

**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  
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**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.

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- (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.

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- (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.

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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.: 5  
 Director Wage Determinations | Date Of Revision: 05/08/2008

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	14.05
01012 - Accounting Clerk II	15.78
01013 - Accounting Clerk III	20.27
01020 - Administrative Assistant	25.95
01040 - Court Reporter	19.46
01051 - Data Entry Operator I	13.07
01052 - Data Entry Operator II	14.26
01060 - Dispatcher, Motor Vehicle	16.79
01070 - Document Preparation Clerk	13.64
01090 - Duplicating Machine Operator	13.64
01111 - General Clerk I	13.92
01112 - General Clerk II	15.32
01113 - General Clerk III	18.74
01120 - Housing Referral Assistant	23.83
01141 - Messenger Courier	11.25
01191 - Order Clerk I	14.74
01192 - Order Clerk II	16.29
01261 - Personnel Assistant (Employment) I	16.90
01262 - Personnel Assistant (Employment) II	18.90
01263 - Personnel Assistant (Employment) III	21.66
01270 - Production Control Clerk	21.29

01280 - Receptionist	13.18
01290 - Rental Clerk	16.16
01300 - Scheduler, Maintenance	16.16
01311 - Secretary I	17.26
01312 - Secretary II	19.41
01313 - Secretary III	23.83
01320 - Service Order Dispatcher	16.10
01410 - Supply Technician	25.95
01420 - Survey Worker	19.46
01531 - Travel Clerk I	12.59
01532 - Travel Clerk II	13.54
01533 - Travel Clerk III	14.54
01611 - Word Processor I	13.76
01612 - Word Processor II	16.16
01613 - Word Processor III	19.46
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	9.82
07130 - Food Service Worker	10.66
07210 - Meat Cutter	16.07
07260 - Waiter/Waitress	8.82
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	9.85
11060 - Elevator Operator	9.85
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	17.69
12011 - Breath Alcohol Technician	18.55
12012 - Certified Occupational Therapist Assistant	21.01
12015 - Certified Physical Therapist Assistant	21.01
12020 - Dental Assistant	16.90
12025 - Dental Hygienist	40.68
12030 - EKG Technician	24.77
12035 - Electroneurodiagnostic Technologist	24.77
12040 - Emergency Medical Technician	18.55
12071 - Licensed Practical Nurse I	18.60
12072 - Licensed Practical Nurse II	20.82
12073 - Licensed Practical Nurse III	22.85
12100 - Medical Assistant	14.23
12130 - Medical Laboratory Technician	18.04
12160 - Medical Record Clerk	16.06
12190 - Medical Record Technician	17.96
12195 - Medical Transcriptionist	17.93
12210 - Nuclear Medicine Technologist	31.82
12221 - Nursing Assistant I	9.75
12222 - Nursing Assistant II	10.96
12223 - Nursing Assistant III	13.02
12224 - Nursing Assistant IV	14.62
12235 - Optical Dispenser	18.34
12236 - Optical Technician	14.41
12250 - Pharmacy Technician	16.31
12280 - Phlebotomist	14.62
12305 - Radiologic Technologist	28.28
12311 - Registered Nurse I	26.73
12312 - Registered Nurse II	31.24
12313 - Registered Nurse II, Specialist	31.24
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)	18.85
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	20.40
13042 - Illustrator II	25.28
13043 - Illustrator III	30.91

13047 - Librarian	28.00	
13050 - Library Aide/Clerk	13.77	
13054 - Library Information Technology Systems Administrator		25.29
13058 - Library Technician	19.05	
13061 - Media Specialist I	17.03	
13062 - Media Specialist II	19.05	
13063 - Media Specialist III	21.24	
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		17.59
14000 - Information Technology Occupations		
14041 - Computer Operator I	17.78	
14042 - Computer Operator II	19.88	
14043 - Computer Operator III	22.17	
14044 - Computer Operator IV	24.64	
14045 - Computer Operator V	27.28	
14071 - Computer Programmer I (1)	23.12	
14072 - Computer Programmer II (1)		
14073 - Computer Programmer III (1)		
14074 - Computer Programmer IV (1)		
14101 - Computer Systems Analyst I (1)		
14102 - Computer Systems Analyst II (1)		
14103 - Computer Systems Analyst III (1)		
14150 - Peripheral Equipment Operator	17.78	
14160 - Personal Computer Support Technician		24.64
15000 - Instructional Occupations		
15010 - Aircrew Training Devices Instructor (Non-Rated)		34.77
15020 - Aircrew Training Devices Instructor (Rated)	42.72	
15030 - Air Crew Training Devices Instructor (Pilot)	50.81	
15050 - Computer Based Training Specialist / Instructor	31.26	
15060 - Educational Technologist	30.88	
15070 - Flight Instructor (Pilot)	50.81	
15080 - Graphic Artist	26.80	
15090 - Technical Instructor	23.87	
15095 - Technical Instructor/Course Developer		29.19
15110 - Test Proctor	19.22	
15120 - Tutor	19.22	
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations		
16010 - Assembler	9.29	
16030 - Counter Attendant	9.29	
16040 - Dry Cleaner	12.21	
16070 - Finisher, Flatwork, Machine	9.29	
16090 - Presser, Hand	9.29	
16110 - Presser, Machine, Drycleaning	9.29	
16130 - Presser, Machine, Shirts	9.29	
16160 - Presser, Machine, Wearing Apparel, Laundry		9.29
16190 - Sewing Machine Operator	12.79	

16220 - Tailor	13.57	
16250 - Washer, Machine	10.16	
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	17.90	
21030 - Material Coordinator	21.29	
21040 - Material Expediter	21.29	
21050 - Material Handling Laborer	12.65	
21071 - Order Filler	13.87	
21080 - Production Line Worker (Food Processing)		17.90
21110 - Shipping Packer	14.46	
21130 - Shipping/Receiving Clerk	14.46	
21140 - Store Worker I	10.91	
21150 - Stock Clerk	15.70	
21210 - Tools And Parts Attendant	17.90	
21410 - Warehouse Specialist	17.90	
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	20.88	
23140 - Carpet Layer	19.33	
23160 - Electrician, Maintenance	26.56	
23181 - Electronics Technician Maintenance I		22.73
23182 - Electronics Technician Maintenance II		24.13
23183 - Electronics Technician Maintenance III		25.42
23260 - Fabric Worker	18.04	
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	21.17	
23380 - Ground Support Equipment Mechanic	24.46	
23381 - Ground Support Equipment Servicer	18.71	
23382 - Ground Support Equipment Worker	19.90	
23391 - Gunsmith I	16.63	
23392 - Gunsmith II	19.33	
23393 - Gunsmith III	21.62	
23410 - Heating, Ventilation And Air-Conditioning Mechanic		22.21
23411 - Heating, Ventilation And Air Contditioning Mechanic (Research Facility)		

24.37		
23430 - Heavy Equipment Mechanic	21.46	
23440 - Heavy Equipment Operator	21.46	
23460 - Instrument Mechanic	21.62	
23465 - Laboratory/Shelter Mechanic	20.52	
23470 - Laborer	14.27	
23510 - Locksmith	19.76	
23530 - Machinery Maintenance Mechanic	21.77	
23550 - Machinist, Maintenance	21.62	
23580 - Maintenance Trades Helper	15.10	
23591 - Metrology Technician I	21.62	
23592 - Metrology Technician II	22.78	
23593 - Metrology Technician III	23.89	
23640 - Millwright	25.63	
23710 - Office Appliance Repairer	21.63	
23760 - Painter, Maintenance	20.52	
23790 - Pipefitter, Maintenance	23.19	
23810 - Plumber, Maintenance	20.99	
23820 - Pneudraulic Systems Mechanic	21.62	
23850 - Rigger	21.62	
23870 - Scale Mechanic	19.33	
23890 - Sheet-Metal Worker, Maintenance	21.62	
23910 - Small Engine Mechanic	20.05	
23931 - Telecommunications Mechanic I	27.74	
23932 - Telecommunications Mechanic II	29.24	
23950 - Telephone Lineman	26.38	
23960 - Welder, Combination, Maintenance	21.62	
23965 - Well Driller	21.62	
23970 - Woodcraft Worker	21.62	
23980 - Woodworker	16.63	
24000 - Personal Needs Occupations		
24570 - Child Care Attendant	11.63	
24580 - Child Care Center Clerk	16.15	
24610 - Chore Aide	10.00	
24620 - Family Readiness And Support Services Coordinator		14.25
24630 - Homemaker	16.75	
25000 - Plant And System Operations Occupations		
25010 - Boiler Tender	26.10	
25040 - Sewage Plant Operator	20.23	
25070 - Stationary Engineer	26.10	
25190 - Ventilation Equipment Tender	18.37	
25210 - Water Treatment Plant Operator	20.23	
27000 - Protective Service Occupations		
27004 - Alarm Monitor	19.43	
27007 - Baggage Inspector	12.66	
27008 - Corrections Officer	21.30	
27010 - Court Security Officer	23.26	
27030 - Detection Dog Handler	19.43	
27040 - Detention Officer	21.30	
27070 - Firefighter	22.39	

27101 - Guard I	12.66	
27102 - Guard II	19.43	
27131 - Police Officer I	24.58	
27132 - Police Officer II	28.24	
28000 - Recreation Occupations		
28041 - Carnival Equipment Operator	13.59	
28042 - Carnival Equipment Repairer	14.63	
28043 - Carnival Equipment Worker	9.24	
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	18.21	
29000 - Stevedoring/Longshoremen Occupational Services		
29010 - Blocker And Bracer	22.60	
29020 - Hatch Tender	22.60	
29030 - Line Handler	22.60	
29041 - Stevedore I	20.82	
29042 - Stevedore II	23.68	
30000 - Technical Occupations		
30010 - Air Traffic Control Specialist, Center (HFO) (2)		36.27
30011 - Air Traffic Control Specialist, Station (HFO) (2)		25.01
30012 - Air Traffic Control Specialist, Terminal (HFO) (2)		27.54
30021 - Archeological Technician I	17.82	
30022 - Archeological Technician II	19.87	
30023 - Archeological Technician III	25.95	
30030 - Cartographic Technician	25.95	
30040 - Civil Engineering Technician	23.78	
30061 - Drafter/CAD Operator I	18.72	
30062 - Drafter/CAD Operator II	20.94	
30063 - Drafter/CAD Operator III	24.60	
30064 - Drafter/CAD Operator IV	30.26	
30081 - Engineering Technician I	20.95	
30082 - Engineering Technician II	23.53	
30083 - Engineering Technician III	26.31	
30084 - Engineering Technician IV	32.61	
30085 - Engineering Technician V	39.88	
30086 - Engineering Technician VI	48.25	
30090 - Environmental Technician	23.50	
30210 - Laboratory Technician	22.36	
30240 - Mathematical Technician	28.94	
30361 - Paralegal/Legal Assistant I	20.71	
30362 - Paralegal/Legal Assistant II	25.69	
30363 - Paralegal/Legal Assistant III	31.38	
30364 - Paralegal/Legal Assistant IV	37.97	
30390 - Photo-Optics Technician	27.33	
30461 - Technical Writer I	21.27	
30462 - Technical Writer II	25.98	

30463 - Technical Writer III	31.44	
30491 - Unexploded Ordnance (UXO) Technician I		23.05
30492 - Unexploded Ordnance (UXO) Technician II		27.89
30493 - Unexploded Ordnance (UXO) Technician III		33.43
30494 - Unexploded (UXO) Safety Escort	23.05	
30495 - Unexploded (UXO) Sweep Personnel	23.05	
30620 - Weather Observer, Combined Upper Air Or Surface Programs (2)	24.35	
30621 - Weather Observer, Senior (2)	26.38	
31000 - Transportation/Mobile Equipment Operation Occupations		
31020 - Bus Aide	12.50	
31030 - Bus Driver	18.19	
31043 - Driver Courier	12.71	
31260 - Parking and Lot Attendant	9.53	
31290 - Shuttle Bus Driver	14.69	
31310 - Taxi Driver	13.98	
31361 - Truckdriver, Light	14.69	
31362 - Truckdriver, Medium	17.18	
31363 - Truckdriver, Heavy	18.42	
31364 - Truckdriver, Tractor-Trailer	18.42	
99000 - Miscellaneous Occupations		
99030 - Cashier	10.03	
99050 - Desk Clerk	11.11	
99095 - Embalmer	23.05	
99251 - Laboratory Animal Caretaker I	10.47	
99252 - Laboratory Animal Caretaker II	11.73	
99310 - Mortician	29.98	
99410 - Pest Controller	15.13	
99510 - Photofinishing Worker	11.59	
99710 - Recycling Laborer	16.51	
99711 - Recycling Specialist	20.27	
99730 - Refuse Collector	14.64	
99810 - Sales Clerk	11.87	
99820 - School Crossing Guard	12.51	
99830 - Survey Party Chief	21.61	
99831 - Surveying Aide	13.43	
99832 - Surveying Technician	20.54	
99840 - Vending Machine Attendant	13.68	
99841 - Vending Machine Repairer	17.76	
99842 - Vending Machine Repairer Helper	13.68	

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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) Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals, (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

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.

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Attachment J.2

Attachment J.3

<http://www.hhs.gov/ocr/hipaa/>

# 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 MAYORS 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 THT THE CONTRATOR 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 <sup>th</sup> 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
--	--

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
--	-------------------------

Address (Number and street)	City or Town	Country	State	Zip Code	b.
-----------------------------	--------------	---------	-------	----------	----

b. Employer Identification No.									
--------------------------------	--	--	--	--	--	--	--	--	--

2. Establishment for which this report is filed.	OFFICIAL USE ONLY
--	-------------------------

a. Name of establishment	c.
--------------------------	----

Address (Number and street)	City or Town	Country	State	Zip Code	d.
-----------------------------	--------------	---------	-------	----------	----

b. Employer Identification No.									
--------------------------------	--	--	--	--	--	--	--	--	--

3. Parent of affiliated Company

a. Name of parent or affiliated Company	b. Employer Identification No.								
---	--------------------------------	--	--	--	--	--	--	--	--

Address (Number and Street)	City or Town	Country	State	Zip Code
-----------------------------	--------------	---------	-------	----------

## 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.
--	----

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>	
---	--

**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)

Title                      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 EMPLOYEES 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**

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**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 (\$10,000) 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					





## LIVING WAGE ACT FACT SHEET

The “Living Wage Act of 2006,” Title I of D.C. Law 16-18, (D.C. Official Code §§2-220.01-.11) became effective June 9, 2006. It provides that District of Columbia government contractors and recipients of government assistance (grants, loans, tax increment financing) in the amount of \$100,000 or more shall pay affiliated employees wages no less than the current living wage rate.

**Effective January 1, 2008, the living wage rate is \$12.10 per hour.**

Subcontractors of D.C. government contractors who receive \$15,000 or more from the contract and subcontractors of the recipients of government assistance who receive \$50,000 or more from the assistance are also required to pay their affiliated employees no less than the current living wage rate.

“Affiliated employee” means any individual employed by a recipient who receives compensation directly from government assistance or a contract with the District of Columbia government, including any employee of a contractor or subcontractor of a recipient who performs services pursuant to government assistance or a contract. The term “affiliated employee” does not include those individuals who perform only intermittent or incidental services with respect to the government assistance or contract, or who are otherwise employed by the contractor, recipient or subcontractor.

**Exemptions** – The following contracts and agreements are exempt from the Living Wage Act:

1. Contracts or other agreements that are subject to higher wage level determinations required by federal law (i.e., if a contract is subject to the Service Contract Act and certain wage rates are lower than the District’s current living wage, the contractor must pay the higher of the two rates);
2. Existing and future collective bargaining agreements, provided that the future collective bargaining agreement results in the employee being paid no less than the current living wage;
3. Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
4. Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
5. Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services, provided that the trainees do not replace employees subject to the Living Wage Act;

6. An employee, under 22 years of age, employed during a school vacation period, or enrolled as full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act;
7. Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District of Columbia;
8. Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to Section 501 (c) (3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26. U.S.C. §501(c)(3));
9. Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §44-501); and
10. Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

## Enforcement

The Department of Employment Services (DOES) and the D.C. Office of Contracting and Procurement (OCP) share monitoring responsibilities.

If you learn that a contractor subject to this law is not paying at least the current living wage you should report it to the Contracting Officer.

If you believe that your employer is subject to this law and is not paying you at least the current living wage, you may file a complaint with the DOES Office of Wage – Hour, located at 64 New York Ave., NE, Room 3105, (202) 671-1880.

For questions and additional information, contact the Office of Contracting and Procurement at (202) 727-0252 or the Department of Employment Services on (202) 671-1880.

**Please note:** *This fact sheet is for informational purposes only as required by Section 106 of the Living Wage Act. It should not be relied on as a definitive statement of the Living Wage Act or any regulations adopted pursuant to the law.*

# **“THE LIVING WAGE ACT OF 2006”**

Title I, D.C. Law No. 16-118, (D.C. Official Code §§ 2-220.01-11)

**Effective June 9, 2006, recipients of new contracts or government assistance shall pay affiliated employees and subcontractors who perform services under the contracts no less than the current living wage. Effective January 1, 2008, the living wage rate is \$12.10.**

**The requirement to pay a living wage applies to:**

- All recipients of contracts in the amount of \$100,000 or more; and, all subcontractors of these recipients receiving \$15,000 or more from the funds received by the recipient from the District of Columbia, and,
- All recipients of government assistance in the amount of \$100,000 or more; and, all subcontractors of these recipients of government assistance receiving \$50,000 or more in funds from government assistance received from the District of Columbia.

