts by section 1103, preserving in substance the contractor's obligation under those provision.
- 1199 DEFINITIONS

1199.1

The following words and phrases set forth in this section, when used in this chapter, shall have the following meanings ascribed:

Contract – any binding legal relationship between the District of Columbia and a contractor for supplies or services, including but not limited to any District of Columbia Government or District of Columbia Government assisted construction or project, lease agreements, Industrial Revenue Bond financing, and Urban Development Action grant, or for the lease of District of Columbia property in which the parties, respectively, do not stand in the relationship of employer and employee.

Contracting Agency – any department, agency, or establishment of the District of Columbia which is authorized to enter into contracts.

Contracting Officer – any official of a contracting agency who is vested with the authority to execute contracts on behalf of said agency.

Contractor – any prime contractor holding a contract with the District of Columbia Government. The term shall also refer to subcontractors when the context so indicates.

Director – the Director of the Office of Human Rights, or his or her designee.

Dispute – any protest received from a bidder or prospective contractor relating to the effectiveness of his or her proposed program of affirmative action for providing equal opportunity.

Minority – Black Americans, Native Americans, Asian Americans, Pacific Islander Americans, and Hispanic Americans. In accordance with D.C. Code, Section 1-1142(1) (Supp. 1985).

Subcontract – any agreement made or executed by a prime contractor or a subcontractor where a material part of the supplies or services, including construction, covered by an agreement is being obtained for us in the performance of a contract subject to Mayor's Order No. 85-85, and any rules, regulations, and procedures issued pursuant thereto.

Subcontractor – any contractor holding a contract with a District prime contractor calling for supplies or services, including construction, required for the performance of a contract subject to Mayor's Order No. 85-85, and any rules, regulations, and procedures promulgated pursuant thereto.

FIRST SOURCE EMPLOYMENT AGREEMENT

Contract Number: _____

Contract Amount: _____

Project Name: _____

Project Address: _____ Ward: _____

Nonprofit Organization with 50 Employees or Less: (Yes) ____ (No) ____

This First Source Employment Agreement, in accordance with D. C. Law 14-24, D.C. Law 5-93, and Mayor's Order 83-265 for recruitment, referral, and placement of District of Columbia residents, is between the District of Columbia Department of Employment Services, hereinafter referred to as DOES, and _____, hereinafter, referred to as EMPLOYER. Under this Employment Agreement, the EMPLOYER will use DOES as its first source for recruitment, referral, and placement of new hires or employees for the new jobs created by this project and will hire 51% District of Columbia residents for all new jobs created, as well, as 51% of apprentices employed in connection with the project shall be District residents registered in programs approved by the District of Columbia Apprenticeship Council.

I. GENERAL TERMS

- A. The EMPLOYER will use DOES as its first source for the recruitment, referral and placement of employees.
- B. The EMPLOYER shall require all contractors and subcontractors, with contracts totaling \$100,000 or more, to enter into a First Source Employment Agreement with DOES.
- C. DOES will provide recruitment, referral and placement services to the EMPLOYER subject to the limitations set out in this Agreement.
- D. DOES participation in this Agreement will be carried out by the Office of the Director, with the Office of Employer Services, which is responsible for referral and placement of employees, or such other offices or divisions designated by DOES.

- E. This Agreement shall take effect when signed by the parties below and shall be fully effective for the duration of the contract and any extensions or modifications to the contract.
- F. This Agreement shall not be construed as an approval of the EMPLOYER'S bid package, bond application, lease agreement, zoning application, loan, or contract/subcontract.
- G. DOES and the EMPLOYER agree that for purposes of this Agreement, new hires and jobs created (both union and nonunion) include all EMPLOYER'S job openings and vacancies in the Washington Standard Metropolitan Statistical Area created as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this project, including loans, lease agreements, zoning applications, bonds, bids, and contracts.
- H. For purposes of this Agreement, apprentices as defined in D.C. Law 2-156, as amended, are included.
- I. The EMPLOYER shall register an apprenticeship program with the D.C. Apprenticeship Council for construction or renovation contracts or subcontracts totaling \$500,000 or more. This includes any construction or renovation contract or subcontract signed as the result of, but is not limited to, a loan, bond, grant, Exclusive Right Agreement, street or alley closing, or a leasing agreement of real property for one (1) year or more.
- J. All contractors who contract with the Government of the District of Columbia to perform information technology work with a single contract or cumulative contracts of at least \$500,000, let within any twelve (12) month period shall be required to register an apprenticeship program with the District of Columbia Apprenticeship Council.
- K. The term "information technology work" shall include, but is not limited to, the occupations of computer programmer, programmer analyst, desktop specialist, technical support specialist, database specialist, network support specialist, and any other related occupations as the District of Columbia Apprenticeship Council may designate by regulation.

II. RECRUITMENT

- A. The EMPLOYER will complete the attached Employment Plan, which will indicate the number of new jobs projected, salary range, hiring dates, and union requirements. The EMPLOYER will notify DOES of its specific need for new employees as soon as that need is identified.

- B. Notification of specific needs, as set forth in Section II.A. must be given to DOES at least five (5) business days (Monday - Friday) before using any other referral source, and shall include, at a minimum, the number of employees needed by job title, qualification, hiring date, rate of pay, hours of work, duration of employment, and work to be performed.
- C. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce need not be referred to DOES for placement and referral.
- D. The EMPLOYER will submit to DOES, prior to starting work on the project, the names, and social security numbers of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the project.

III. REFERRAL

DOES will screen and refer applicants according to the qualifications supplied by the EMPLOYER.

IV. PLACEMENT

- A. DOES will notify the EMPLOYER, prior to the anticipated hiring dates, of the number of applicants DOES will refer. DOES will make every reasonable effort to refer at least two qualified applicants for each job opening.
- B. The EMPLOYER will make all decisions on hiring new employees but will in good faith use reasonable efforts to select its new hires or employees from among the qualified persons referred by DOES.
- C. In the event DOES is unable to refer the qualified personnel requested, within five (5) business days (Monday - Friday) from the date of notification, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. Notwithstanding, the EMPLOYER will still be required to hire 51% District residents for the new jobs created by the project.
- D. After the EMPLOYER has selected its employees, DOES will not be responsible for the employees' actions and the EMPLOYER hereby releases DOES, and the Government of the District of Columbia, the District of Columbia Municipal Corporation, and the officers and employees of the District of Columbia from any liability for employees' actions.

