

ATTACHMENT J.1

Government of the District of Columbia Standard
Contract Provisions for Use with the Supply and Service Contracts,
dated March 2007

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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WASHINGTON, DC 20001**

STANDARD CONTRACT PROVISIONS
TABLE OF CONTENTS

1. <i>Covenant Against Contingent Fees:</i>	1
2. <i>Shipping Instructions – Consignment:</i>	1
3. <i>Patents:</i>	1
4. <i>Quality:</i>	1
5. <i>Inspection Of Supplies:</i>	1
6. <i>Inspection Of Services:</i>	3
7. <i>Waiver:</i>	4
8. <i>Default:</i>	4
9. <i>Indemnification:</i>	6
10. <i>Transfer:</i>	6
11. <i>Taxes:</i>	6
12. <i>Appointment of Attorney:</i>	7
13. <i>District Employees Not To Benefit:</i>	7
14. <i>Disputes:</i>	7
15. <i>Changes:</i>	10
16. <i>Termination For Convenience Of The District:</i>	10
17. <i>Recovery Of Debts Owed The District:</i>	14
18. <i>Retention and Examination Of Records:</i>	14
19. <i>Non-Discrimination Clause:</i>	14
20. <i>Definitions:</i>	16
21. <i>Health And Safety Standards:</i>	16
22. <i>Appropriation Of Funds:</i>	16
23. <i>Buy American Act:</i>	16
24. <i>Service Contract Act of 1965:</i>	17
25. <i>Cost and Pricing Data:</i>	23
26. <i>Multiyear Contract:</i>	25
27. <i>Termination Of Contracts For Certain Crimes And Violations:</i>	25

March (2007)

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

March (2007)

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.

March (2007)

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

6. **Inspection Of Services:**

- (a) Definition. "Services" as used in this clause includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the District covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the District during contract performance and for as long afterwards as the contract requires.

March (2007)

- (c) The District has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The District will perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the District performs inspections or tests on the premises of the Contractor or subcontractor, the Contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safety and convenient performance of these duties.
- (e) If any of the services do not conform to the contract requirements, the District may require the Contractor to perform these services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by performance, the District may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect value of services performed.
- (f) If the Contractor fails to promptly perform the services again or take the necessary action to ensure future performance in conformity to contract requirements, the District may (1) by contract or otherwise, perform the services and charge the Contractor any cost incurred by the District that is directly related to the performance of such services, or (2) terminate the contract for default.

7. **Waiver:**

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

8. **Default:**

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

March (2007)

- (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.

March (2007)

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."

March (2007)

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

March (2007)

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.

March (2007)

- (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.

March (2007)

- (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.

March (2007)

- (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

March (2007)

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

March (2007)

- (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

March (2007)

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.

March (2007)

- (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.

March (2007).

- (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.

March (2007)

“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.

March (2007)

- (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

March (2007)

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

March (2007)

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.

March (2007)

- (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

March (2007)

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.

March (2007)

- (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;

March (2007)

- (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
THE SERVICE CONTRACT ACT
By direction of the Secretary of Labor

U. S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
WASHINGTON D. C. 20210

Shirley F. Ebbesen Division of
Director Wage Determinations

Wage Determination No. : 2005-2103
Revision No. : 8
Date Of Revision: 05/26/2009

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	FOOTNOTE	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		28.55
01040 - Court Reporter		19.95
01051 - Data Entry Operator I		14.38
01052 - Data Entry Operator II		15.69
01060 - Dispatcher, Motor Vehicle		16.94
01070 - Document Preparation Clerk		14.21
01090 - Duplicating Machine Operator		14.21
01111 - General Clerk I		13.92
01112 - General Clerk II		15.32
01113 - General Clerk III		18.74
01120 - Housing Referral Assistant		25.29
01141 - Messenger Courier		12.38
01191 - Order Clerk I		14.85
01192 - Order Clerk II		16.29
01261 - Personnel Assistant (Employment) I		17.31
01262 - Personnel Assistant (Employment) II		19.36
01263 - Personnel Assistant (Employment) III		21.66
01270 - Production Control Clerk		22.03
01280 - Recepti onist		14.12
01290 - Rental Clerk		16.55
01300 - Scheduler, Maintenance		17.49
01311 - Secretary I		17.49
01312 - Secretary II		19.70
01313 - Secretary III		25.29
01320 - Service Order Dispatcher		16.10
01410 - Supply Technician		28.55
01420 - Survey Worker		19.46
01531 - Travel Clerk I		12.92
01532 - Travel Clerk II		13.89
01533 - Travel Clerk III		14.92
01611 - Word Processor I		14.21
01612 - Word Processor II		16.65
01613 - Word Processor III		19.95
05000 - Automotive Service Occupations		
05005 - Automobile Body Repairer, Fiberglass		25.26
05010 - Automotive Electrician		23.51