**“Contract” means a written agreement between a recipient and the District government.**

**“Government assistance” means a grant, loan or tax increment financing that result in a financial benefit from an agency, commission, instrumentality, or other entity of the District government.**

**“Affiliated employee” means any individual employed by a recipient who received compensation directly from government assistance or a contract with the District of Columbia government, including any employee of a contractor or subcontractor of a recipient who performs services pursuant to government assistance or contract. The term “affiliated employee” does not include those individuals who perform only intermittent or incidental services with respect to the contract or government assistance or who are otherwise employed by the contractor, recipient or subcontractor.**

Certain exceptions may apply where contracts or agreements are subject to wage determinations required by federal law which are higher than the wage required by this Act; contracts for electricity, telephone, water, sewer other services delivered by regulated utility; contracts for services needed immediately to prevent or respond to a disaster or eminent threat to the public health or safety declared by the Mayor; contracts awarded to recipients that provide trainees with additional services provided the trainee does not replace employees; tenants or retail establishments that occupy property constructed or improved by government assistance, provided there is no receipt of direct District government assistance; Medicaid provider agreements for direct care services to Medicaid recipients, provided that the direct care service is not provided through a home care agency, a community residential facility or a group home for mentally retarded persons; and contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

Exemptions are provided for employees under 22 years of age employed during a school vacation period, or enrolled as a full-time student who works less than 25 hours per week, provided that other employees are not replaced, and for employees of nonprofit organizations that employ not more than 50 individuals.

**Each recipient and subcontractor of a recipient shall provide this notice to each affiliate employee covered by this notice, and shall also post this notice concerning these requirements in a conspicuous site in the place of business.**

**All recipients and subcontractors shall retain payroll records created and maintained in the regular course of business under District of Columbia law for a period of at least 3 years.**

This is a summary of the “Living Wage Act of 2006”. For the complete text go to:

[www.does.dc.gov](http://www.does.dc.gov) or [www.ocp.dc.gov](http://www.ocp.dc.gov)

**To file a complaint contact:**

**Department of Employment Services  
Office of Wage-Hour**

**64 New York Avenue, N.E., Room 3105, Washington, D.C. 20002  
(202) 671-1880**

# MITA Information Series

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1. What Is MITA? An Overview
2. Planning for MITA — An Introduction to Transition Planning
3. Service-Oriented Architecture — A Primer
4. The MITA Business Process Model
5. **The MITA Maturity Model**
6. The MITA Service Infrastructure
7. The MITA Operations Concept
8. The MITA Repository
9. MITA and APDs



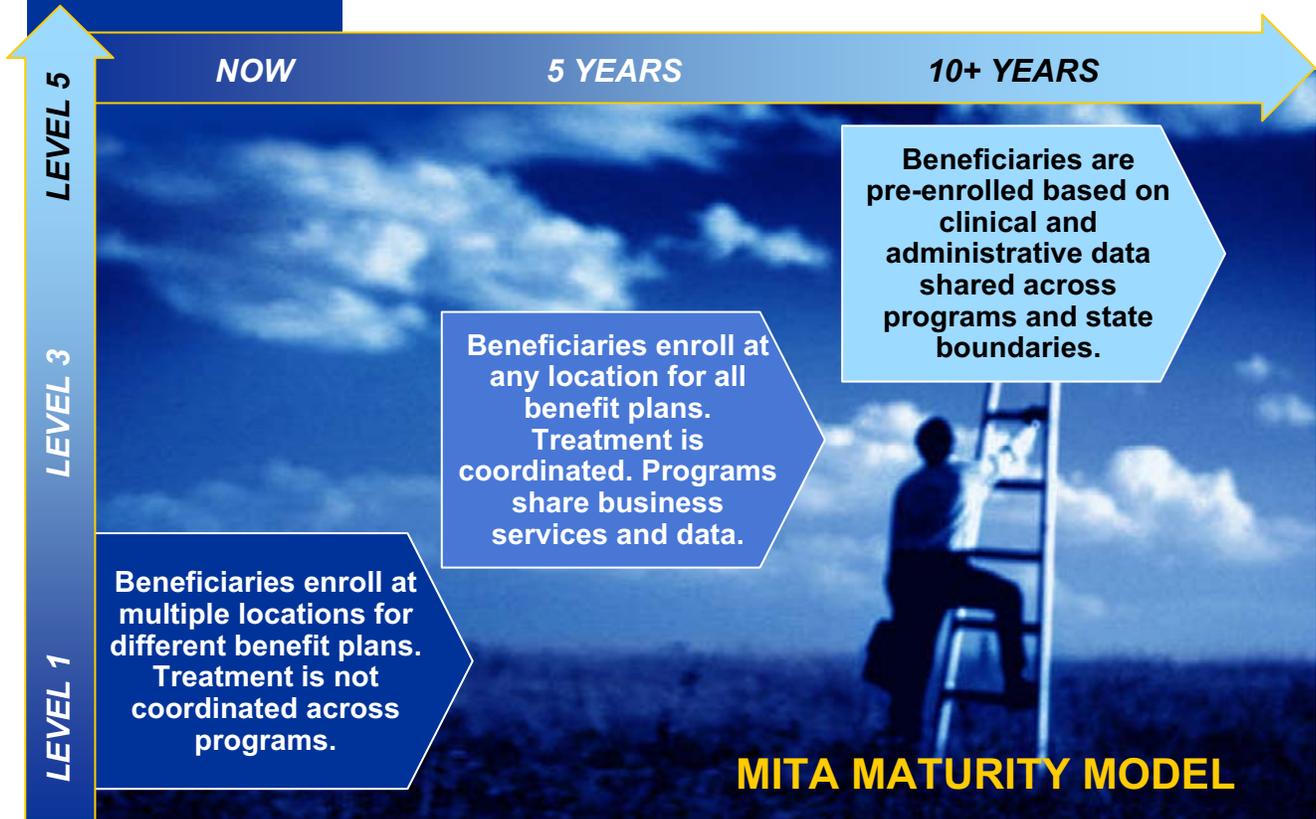
# The MITA Maturity Model

This paper presents the Medicaid Information Technology Architecture (MITA) Maturity Model (MMM) and explains its role in the MITA architectural framework and how it is used by the MITA team, the Centers for Medicare and Medicaid Services (CMS), states, and vendors.

## What Is a Maturity Model?

Figure 1  
A Maturity Model has two dimensions: time and space (levels)

A Maturity Model shows improvement and transformation of a business over time.<sup>1</sup> It is a two-dimensional model showing change related to time and space (Figure 1). The temporal dimension shows a progression from the present time to a realistic future time. The spatial dimension captures how the business looks, what capabilities it exhibits, at each progressively higher level.



<sup>1</sup> In the MMM, time is loosely associated with five milestones ranging from the present to 10+ years from now. Predictions are well grounded at the 5-year marker but are dependent on new enablers in the future. Therefore, the time estimates are less certain beyond the midpoint.

The Maturity Model is used in contemporary methodologies (e.g., CMM<sup>1</sup>) to establish goals for achieving and measuring progress. Maturity models typically focus on individual enterprises; e.g., a single state Medicaid program. However, MITA has to accommodate 51 individual Medicaid enterprises. We need a Maturity Model useful to all state Medicaid agencies, adaptable to any state at any level of maturity, and able to show different levels of maturity for different business processes within a single state. Such a model did not exist. The MITA team has adapted industry standards for maturity models to the needs of the multistate Medicaid enterprise.

This white paper describes the MITA Maturity Model and covers the following topics:

- The Model's time and space dimensions and general statements about the levels
- Relationship between the Maturity Model and both business and technical capabilities
- Relationship between the Maturity Model and Medicaid mission and goals
- Relationship between the Maturity Model and MITA goals and objectives
- General description and qualities of each level
- Uses of the Maturity Model
- An example of business capabilities for a business process (Enroll Provider) derived from the general MITA Maturity Model definitions and qualities

### Time and Space Dimension

The MITA Maturity Model incorporates five levels of maturity over a 10+ year timeline.

Why five Levels and 10+ years?

- The Medicaid enterprise is complex; there are many moving parts. We need a maturity model that adequately encompasses the breadth and depth of Medicaid business processes
- A 10-year vision is the right target given our current understanding of technology, policy, and stakeholder drivers
- We want to show a reasonable progression; ten steps over 10 years are too many; two steps are too few; five intervals allow for differentiations, targets for progress that we can understand and implement.

<sup>1</sup> The Software Engineering Institute (SEI) developed the Capability Maturity Model (CMM) for IT organizations.

Time Dimension

The MITA Maturity Model projects a 10+ year timeline. The assumptions for the timeline include dependencies on technology advances, state and federal policies, and legislation.

We feel reasonably certain regarding predictions within the next 5 years. The 10-year target is also possible but less predictable due to dependencies on adoption of enablers. Recognizing the many obstacles in the way of achieving goals, we take the conservative position of 10+ years. Figure 2 illustrates the planned progression for state Medicaid agencies over the next 10 years.



Figure 2  
Maturity Model  
Timeline for MITA

**Levels 1 and 2: As-Is**

All technology, policy, and statutory enablers exist and are widely used. Agency complies with baseline requirements.  
Level 2 shows improved capabilities over Level 1.

**Levels 3: 5 Years**

Healthcare industry begins to use technology already available in other business sectors. Adopts policy to promote collaboration, data sharing, consolidation of business processes.

**Levels 4 and 5:  
To-Be 8–10+ years**

Technology, policy under development. Cannot be certain of timeframe. When available, will cause profound change and improvement in business processes.

**Space Dimension  
(Levels of  
Maturity)**

Within the 10-year time frame, the Maturity Model predicts a transformation of the Medicaid enterprise from a current level of capability to a future state. This dimension is explained through a narrative description of the business capabilities at a defined point in time. These progressive steps of maturity are referred to as *levels*. Each level has a distinct definition that differentiates it from other levels. The model provides a narrative description of the state of the Medicaid enterprise at each level. For example, take the MITA goal to “promote an environment which supports flexibility and adaptability and rapid response to changes in programs and technologies.” Figure 3 shows how progressive levels of maturity improve the agency’s ability to meet the goal.

**Figure 3  
Example of Levels  
of Maturity**

Level 1	Level 2	Level 3	Level 4	Level 5
Agencies comply with mandatory changes but lack technical flexibility. Program changes are costly and time consuming to implement.	Agencies introduce elements of flexibility in program design and selection of technology driven by requirements to manage costs and implement new programs.	Agencies improve on flexibility and adaptability through implementation of shared and extensible business services, adoption of national standards, increased collaboration among intra-state agencies, and use of state/regional information exchange.	Agencies benefit from immediate access to clinical data to speed up response time and improve accuracy of results in critical business processes.	Agencies extend the capability of flexibility and adaptability through national interoperability. Agencies collaborate on response to changes and share solutions intra- and inter-state.



# The MITA Maturity Model

The MMM is the Keystone of the MITA Business and Technical Capabilities

The MMM shows how the Medicaid program will evolve and be transformed over time. It applies the general definition of a maturity model to the complexities of the Medicaid program as manifested in 51 jurisdictions.

The MMM takes the Medicaid mission and goals and places them in a structure designed to show the future (To-Be) vision and the intermediary steps (levels) that the agency must achieve in order to reach the To-Be objectives. The MMM shows a pathway of continuous business improvement leading to a realistic future state. Each higher level incorporates the best practices of the level below and more importantly introduces higher level capabilities.

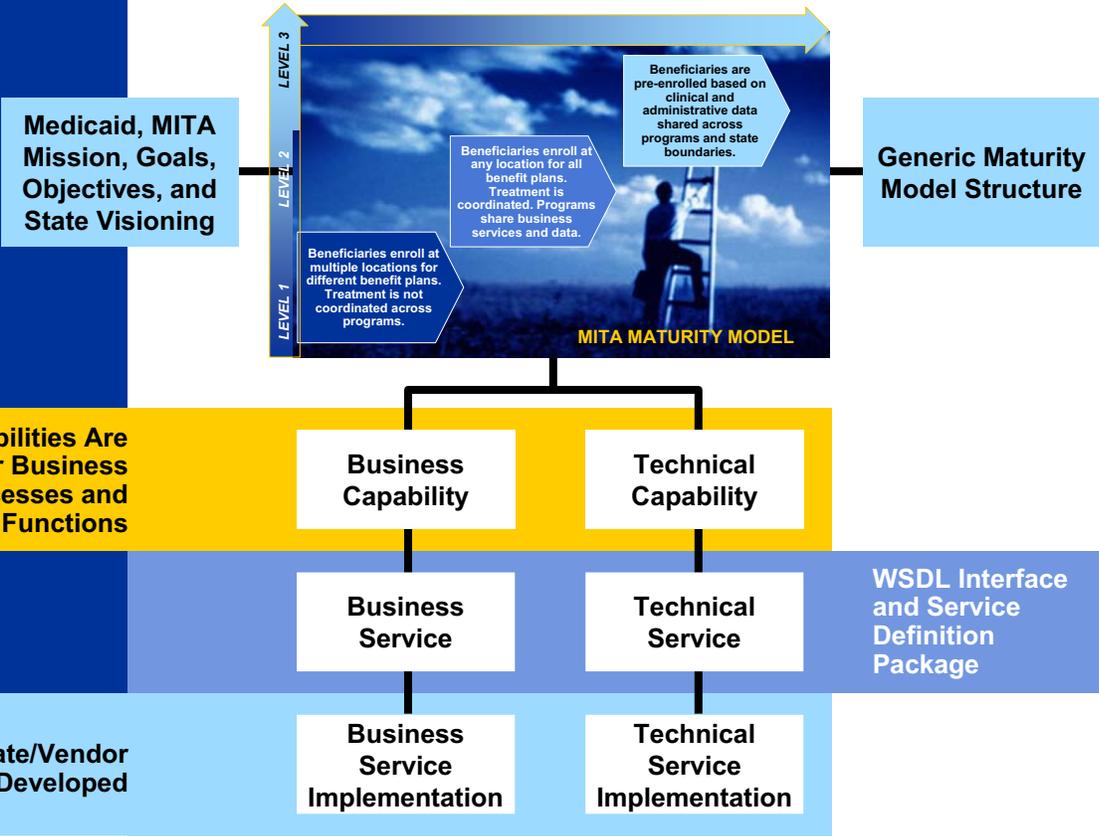


Figure 4  
MMM establishes the vision and direction for the MITA Transformation Path

Figure 4 shows the relationship of the Maturity Model to the MITA transformation path. As shown in the figure, there are two separate tracks under the MITA Maturity Model: business and technical. The business track maps directly to processes in the MITA business process model. The technical track is the enabler for the business services and also maps to the MITA goals and objectives. It is critical to understand that MITA only specifies the technology needed for the *interoperability* of the business services, it does not mandate the technology used to *implement* business processes.

For example, the MITA team in collaboration with states can develop a business service for the Authorize Service business process at Level 3. The business service definition package will contain specifications for the inputs and outputs written in Web Service Definition Language (WSDL), which all implementers agree to follow, but will not contain a specific implementation approach. States and vendors are free to choose a J2EE or a dot.net approach, develop software or use a commercial off-the-shelf (COTS) software, and limit or expand functionality as long as the service uses the trigger and result WSDL.

**Note: This paper presents the MITA Maturity Model and shows how it is used in building Business Capabilities. There is a separate capability matrix for technology, not included in this paper, that will be seen in the MITA Framework, Release 2.0**

This approach ensures interoperability of services while still allowing the maximum flexibility for states and vendors during implementation. An individual state is responsible for selecting the appropriate technology for their specific implementation. This selection is based on the state's goals, objectives, priorities, budgets, and IT environment. As long as the implementation matches the MITA interoperability requirements, the state will be MITA-compliant regardless of the specific implementation methods used. In order to be technology neutral for the implementation, MITA does not map the technology or technical services to the business processes. The technology is mapped by a state at implementation time as part of the solution set for the service.

The MITA team will maintain a repository that will define a service and its interfaces (using WSDL) and will keep track of the solution sets used to implement the services. States will use this repository to determine whether the service has already been implemented and, if so, using what technologies. The repository will also provide recommended technologies and standards to be used during the implementation of the services.

For each Business Process and each Technical Function, we define capabilities that conform to the Maturity Model. For example, a Level 3 Business Capability adheres to the general description of Maturity Level 3 and exhibits the same Level 3 qualities. The following text explains the traceability from Maturity Model to Business Capabilities.

**Medicaid Mission and Goals**



The MMM begins with the definition of the Medicaid mission and goals. This is a statement in business terms that establishes the long-range vision of the Medicaid program. The Medicaid Mission expresses a vision of the future. The future is achievable as the agency matures aided by technology, policymaking, and legislation.

Medicaid mission and goals are described for each level of maturity (Figure 5). These will illustrate what improvements are expected to be found at each higher level. Medicaid mission and goals have been shaped by “visioning” sessions conducted with several state agencies and by recent national initiatives such as the National Health Information Network.

**Note: This paper contains excerpts from the Medicaid and MITA Goals and Objectives, and the MITA Maturity Model and Business Capability Matrix. The full model and the Business Capability Matrix are included in MITA Framework, Release 2.0.**

Medicaid Goal	Level 1	Level 2	Level 3	Level 4	Level 5
<b>Improve Healthcare Outcomes for Medicaid Beneficiaries</b>	The agency focuses on payment of provider claims to encourage participation of providers and, thereby, promote access to care.	Improved healthcare outcomes are a byproduct of programs focused on managing costs, e.g., managed care and waiver programs.	The agency adopts national data standards, collaborates with other agencies, and shares business services resulting in a better base for comparing outcomes.	All stakeholders have access to clinical data resulting in a major leap forward in analysis of healthcare outcomes.	The agency has access to data nationally to compare outcomes across a broad spectrum of other agencies and states.

**Figure 5**  
Example of a Medicaid goal realized at different levels of maturity

**MITA Mission, Goals, and Objectives**

The MITA mission, goals, and objectives support the Medicaid mission and goals. The Medicaid Mission draws upon a variety of sources including policymaking, strategic planning, and legislation. MITA is one of the key supports for achieving the Medicaid mission. MITA has its own mission statement, objectives, and goals that align with the Medicaid mission and with federal standards, e.g., Federal Health Architecture (FHA) and the National Health Information Network (NHIN) initiative. The Medicaid mission and the MITA mission are interwoven in the fabric of the MITA framework. The realization of the Medicaid mission and MITA objectives is described at each level of maturity. This is the capstone of the MITA Maturity Model.