V. TRAINING

DOES and the EMPLOYER may agree to develop skills training and on-the-job training programs; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and DOES and set forth in a separate Training Agreement.

VI. CONTROLLING REGULATIONS AND LAWS

- A. To the extent this Agreement is in conflict with any labor laws or governmental regulations, the laws or regulations shall prevail.
- B. DOES will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party.
- C. The EMPLOYER will provide DOES with written documentation that the EMPLOYER has provided the representative of any involved collective bargaining unit with a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to DOES.

VII. EXEMPTIONS

- A. Contracts, subcontracts or other forms of government-assistance less than \$100,000.
- B. Employment openings the contractor will fill with individuals already employed by the company.
- C. Job openings to be filled by laid-off workers according to formally established recall procedures and rosters.
- D. Suppliers located outside of the Washington Standard Metropolitan Statistical Area and who will perform no work in the Washington Standard Metropolitan Statistical Area.

VIII. AGREEMENT MODIFICATIONS, RENEWAL, MONITORING, AND PENALTIES

- A. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise, the EMPLOYER as a condition of transfer shall:
 - 1. Notify the party taking possession of the existence of the EMPLOYER'S Agreement.
 - 2. Notify the party taking possession that full compliance with this Agreement is required in order to avoid termination of the project.

3. EMPLOYER shall, additionally, advise DOES within seven (7) business/calendar days of the transfer. This advice will include the name of the party taking possession and the name and telephone of that party's representative.
- B. DOES shall monitor EMPLOYER'S performance under this Agreement. The EMPLOYER will cooperate in DOES' monitoring effort and will submit a Contract Compliance Form to DOES monthly.
 - C. To assist DOES in the conduct of the monitoring review, the EMPLOYER will make available payroll and employment records for the review period indicated.
 - D. If additional information is needed during the review, the EMPLOYER will provide the requested information to DOES.
 - E. With the submission of the final request for payment from the District, the EMPLOYER shall:
 1. Document in a report to the Contracting Officer its compliance with the requirement that 51% of the new employees hired by the project be District residents; or
 2. Submit a request to the Contracting Officer for a waiver of compliance with the requirement that 51% of the new employees hired by the project be District residents and include the following documentations:
 - a. Material supporting a good faith effort to comply;
 - b. Referrals provided by DOES and other referral sources; and
 - c. Advertisement of job openings listed with DOES and other referral sources.
 - F. The Contracting Officer may waive the requirement that 51% of the new employees hired by the project be District residents, if the Contracting Officer finds that:
 1. A good faith effort to comply is demonstrated by the contractor;
 2. The EMPLOYER is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area;

The Washington Standard Metropolitan Statistical Area includes the District of Columbia, the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg; the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.

- 3. The EMPLOYER enters into a special workforce development training or placement arrangement with DOES; or
- 4. DOES certifies that insufficient numbers of District residents in the labor market possess the skills required by the positions created as a result of the contract.

G. Willful breach of the First Source Employment Agreement by the EMPLOYER, or failure to submit the Contract Compliance Report, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract.

H Nonprofit organizations with 50 or less employees are exempted from the requirement that 51% of the new employees hired on the project be District residents.

I. The EMPLOYER and DOES, or such other agent as DOES may designate, may mutually agree to modify this Agreement.

J. The project may be terminated because of the EMPLOYER'S non-compliance with the provisions of this Agreement.

IX. Is your firm a certified Local, Small, Disadvantaged Business Enterprise (LSDBE)?
 YES NO
 If yes, certification number: _____

X. Do you have a registered Apprenticeship program with the D.C. Apprenticeship Council?
 YES NO
 If yes, D.C. Apprenticeship Council Registration Number: _____

XI. Indicate whether your firm is a subcontractor on this project: YES NO
 If yes, name of prime contractor: _____

Dated this _____ day of _____ 20_____

 Signature Dept. of Employment Services

 Signature of Employer

 Name of Company

 Address

 Telephone

 E-mail

EMPLOYMENT PLAN

NAME OF FIRM _____

ADDRESS _____

TELEPHONE NUMBER _____ FEDERAL IDENTIFICATION NO. _____

CONTACT PERSON _____ TITLE _____

E-mail: _____ TYPE OF BUSINESS: _____

ORIGINATING DISTRICT AGENCY _____

CONTRACTING OFFICER: _____ TELEPHONE NUMBER: _____

TYPE OF PROJECT _____ FUNDING AMOUNT _____

PROJECTED START DATE _____ PROJECT DURATION _____

NEW JOB CREATION PROJECTIONS (Attach additional sheets, as needed.) Please indicate the new position(s) your firm will create as a result of this project.

	JOB TITLE	# OF JOBS F/T P/T	SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
A					
B					
C					
D					
E					
F					
G					
H					
I					
J					
K					

GOVERNMENT OF THE DISTRICT OF COLUMBIA

STANDARD CONTRACT PROVISIONS

FOR USE WITH

**DISTRICT OF COLUMBIA GOVERNMENT
SUPPLIES AND SERVICES CONTRACTS**

March 2007

**OFFICE OF CONTRACTING AND PROCUREMENT
SUITE 700 SOUTH
441 4th STREET, NW
WASHINGTON, DC 20001**

STANDARD CONTRACT PROVISIONS
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1. Covenant Against Contingent Fees:

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the District will have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.

2. Shipping Instructions – Consignment:

Unless otherwise specified in this Invitation for Bids/Request for Proposals, 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 will 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 will not be accepted unless specific arrangements have been previously made with the contact person identified in the contract at the delivery point.