Attachment J 2 Wage Determination.txt

05040 - Automotive Glass Installer	22.15
05070 - Automotive Worker	22.15
05110 - Mobile Equipment Servicer	19.04
05130 - Motor Equipment Metal Mechanic	24.78
05160 - Motor Equipment Metal Worker	22.15
05190 - Motor Vehicle Mechanic	24.78
05220 - Motor Vehicle Mechanic Helper	18.49
05250 - Motor Vehicle Upholstery Worker	21.63
05280 - Motor Vehicle Wrecker	22.15
05310 - Painter, Automotive	23.51
05340 - Radiator Repair Specialist	22.15
05370 - Tire Repairer	14.44
05400 - Transmission Repair Specialist	24.78
07000 - Food Preparation And Service Occupations	
07010 - Baker	13.48
07041 - Cook I	11.97
07042 - Cook II	13.28
07070 - Dishwasher	9.82
07130 - Food Service Worker	10.66
07210 - Meat Cutter	17.04
07260 - Waiter/Waitress	9.70
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	10.50
11060 - Elevator Operator	10.50
11090 - Gardener	16.22
11122 - Housekeeping Aide	11.25
11150 - Janitor	11.25
11210 - Laborer, Grounds Maintenance	12.47
11240 - Maid or Houseman	11.03
11260 - Pruner	11.37
11270 - Tractor Operator	14.66
11330 - Trail Maintenance Worker	12.47
11360 - Window Cleaner	11.68
12000 - Health Occupations	
12010 - Ambulance Driver	19.46
12011 - Breath Alcohol Technician	18.55
12012 - Certified Occupational Therapist Assistant	21.01
12015 - Certified Physical Therapist Assistant	21.01
12020 - Dental Assistant	16.97
12025 - Dental Hygienist	40.68
12030 - EKG Technician	25.95
12035 - Electroneurodiagnostic Technologist	25.95
12040 - Emergency Medical Technician	20.41
12071 - Licensed Practical Nurse I	18.82
12072 - Licensed Practical Nurse II	21.09
12073 - Licensed Practical Nurse III	23.47
12100 - Medical Assistant	14.89
12130 - Medical Laboratory Technician	18.04
12160 - Medical Record Clerk	16.06
12190 - Medical Record Technician	18.27
12195 - Medical Transcriptionist	18.77
12210 - Nuclear Medicine Technologist	34.18
12221 - Nursing Assistant I	10.47
12222 - Nursing Assistant II	11.77
12223 - Nursing Assistant III	13.02
12224 - Nursing Assistant IV	14.62

Attachment J 2 Wage Determination.txt

12235 - Optical Dispenser	20.17
12236 - Optical Technician	14.41
12250 - Pharmacy Technician	16.47
12280 - Phlebotomist	14.62
12305 - Radiologic Technologist	28.28
12311 - Registered Nurse I	26.73
12312 - Registered Nurse II	32.41
12313 - Registered Nurse II, Specialist	32.41
12314 - Registered Nurse III	38.98
12315 - Registered Nurse III, Anesthetist	38.98
12316 - Registered Nurse IV	46.73
12317 - Scheduler (Drug and Alcohol Testing)	19.75
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	19.86
13012 - Exhibits Specialist II	24.61
13013 - Exhibits Specialist III	30.09
13041 - Illustrator I	20.48
13042 - Illustrator II	25.38
13043 - Illustrator III	31.03
13047 - Librarian	30.80
13050 - Library Aide/Clerk	14.21
13054 - Library Information Technology Systems Administrator	27.82
13058 - Library Technician	19.89
13061 - Media Specialist I	18.73
13062 - Media Specialist II	20.95
13063 - Media Specialist III	23.36
13071 - Photographer I	16.14
13072 - Photographer II	18.90
13073 - Photographer III	23.67
13074 - Photographer IV	28.65
13075 - Photographer V	30.69
13110 - Video Teleconference Technician	19.35
14000 - Information Technology Occupations	
14041 - Computer Operator I	18.54
14042 - Computer Operator II	20.74
14043 - Computer Operator III	23.12
14044 - Computer Operator IV	25.69
14045 - Computer Operator V	28.45
14071 - Computer Programmer I	(see 1) 25.43
14072 - Computer Programmer II	(see 1)
14073 - Computer Programmer III	(see 1)
14074 - Computer Programmer IV	(see 1)
14101 - Computer Systems Analyst I	(see 1)
14102 - Computer Systems Analyst II	(see 1)
14103 - Computer Systems Analyst III	(see 1)
14150 - Peripheral Equipment Operator	18.54
14160 - Personal Computer Support Technician	25.69
15000 - Instructional Occupations	
15010 - Aircrew Training Devices Instructor (Non-Rated)	35.71
15020 - Aircrew Training Devices Instructor (Rated)	43.84
15030 - Air Crew Training Devices Instructor (Pilot)	52.55
15050 - Computer Based Training Specialist / Instructor	34.39
15060 - Educational Technologist	32.75
15070 - Flight Instructor (Pilot)	52.55
15080 - Graphic Artist	26.80
15090 - Technical Instructor	25.08
15095 - Technical Instructor/Course Developer	30.67
15110 - Test Proctor	20.20
15120 - Tutor	20.20
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations	
16010 - Assembler	9.44
16030 - Counter Attendant	9.44