MITA Goal	Level 1	Level 2	Level 3	Level 4	Level 5
<b>Provide data that is timely, accurate, usable, and easily accessible in order to support analysis and decision making for healthcare management and program administration.</b>	The source of data is primarily the claim. Data is accessible via a request/response process. Data is non-standard. Data is primarily used to manage operations. Data timeliness may be subject to delays.	Claim and encounter data are accessible. Decision support tools improve analysis. Data standards are mandated by HIPAA but are not widely used in internal processes. Data timeliness improves.	Data standards are adopted nationally. Shared repositories of data improve efficiency of access and accuracy of data used resulting in better business process results.	Access to standardized clinical data through regional data exchange enhances the decision-making process. With clinical evidence, decisions can be immediate, consistent, and decisive.	Data exchange on a national scale optimizes the decision-making capabilities of the state agency.

**Figure 6**  
Example of a MITA goal represented at different levels of maturity

**MITA Maturity Model General Description and Qualities for Each Level**

The MMM takes the Maturity Model timeline shown in Figure 6 and the description of levels of achievement of the goals and objectives (in Figures 1 through 3) and distills them into a consolidated, general description of each level of maturity. The general description is accompanied by a set of *qualities* to provide more detail in characterizing the individual level. The general description and the companion qualities are generic and cover all Medicaid business areas. Figure 7 captures the general description of each level of maturity.

Level 1	Level 2	Level 3	Level 4	Level 5
At Level 1, the agency focuses on meeting compliance thresholds dictated by state and federal regulations. It primarily targets accurate enrollment of program eligibles and timely and accurate payment of claims for appropriate services.	At Level 2, the agency focuses on cost management and improving quality of and access to care within structures designed to manage costs; e.g., managed care, catastrophic care management, disease management. The focus on managing costs leads to program innovations.	At Level 3, the agency focuses on coordination with other agencies and collaboration in adopting national standards and developing shared business services as a means to improving cost effectiveness of healthcare service delivery. The agency promotes usage of intra-state data exchange.	At Level 4, widespread and secure access to clinical data enables the agency to improve healthcare outcomes, empower beneficiary and provider stakeholders, measure quantitative objectives, and focus on program improvement.	At Level 5, national (and international) interoperability combined with the previous improvements automates routine operations and allows the agency to focus on fine tuning and optimizing program management, planning, and evaluation.

**Figure 7  
Definition of  
Medicaid levels of  
maturity**

Medicaid in any state is a complex program. It is difficult to capture the essence of the Medicaid program at a level of maturity in a few words in the Maturity Model. To help illustrate the goals of each level and to differentiate between levels, we have added a layer of qualities to illustrate in more detail the nature of each level.

## Qualities of Each Level of Maturity

- **Timeliness of Process** — Time lapse between initiation of a business process/capability and the desired result; e.g., length of time to enroll a provider, assign a member, pay for a service, respond to an inquiry, make a change, report on outcomes
- **Data Access and Accuracy of Data** — Ease of access to data required by the process/capability, and timeliness and accuracy of the data used by the process
- **Effort to Perform; Efficiency** — Level of effort to perform this business process/capability; resource requirements, burden
- **Cost Effectiveness** — Ratio of effort and cost to outcome
- **Quality of Process Results** — Demonstrable benefits resulting from the business process/capability
- **Utility or Value to Stakeholders** — Impact of the business process/capability on the individual (member, provider, Medicaid staff)

**Figure 8**  
Example of  
Timeliness as a  
Quality Applied to  
the Five Levels to  
Maturity

Qualities defined for each level should clearly differentiate between levels and show a progression of improvement. Figure 8 illustrates the quality of Timeliness of Process.

Quality: Timeliness of Process				
Level 1	Level 2	Level 3	Level 4	Level 5
Business processes meet threshold, mandated requirements for timeliness; i.e., the results are achieved within the time specified by law or regulation.	Business process timeliness is enhanced through use of Web portal, EDI. Business processes that result in cost savings are prioritized. Timeliness exceeds legal requirements.	Timeliness improves via collaboration, data-sharing standards, and use of state/regional information exchange.	Clinical data is available in real time. Processes using clinical data result in immediate action, response, and outcomes. State or regional stakeholders are interoperable, optimizing timeliness.	Processes are further enhanced through connectivity with other states and federal agencies. Most business processes are executed at the point of service. Results are as close to immediate as we can envision at this time.

### Uses of the MITA Maturity Model

The MMM is a Reference Model that the MITA team can use to define business capabilities associated with business processes. The MMM defines the parameters for each level.

State Self-Assessment and the Assignment of Levels

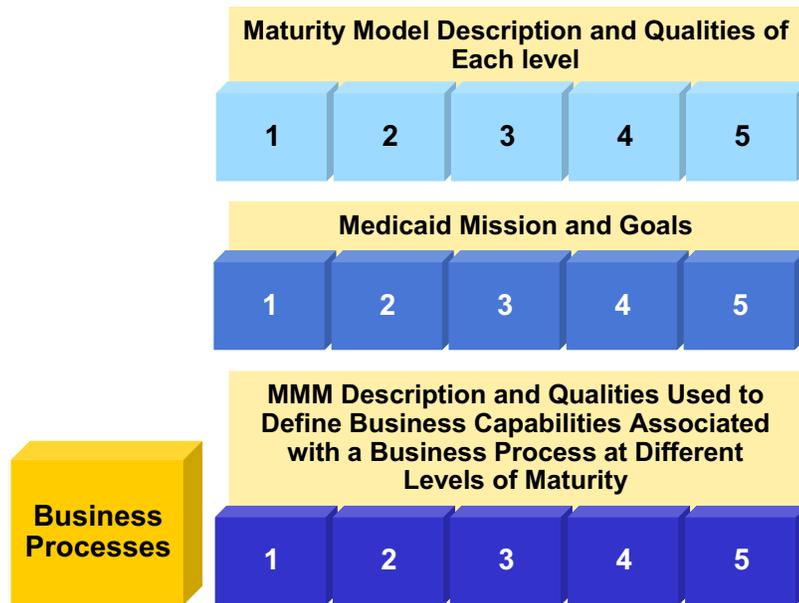
- The MMM serves as a guidebook for the MITA team in the development of the business capabilities. Business capabilities at Level 3 and above are the basis for the development of business services, which is one of the goals of the MITA framework.
- The MMM shows traceability from the mission and goals to the business capabilities. It shows how each lower level is aligned with its higher level.
- MMM provides the framework for a common definition of each level and model qualities for further detail. It provides a baseline and grounding for the levels of maturity.
- It provides consistency; e.g., all Level 3 descriptions have a common base.
- In the future, CMS will use the MMM to adjust the business capabilities and maintain alignment with the mission and goals.
- In the future, CMS could use the business capabilities to measure performance of Medicaid agencies; in this case, the MMM serves as a reference establishing the basis of the measurement.
- States and vendors can refer to the MMM to clarify their understanding of business capabilities. [Note: States will use the business capabilities to do their self-assessment; the MMM is only a reference model.]

**Note: This series includes other papers that are associated with the MMM paper; e.g., Business Process Model, Service-Oriented Architecture, and Transition.**

In applying the MITA Business Capability Matrix to an individual state, it is expected that any state will find that it has a mix of business capabilities at different levels of maturity, primarily Levels 1 and 2. Even within a single business area, individual business processes may be mapped to different maturity levels. States will make decisions regarding how and when to improve their business outcomes. For example, a state may decide (due to funding, legislation, or resource restrictions) to undertake improvements in the Provider Management business area or only the Enroll Provider business process, and defer changes to other business areas for a later date. Over time, however, CMS hopes that states will come closer together as they bring their capabilities in line with Maturity Levels 3, 4, and 5. At these higher levels, states will agree on common data standards, jointly develop business services, and adopt NHIN standards for interoperability and data.

At Level 3 and above, states will begin to share services and exchange data in increasingly more uniform ways. At the same time, state individuality is preserved and vendor solutions can continue to compete. Enabling technology, legislation, and policy decisions are needed before any state can move to Levels 4 and 5. For Level 3, the technology exists and is used in other industries, e.g., banking, but has not been widely introduced in the U.S. healthcare sector.

**Putting It All Together**



1. The Maturity Model provides a framework consisting of a timeline (roughly 10+ years) and levels of maturity to be achieved as the business matures.
2. The MMM describes the Medicaid business in general at five levels of maturity. The description includes a list of qualities to clarify the intent of each level.
3. The levels of maturity are applied to the Medicaid and MITA mission statements.
4. The levels of maturity are then applied to the MITA Business Process Model at the individual Business Process level.
5. Using the MMM as a guide, the MITA team will create business capability statements for each Business Process at Levels 1 through 5. Business capabilities at each level can be traced back to the corresponding MMM Maturity Level. Business capability statements mirror the MMM general description and detailed qualities. States will use the Business Capability Matrix (a table of business capabilities for each business process at each level where they apply) to perform a self-assessment.
6. Over time, states will collaborate with the MITA team to refine the business capabilities. At the point where business and technology come together in the definition of a business service, and later in the implementation of a specific service, the resulting solutions will be maintained in a MITA repository for re-use by other states. The level and qualities of the solution will be captured in the Service Definition package.

**Figure 9**  
Shows the  
Application of the  
Maturity Model to a  
specific business  
process; i.e., Enroll  
Provider (1 of 4)

The Provider Management Business Area services the provider network through outreach, enrollment, information management, communications, and support services. The Business Objectives for this Business Area are **improve quality of provider network, match needs of the population with availability of appropriate services, satisfy providers and consumers, prevent illness, improve outcomes.**

Enroll Provider	Level 1	Level 2	Level 3	Level 4	Level 5
<b>General Statement</b>	Provider enrollment staff meet state and federal requirements for processing applications. They receive and process paper enrollment applications and manually apply the agency's business rules resulting in creating and maintaining a provider network that provides access to benefits for eligible members.	Provider enrollment staff receive and process paper and automated applications and automatically apply some business rules resulting in creating and maintaining a provider network that complies with state and federal law and policy; meets members' clinical, cultural, and linguistic needs faster and more accurately; supports the needs of managed care and waiver programs; and delivers overall improvements in quality of care.	Medicaid agency provider enrollment staff collaborate with other agencies to receive standardized, electronic enrollment applications; apply standardized, automated business rules; access federated registries; and perform all verifications (e.g., credentialing) electronically, resulting in creating and maintaining a robust, coordinated provider network that meets quality and effectiveness objectives, supports integrated monitoring of provider performance, and allows members to have direct interaction with the provider.	Provider enrollment staff augment the capabilities of Level 3 by refining the verification and validation process via automated access to providers' clinical records resulting in creating and maintaining a robust, coordinated, clinically sound provider network that exceeds Level 3 goals of quality, cultural appropriateness, accurate credentialing, and adequacy for the needs of the population.	Provider enrollment staff augment the capabilities of Levels 3 and 4 through full automation of the enrollment process and access to all provider registries nationally via data sharing and interoperability agreements resulting in optimizing the provider network, providing maximum compatibility with members' needs and choices. At Level 5, all enrollment application edits are automated; staff only handle exceptions. This and transforms staff into a professional oversight and consumer satisfaction role.

Figure 9  
(2 of 4)

The Provider Management Business Area services the provider network through outreach, enrollment, information management, communications, and support services. The Business Objectives for this Business Area are **improve quality of provider network, match needs of the population with availability of appropriate services, satisfy providers and consumers, prevent illness, improve outcomes.**

Enroll Provider	Level 1	Level 2	Level 3	Level 4	Level 5
<b>Qualities</b>					
1. Timeliness of Process	Decisions on application may take several days.	Process takes less time than Level 1.	Turnaround time on application decision can be immediate.	Turnaround time is immediate.	Turnaround time is immediate on a national scale.
2. Data Access and Accuracy	<p>Application data and format are indeterminate.</p> <p>Some enrollment records are stored electronically, but storage is not centralized. Provider data, including ID and taxonomy, is not comparable across provider types and programs, reducing ability to monitor performance or detect fraud and abuse.</p>	<p>Application data is standardized within the agency.</p> <p>Enrollment records for different programs are stored separately. Providers have different IDs per program and cannot be cross-matched. Although data comparability is improved and supports use of performance measures to evaluate providers, performance data is only periodically measured and requires sampling and statistical calculation.<sup>1</sup></p>	<p>Application data is standardized nationally.</p> <p>Enrollment records are stored in either a single provider registry or federated provider registries that can be accessed by all applications.</p> <p>The NPI is the identifier of record.</p> <p>Providers, members, and state enrollment staff have secure access to appropriate data on demand.</p>	<p>Medicaid provider registries are federated with regional data exchange networks.</p> <p>Authorized, authenticated parties have virtual, instant access to provider data locally.</p> <p>Access to clinical data improves capability to select providers that meet quality standards.</p>	<p>Medicaid provider registries are federated with regional data exchange networks across the country and, if desired, internationally.</p> <p>Authorized, authenticated parties have virtual, instant access to provider data nationally.</p>
3. Effort to Perform; Efficiency	Staff contact external and internal credentialing and verification sources via phone and fax. A large staff is required to meet targets for manual enrollment of providers.	<p>Enrollment processes continue to be handled by siloed programs according to program-specific rules.</p> <p>Providers can submit on paper and electronically via a portal which improves turnaround time.</p> <p>Verifications are a mix of manual and automated steps.</p>	<p>Applications are only submitted electronically. Medicaid centralizes all provider enrollment processes; has a single set of enrollment rules.</p> <p>Manual steps may continue only for exceptions.</p> <p>Services created for the enrollment process can be shared among states.</p>	<p>Any data-exchange partner can send a notification regarding a provider enrolled with the state Medicaid program.</p> <p>External and internal validation sources automatically send notice of change in provider status, eliminating the need to reverify; supports detection of sanctioned providers in real time.</p>	<p>Any data-exchange partner can send a notification regarding a provider enrolled with any program in the U.S.</p> <p>Nationally interoperable validation sources automatically send notice of change in provider status, eliminating the need to reverify; supports detection of sanctioned providers in real time anywhere in the U.S.</p>

<sup>1</sup>There is inconsistent reporting to National Provider Data Bank or to the HIPAA Health Integrity Protection Database.

Figure 9  
(3 of 4)

The Provider Management Business Area services the provider network through outreach, enrollment, information management, communications, and support services. The Business Objectives for this Business Area are **improve quality of provider network, match needs of the population with availability of appropriate services, satisfy providers and consumers, prevent illness, improve outcomes.**

Enroll Provider	Level 1	Level 2	Level 3	Level 4	Level 5
<b>Qualities</b>					
4. Cost Effectiveness	Requires large numbers of staff.	Process requires fewer staff than Level 1 and produces better results.	Process requires fewer staff than Level 2 and improves on results. Shared services and inter-agency collaboration contribute to streamline the process.	Full automation of the process, plus access to clinical data, reduces staff requirements to a core team of professionals who monitor provider network performance.	Same as Level 4.
5. Accuracy of Process Results	<p>Much of the application information is manually validated.</p> <p>Decisions may be inconsistent.</p> <p>Due to limited monitoring and reverification of enrolled providers' status, sanctioned providers may continue to be enrolled.<sup>1</sup></p>	<p>Automation of business rules improves accuracy of validation and verification.</p> <p>The emphasis on managed care and waiver programs encourages more scrutiny of and reporting to national databases.</p>	<p>All verifications can be automated and conducted via standardized interfaces.</p> <p>Consistent enrollment rules and standardized data available from a single source support continuous performance measures that can be used to adjust rates in real time. The agency sends verification inquiries to any other agency regarding the status of a provider.</p> <p>The quality of the provider network is improved.</p>	<p>Prospective monitoring of program integrity during adjudication improves detection of fraud and abuse, resulting in timelier sanctioning.</p> <p>Clinical data can be accessed and monitored for measuring performance.</p> <p>Performance measures can be shared via federated provider registries.</p>	<p>Same as Level 4, on a national scale.</p> <p>Performance measures can be shared via federated provider registries nationally.</p>

<sup>1</sup>There is inconsistent reporting to National Provider Data Bank or to the HIPAA Health Integrity Protection Database.

Figure 9  
(4 of 4)

The Provider Management Business Area services the provider network through outreach, enrollment, information management, communications, and support services. The Business Objectives for this Business Area are **improve quality of provider network, match needs of the population with availability of appropriate services, satisfy providers and consumers, prevent illness, improve outcomes.**

Enroll Provider	Level 1	Level 2	Level 3	Level 4	Level 5
<b>Qualities</b>					
6. Utility or Value to Stakeholders	Focus is on building a provider network that meets needs of the members. Staff do not have time to focus on cultural and linguistic compatibility, member satisfaction, or provider performance.	In managed care and waiver settings, guidelines ensure adequacy of network (i.e., ratio of number, type, and location of provider to size and demographics of member population). Cultural and linguistic matches are made. Members are assigned to PCPs to coordinate their care.	Members interact directly with providers and can view provider profiles and locations; make informed choices. Cultural and linguistic indicators improve selection of appropriate providers. Provider and member satisfaction improves because of speed and accuracy of enrollment process.	Providers, members, and care managers access standardized provider registries and view clinical performance indicators to make informed decisions regarding provider selection and provider referrals.	Same as Level 4 on a national scale, where appropriate.

For further information, please contact:

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Thank you for your interest.



**District of Columbia  
Department of Health**

**Medical Assistance Administration**

**Advanced Planning Document  
State Self Assessment**

**February 8, 2008**

**Submitted By:**

**Medical Assistance Administration**



*District of Columbia Medical Assistance Administration  
State Self Assessment Advance Planning Document (SS-A APD)*

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## **1. Purpose**

The District of Columbia is submitting this advance planning document (APD) to the Center for Medicare & Medicaid Services (CMS) to request enhanced federal financial participation (FFP) for the Medical Assistance Administration's State Self Assessment

It is the intent of the District to procure a vendor to assist with the State Self Assessment. As a result, an updated version of this document will be provided to CMS for review following the vendor selection process and prior to contract award. The estimated amounts in the budget table (Section 5) are based on feedback the District has received from other States who have completed State Self Assessments of similar size and scope. This APD is requesting enhanced 90% matching funds for the State Self Assessment project which is expected to cost approximately \$772,000 in aggregate.



## **2. Statement of Need**

### **2.1 Context**

#### **2.1.1 Background**

The District of Columbia has a high proportion of Medicaid enrollees and other impoverished citizens. In certain areas of the city, 50% of the population has one of the top 3 chronic conditions: diabetes, high-blood pressure, and heart disease. Healthcare costs are high, coordination is limited, duplicate and unnecessary procedures are common, and outcomes are not optimal.