3. Patents:

The Contractor shall hold and save the District, its officers, agents, servants, and employees harmless from liability of any nature or kind, including costs, expenses, for or on account of any patented or unpatented invention, article, process, or appliance, manufactured or used in the performance of this contract, including their use by the District, unless otherwise specifically stipulated in the contract.

4. 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.

5. 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 a manner that will 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 will perform inspections and tests in a manner that will 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 will 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 will not be liable for any reduction in the value of inspection or test samples.
 - (1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.
 - (2) Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest
- (f) The District has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or otherwise not in conformity with contract requirements. The District may reject nonconforming supplies with or without disposition instructions.
- (g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required, shall disclose the corrective action taken.
- (h) If the Contractor fails to remove, replace, or correct rejected supplies that are required to be replaced or corrected within ten (10) days, the District may either (1) by contract or otherwise, remove, replace or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

- (i) If this contract provides for the performance of District quality assurance at source, and if requested by the District, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract, and (ii) when the supplies will be ready for District inspection.
- (j) The District request shall specify the period and method of the advance notification and the District representative to whom it shall be furnished. Requests shall not require more than 2 business days of advance notification if the District representative is in residence in the Contractor's plant, nor more than 7 business days in other instances.
- (k) The District will accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. District failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability upon the District, for non-conforming supplies.
- (l) Inspections and tests by the District do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.
- (m) If acceptance is not conclusive for any of the reasons in subparagraph (l) hereof, the District, in addition to any other rights and remedies provided by law, or under provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or noncompliance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the District will have the right to return the rejected materials at Contractor's risk and expense or contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the District thereby.

6. Inspection Of Services:

- (a) Definition. "Services" as used in this clause includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) 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.

March (2007)

- (c) 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 will perform inspections and tests in a manner that will not unduly delay the work.
- (d) 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.
- (e) 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.
- (f) 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.

7. Waiver:

The waiver of any breach of the contract will not constitute a waiver of any subsequent breach thereof, or a waiver of the contract.

8. Default:

- (a) The District may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:
 - (1) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
 - (2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.
- (b) In the event the District terminates this contract in whole or in part as provided in paragraph (a) of this clause, the District may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or service similar to those so terminated, and the Contractor shall be liable to the District for any excess costs for similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

- (c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the District or Federal Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without fault or negligence of the Contractor. If the failure to perform is caused by the default of the subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess cost for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- (d) If this contract is terminated as provided in paragraph (a) of this clause, the District, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the District, in the manner and to the extent directed by the Contracting Officer, (i) completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures plans, drawing information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the District has an interest. Payment for completed supplies delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". The District may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the District against loss because of outstanding liens or claims of former lien holders.
- (e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination of convenience of the District, be the same as if the notice of termination had been issued pursuant to such clause. See Clause 20 for Termination for Convenience of the District.
- (f) The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- (g) As used in paragraph (c) of this clause, the terms "subcontractor(s) means subcontractor(s) at any tier.

9. Indemnification:

The Contractor agrees to defend, indemnify and hold harmless the District, its officers, agencies, departments, agents, and employees (collectively the "District") from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorneys' fees), resulting from, arising out of, or in any way connected to activities or work performed by the Contractor, Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor in performance of this Contract. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed in performance of this Contract. The Contractor shall also repair or replace any District property that is damaged by the Contractor, Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor while performing work hereunder.

The indemnification obligation under this section shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Contract. The District agrees to give Contractor written notice of any claim of indemnity under this section. Additionally, Contractor shall have the right and sole authority to control the defense or settlement of such claim, provided that no contribution or action by the District is required in connection with the settlement. Monies due or to become due the Contractor under the contract may be retained by the District as necessary to satisfy any outstanding claim which the District may have against the Contractor.

10. Transfer:

No contract or any interest therein shall be transferred by the parties to whom the award is made; such transfer will be null and void and will be cause to annul the contract.

11. Taxes:

(a) The Government of the District of Columbia is exempt from and will not pay Federal Excise Tax, Transportation Tax, and the District of Columbia Sales and Use Taxes.

(b) Tax exemption certificates are no longer issued by the District for Federal Excise Tax. The following statement may be used by the supplier when claiming tax deductions for Federal Excise Tax exempt items sold to the District.

"The District of Columbia Government is Exempt from Federal Excise Tax – Registration No. 52-73-0206-K, Internal Revenue Service, Baltimore, Maryland."

Exempt From Maryland Sales Tax, Registered With The Comptroller Of The Treasury As Follows:

a) Deliveries to Glenn Dale Hospital – Exemption No. 4647

b) Deliveries to Children's Center – Exemption No. 4648

c) Deliveries to other District Departments or Agencies – Exemption No. 09339

"The District of Columbia Government is Exempt from Sales and Use Tax – Registration No. 53-600, The District of Columbia Office of Tax and Revenue."

12. Appointment of Attorney:

- (a) The bidder/offeror or contractor (whichever the case may be) does hereby irrevocably designate and appoint the Clerk of the District of Columbia Superior Court and his successor in office as the true and lawful attorney of the Contractor for the purpose of receiving service of all notices and processes issued by any court in the District of Columbia, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to this contract or the work required or performed hereunder.
- (b) The bidder/offeror or contractor (whichever the case may be) expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the contractor was personally within the District of Columbia and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the contractor failed to receive a copy of such process, notice or other paper so served upon the said Clerk provided the said Clerk shall have deposited in the United States mail, registered and postage prepaid, a copy of such process, notice, pleading or other paper addressed to the bidder/offeror or contractor at the address stated in this contract.

13. District Employees Not To Benefit:

Unless a determination is made as provided herein, no officer or employee of the District will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the Contracting Officer or any District employee authorized to execute contracts in which they or an employee of the District will be personally interested shall be void, and no payment shall be made thereon by the District or any officer thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A District employee shall not be a party to a contract with the District and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when the District's needs cannot reasonably otherwise be met. (DC Procurement Practices Act of 1985, D.C. Law 6-85, D.C. Official Code, section 2-310.01, and Chapter 18 of the DC Personnel Regulations)

The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

14. Disputes:

- A. All disputes arising under or relating to this contract shall be resolved as provided herein.
- B. Claims by a Contractor against the District.