The provision of care is not well-coordinated among the physicians, health clinics, hospitals, and other providers that serve the DC area. The District departments and agencies that serve this population are not well integrated into the operations of the overall healthcare delivery system. The DC Department of Health operates numerous programs that serve citizens who are also served by the health care providers in the area, or which pay for those services. These services are often provided with less than optimal coordination of effort between the programs, or based on only partial information about the patient/client of the family of the patient. Coordination and greater information would improve services and reduce costs.

Because of categorical funding, narrow organizational missions, and other factors, each program and agency treats the patient and other family members, usually without coordinating with other agencies and programs serving that family and enrollee. Because programs are unable to identify patients that they share data about, these enrollees are infrequently shared. Providers are unaware of family members receiving services elsewhere for conditions that can affect the patient they are treating.

The results of these stovepipe approaches are substantially higher costs, higher eligibility error rates, billing for inappropriate services, missed opportunities for efficiencies, less than optimal outcomes, unsatisfactory care delivery, conflicts between care strategies of the programs and agencies involved with a client/family, and overlooked or ignored needs and care requirements.

#### **2.1.2 Vision**

The District of Columbia is aware of these shortcomings and has begun efforts to address these inefficiencies. First, in recognition of the increasing importance of healthcare delivery and healthcare outcomes in the District, the City Council and the Mayor's Office have established the authority and mandate for the Medical Assistance Administration (MAA) to pursue a strategic plan for a single Health Care Financing Agency. This



mandate calls for MAA to become a separate Mayoral department with reporting responsibilities direct to the Mayor effective October 1, 2008. Currently, MAA is a sub-organization within the Department of Health. The creation of the single Health Care Financing Agency is a commitment from the Mayor's Office, City Council and across agencies to better health outcomes for publicly funded enrollees.

Secondly, the District has applied for and received a Medicaid Transformation Grant. The recently awarded grant will enable the District to establish an initial, scalable central, shared Patient Data Hub service (as described in the MITA Framework 2.0 as a MITA Hub) with Master Patient Index (MPI), data repository, data and analytical capabilities and a record locator service (RLS). As envisioned by MITA, the same process will be used for non-Medicaid as Medicaid. The goal is that any infrastructure that will need to be purchased or designed will be built and used for Medicaid, addressing Medicaid needs and expectations, but also used beyond Medicaid.

## **2.2 Need**

The District's MITA initiative, which begins with the Self-Assessment of its current "state," will provide the framework and mechanisms to document its current Medicaid business processes, operationalize its strategic vision, and ensure continuous improvement in the future. The MITA Self-Assessment Initiative provides the opportunity to design the District's Medicaid future business direction, meet that direction with improved business functions, create open and interoperable systems, modular technologies, data security and information access, and develop improved performance accountability. The District's overall goal is to provide optimal care to its Medicaid and other publicly funded enrollees, augment its HIT capabilities, and improve its business operations and processes by using the MITA framework. The intent of the State Self Assessment will be to identify the maturity of the District's Medicaid processes, capture this information in a matrix, develop a five to ten year strategic plan for improving the maturity of those processes, and identify initiatives that will assist in bringing the plan to fruition.

Relative to the Medicaid Maturity Model, the "As Is" for the District of Columbia is there is no District-wide documented business approaches, policies and procedures or standards that all agencies and providers that relate to health care delivery for DC publicly funded enrollees must use. There is no consistent business approach and/or tool for managed care organizations (MCO) or District authorization of services. The "To Be" is an efficient District operation that has the capability and capacity to make real-time determinations and authorizations of appropriate services while providing providers with access to real-time data that will improve their clinical decision making. The "To Be" also includes an efficiently operated District that will include a separate Health Care Purchasing Agency. The "To Be" is dependent on and requires the use of Health Information Technology (HIT) to provide for an effective, standardized, District wide-capability.



### **2.2.1 Visioning While Maintaining and Changing**

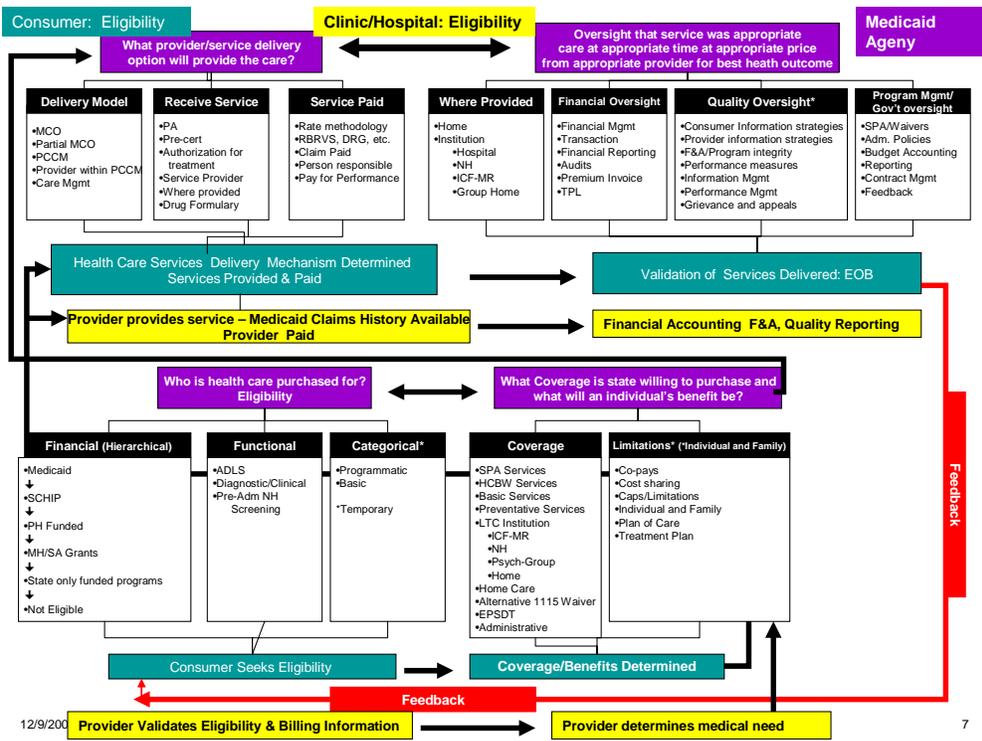
The MITA Self-Assessment will be a part of the broad and comprehensive analysis. This effort cannot be understated and it has significant impact on the current Medicaid Agency and the various other city agencies. The MITA Self-Assessment approach will be the framework and mechanism for the multiple components included in this massive effort – including the initial review of other states.

This planning and process will be intense and comprehensive. It will proceed simultaneously with managing ongoing current operations; the design phase of a new MMIS system, the procuring a contractor for a Patient Hub for e-health information exchange with Medicaid, as well as the implementation of NDC/J-Codes and NPI initiatives.

During the MITA Self-Assessment, the “As Is” business processes will be based on the current Medicaid Agency infrastructure, which is not well documented, as well as that of appropriate other District government agencies and stakeholders. See chart below for view of the entire process from initiation of contact with a potential enrollee through delivery of care and financial/quality oversight. The components of the workflow will be retained, but how and who does what to enhance the process and efficiencies while improving accountability will potentially change.



*District of Columbia Medical Assistance Administration  
State Self Assessment Advance Planning Document (SS-A APD)*





### **3. Nature and Scope**

Once this APD has been approved by CMS, the District will issue a Request for Proposal (RFP) to secure a qualified contractor to facilitate identifying current MMIS business processes and technical capabilities (“As Is”), clarifying and validating the vision “To Be” as well as facilitating a gap analysis and mapping for those processes against the MITA Maturity level, stakeholder expectations and business, political and practical realities.

The scope of the MITA SS-A will address all business processes to help shape the District’s strategic plan but may drill down further on processes affected by the envisioned enhancement(s). The process will include current information needs for financial, program integrity and quality oversight, and information technology tools and infrastructure identified through a gap analysis. The goal will be to allow the District to move up the maturity ladder to the “To Be” vision of an efficient and effective Health Care Financing Agency using performance based purchasing techniques. A complete MITA Business Process Impact Analysis and the Technical Assessment will be conducted to determine the maturity level of the current processes for the Medicaid program. As a part of the process, operational policies and procedures will be written and implemented. Appropriate stakeholder engagement is incorporated throughout the process.

The District is in the process of implementing a newly procured MMIS and therefore has no immediate plan to replace it in the short-term; however, the District is also cognizant that significant enhancements of that MMIS system will be necessary as major areas, such as a data warehouse, predictive modeling, e-Health Information Exchange, etc. were outside the scope of that procurement. This MITA assessment will be used as a baseline for purposes of evaluating and identifying the value of future MMIS enhancements as well as enhance RFP development, vendor bid evaluation, vendor selection and system design for any data/information health information technology that is identified through the gap analysis.

The contractor will be required to utilize the MITA Capability Matrix, assist the District in prioritizing its capabilities and develop the District’s MITA implementation plan with the initial step one focus on “data/information.” To ensure that documentation is captured properly during the MITA Assessment, the contractor will be required to document each of the business processes in detail and create a written policy and procedure document for each business process to be used by the District for ongoing operations upon completion. The contractor will also develop written policy and procedure documents for “To Be,” which will be utilized when the “To Be” is implemented.



There are 3 major components to this APD and initiative:

- Contracted staff augmentation to DC MAA for management/oversight of the project, contractors, and ongoing operations.
- Contracted staff augmentation through amendment to the GWU contract for documentation and implementation of written operational policies and procedures for the business processes established through the MITA Self-Assessment Framework/Initiative.
- A separate competitively bid RFP for the MITA Self-Assessment that will require the qualified contractor to complete the following tasks:
  - Validate the “As Is” business process descriptions with internal and external stakeholder groups
  - Document the “As-Is” business
  - Validate mapping of DC MAA and, as appropriate, DC DOH and other DC government agency processes to MITA
  - Assign MITA maturity level to “As Is” business processes, provide associated analysis and findings and create this deliverable document
  - Coordinate with separate “policy and procedure” contractor in the documentation of the “As Is” and “To Be” business processes
  - Finalize and validate system and technical capability assessment and create this deliverable document
  - Review/present “As Is” business processes and system and technical capability deliverable documents to DC MAA
  - Facilitate and document “vision” discussion of “To Be” capabilities
  - Select maturity level goals for each business area
  - Prepare final DC MITA Self-Assessment Report
  - Facilitate project close out activities including exit interviews, feedback, lessons learned and next steps



## 4. Activity Schedule

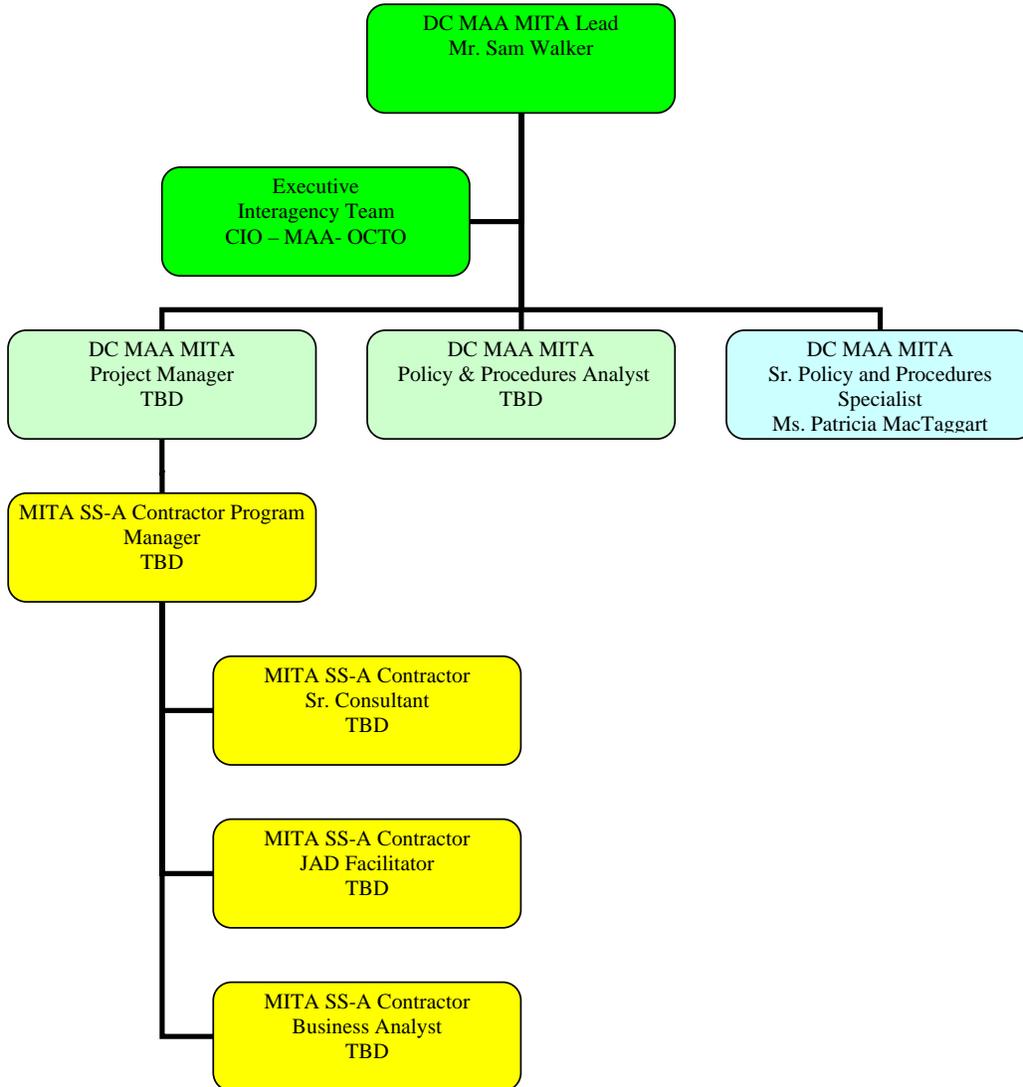
### 4.1 Deliverable Schedule

<b>Activity/Deliverable</b>	<b>Date</b>
Submit APD to CMS	2/10/08
Publish RFP for MITA Self-Assessment Contractor	4/1/08
Amend Contract with GWU University for "Policies & Procedures" Activities	4/1/08
Contract for Project Manager	4/1/08
Review Proposals	6/1/08
Award Contract	6/15/08
MITA Self-Assessment Project Work Plan Submitted	7/1/08
MITA Self-Assessment Begins	7/1/08
MITA Maturity Level Document	10/1/08
MITA System/Technical Capability Document	10/1/08
MITA Self-Assessment Ends	1/15/09
Initial Draft of "Policies and Procedures"	3/1/09
MITA Self-Assessment Report	3/8/09
Project Close-Out	3/31/09



## 4.2 Staffing

Staffing for the efforts will be a blend of District employees, contracted individuals and contractors. The District will utilize personnel from the George Washington University and by procuring a private sector vendor. All personnel listed, excluding DC MAA MITA lead, Sam Walker, will be contracted for with funding through this APD.





The staffing plan (above) includes a DC MAA MITA Lead, one contracted DC MAA project manager, one DC MAA documentation analysts, one contracted DC MAA senior policy and procedures specialists and one DC MAA policy and procedures specialist. This team will provide logistical support as well as take over the activity after the contractor has rolled out the effort. Roles and responsibilities include:

- DC MAA MITA Lead – Allocate business resources for sessions, project manager, analysts and contract resources. Review output deliverables and monitor results.
- DC MAA MITA Project Manager – Assure that CMS MITA requirements are being met. Assure subject matter experts information is captured. Report results, risks, scope changes or issues to DC MAA MITA Lead.
- DC MAA MITA Sr. Policy and Procedures Specialist – Support Contractor when policy and procedure matters arise during assessment. Ensure information is accurately captured. Draft written policies and procedures based on MITA Self-Assessment process.
- DC MAA MITA Policy and Procedures Analyst – Assist Sr. Policy and Procedures Specialist by providing insight into those MAA’s policies evaluated as part of the State Self Assessment. This resource will be a member of MAA’s Policy team. .
- MITA SS-A Contractor Program Manager – Create project plan, execute the plan, manage risks, communicate results and issues.
- MITA SS-A Contractor Sr. Consultant – Focus on the planning aspects, the methodology, deliverables and timely knowledge transfer.
- MITA SS-A JAD Facilitator – Facilitate JAD sessions with the DC MAA MITA Project Manager and MAA staff.
- MITA SS-A Business Analyst – Provide general and administrative support to all members of the team; Document, in detail, the output of the JAD sessions relative to written policies and procedures based on MITA Self-Assessment.



## **5. Alternatives Considered**

In preparation for this APD as well as the following anticipated Health Information Technology APDs, the District will combine a feasibility study with an alternatives analysis. In order to determine if there is a state with similar objectives which had instituted a program that the District could emulate or learn from, the District studied the following five states: Minnesota, Maryland, New York, Michigan and Ohio. While some similarities were found that will be incorporated into the MITA Self-Assessment analysis, the District has unique characteristics, such as being a city that requires adaptation and additional considerations.

As part of all MMIS procurements, the District's Office of Procurement requires a cost estimate analysis. This District required process assures the financial alternative analysis envisioned through the MITA process is completed.



## **6. Proposed Budget and Cost Distribution**

### **6.1 Budget Narrative**

The District will contract with a private sector vendor to accomplish the MITA Self-Assessment and chart its course to improve its Medicaid enterprise operations and program outcomes. As such, the District is requesting ninety percent Federal Financial Participation (FFP) for the personnel hours and costs associated with completing the MITA Self-Assessment. DC MAA has provided the estimated amount needed to complete this project in the attached budget. The District anticipates a seven month period of performance for the Self-Assessment project upon award of contract. The project timeline and budget will be adjusted in the updated advance planning document based on responses to the SS-A request for proposal.