Claim, as used in Section B of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that

contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

- (a) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision. The contractor's claim shall contain at least the following:
 - (1) A description of the claim and the amount in dispute;
 - (2) Any data or other information in support of the claim;
 - (3) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
 - (4) The Contractor's request for relief or other action by the Contracting Officer.
- (b) The Contracting Officer may meet with the Contractor in a further attempt to resolve the claim by agreement.
- (c) For any claim of \$50,000 or less, the Contracting Officer shall issue a decision within sixty (60) days from receipt of a written request from a Contractor that a decision be rendered within that period.
- (d) For any claim over \$50,000, the Contracting Officer shall issue a decision within ninety (90) days of receipt of the claim. Whenever possible, the Contracting Officer shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.
- (e) The Contracting Officer's written decision shall do the following:
 - (1) Provide a description of the claim or dispute;
 - (2) Refer to the pertinent contract terms;
 - (3) State the factual areas of agreement and disagreement;
 - (4) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
 - (5) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
 - (6) Indicate that the written document is the contracting officer's final decision; and
 - (7) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (f) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as authorized by D.C. Official Code § 2-309.04.

- (g) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.
- (2) Liability under paragraph (g)(1) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.
- (h) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D. C. Official Code § 2-309.04.
- (i) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

C. Claims by the District against a Contractor

- (a) Claim as used in Section C of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.
- (b) (1) All claims by the District against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer.
- (2) The Contracting Officer shall send written notice of the claim to the Contractor. The Contracting Officer's written decision shall do the following:
 - (a) Provide a description of the claim or dispute;
 - (b) Refer to the pertinent contract terms;
 - (c) State the factual areas of agreement and disagreement;
 - (d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
 - (e) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
 - (f) Indicate that the written document is the Contracting Officer's final decision; and
 - (g) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

- (3) The decision shall be supported by reasons and shall inform the Contractor of its rights as provided herein.
- (4) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.
- (5) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- (c) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D.C. Official Code §2-309.04.
- (d) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

15. Changes:

The Contracting Officer 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 this contract, or in the time required for performance, an equitable adjustment shall be made. Any claim for adjustment under this paragraph must be asserted within ten (10) days from the date the change is offered; provided, however, that the Contracting Officer, if he or she determines that the facts justify such action, 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 the Disputes clause at Section 18. Nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

16. Termination For Convenience Of The District:

- (a) The District may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the District's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and effective date.
- (b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - (3) Terminate all contracts to the extent they relate to the work terminated.

- (4) Assign to the District, as directed by the Contracting Officer, all rights, title and interest of the Contractor under the subcontracts terminated, in which case the District will have the right to settle or pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts. The approval or ratification will be final for purposes of this clause.
 - (6) As directed by the Contracting Officer, transfer title and deliver to the District (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other materials produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to the District.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the District has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the District under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (c) After the expiration of ninety (90) days (or such longer period as may be agreed to) after receipt by the Contracting Officer of acceptable inventory schedules, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality of termination inventory not previously disposed of excluding items authorized for disposition by the Contracting Officer. The Contractor may request the District to remove those items or enter into an agreement for their storage. Within fifteen (15) days, the District will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within forty five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this one year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be

received and acted on after one year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due to the Contractor because of the termination and shall pay the amount determined.

- (e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (1) the amount of payment previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (f) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:
 - (1) The contract price for completed supplies or services accepted by the District (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.
 - (2) The total of :
 - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (f)(1) above; and
 - (iii) A sum, as profit on subparagraph f(1) above, determined by the Contracting Officer to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph (iii) and shall reduce the settlement to reflect the indicated rate of loss.
 - (3) The reasonable cost of settlement of the work terminated, including-
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontractors (excluding the amounts of such settlements); and

- (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (g) Except for normal spoilage, and except to the extent that the District expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the District or to a buyer.
- (h) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraphs (d), (f) or (j), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (j), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f) or (j), the District will pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.
- (i) In arriving at the amount due the Contractor under this clause, there shall be deducted:
 - (1) All unliquidated advances or other payments to the Contractor under the termination portion of the contract;
 - (2) Any claim which the District has against the Contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the District.
- (j) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the Contracting Officer.
- (k) (1) The District may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor shall be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the District upon demand together with interest computed at the rate of 10 percent (10%) per year. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess payment is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or

other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

- (l) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the District, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, micrographs, or other authentic reproductions may be maintained instead of original records and documents.

17. Recovery Of Debts Owed The District:

The Contractor hereby agrees that the District may use all or any portion of any consideration or refund due the Contractor under the present contract to satisfy, in whole or part, any debt due the District.

18. Retention and Examination Of Records:

The Contractor shall establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the District under the contract that results from this solicitation.

The Contractor shall retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to the contract for a period of three (3) years after termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of three (3) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the contract.

The Contractor shall assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, District, or other personnel duly authorized by the Contracting Officer.

The Contracting Officer, the Inspector General and the District of Columbia Auditor, or any of their duly authorized representatives shall, until three years after final payment, have the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to the contract.

19. Non-Discrimination Clause:

- (a) The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, approved December 13, 1977, as amended (D. C. Law 2-38; D. C. Official Code §2-1402.11) (2001 Ed.) ("Act" as used in this Section). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, Contractor agrees and any subcontractor shall agree to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause as provided in Section 251 of the Act.

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(b) Pursuant to rules of the Office of Human Rights, published on August 15, 1986 in the D. C. Register, Mayor's Order 2002-175 (10/23/02), 49 DCR 9883 and Mayor's Order 2006-151 (11/17/06), 52 DCR 9351, the following clauses apply to this contract:

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.
- (2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business.