Budget



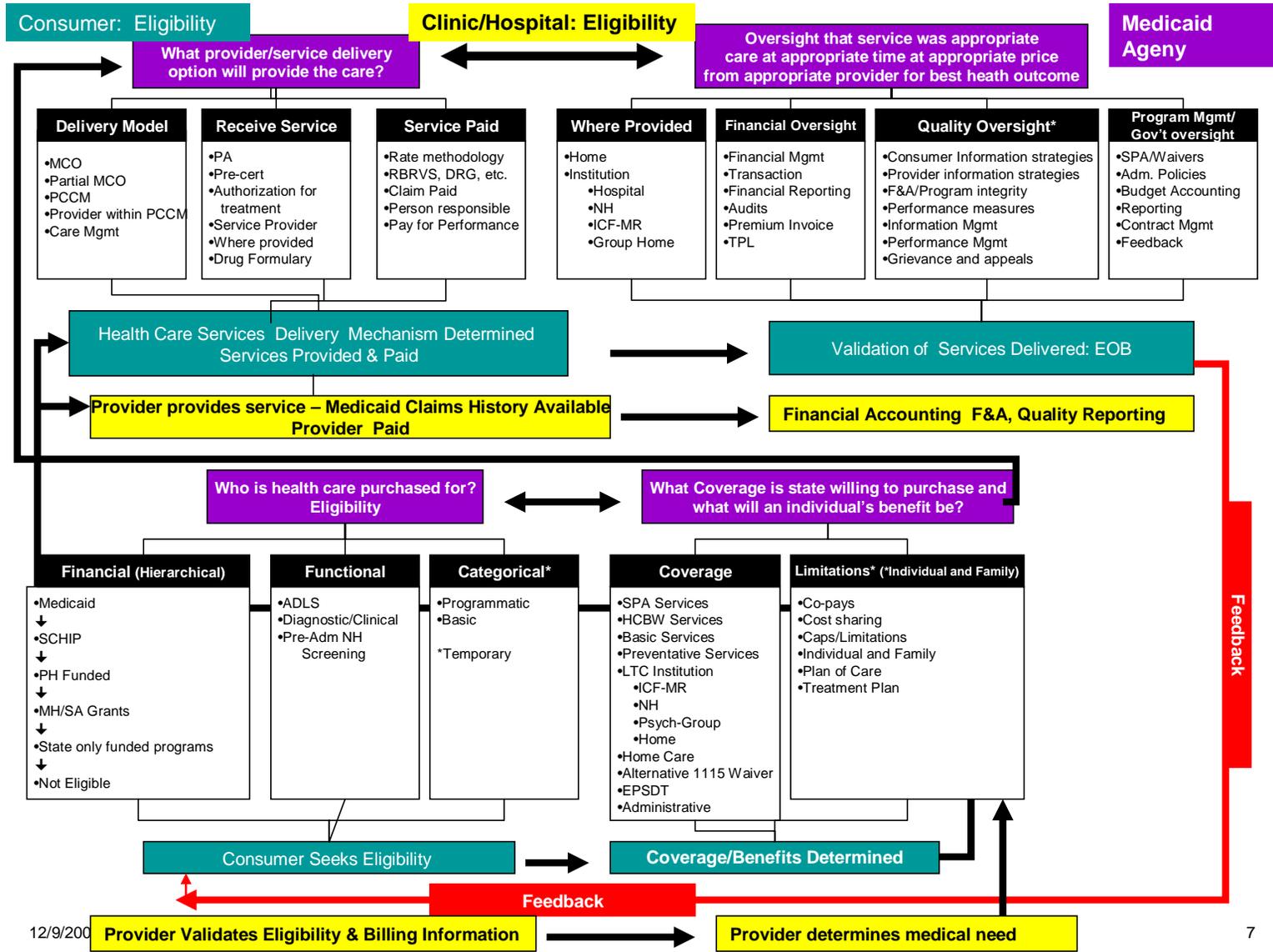
## **7. Assurances**

The District of Columbia assures that it will comply with the Procurement Standards found in 45 CFR 95.613, 45 CFR 96.615 and SMM Section 11267.

The District of Columbia assures that it will comply with Access to Records regulations in 42 CFR 433.112(b) (5)-(9), 45 CFR 95.615 and SMM Section 11267.

The District of Columbia assures that it will comply with Software Ownership, Federal Licenses and Information Safeguards regulations in 42 CFR 433.112(b)(5)-(9).

The District of Columbia assures that it will provide Progress Reports as required in SMM Section 11267.



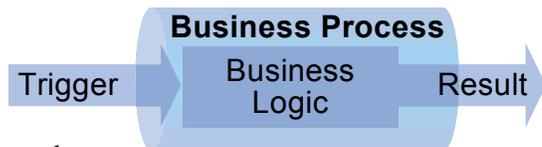
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# Part I — Business Architecture

## Chapter 4 — Business Process Model

### Introduction

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This chapter presents the Medicaid IT Architecture (MITA) Business Process Model (BPM) and explains the role of the BPM in the MITA Framework. One of the MITA core concepts is that business needs and objectives inform and drive technical design.

This chapter answers the following questions:

- What is a business process model?
- What is the MITA Business Process Model?
- What is a MITA business process?
- How do business processes mature?
- What are the next steps in the evolution of the BPM?

### Purpose

This chapter focuses on communicating the structure of and rationale for the MITA BPM and the role of the BPM in the MITA Framework. The BPM is one of the key building blocks within the Framework.

### Scope

The BPM is a work in progress. MITA Framework 2.0 delivers a baseline model and descriptions of 78 business processes. (See Part I Appendix C for the business process description sheets.) In MITA Framework 2.0, the emphasis is on defining business processes that most States support today. In the future, the model will expand to describe new business processes that come online as the business matures (e.g., at Maturity Level 3, where Medicaid agencies coordinate with other State and local agencies to create a “one-stop shop” beneficiary intake process). Many business processes that States engage in today are expected to disappear in the future (e.g., at Maturity Level 4, claims processing as we know it today will be replaced by message exchange directly between a provider’s electronic medical record or other source of clinical information and a payer’s reimbursement process).

The MITA business process definition provides a high-level description of a business activity (a series of steps), the trigger (data) that initiates it, shared data that the activity uses, and the result (data) of the process. In MITA Framework 2.0, the business process descriptions contain placeholders for future links to the Conceptual Data Model (Part II Chapter 3). Placeholders reference types of data needed to support the business process. The MITA initiative calls for collaboration between States and Centers for Medicare & Medicaid Services (CMS) to review

and improve the business process descriptions and develop the Conceptual Data Model. Consensus is important in order for the community to be able to use the BPM as a springboard for developing sharable business services in the future. (See Part III Chapter 4, Business Services.)

## What Is a Business Process Model?

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A BPM describes what an organization or business does, including the events that initiate those processes (i.e., the trigger event). A BPM also describes the results of those processes. A process-oriented business model was chosen because it fits best in a framework that is designed to support over 51 Medicaid agencies, each with its own organizational structure, policies, and operational procedures. The MITA process-oriented approach views the business cross-functionally and organizes the actions of the business as a set of activities that respond to business events. Opportunities for real process improvement and dramatic business change are more likely to emerge from this perspective because it “dismantles” existing organizational silos. The BPM does not care how the business is organized, who does the work, or where the work is performed. Its focus is on the activity itself (i.e., what initiates the activity and what the activity produces). In this sense, the BPM offers a “one-size-fits-all” solution because it focuses on the core business process and not on how the activity is accomplished.

## What Is the MITA Business Process Model?

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The MITA BPM is a model representing the operations of the Medicaid enterprise<sup>1</sup> as they exist in most States. It describes the Medicaid business processes found in a typical State and organizes them into various categories of common interest or focus (e.g., Provider Management, Member Management, and Operations Management). The role of the MITA BPM is to provide a common reference point for State Medicaid agencies. Agencies and their vendors can then map their processes to the BPM, which lets them describe their business processes in a standard way using a common vocabulary.

### *Lineage of the MITA Business Process Model*

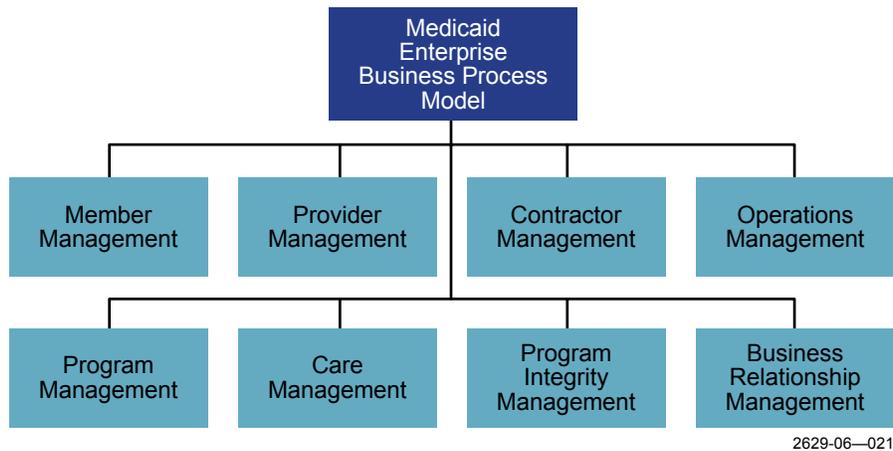
The MITA team developed the MITA BPM using as primary sources the Medicaid HIPAA-Compliant Concept Model (MHCCM) and the State Systems Technical Advisory Group (S-TAG) MMIS Redesign Report. Models shown in these documents represent integrations of individual models from several States. The MITA team also collected responses from many States regarding their goals, objectives, and business needs for their Medicaid programs during the MMIS conference in Louisiana in 2003. The team followed up those responses with interviews with Medicaid personnel from individual States. The resulting MITA BPM contains processes common to most States. It is grounded in the present but remains flexible to accommodate the visions of the future as expressed by many States.

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<sup>1</sup> For a discussion of “Enterprise”, see Part I Chapter 1.

### The Business Process Hierarchy

The MITA business process hierarchy is a structure that groups together business processes that have a common purpose and that share data. Provider Management, for example, focuses on provider outreach, enrollment, and information maintenance (as distinct from payment or auditing) and “owns” a designated set of provider demographic data. Although the MITA BPM presents a way to organize business processes, States can organize their individual business processes differently (and, of course, assign them different names). Grouping business processes allows us to break them down until we reach the level of an actual business process in a business area. **Figure 4-1** shows the first level (Tier 1) of business areas in the MITA BPM.



**Figure 4-1. MITA Business Process Model Business Areas**

Figure 4-2 illustrates the tiers, hierarchy, and groupings used by the MITA BPM.

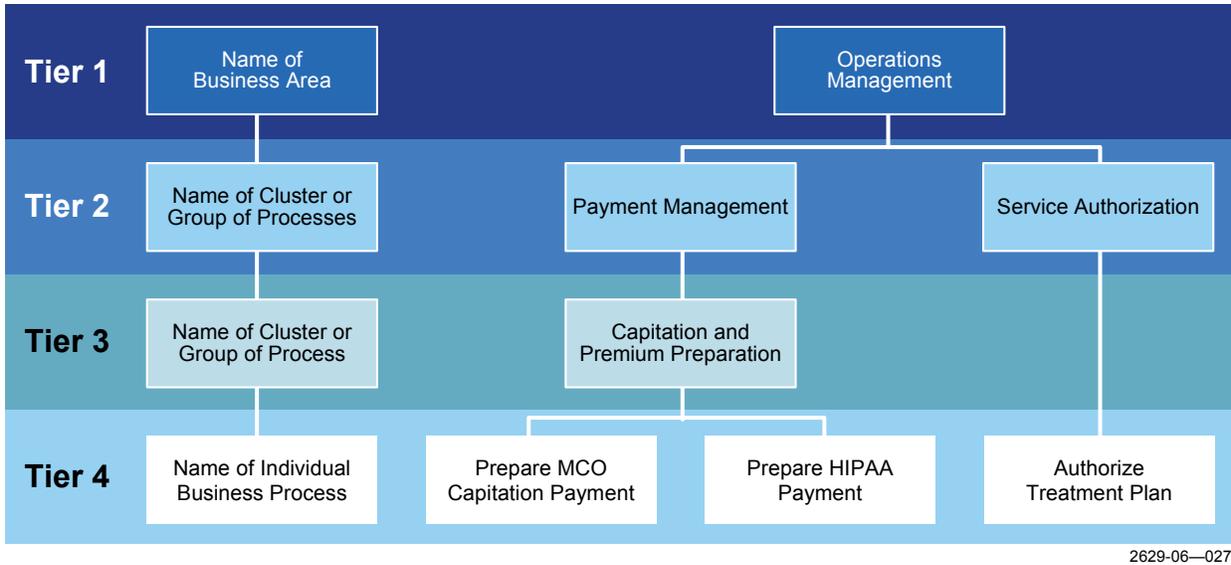


Figure 4-2. MITA Business Process Model Hierarchy

Figure 4-2 is a simplified version of the BPM. The lowest level business process appears in different tiers depending on the complexity of the business area. In less complex business areas, the business process appears at Tier 2 or 3.

The title of a business area or a lower tier grouping of business processes appears as a **noun** (e.g., Operations Management, Payment Management). The business process appears at the lowest tier and is shown as a **verb + object** (e.g., Prepare MCO Capitation Payment, Authorize Treatment Plan).

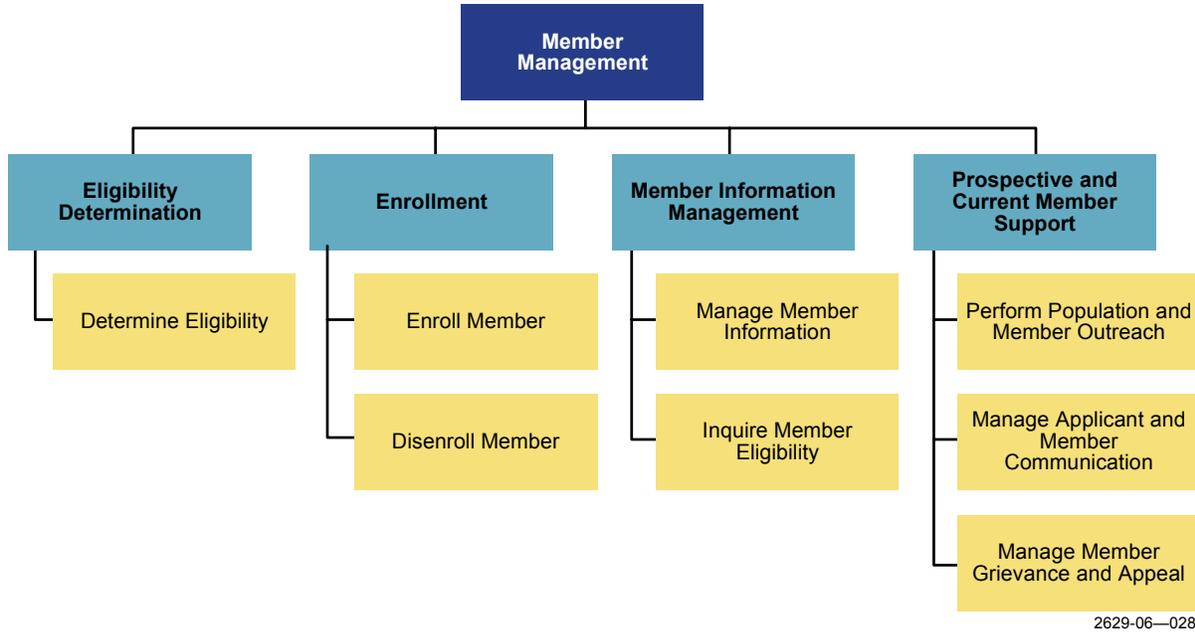
The content and purpose of each business area are discussed below.

### Member Management Business Area

The Member Management business area is a collection of business processes involved in communications between the Medicaid agency and the prospective or enrolled beneficiary and actions that the agency takes on behalf of the beneficiary. These processes share a common set of beneficiary-related data. The goal for this business area is to improve healthcare outcomes and raise the level of consumer satisfaction.

This business area is transformed in the future from agency staff performing eligibility and enrollment functions to more patient self-directed decision making.

Member Management business processes consolidate many eligibility and enrollment functions into a single, generic business process (see **Figure 4-3**). Determine Eligibility, for example, covers Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), State Children’s Health Insurance Program (SCHIP), and other programs. Enroll Member includes enrollment in managed care programs, carved-out benefit plans (e.g., pharmacy, dental, or mental health services), waiver service programs, and gatekeeper or lock-in programs.

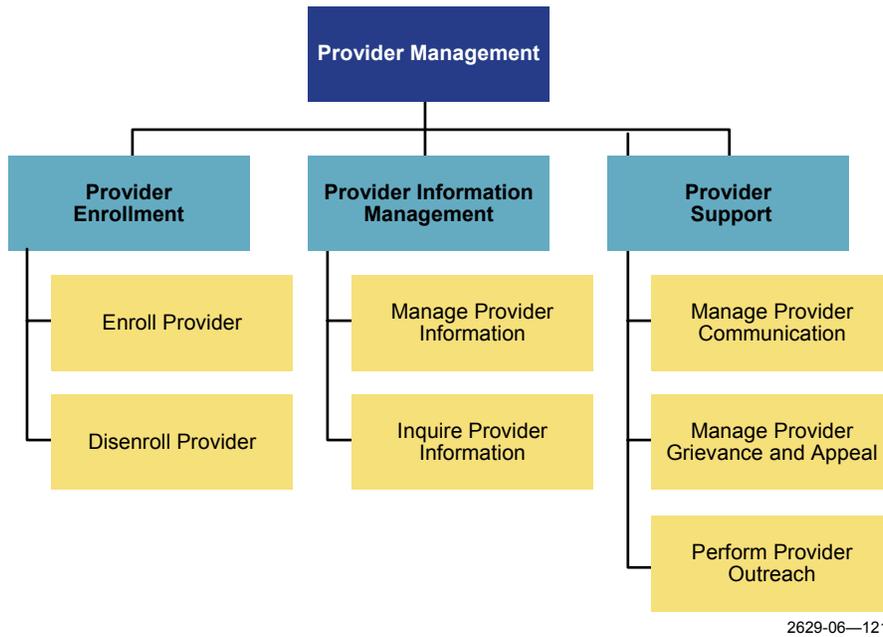


**Figure 4-3. Member Management Business Area**

**Provider Management Business Area**

The Provider Management business area is a collection of business processes that focus on recruiting potential providers, supporting the needs of the population, maintaining information on the provider, and communicating with the provider community. The goal of this business area is to maintain a robust provider network that meets the needs of both beneficiaries and provider communities and allows the State Medicaid agency to monitor and reward provider performance and improve healthcare outcomes.

The Provider Management business processes represented in **Figure 4-4** cover many types of providers. In this case, Enroll Provider may subdivide into Enroll Institutional Provider, Professional Provider, Pharmacy, Durable Medical Equipment (DME), Atypical, and other types. These groups are types together in the BPM because they share a common set of activities, though the business rules and specific data associated with each provider type may differ.



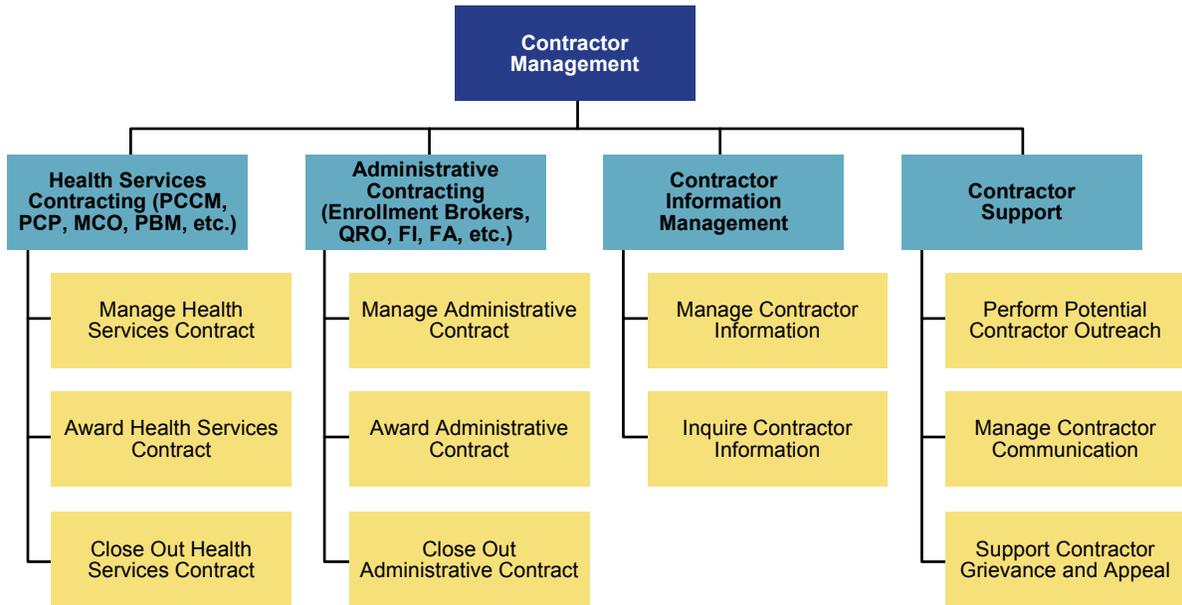
**Figure 4-4. Provider Management Business Area**

**Contractor Management Business Area**

The Contractor Management business area accommodates States that have managed care contracts or a variety of outsourced contracts. Some States may, for example, group Provider and Contractor in one business area. The Contractor Management business area has a common focus (e.g., manage outsourced contracts), owns and uses a specific set of data (e.g., information about the contractor or the contract), and uses business processes that have a common purpose (e.g., solicitation, procurement, award, monitoring, management, and closeout of a variety of contract types).

Creating a separate business area for Contractor Management allows the MITA BPM to highlight this part of the Medicaid enterprise, which is becoming increasingly important to State Medicaid agencies. Indeed, it is the primary focus in some States that have comprehensive managed care or multiple-contractor operations.

In the Contractor Management business area, the many types of healthcare service delivery contracts (e.g., managed care, at-risk mental health or dental care, primary care physician) and the many types of administrative services (e.g., fiscal agent, enrollment broker, Surveillance and Utilization Review [SUR] staff, and third-party recovery) are treated as single business processes (see **Figure 4-5**) because the business process activities are the same, even though the input and output data and the business rules may differ.



2629-06—122

**Figure 4-5. Contractor Management Business Area**

**Operations Management Business Area**

The Operations Management business area is the focal point of most State Medicaid enterprises today. It includes operations that support the payment of providers, managed care organizations, other agencies, insurers, and Medicare premiums and support the receipt of payments from other insurers, providers, and member premiums.

This business area focuses on payments and receivables and “owns” all information associated with service payment and receivables. Most States have automated operations that support these payments. In fact, this is probably the part of Medicaid that is most representative of all State Medicaid programs.

Common business processes include validating requests for payment and determining payable amount; responding to premium payment schedules and determining payable amount; and identifying and pursuing recoveries (see **Figure 4-6**).

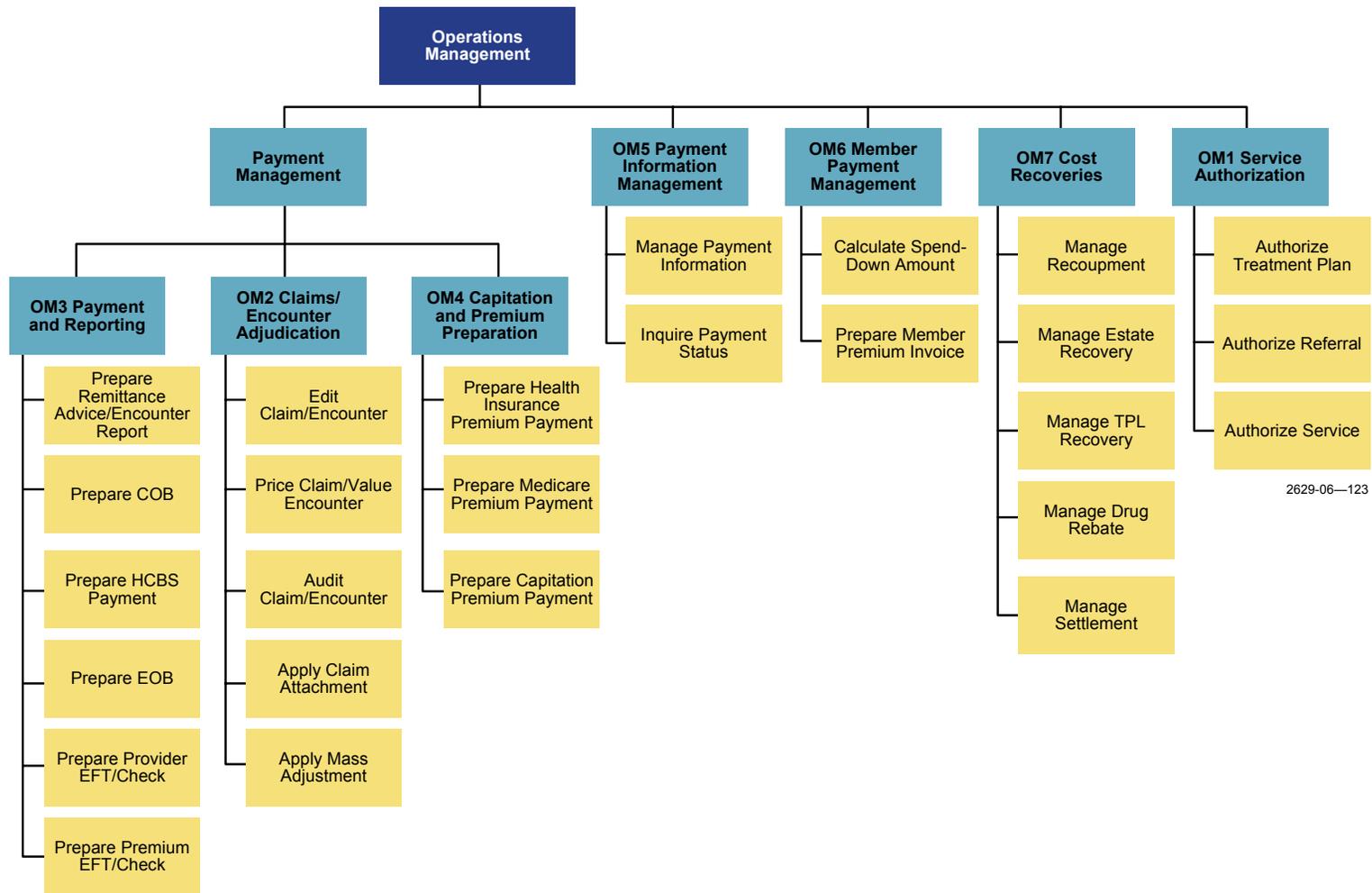
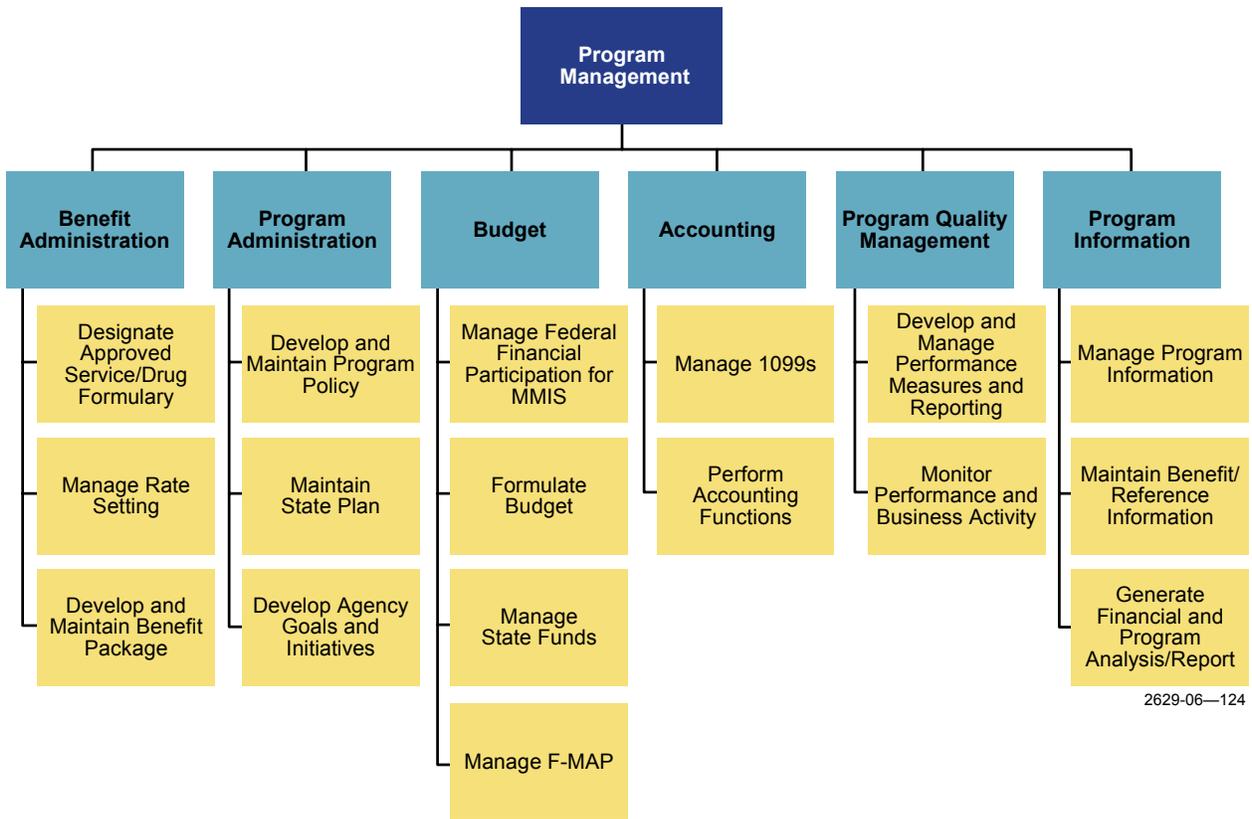


Figure 4-6. Operations Management Business Area

**Program Management Business Area**

The Program Management business area houses the strategic planning, policy making, monitoring, and oversight activities of the agency. These activities depend heavily on access to timely and accurate data and the use of analytical tools. This business area uses a specific set of data (e.g., information about the benefit plans covered, services rendered, expenditures, performance outcomes, and goals and objectives) and contains business processes that have a common purpose (e.g., managing the Medicaid program to achieve the agency’s goals and objectives such as by meeting budget objectives, improving customer satisfaction, and improving quality and health outcomes). (See **Figure 4-7.**)



2629-06—124

**Figure 4-7. Program Management Business Area**

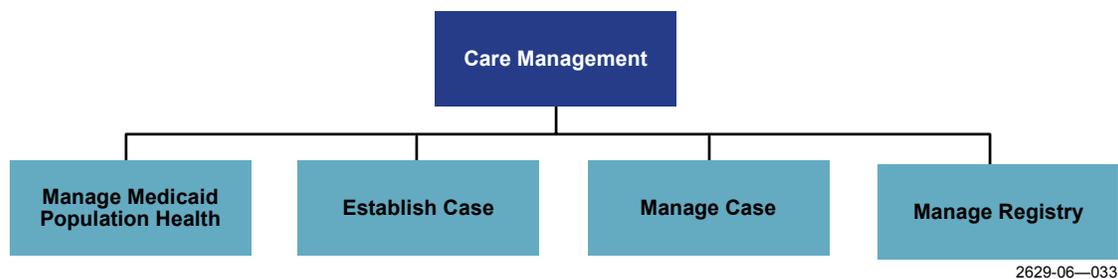
This business area includes a wide range of planning, analysis, and decision-making activities, including benefit plan design, rate setting, healthcare outcome targets, and cost-management decisions. It also contains budget analysis, accounting, quality assessment, performance analysis, outcome analysis, continuity of operations plan, and information management.

This is the heart of the Medicaid enterprise and the control center for all operations.

As the Medicaid enterprise matures, Program Management benefits from immediate access to information, addition of clinical records, use of standards, and interoperability with other programs. The Medicaid program is moving from a focus on daily operations (e.g., number of claims paid) to a strategic focus on how to meet the needs of the population within a prescribed budget.

### Care Management Business Area

The Care Management business area illustrates the growing importance of care management as the Medicaid program evolves. Care Management collects information about the needs of the individual member, plan of treatment, targeted outcomes, and the individual's health status. It also contains business processes that have a common purpose (e.g., identify clients with special needs, assess needs, develop treatment plan, monitor and manage the plan, and report outcomes). (See **Figure 4-8**.) This business area includes processes that support individual care management and population management. Population management targets groups of individuals with similar characteristics and needs and promotes health education and awareness.



**Figure 4-8. Care Management Business Area**

Care Management includes Disease Management; Catastrophic Case Management; Early and Periodic Screening, Diagnosis, and Treatment (EPSDT); Population Management; Patient Self-Directed Care Management; Immunization and other registries; Waiver Program Case Management; and programs yet to come. With individual patient and case manager access to clinical data and treatment history, Care Management continues to evolve and increase in importance in the Medicaid enterprise.

Members with special needs are the initial focus of Care Management. As the Medicaid enterprise evolves, all beneficiaries could have access to care management, including self-directed decision making.

### Program Integrity Management Business Area

The Program Integrity business area incorporates those business activities that focus on program compliance (e.g., auditing and tracking medical necessity and appropriateness of care and quality of care, fraud and abuse, erroneous payments, and administrative abuses).

Program Integrity collects information about an individual provider or member (e.g., demographics; information about the case itself such as case manager ID, dates, actions, and

status; and information about parties associated with the case). (See **Figure 4-9**.) The business processes in this business area have a common purpose (e.g., to identify case, gather information, verify information, develop case, report on findings, make referrals, and resolve case). As with the previous business areas, a single business process may cover several types of cases. The input, output, shared data, and the business rules may differ by type of case, but the business process activities remain the same.



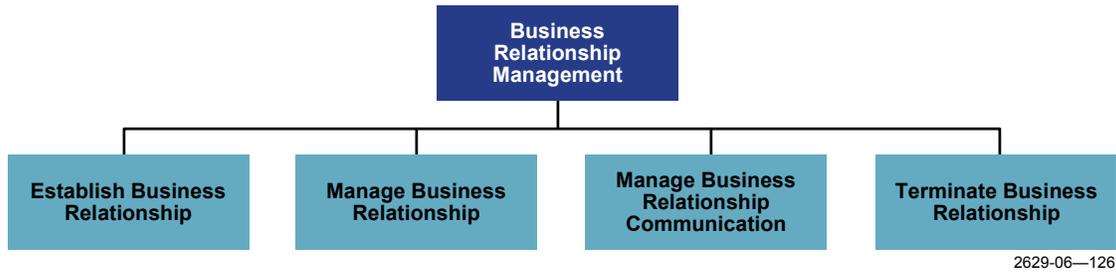
**Figure 4-9. Program Integrity Management Business Area**

This business area will mature with access to clinical data that improve the capability for identifying real cases of program abuse. Today this business area concentrates on SUR activities, fraud detection, and other types of program safeguards. Although Program Integrity activities continue to have a place as core business processes mature, their focus is predicted to shift from retrospective analysis to prospective and concurrent application of business rules.

### **Business Relationship Management**

The Business Relationship Management business area is currently represented in many States as a component of Program Management. It is shown here as a separate business area because collaboration between in-State agencies and inter-State and Federal agencies is increasing in importance.

This business area owns the standards for interoperability between the agency and its partners. It contains business processes that have a common purpose (e.g., establish the interagency service agreement, identify the types of information to be exchanged, identify security and privacy requirements, define communication protocol, and oversee the transfer of information.) (See **Figure 4-10**.)



**Figure 4-10. Business Relationship Management Business Area**

Today, data exchange and intra-agency service agreements are commonplace. Technology, including security, allows States to communicate, share data, and receive information from in-State sister agencies and from other States’ or Federal data-sharing partners.