The affirmative action shall include, but not be limited to the following:

- (a) employment, upgrading or transfer;
 - (b) recruitment, or recruitment advertising;
 - (c) demotion, layoff, or termination;
 - (d) rates of pay, or other forms of compensation; and
 - (e) selection for training and apprenticeship.
- (3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections (b)(1) and (b)(2) concerning non-discrimination and affirmative action.
 - (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in subsection (b)(2).
 - (5) The Contractor agrees to send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (6) The Contractor agrees to permit access to his books, records and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of Human Rights or designee, for purposes of investigation to ascertain compliance with this chapter, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.
- (7) The Contractor agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.
- (8) The Contractor shall include in every subcontract the equal opportunity clauses, subsections (b)(1) through (b)(9) of this section, so that such provisions shall be binding upon each subcontractor or vendor.
- (9) The Contractor shall take such action with respect to any subcontract as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the District to enter into such litigation to protect the interest of the District.

20. Definitions:

The terms Mayor, Chief Procurement Officer, Contract Appeals Board and District will mean the Mayor of the District of Columbia, the Chief Procurement Officer of the District of Columbia or his/her alternate, the Contract Appeals Board of the District of Columbia, and the Government of the District of Columbia respectively. If the Contractor is an individual, the term Contractor shall mean the Contractor, his heirs, his executor and his administrator. If the Contractor is a corporation, the term Contractor shall mean the Contractor and its successor.

21. Health And Safety Standards:

Items delivered under this contract shall conform to all requirements of the Occupational Safety and Health Act of 1970, as amended ("OSHA"), and Department of Labor Regulations under OSHA, and all Federal requirements in effect at time of bid opening/proposal submission.

22. Appropriation Of Funds:

The District's liability under this contract is contingent upon the future availability of appropriated monies with which to make payment for the contract purposes. The legal liability on the part of the District for the payment of any money shall not arise unless and until such appropriation shall have been provided.

23. Buy American Act:

- (a) The Buy American Act (41 U.S.C. §10a) provides that the District give preference to domestic end products.

“Components,” as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

“Domestic end product,” as used in this clause, means, (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in paragraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“End products,” as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

- (b) The Contractor shall deliver only domestic end products, except those-
 - (1) For use outside the United States;
 - (2) That the District determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
 - (3) For which the District determines that domestic preference would be inconsistent with the public interest; or
 - (4) For which the District determines the cost to be unreasonable.

24. Service Contract Act of 1965:

- (a) Definitions. “Act,” as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. §351, *et seq.*).
 - (1) “Contractor,” as used in this clause, means the prime Contractor or any subcontractor at any tier.
 - (2) “Service employee,” as used in this clause, means any person (other than a person employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR 541) engaged in performing a District contract not exempted under 41 U.S.C. §356, the principal purpose of which is to furnish services in the United States, as defined in section 22.1001 of the Federal Acquisition Regulation. It includes all such persons regardless of the actual or alleged contractual relationship between them and a contractor.
- (b) Applicability. To the extent that the Act applies, this contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (20 CFR part 4). All interpretations of the Act in Subpart C of 29 CFR 4 are incorporated in this contract by reference. This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. §356, as interpreted in Subpart C of 29 CFR 4.
- (c) Compensation.

- (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any wage determination attached to this contract.
- (2) If a wage determination is attached to this contract, the Contractor shall classify any class of service employees not listed in it, but to be employed under this contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph. This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee.
 - (a) The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration (ESA), Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary;
 - (b) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contracting Officer with a written copy of such determination or it shall be posted as a part of the wage determination;
 - (c) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General

Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed;

- (d) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds to a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in this clause need not be followed;
 - (e) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;
 - (f) The wage rate and fringe benefits finally determined under this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract;
 - (g) Upon discovery of failure to comply with this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.
- (3) If the term of this contract is more than 1 year, the minimum wages and fringe benefits required for service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by ESA.
 - (4) The Contractor can discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (2) of this clause by furnishing any equivalent combinations of bona fide fringe

benefits, or by making equivalent or differential cash payments, in accordance with Subpart B and C of 29 CFR 4.

- (d) Minimum wage: In the absence of a minimum wage attachment for this contract, the Contractor shall not pay any service or other employees performing this contract less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §206). Nothing in this clause shall relieve the Contractor of any other legal or contractual obligation to pay a higher wage to any employee.
- (e) Successor contracts: If this contract succeeds a contract subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to this contract, the Contractor may not pay any service employee performing this contract less than the wages and benefits, including those accrued and any prospective increases, provided for under that agreement. No Contractor may be relieved of this obligation unless the limitations of 29 CFR 4.1c(b) apply or unless the Secretary of Labor or the Secretary's authorized representative:
 - (1) Determines that the agreement under the predecessor was not the result of arms-length negotiations; or
 - (2) Finds, after a hearing under 29 CFR 4.10, that the wages and benefits provided for by that agreement vary substantially from those prevailing for similar services in the locality or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and 4.11 and parts 6 and 8 that some or all of the wages and fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.
- (f) Notification to employees: The Contractor shall notify each service employee commencing work on this contract of a minimum wage and any fringe benefits required to be paid, or shall post a notice of these wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

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- (g) Safe and sanitary working conditions: The Contractor shall not permit services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Contractor shall comply with the health standards applied under 29 CFR Part 1925.
- (h) Records: The Contractor shall maintain for 3 years from the completion of work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:
 - (1) For each employee subject to the Act:
 - (a) Name and address;
 - (b) Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
 - (c) Daily and weekly hours worked; and
 - (d) Any deductions, rebates, or refunds from total daily or weekly compensation.
 - (2) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of paragraph (c)(3) of this clause. A copy of the report required by paragraph (e) of this clause will fulfill this requirement.
 - (3) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by this clause. The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases. The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- (i) Pay periods: The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.
- (j) Withholding of payments and termination of contract: The Contracting Officer shall withhold from the prime Contractor under this or any other District contract

with the prime contractor any sums the Contracting Officer, or an appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination for default. In such event, the District may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