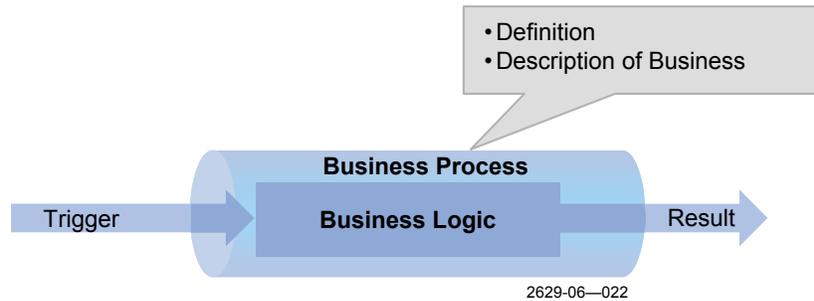
Currently, data exchange between State Medicaid agencies and other agencies and States is primarily a manual exercise. Requests are made and responded to in an ad hoc manner.

In the future, data may be exchanged more on a national scale based on agreements between State and local entities. Business processes define who can share information and what information is exposed.

### What Is a MITA Business Process?

The MITA business process is the lowest element shown in the BPM. Levels above are clusters or groupings of processes. The final business process is defined as a series of activities that are triggered by one or more events and result in one or more results. All of the business processes contained in the MITA BPM are described in a standard template that captures the Trigger<sup>2</sup>, Result, and Business Logic. The Trigger is the initiating event. It is defined in terms of data or a time/schedule. The Result is the output of the process. It is described as data produced by the business process. Business Logic is defined by the individual steps/activities. **Figure 4-11** illustrates the components of the business process.

<sup>2</sup> Synonyms used in this chapter include: Trigger or Trigger event; Result or Outcome; Business Logic or Steps or Activities; Shared Data or Data at Rest.



**Figure 4-11. MITA Business Process Description**

An example of a business process is Enroll Provider. The Trigger is the receipt of enrollment application data. The Result is a status of “enrolled,” “denied,” or “suspended.” The Business Logic includes validation of key data, validation of credentials, verification or assignment of ID, and association of rates, fees, and contract terms. An example of measurement is the time between the Trigger and the Result. Shared data includes the State’s provider registry, external registries, the National Provider Identifier (NPI) database, license/credential boards, and national lists of “defrocked” providers.

A Trigger event activates a business process, carries out one or more steps, and produces one or more results or outcomes. For example, the business process Enroll Provider contains the following elements:

- One or more Triggers (e.g., receiving a provider enrollment application)
- A series of steps (e.g., login provider enrollment application, authenticate sender, or validate credentials)
- One or more Results (e.g., authorize or deny enrollment, request more information, and notify provider of result)

The MITA BPM is augmented by the following:

- A definition of the business process that describes the overall objective and purpose
- A definition of a performance measure, which lets all stakeholders measure the same things in the same way (i.e., what is measured to verify that the business process is meeting the capabilities ascribed to it)
- A definition of the data used to trigger the business process and the data contained in the Result — this is called *data in motion* because (1) it is received from an external source (e.g., a provider submits a claim) or (2) it is passed from one process to another
- A definition of the data used by the Business Logic — this is called *data at rest* or *shared data* because the data is utilized or read, but not moved, changed, or updated
- A definition of failure points where a business process may stop before completion

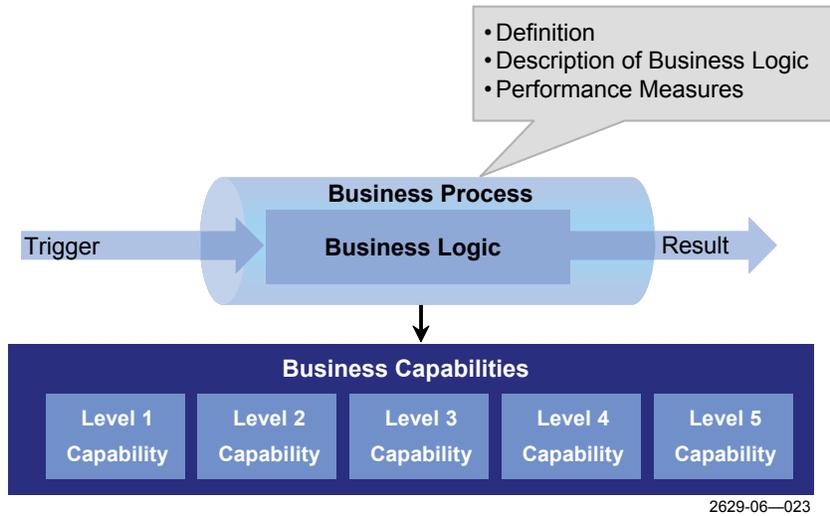
In the BPM, the business processes represent the typical operations of a Medicaid agency. These processes evolve over time. Some are transformed and others are replaced. New business processes will appear. **Table 4-1** illustrates the template used to describe all MITA business processes. Part I Appendix C, Business Process Model Details, contains the complete set of business processes.

**Table 4-1. MITA Business Process Template**

Tier 3: Enroll Provider		
Item	Details	Links
<b>Description</b>	A brief description of the complete business process	<i>Location in the Model</i>
<b>Trigger Event</b>	An occurrence that triggers a business process (e.g., receipt of a request, phone call, or a scheduled date) The Trigger is a defined data set.	<i>Sources of Trigger events</i>
<b>Result</b>	One or more outcomes from the execution of the Business Logic (results are defined as <i>data in motion</i> and are the immediate output from the business process, not the ultimate, downstream result) The Result is a defined data set.	<i>Business processes affected by the Result</i>
<b>Business Process Steps</b>	A sequence of steps that execute the successful completion of the business process (steps start with a verb)	N/A
<b>Shared Data</b>	Shared data is <i>data at rest</i> (i.e., data stores accessed to complete a step in the business process) Shared data is a defined data set.	<i>List of data sources</i>
<b>Predecessor</b>	The preceding business process, the Result of which becomes an input Trigger to this business process	<i>Other BP</i>
<b>Successor</b>	The Results of this business process, which may become a Trigger for another business process	<i>Other BP</i>
<b>Constraints</b>	Conditions that must be met for this generalized process to execute (e.g., enrolling institutional providers requires different information from enrolling pharmacies)	<i>External rules</i>
<b>Failures</b>	An identification of the exit points throughout the business process where the Business Logic specifies that the process must terminate because of failure of one or more steps	<i>Failure Notifications</i>
<b>Performance Measures</b>	Measures that describe what can be measured but that are not specific measures in themselves, such as the following: 1. Time to complete process (e.g. real-time response = within ___ seconds; batch response = within ___ days) 2. Accuracy of decisions = ___% 3. Consistency of decisions and disposition = ___% 4. Error rate = ___% or less The MITA template specifies the type of measure but not the actual measure.	<i>External source or performance measure rules</i>

## How Do Business Processes Mature?

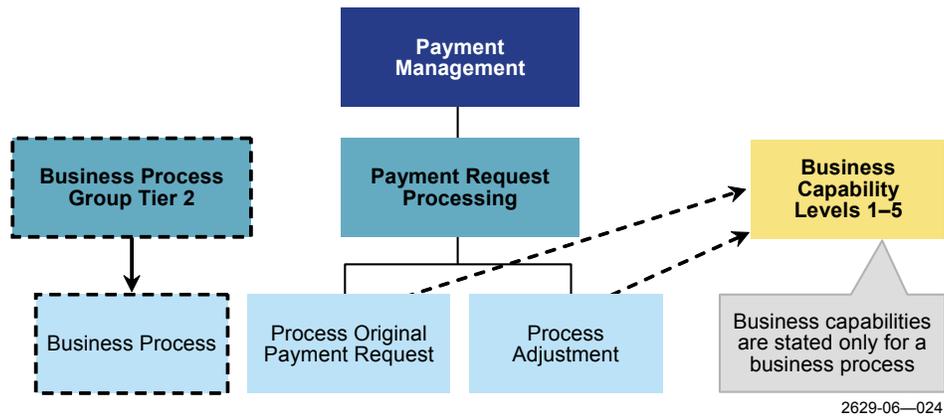
Business processes described in the BPM are those found today in most Medicaid enterprises. However, the MITA Framework also needs to show how typical processes can be transformed over time. The Business Capability Matrix described in the next chapter is the vehicle chosen by the MITA team to show this transformation. The next chapter presents the five levels of progressively maturing capabilities associated with each business process. **Figure 4-12** illustrates the relationship between the business process and the different levels of capability. (See Part I Chapter 5, Business Capability Matrix, for more information on business capabilities and Part I Appendix D, Business Capability Matrix Details, for a full list of capabilities associated with business processes.)



**Figure 4-12. Business Processes and Business Capabilities**

As an example, assume that Authorize Service is a business process that approves or denies payment for a service based on evidence about the person’s health status, medical needs, or other factors. The Trigger event is Receipt of Service Authorization Request. The Result is Authorization Status (e.g., denied, approved, or suspended for more information). The steps include authentication of requestor; validity of service; eligibility of client; appropriateness of service for client’s medical condition, age, or gender; service or dollar limits; availability of funds; and final disposition.

Business processes can have from one to five Maturity Levels of business capabilities, as reflected in **Figure 4-13**. Maturity Level 1 reflects the current capabilities commonly seen today in many Medicaid operations. The other levels show advances in the timeliness, effectiveness, and efficiency of the business process.



**Figure 4-13. Business Processes**

The MITA BPM continues to evolve and change as new processes are identified and added. A new process may be created as a result of a change in the industry, such as adoption of electronic health records (EHRs) or Regional Health Information Organizations (RHIOs). These innovations change the way the Medicaid enterprise does business. (For example, direct access to clinical data can change the way Service Authorization and Claims Adjudication are performed today). The new business processes replace or make an existing process obsolete. For example, online coordination of benefits eliminates the need for cost recovery (i.e., Pay and Chase).

Each new business process has an initial capability. The level of the capability indicates when the process is available. Both the old and the new processes remain in the BPM because some States may have implemented the new process, while other States continue to use the older process.

## What Are the Next Steps in the Evolution of the BPM?

The MITA BPM is designed to identify all the major Medicaid business processes commonly found in most States. Processes that support optional programs (e.g., managed care, Waiver, Immunization Registry, Care Management, or Medicaid-based SCHIP) are included because of the many States that have implemented these programs. MITA Framework 2.0 establishes a Model — a baseline for a common set of Medicaid business processes. It is important to have this “starter kit” validated by the community of Medicaid agencies and stakeholders, which States, National Medicaid Electronic Data Interchange (EDI) HIPAA (NMEH) workgroup, S-TAG, and the MITA team can accomplish through collaborative efforts.

The definition of the business process allows all Medicaid agencies to identify their business processes within the MITA BPM. The business process capabilities, described in the next chapter, allow States and vendors to assess their current systems and plan for enhancements, upgrades, or replacement systems.

## **DRUG-FREE WORKPLACE CERTIFICATION**

### **K.7. CERTIFICATION REGARDING A DRUG-FREE WORKPLACE (JULY - 1990):**

#### **K.7.1** Definitions. As used in this provision:

- K.7.1.K.7** **Controlled substance:** means a controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.
- K.7.1.2** **Conviction:** means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.
- K.7.1.3** **Criminal drug statute:** means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.
- K.7.1.4** **Drug-free workplace:** means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
- K.7.1.5** **Employee:** means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.
- K.7.1.6** **Individual:** means an Offeror/Contractor that has no more than one employee including the Offeror/Contractor.
- K.7.2** By submission of its offer, the Offeror, if other than an individual, who is making an offer that equals or exceeds \$25,000, certifies and agrees, that with respect to all employees of the Offeror to be employed under a contract resulting from this solicitation, it will - no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration: or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed:

- K.7.2.1** Publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- K.7.2.2** Establish an ongoing drug-free awareness program to inform such employees about the following:
- (i) The dangers of drug abuse in the workplace;
  - (ii) The Contractor's policy of maintaining a drug-free workplace;
  - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- K.7.2.3** Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph K.7.2.1 of this provision;
- K.7.2.4** Notify such employees in writing in the statement required by subparagraph K.7.2.1 of this provision that, as a condition of continued employment on the contract resulting from this solicitation, the employee will:
- (i) Abide by the terms of the statement; and
  - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;
- K.7.2.5** Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision K.7.2.4 (ii) of this provision, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee; and
- K.7.2.6** Within 30 calendar days after receiving notice under subdivision K.7.2.4 (ii) of this provision of a conviction, takes one of the

following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

- (i) Take appropriate personnel action against such employee, up to and including termination; or
- (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

**K.7.2.7** Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs K.7.2.1 through K.7.2.6 of this provision.

**K.7.3** By submission of its offer, the Offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the Offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.

**K.7.4** Failure of the Offeror to provide the certification required by paragraphs K.7.2 through K.7.3 of this provision, renders the Offeror unqualified and ineligible for award.

**K.7.5** In addition to other remedies available to the Government, the certification in paragraphs K.7.2 through K.7.3 of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

**K.7.6 CERTIFICATION REGARDING A DRUG-FREE WORKPLACE**

\_\_\_\_\_  
AUTHORIZED CONTRACTOR PERSONNEL (PRINT NAME)

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
Signature of Authorized Contractor Personnel

\_\_\_\_\_  
Date

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE CHIEF FINANCIAL OFFICER  
OFFICE OF TAX AND REVENUE



**TAX CERTIFICATION AFFIDAVIT**

**THIS AFFIDAVIT IS TO BE COMPLETED ONLY BY THOSE WHO ARE REGISTERED TO CONDUCT BUSINESS IN THE DISTRICT OF COLUMBIA.**

Date: \_\_\_\_\_

Name of Organization/Entity: \_\_\_\_\_

Address: \_\_\_\_\_

Business Telephone No.: \_\_\_\_\_

Principal Officer:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Soc. Sec. No.: \_\_\_\_\_

Federal Identification No.: \_\_\_\_\_

Contract No.: \_\_\_\_\_

Unemployment Insurance Account No.: \_\_\_\_\_

I hereby certify that:

1. I have complied with the applicable tax filing and licensing requirements of the District of Columbia.
2. The following information is true and correct concerning tax compliance for the following taxes for the past five (5) years:

	Current	Not Current	Not Applicable
District: Sales and Use	( )	( )	( )
Employer Withholding	( )	( )	( )
Ball Park Fee	( )	( )	( )
Corporation Franchise	( )	( )	( )
Unincorporated Franchise	( )	( )	( )
Personal Property	( )	( )	( )
Real Property	( )	( )	( )
Individual Income	( )	( )	( )

**The Office of Tax and Revenue is hereby authorized to verify the above information with the appropriate government authorities. The penalty for making false statements is a fine not to exceed \$5,000.00, imprisonment for not more than 180 days, or both, as prescribed by D.C. Official Code § 47-4106.**

**This affidavit must be notarized and becomes void if not submitted within 90 days of the date notarized.**

\_\_\_\_\_  
Signature of Authorizing Agent

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

Notary: DISTRICT OF COLUMBIA, ss:

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ Month and Year

Notary Public: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**PAST PERFORMANCE EVALUATION FORM**

(Check appropriate box)

Offeror: \_\_\_\_\_

Performance Elements	Excellent	Good	Acceptable	Poor	Unacceptable
Quality of Services/ Work					
Timeliness of Performance					
Cost Control					
Business Relations					
Customer Satisfaction					

1. Name & Title of Evaluator: \_\_\_\_\_
2. Signature of Evaluator: \_\_\_\_\_
3. Name of Organization: \_\_\_\_\_
4. Telephone Number of Evaluator: \_\_\_\_\_
5. State type of service received: \_\_\_\_\_
6. State Contract Number, Amount and period of Performance \_\_\_\_\_  
\_\_\_\_\_
7. Remarks on Excellent Performance: Provide data supporting this observation. Continue on separate sheet if needed)
8. Remarks on unacceptable performance: Provide data supporting this observation. (Continue on separate sheet if needed)

## RATING GUIDELINES

Summarize Contractor performance in each of the rating areas. Assign each area a rating of 0 (Unacceptable), 1 (Poor), 2 (Acceptable), 3 (Good), 4(Excellent), or ++ (Plus). Use the following instructions a guidance in making these evaluations.

	<b>Quality Product/Service</b>	<b>Cost Control</b>	<b>Timeless of Performance</b>	<b>Business Relations</b>
	<ul style="list-style-type: none"> <li>-Compliance with contract requirements</li> <li>-Accuracy of reports</li> <li>-Appropriateness of personnel</li> <li>-Technical excellence</li> </ul>	<ul style="list-style-type: none"> <li>-Within budget (over/ under target costs)</li> <li>-Current, accurate, and complete billings</li> <li>-Relationship of negated costs to actual</li> <li>-Cost efficiencies</li> <li>-Change order issue</li> </ul>	<ul style="list-style-type: none"> <li>-Meet Interim milestones</li> <li>-Reliable</li> <li>-Responsive to technical directions</li> <li>-Completed on time, including wrap-up and contract administration</li> <li>-No liquidated damages assessed</li> </ul>	<ul style="list-style-type: none"> <li>-Effective management</li> <li>-Businesslike correspondence</li> <li>-Responsive to contract requirements</li> <li>-Prompt notification of contract problems</li> <li>-Reasonable/cooperative</li> <li>-Flexible</li> <li>-Pro-active</li> <li>-effective contractor recommended solutions</li> <li>-Effective snail/small disadvantaged business Subcontracting program</li> </ul>
<b>0. Zero</b>	Nonconformances are comprises the achievement of contract requirements, despite use of Agency resources	Cost issues are comprising performance of contract requirements.	Delays are comprising the achievement of contract requirements, Despite use of Agency resources.	Response to inquiries, technical/ service/administrative issues is not effective and responsive.
<b>1, Unacceptable</b>	Nonconformances require major Agency resources to ensure achievement of contract requirements.	Cost issues require major Agency resources to ensure achievement of contract requirements.	Delays require major Agency resources to ensure achievement of contract requirements.	response to inquiries, technical/ service/administrative issues is marginally effective and responsive.
<b>2. Poor</b>	Nonconformances require minor Agency resources to ensure achievement of contract requirements.	Costs issues require minor Agency resources to ensure achievement of contract requirements.	Delays require minor Agency resources to ensure achievement of contract requirements.	Responses to inquiries, technical/ service/administrative issues is somewhat effective and responsive.
<b>3. Acceptable</b>	Nonconformances do not impact achievement of contract requirements.	Cost issues do not impact achievement of contract requirements.	Delays do not impact achievement of contract requirements.	Responses to inquires, technical/ service/administrative issues is usually effective and responsive.
<b>4. Good</b>	There are no quality problems.	There are no cost issues.	There are not delays.	Responses to inquiries, technical/ service/administrative issues is effective and responsive,
<b>5. Excellent</b>	The contractor has demonstrated an exceptional performance level in some or all of the above categories.			