- (k) Subcontracts: The Contractor agrees to insert this clause in all subcontracts.
- (l) Contractor's report:
 - (1) If there is a wage determination attachment to this contract and any classes of service employees not listed on it are to be employed under the contract, the Contractor shall report promptly to the Contracting Officer the wages to be paid and the fringe benefits to be provided each of these classes, when determined under paragraph (c) of this clause.
 - (2) If wages to be paid or fringe benefits to be furnished any service employees under the contract are covered in a collective bargaining agreement effective at any time when the contract is being performed, the Contractor shall provide to the Contracting Officer a copy of the agreement and full information on the application and accrual of wages and benefits (including any prospective increases) to service employees working on the contract. The Contractor shall report when contract performance begins, in the case of agreements then in effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.
- (m) Contractor's Certification: By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded District contracts by virtue of the sanctions imposed under section 5 of the Act. No part of this contract shall be subcontracted to any person or firm ineligible for award of a District contract under section 5 of the Act. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. §1001.
- (n) Variations, tolerances, and exemptions involving employment: Notwithstanding any of the provisions in paragraphs (c) through (l) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor.
 - (1)(i) In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division, ESA (29 CFR 520, 521, 524, and 525), apprentices, student learners, and workers whose earning capacity is impaired by age or by physical or mental deficiency or injury, may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1)

of the Service Contract Act, without diminishing any fringe benefits or payments in lieu of these benefits required under section 2(a)(2) of the Act.

- (ii) The Administrator will issue certificates under the Act for employing apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages, but without changing requirements concerning fringe benefits or supplementary cash payments in lieu of these benefits.
 - (iii) The Administrator may also withdraw, annul, or cancel such certificates under 29 CFR 525 and 528.
- (2) An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips shall be credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with regulations in 29 CFR 531. However, the amount of credit shall not exceed 40 percent of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended.

25. Cost and Pricing Data:

- (a) This paragraph and paragraphs b through e below shall apply to contractors or offerors in regards to: (1) any procurement in excess of \$100,000, (2) any contract awarded through competitive sealed proposals, (3) any contract awarded through sole source procurement, or (4) any change order or contract modification. By entering into this contract or submitting this offer, the Contractor or offeror certifies that, to the best of the Contractor's or offeror's knowledge and belief, any cost and pricing data submitted was accurate, complete and current as of the date specified in the contract or offer.
- (b) Unless otherwise provided in the solicitation, the offeror or Contractor shall, before entering into any contract awarded through competitive sealed proposals or through sole source procurement or before negotiating any price adjustments pursuant to a change order or modification, submit cost or pricing data and certification that, to the best of the Contractor's knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of the date of award of this contract or as of the date of negotiation of the change order or modification.
- (c) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified by the Contractor, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified by the Contractor, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

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- (d) Any reduction in the contract price under paragraph c above due to defective data from a prospective subcontractor that was not subsequently awarded, the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided that the actual subcontract price was not itself affected by defective cost or pricing data.
- (e) Cost or pricing data includes all facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective Contractor's judgment about estimated future costs or projections, cost or pricing data do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.
- (f) The following specific information should be included as cost or pricing data, as applicable:
 - (1) Vendor quotations;
 - (2) Nonrecurring costs;
 - (3) Information on changes in production methods or purchasing volume;
 - (4) Data supporting projections of business prospects and objectives and related operations costs;
 - (5) Unit – cost trends such as those associated with labor efficiency;
 - (6) Make or buy decisions;
 - (7) Estimated resources to attain business goals;
 - (8) Information on management decisions that could have a significant bearing on costs.
- (g) If the offeror or contractor is required by law to submit cost or pricing data in connection with pricing this contract or any change order or modification of this contract, the Contracting Officer or representatives of the Contracting Officer shall have the right to examine all books, records, documents and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the contract, change order or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. Contractor shall make available at its office at all reasonable times the materials described above for examination, audit, or reproduction until three years after the later of:
 - (1) final payment under the contract;

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- (2) final termination settlement; or
- (3) the final disposition of any appeals under the disputes clause or of litigation or the settlement of claims arising under or relating to the contract.

26. Multiyear Contract:

If this contract is a multiyear contract, then the following provision is made part of this contract:

If funds are not appropriated or otherwise made available for the continued performance in a subsequent year of a multiyear contract, the contract for the subsequent year shall be terminated, either automatically or in accordance with the termination clause of the contract. Unless otherwise provided for in the contract, the effect of termination is to discharge both the District and the Contractor from future performance of the contract, but not from the existing obligations. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

27. Termination Of Contracts For Certain Crimes And Violations:

- (a) The District may terminate without liability any contract and may deduct from the contract price or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid in violation of this title if:
 - (1) The Contractor has been convicted of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract; or
 - (2) There has been any breach or violation of:
 - (A) Any provision of the Procurement Practices Act of 1985, as amended, or
 - (B) The contract provision against contingent fees.
- (b) If a contract is terminated pursuant to this section, the Contractor:
 - (1) May be paid only the actual costs of the work performed to the date of termination, plus termination costs, if any; and
 - (2) Shall refund all profits or fixed fees realized under the Contract.
- (c) The rights and remedies contained in this are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law.

Hospital _____
Submission Date _____
DHS/IMA Receipt Date _____

NEWBORN NOTIFICATION FORM
REQUEST TO ADD NEWBORNS
TO DC MEDICAID, PUBLIC ASSISTANCE AND FOOD STAMP ROLLS

Mother's Medicaid I.D. Number: _____ Eligibility Period: _____

Mother's Name: _____ Telephone: _____

Mother's Address: _____

Father's Name: _____ Telephone: _____

Newborn's Name: _____ Date of Birth _____

Place of Birth: _____ Sex _____ Date of Birth _____

I hereby request that my child, _____, be added to my Medicaid eligibility case.

This also serves as the official report to D.C. DHS of this birth for Public Assistance and/or Food Stamp Program Purposes. If I am currently receiving these services, I am requesting that my child be added to my PA and/or FS household.

Mother's Signature

Date of Report

I do hereby certify that the above information is as reported by the birth hospital.

Utilization Reviewer

MCO Medical Director

Telephone: _____

Telephone: _____

District of Columbia Healthy Tots and Teen/Health Check Periodicity Schedule

The DC Healthy Tots and Teens/ Health Check Periodicity Schedule follows the American Academy of Pediatrics (AAP) health recommendation in consultation with local medical community. The recommendations are for the care of children who have no manifestation of any important health problems. Additional visits or interperiodic screens may become necessary if circumstances suggest the need for more screens, i.e. medical conditions, referral by parent, Head State, DC Public Schools, Early Intervention Programs. If a child comes under care for the first time at any point on the schedule or if any items are not done at the suggest age, the schedule should then be brought up to date as soon as possible.

Age	INFANCY									EARLY CHILDHOOD			MIDDLE CHILDHOOD						ADOLESCENCE										
	Prenatal	Newborn	2-4d	by 1m	2m	4m	6m	9m	12mo	15mo	18mo	24mo	3y	4y	5y	6y	8y	10y	11y	12y	13y	14y	15y	16y	17y	18y	19y	20y	21y
HISTORY																													
Initial/Interval	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
MEASUREMENTS																													
Height and Weight		•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Head Circumference		•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Blood Pressure													•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
SENSORY SCREENING																													
Vision		S ⁷	S	S	S	S	S	S	S	S	S	S	O ⁶	S	O	O	O	O	S	O	S	S	O	S	S	O	S	S	S
Hearing		O ⁷	S	S	S	S	S	S	S	S	S	S	S	S	O	O	O	O	S	O	S	S	O	S	S	O	S	S	S
DEVELOPMENTAL/BEHAVIORAL ASSESSMENT ⁸		•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Physical Examination ⁹		•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Procedures-General ¹⁰																													
Hereditary/Metabolic Screening ¹¹			←•→																										
Immunization ¹²		•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Hematocrit or Hemoglobin ¹³									•→	*	*	*	*	*	*	*	*	*											
Urinalysis ¹⁴⁻¹⁵																			←•→										→
PROCEDURES-PATIENTS AT RISK																													
Lead Screening ¹⁶							*	*	•	*	*	•	*	*	*	*	*	*											
Tuberculin Test ¹⁷ (PPD)									•→				*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Cholesterol Screening ¹⁸													*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
STD Screening ¹⁹													*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Pelvic Exam ²⁰																			*	*	*	*	*	*	*	*	*	*	*
ANTICIPATORY GUIDANCE ²¹																													
Injury Prevention ²²	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Violence Prevention ²³	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Sleep Positioning Counseling ²⁴	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Nutrition Counseling ²⁵	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
DENTAL EVALUATION/REFERRAL									←•→																				

KEY: • = to be performed * = to be performed for patients at risk S= subjective, by history O = objective, by a standard testing methods
 ←•→ = the range during which a service may be provided, with the dot indicating the preferred age. ←○→ 12m thru 24 m

1. Prenatal visit is recommended for parents who are at high risk, for first-time parents, and for those who request a conference the prenatal visit should include anticipatory guidance, pertinent medical history, and a discussion of benefits of breastfeeding and planned method of feeding per AAP statement “The Prenatal Visit” (1996).
2. Every infant should have a newborn evaluation after birth. Breastfeeding should be encouragement, and instruction as recommended in the AAP statement “Breastfeeding and the Use of Human Milk” (1997).
3. For newborns discharged in less than 48 hours after delivery refer AAP statement “Hospital Stay for Healthy Term Newborn” (1995).
4. Developmental, psychosocial, and chronic disease issues for children and adolescents may require frequent counseling and treatment visits separate from preventive care visits.
5. If a child comes under care for the first time at any point on the schedule, or if any items are not accomplished at the suggested age, the schedule should be brought up to date at the earliest possible time.
6. If the patient is uncooperative, rescreen within 6 months.
7. All newborns should be screened per the AAP Task Force on Newborn and Infant Hearing Loss in the neonate period (birth to 28 days) and again at 6 months through objective assessment: Hearing screening for children greater than 6 months of age, may be screened through subjective assessments, unless the child is at risk for hearing loss or the subjective evaluation indicates a reason for concern.
8. By history and appropriate physical examinations: If suspicious, by specific objective developmental testing. Parenting skills should be fostered at every visit.
9. At each visit, a complete physical examination is essential, with infant totally unclothed, older child undressed and suitably draped.
10. These may be modified, depending upon entry point into schedule and individual need.
11. Metabolic screening (eg thyroid, hemoglobinopathies, PKU, galactosemia) should be done according to state law.
12. Schedule(s) per the Committee on Infectious Diseases, published annually in the January edition of Pediatrics. Every visit should be an opportunity to update and complete a child’s immunizations.
13. All menstruating adolescents should be screened annually.
14. Unless otherwise clinically indicated in other ages, a urinalysis should be preformed, per AAP recommendations, on all sexually active adolescents.
15. Conduct dipstick urinalysis for leukocytes annually for sexually active male and female adolescents.
16. For children at risk of lead exposure refer to the statement “Screening for Elevated Blood Levels” (1998). Children must be screened between 6 months and 14 months and again at 24 months of age. A child over 26 months and less than 6 years without a documented result requires at least one documented BLL result.
17. Current DC regulations require one PPD test for all children entering child care or school, whichever comes first. PPD test is also required for all children who are assessed as high risk for exposure.
18. Cholesterol screening for high-risk patients per AAP statement “Cholesterol in Childhood” (1998). If family history cannot be ascertained and other risk factors are present, screening should be at the discretion of the physician.
19. All sexually active patients should be screened for sexually transmitted diseases (STDs). Refer to STD practice guidelines.
20. All sexually active females should have a pelvic examination. A pelvic examination and routine pap smear should be offered as part of preventive health maintenance between the ages of 18 and 21 year.
21. Age-appropriate discussion and counseling should be an integral part of each visit for care per the AAP Guidelines for Health Supervision III (1998).
22. From birth to age 12, refer to the AAP injury prevention program (TIPP@) as described in A Guide to Safety Counseling in Office Practice (1994).
23. Violence prevention and management for all patients per AAP Statement “The Role of the Pediatrician in Youth Violence Prevention in Clinical Practice and the Community Level “ (1999).
24. Parent and caregivers should be advised to place healthy infants on their backs when putting them to sleep. Side positioning is a reasonable alternative but carries a slightly higher of SIDS. Consult the AAP statement ‘Changing Concepts of Sudden Infant Death Syndrome: Implications for infant Sleeping Environment and Sleep Position” (2000).
25. Age-appropriate nutrition counseling should be an integral part of each visit per the AAP Handbook of Nutrition (1998).
26. Earlier initial dental examination may be appropriate for some children. Subsequent examinations as prescribed by dentist.