### COST / PRICE DISCLOSURE CERTIFICATION

RFP Number: DCHC-2008-R-9090 Closing Date: July 21, 2008

Caption: **Professional Consulting Services and Technical Assistance - Medicaid Information Technology Architecture State Self Assessment**

Total Proposed Amount: \_\_\_\_\_

The undersigned \_\_\_\_\_

(please print name and title of offeror's authorized signatory) hereby certifies that, to the best of my knowledge, the cost and pricing data (i.e. at the time of price agreement this certification represents that all material facts of which prudent buyers and sellers would reasonably expect to affect price negotiations in any significant manner) submitted was accurate, complete, and current as of \_\_\_\_\_ (date of RFP closing or conclusion of negotiations as appropriate) .

The undersigned further agrees that it is under a continuing duty to update cost or pricing data through the date that negotiations, if any, with the District are completed. The undersigned further agrees that the price, including profit or fee, will be adjusted to exclude any significant price increases occurring because the cost or pricing data was inaccurate, incomplete or not current. (See D.C. Procurement Regulations, 27 DCMR, Chapter 6, Section 699, Chapter 16, Section 1624; and Section 32 of the Standard Contract Provisions for Use with District of Columbia Government Supply and Services Contracts, December 1984, as amended).

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

DUNS #: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

## **COST/PRICE DATA REQUIREMENTS**

### **1. GENERAL INFORMATION:**

- 1.1 Offerors submitting cost/price proposals, in response to a District Request For Proposal (RFP), sole source procurement, change order, or contract modification exceeding \$500,000 in total value, must include a complete cost and pricing data breakdown (i.e., data that is verifiable and factual) for all costs identified in the proposal, and relevant to the performance of the contract. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the Offeror has been submitted, either actually, or by specific identification, to the District. If not available at the time of submission, as later information comes into the Offeror's possession, it should be promptly submitted to the District in a manner that clearly demonstrates its relationship to, and effect on, the Offeror's cost/price proposal. This requirement continues up to the date of final agreement on price and/or other issues, as agreed upon between the parties.
- 1.2 There is a clear distinction between submitting cost or pricing data and merely making available books, records and other documents without identification or context. By submitting a cost/price proposal, the Offeror, if selected for negotiation, grants the Contracting Officer, or an authorized representative, the right to examine, at any time before award, those books, records, documents, and other types of factual information, regardless of form or whether such supporting information is specifically referenced or included in the proposal as a basis for pricing, that will permit an adequate evaluation of the proposed cost/price.
- 1.3 The cost/price proposal will represent the offeror's understanding of the RFP's requirements and the offeror's ability to organize and perform those requirements effectively and efficiently. The evaluation of the Offeror's cost/price proposal will be based on an analysis of the realism and completeness of the cost data, the conformity of the cost to the offeror's technical data and the proposed allocation of labor-hours and skill sets. Pertinent cost information, including but not limited to Defense Contract Auditing Agency (DCAA) and/or the Department of Labor (DOL) recommended rates for direct labor, overhead, general and administrative expense (G&A), etc., as necessary and appropriate, must be used to arrive at the most probable cost to be incurred by the Offeror. If the District considers the proposed costs to be unrealistic, the Offeror should adjust its proposed costs accordingly. Any inconsistency, whether real or apparent, between promised performance and cost or price should be explained in the cost/price proposal. The burden of proof for cost credibility rests with the Offeror.
- 1.4 The Offeror must submit its cost/price proposal in hard copy as well as on a diskette, which is in a format (i.e. MS Office, Lotus 1-2-3, etc.) specified and/or provided by the Agency Contracting Officer in the solicitation package. All cost/price proposals should provide a cost summary by all cost elements, cross-referenced to supporting documentation. See Table No. (1.4).

Attachment J.15

1.5 The following information shall be included in this section, for the prime contractor and each proposed subcontractor:

- (a) A properly completed “Cost/Price Disclosure Certification.’
- (a) Identification of any estimates, along with the rationale and methodology used to develop them, including judgmental factors used in projecting future costs, based on known data, and the timing, nature and extent of any material contingencies.
- (c) Disclosure of any other activities or likely events which could materially impact specific costs (i.e., existing large material and supply inventories, management/ownership changes, new technologies, collective bargaining agreements, etc.)
- (d) Disclosure of any and all awarded and pending contracts with the District of Columbia, including contract number(s), amount, type (fixed price, cost reimbursement, etc.), agency, and a brief description of services.
- (e) Source of approval and the latest date of approval of the offeror’s Accounting system.

**Table (1.4)  
Example Cost Summary Format**

Cost Item	Task 1			Task 2			Task 3			Task 4, etc.			Base Year Total
	R	H	D	R	H	D	R	H	D	R	H	D	
Direct Labor Categories													
♦ Employee A													
♦ Employee B													
♦ Employee C													
Total Labor Hours													
Total Labor Dollars													
Fringe Benefit													
Labor Overhead *													
Total Direct Labor													
Other Direct Costs													
♦ Equip. & Supplies													
♦ Materials													
♦ Travel													
♦ Other													
Subcontractors													
♦ Sub A													
♦ Sub B													
ODC Overhead *													
Total ODC & Subcontractors													
G&A													
Fee/Profit													
Total Price													

H = Hours                      R = Rate                      D = Dollars (Rate X Hours = Dollars)

***Note: Provide cost information similar to the above format for each option/out-year***

*\* Note: Small, field-based trade providers typically have a labor or combined overhead cost components. Larger, more diversified providers may have separate labor, and/or ODC or combined overhead component.*

## **2. SUPPORTING COST DATA:**

- 2.1 The Offeror shall provide, for each cost element, a narrative description, in sufficient detail, to demonstrate price reasonableness, credibility and reliability. The Offeror shall provide its assumptions and methodologies used to estimate each cost element (significant item and quantity estimates, labor hour expenditure patterns and mix, etc.). The following information shall be included in this section:
- 2.1.1. The Offeror's total estimated costs plus its fee (if applicable) for providing all of the requirements of the RFP, as proposed in their technical proposal. Offerors should support their best estimates of all costs (direct, indirect, profit, etc.) to be incurred in the performance of the contract.
  - 2.1.2. When proposing multiyear/option year pricing, the estimated proposed costs shall include a breakdown of all cost elements for the base year as well as each option/out-year. Labor, other direct costs, indirect costs and profit shall each be clearly identifiable. If different from the Defense Contract Auditing Agency (DCAA) or Department Of Labor (DOL) recommended rates, the Offeror shall provide a thorough explanation for the variation(s) of rates.
  - 2.1.3. The Cost Summary Format (Table 1.4) provides a format for the Offeror to submit to the District a pricing proposal of estimated cost by line item, along with supporting documentation that is adequately cross-referenced and suitable for cost realism analysis. A cost-element breakdown shall be attached for each proposed line item and must reflect any other specific requirements established by the Contracting Officer. When more than one contract line item is proposed, a summary of the total amount covering all line items must be furnished for each cost element.
  - 2.1.4. If the Offeror has an agreement with a federal, state, or municipal government agency on the use of a Forward Pricing Rates Agreement (FPRA) or other rate agreement for labor, fringe benefits, overhead and/or general and administrative expense, the Offeror must identify the agreement, provide a copy and describe its nature, terms and duration.

## **3. SPECIFIC COST ELEMENTS:**

A well-supported cost/price proposal reduces the effort needed for review and facilitates informed negotiations. The following are the minimum criteria that constitute an acceptable cost/price proposal:

- 3.1 **Direct labor:** A task-phased annual breakdown of labor rates and labor hours by category or skill level, including the basis for the rates and hours estimated (i.e., payroll registers, wage determinations, collective bargaining agreements, historical experience, engineering estimates, etc.).
  - 3.1.1 The Offeror shall use the following Table No. (3.1.1) to exhibit its total labor hours by prime contractor and subcontractor(s). A separate table should be completed for each year (base and out-years).

**Table (3.1.1)  
Annual Labor Summary**

Item	Task 1	Task 2	Task 3	Task 4	Base Year Total
<u>Labor Category, Prime</u> <ul style="list-style-type: none"> <li>• Employee A</li> <li>• Employee B</li> <li>• Employee C</li> </ul>					
<u>Labor Category, Sub.</u> <ul style="list-style-type: none"> <li>• Employee D</li> <li>• Employee E</li> <li>• Employee F</li> </ul>					
<u>Labor Category, Consultant</u> <ul style="list-style-type: none"> <li>• Employee G</li> <li>• Employee H</li> </ul>					
Total Labor Hours by Task					

Note: Do not include wage rates in this table

- 3.1.2 A standard of 40 hours/week, 1,920 hours/year is recommended. If another standard is used, it should be precisely defined. Any deviation from the above labor-hour projection without substantiation may form the basis to reject the response to the RFP. The proposed labor-hours shall include prime contractor, subcontractor and consultant hours.
  
- 3.1.3 The Offeror shall also submit Table No. (3.1.4.b), depicting the labor mix percentages as proposed for the base year as well as the out-years and should match the personnel experience requirements specified in the RFP, Section **(to be referenced by the Contract Specialist)**, under Personnel Experience. All of the RFP Key positions must be included within the Senior Staff categories. To provide a better understanding of this format, Table No. (3.1.4.a) is provided as an example.
  
- 3.1.4 The Offeror shall describe how the hourly direct labor rate was derived and indicate whether these rates are subject to any collective bargaining agreement(s), the Service Contract Act (SCA), Davis-Bacon, or any other special agreement which controls the labor rate indicated. When proposing price escalation for option/out-years, the Offerors must follow instructions provided under Economic Price Adjustments, Section H, of this RFP.

Table (3.1.4.a)

## Summary of Proposed Annual labor Mix Category (with examples)

<b>NAME</b>  <b>(Note1)</b>	<b>LABOR MIX</b>  <b>(Note 2)</b>	<b>OFFEROR'S LABOR CATEGORY</b>  <b>(Note 3)</b>	<b>PERCENT OF TIME ON CONTRACT</b>  <b>(Note 4)</b>	<b>PLANNED SOW ASSIGNMENT</b>  <b>(Note 5)</b>	<b>STATUS</b>  <b>(Note 6)</b>
Able, Jackson	Sr. Staff Level 1	Program Director	PT/10%	N/A	PCE/E
Black, William E.	Sr. Staff Level 1	Psychiatrist	PT/20%	C.3	PCE/E
White, Pamela A.	Sr. Staff Level 2	Clinic Manager	PT/50%	C.4.1	PCE/P
Green, Robert T	Sr. Staff Level 3	Counseling Supvs.	PT/50%	C.4.2	PCE/P
Ross, Allen	Jr. Staff Level 1	Counselor	FT/100%	C.4.3	PCE/E

Note 1: Last name, first name, middle initial, grouped by task as specified in SOW. Attach resume for each name on list. The names on this list and the resumes are to be in the same order.

Note 2: Staff levels in each Labor Mix should be classified by the level of expertise and years of experience.

Note 3: Offerors internal labor category.

Note 4: State whether the individual is employed full time (FT) or part time (PT) and the planned percentage of the named person's production time that is to be applied as a direct charge to the contract.

Note 5: Identify by SOW paragraph(s) and task number, the major tasks to which the individual is expected to be assigned.

Note 6: Enter PCE if individual is to be a prime contractor employee; enter SCE if the individual is to be a subcontractor employee; enter CON if individual is to be a consultant. Enter E if employee as of the date of this proposal; enter P if the individual is a pending employee as of date of the proposal. Signed Commitment Agreements are required for all individuals with P status. A copy of each agreement is to be inserted behind the resume section in the technical proposal.

Table (3.1.4.b)

## Summary of Proposed Annual labor Mix Category

NAME  (Note 1)	LABOR MIX  (Note 2)	OFFEROR'S LABOR CATEGORY  (Note 3)	PERCENT OF TIME ON CONTRACT  (Note 4)	PLANNED SOW ASSIGNMENT  (Note 5)	STATUS  (Note 6)
<u>Labor Category, Prime</u> <ul style="list-style-type: none"> <li>• Employee A</li> <li>• Employee B</li> <li>• Employee C</li> <li>• Employee D</li> </ul> <u>Labor Category, Sub.</u> <ul style="list-style-type: none"> <li>• Employee E</li> <li>• Employee F</li> <li>• Employee G</li> </ul> <u>Labor Category, Consultant</u> <ul style="list-style-type: none"> <li>• Employee H</li> <li>Employee I</li> </ul>					

Last name, first name, middle initial, grouped by task as specified in SOW. Attach resume for each name on list. The names on this list and the resumes are to be in the same order.

Note 2: Staff levels in each Labor Mix should be classified by the level of expertise and years of experience.

Note 3: Offerors internal labor category.

Note 4: State whether the individual is employed full time (FT) or part time (PT) and the planned percentage of the named person's production time that is to be applied as a direct charge to the contract.

Note 5: Identify by SOW paragraph(s) and task number, the major tasks to which the individual is expected to be assigned.

Note 6: Enter PCE if individual is to be a prime contractor employee; enter SCE if the individual is to be a subcontractor employee; enter CON if individual is to be a consultant. Enter E if employee as of the date of this proposal; enter P if the individual is a pending employee as of date of the proposal. Signed Commitment Agreements are required for all individuals with P status. A copy of each agreement is to be inserted behind the resume section in the technical proposal.

- 3.2 **Indirect Costs:** The Offeror shall indicate its proposed Fringe, Overhead and General & Administrative rates for each applicable fiscal or calendar year (as appropriate). The Offeror shall indicate if these rates are subject to a Forward Pricing Rate Agreement. If the proposed Indirect Rates differ from the Forward Pricing Rate Agreement, the Offeror shall provide an explanation. The Offeror shall provide its actual indirect rates for overhead, G&A and fringe benefits for at least the past three (3) years and shall explain the basis for any significant rate difference between the prior three year period and the rates proposed now.
- 3.3 **Other Direct Costs:** Other Direct Costs consists of materials, travel, reproduction, postage, telephone, supplies for the prime and all subcontracted effort. This includes all other direct costs associated with performance of the contract. Travel costs shall be in accordance with GSA Joint Travel Regulations for airfare, hotel, and per diem allowances. All other direct costs should be specifically identified and explained. If an allocated portion of a Direct cost is also included in an Offeror's indirect rate (such as General and Administrative), the Offeror should state so and list the types of expenses included in the indirect rate.
- 3.3.1 The Offeror should identify types, quantities, and costs of all materials and supplies proposed including a non-loaded priced listing of individual materials or supplies ordered, or a consolidated and priced bill of materials for the entire proposal. A thoroughly documented bill of materials includes part numbers, description, unit costs, quantity required, extended cost (including delivery charges) and basis for the proposed cost (price quotation, prior buy, signed purchase orders, etc.) plus any other non-recurring costs. Deliverable materials are items delivered as a part of the work product. Examples of this are copies and binders delivered to the Government as a report or software ordered for and installed on a computer in a District Government office.
- 3.3.2 The Offeror shall use the following Table (3.3.2) to exhibit its total other direct costs (ODC) by prime and subcontractor(s). A separate table should be completed for each year (base and out-years).

Table (3.3.2)

### Other Direct Costs (ODC) Summary

Item	Task 1	Task 2	Task 3	Task 4	Base Year Total
Supplies and Materials					
Office Equipment					
Travel					
<ul style="list-style-type: none"> <li>• Airfare</li> <li>• Hotel</li> <li>• Meals &amp; Incidentals</li> <li>• Ground Transportation</li> </ul>					
Telecommunications					
Occupancy					
<ul style="list-style-type: none"> <li>• Rent</li> <li>• Utilities</li> <li>• Building Maintenance</li> </ul>					
Transportation					
Client Care Cost					
<ul style="list-style-type: none"> <li>• Food</li> <li>• Medical</li> <li>• Clothing</li> <li>• Personal Hygiene</li> </ul>					
Other					
Total ODC by Task					

***Note:** State each individual cost element being proposed. Describe in the narrative section of the cost proposal, how each cost element is derived and why it is being proposed. (Not all cost elements in the table above will apply to each solicitation. The above table should be tailored to the requirements of the RFP.)*

- 3.4 **Subcontracting Costs:** Each subcontract must be addressed separately. For any subcontract exceeding \$25,000 the cost/price proposal must show the names, quantities, prices, deliverables, basis for selection, and degree of competition used in the selection process. The subcontractor's cost or pricing data should be included along with the prime Offeror's proposal. If available, the Offeror should also include the results of its review and evaluation of the subcontract proposals. The Offeror shall provide copies of any cost or price analyses of the subcontractor costs proposed.
- 3.5 **Start-up Costs:** As appropriate, the Offeror shall identify all start up costs associated with this effort.

3.6 **Other Historical Data:** All offerors with current or past experience (within three to five years) for similar requirements, as described herein, must submit, as a part of their cost data, the following:

- (a) Contract Number.
- (b) Government agency (federal, state, District, municipal) the contract was awarded by.
- (c) Name and phone number of the Contracting Officer.
- (d) Name and phone number of the Contract Administrator.
- (e) Name and phone number of the Contracting Officer’s Representative (if applicable) and the Contract Administrator.
- (f) Period of Performance of the Contract.
- (g) Total amount of contract(s)

In addition to the above data, the following table (No. 3.6) will be completed and submitted with the cost data:

**Table (3.6)**

**Format for Historical Data**

	Proposed Contract			Delivered Contract *		
	Number Of Hours**	Contract Value	Average Hr Rate	Number Of Hours**	Contract Value	Average Hr Rate
Direct Labor						
Loaded Labor***						

- \* Should include any increased scope officially added to contract.
- \*\* If provided different number of hours, the difference should be explained.
- \*\*\* Loaded labor should include all loading and profit. If significant material (i.e., greater than 5%) is included in the contract, data shall be presented both with and without material cost.

In addition, any other data the offeror believes is necessary should be provided in this section.

*Note: For data submitted in the above table for “delivered Contract”, the Offeror shall indicate the date as of which, the submitted data is current.*