Attachment J.9

Advisory Committee on Immunization Practices (ACIP) Recommendations (Full
version available at: <http://www.cdc.gov/nip/publications/acip-list.htm>)

**District of Columbia Department of Health
Medical Assistance Administration
Dental Periodicity Schedule**

The District of Columbia Department of Health Medical Assistance Administration (DC DOH MAA) Dental Health Periodicity Schedule follows the American Academy of Pediatric Dentistry Periodicity Schedule oral health recommendations in consultation with local medical communities. This schedule is designed for the care of children who have no contributing medical conditions and are developing normally. The DC DOH MAA Dental periodicity schedule will be modified for children with special health care needs or if disease or trauma manifests variations from normal.

Age	Birth - 12 months	12 - 24 months	24 months – 3 years	3 - 6 years	6 - 12 years	12 years & Older
Clinical Oral screening ¹	•	•	•	•		
Assess oral growth and development ²	•	•	•	•	•	•
Referral for Regular & Periodic Dental care ³		If at risk	•	•	•	•
Counseling for nonnutritive Habits ⁴	•	•	•	•	•	•
Oral hygiene counseling ⁵	•	•	•	•	•	•
Dietary Counseling ⁶ Injury prevention counseling ⁷	•	•	•	•	•	•
Fluoride Supplementation ⁸		•	•	•	•	•
Radiographic Assessment ⁹			•	•	•	•
Pit & Fissure Sealants ¹⁰			•	•	•	•
Assessment & Treatment of Developing Malocclusion				•	•	•
Assessment and Removal of 3 rd molars						•
Substance Abuse Counseling					•	•
Anticipatory Guidance ¹¹	•	•	•	•	•	•

See Footnotes on Back

1. The Primary Care Physician/Pediatrician should perform the first/initial oral health screening following AAP guidelines.
2. An oral assessment can be done by the Primary Care Physician/Pediatrician up to age 3. Every infant should receive an oral health risk assessment from his/her primary health care provider or qualified health care professional by 6 months of age that includes: (1) assessing the patient's risk of developing oral disease using the AAPD Caries-risk assessment tool; (2) providing education on infant oral health; and (3) evaluating and optimizing fluoride exposure.
3. All children should be referred to a dentist for the establishment of a dental home no later than age 3. Children determined by the PCP/Pediatrician to be at risk for dental caries should be referred to a dentist as early as 6 months after the first tooth erupts, or 12 months of age (whichever comes first) for establishment of a dental home. Children at risk are defined as:
 - Children with Special Health Care Needs
 - Children of mothers with a high caries rate
 - Children with demonstrable caries, plaque, demineralization, and or staining
 - Children who sleep with a bottle or breastfeed throughout the night
 - Later-order offspring
 - Children in families of low socioeconomic status

Once dental care is established with a dental professional, it is recommended and is the right of every child enrolled in Medicaid to see the Dentist every six months.

4. At first discussion of the need for additional sucking: digits vs. pacifiers; then the need to wean from the habit before malocclusion or skeletal dysphasia occurs.
5. For school-aged children and adolescent patients, counsel regarding any existing habits such as fingernail biting, clenching, or bruxism. Counseling is given to parents/guardians/caregivers up to age 2. At age 2, the provider should include the patient/child in the counseling. For children 12 years and older, counseling need only be done with the child/patient if the dentist feels this is appropriate – Otherwise include the parents.
6. At every screening discuss the role of refined carbohydrates, frequency of snacking, etc.
7. Initial discussions should include play objects, pacifiers, and car seats; when learning to walk, include injury prevention. For school-age children and adolescent patients, counsel regarding sports and routine playing.
8. Fluoride supplementation as indicated including a topical fluoride varnish, as indicated by the child's risk for caries and periodontal disease and the water source. (Performed by dental professional only)
9. As per AAPD "Clinical guideline on prescribing dental radiographs." (Performed by dental professional only)
10. For caries-susceptible primary molars, permanent molars, premolars, and anterior teeth with deep pits and/ or fissures; placed as soon as possible after eruption. (Performed by dental professional only)
11. Appropriate oral health discussion and counseling should be an integral part of each visit for care. (Performed by dental professional only)

REFERENCES FOR DENTAL PERIODICITY SCHEDULE

1. American Academy of Pediatrics, “Policy Statement on Oral Health Risk Assessment Timing and Establishment of the Dental Home”, *Pediatrics*, 111(5):1113-16 (2003).
2. *Guide to Children’s Dental Care in Medicaid*, U.S. Department of Health & Human Services, Centers for Medicare and Medicaid Services (Oct. 2004)
3. Cruz GG, Rozier RG, and Slade G, “Dental Screening and Referral of Young Children by Pediatric Primary Care Providers,” *Pediatrics*, 114(5):642-52 (Nov. 2004)
4. Scale NS and Casamassimo PS, “Access to dental care for children in the United States: a survey of general practitioners,” *JADA*, 134:1630-1640 (dec. 2003)
5. American Academy of Pediatric Dentistry, *Policy on Use of a Caries-risk Assessment Tool (CAT) for Infants, Children and Adolescents* Originating Council, Council on Clinical Affairs, Adopted 2002