Attachment J 2 Wage Determination.txt

16040 - Dry Cleaner	12.21
16070 - Finisher, Flatwork, Machine	9.44
16090 - Presser, Hand	9.44
16110 - Presser, Machine, Drycleaning	9.44
16130 - Presser, Machine, Shirts	9.44
16160 - Presser, Machine, Wearing Apparel, Laundry	9.44
16190 - Sewing Machine Operator	13.07
16220 - Tailor	13.90
16250 - Washer, Machine	10.41
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	19.22
19040 - Tool And Die Maker	23.38
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	17.90
21030 - Material Coordinator	22.03
21040 - Material Expediter	22.03
21050 - Material Handling Laborer	12.92
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	11.44
21150 - Stock Clerk	16.46
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	21.62
23120 - Bicycle Repairer	14.43
23125 - Cable Splicer	25.61
23130 - Carpenter, Maintenance	20.99
23140 - Carpet Layer	19.33
23160 - Electrician, Maintenance	27.43
23181 - Electronics Technician Maintenance I	23.70
23182 - Electronics Technician Maintenance II	25.15
23183 - Electronics Technician Maintenance III	26.50
23260 - Fabric Worker	19.01
23290 - Fire Alarm System Mechanic	22.78
23310 - Fire Extinguisher Repairer	17.52
23311 - Fuel Distribution System Mechanic	22.81
23312 - Fuel Distribution System Operator	19.38
23370 - General Maintenance Worker	21.43
23380 - Ground Support Equipment Mechanic	24.46
23381 - Ground Support Equipment Servicer	18.71
23382 - Ground Support Equipment Worker	19.90
23391 - Gunsmith I	17.52
23392 - Gunsmith II	20.38
23393 - Gunsmith III	22.78
23410 - Heating, Ventilation And Air-Conditioning Mechanic	22.94
23411 - Heating, Ventilation And Air-Conditioning Mechanic (Research Facility)	24.37
23430 - Heavy Equipment Mechanic	22.78
23440 - Heavy Equipment Operator	22.78
23460 - Instrument Mechanic	22.59
23465 - Laboratory/Shelter Mechanic	21.62

Attachment J 2 Wage Determination.txt

23470 - Laborer	14.27
23510 - Locksmith	21.11
23530 - Machinery Maintenance Mechanic	22.99
23550 - Machinist, Maintenance	21.78
23580 - Maintenance Trades Helper	16.61
23591 - Metrology Technician I	22.59
23592 - Metrology Technician II	23.80
23593 - Metrology Technician III	24.96
23640 - Millwright	28.19
23710 - Office Appliance Repairer	22.96
23760 - Painter, Maintenance	21.62
23790 - Pipefitter, Maintenance	23.19
23810 - Plumber, Maintenance	20.99
23820 - Pneumatic Systems Mechanic	22.78
23850 - Rigger	22.78
23870 - Scale Mechanic	20.38
23890 - Sheet-Metal Worker, Maintenance	22.78
23910 - Small Engine Mechanic	20.38
23931 - Telecommunications Mechanic I	27.74
23932 - Telecommunications Mechanic II	29.24
23950 - Telephone Lineman	26.38
23960 - Welder, Combination, Maintenance	22.78
23965 - Well Driller	22.78
23970 - Woodcraft Worker	22.78
23980 - Woodworker	17.52
24000 - Personal Needs Occupations	
24570 - Child Care Attendant	12.79
24580 - Child Care Center Clerk	17.77
24610 - Chore Aide	10.52
24620 - Family Readiness And Support Services Coordinator	15.68
24630 - Homemaker	18.43
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	27.10
25040 - Sewage Plant Operator	20.73
25070 - Stationary Engineer	27.10
25190 - Ventilation Equipment Tender	19.08
25210 - Water Treatment Plant Operator	20.73
27000 - Protective Service Occupations	
27004 - Alarm Monitor	20.57
27007 - Baggage Inspector	12.66
27008 - Corrections Officer	22.25
27010 - Court Security Officer	23.33
27030 - Detection Dog Handler	20.57
27040 - Detention Officer	22.25
27070 - Firefighter	22.39
27101 - Guard I	12.66
27102 - Guard II	20.57
27131 - Police Officer I	26.14
27132 - Police Officer II	28.99
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	23.13

Attachment J 2 Wage Determination.txt

29020 - Hatch Tender	23.13
29030 - Line Handler	23.13
29041 - Stevedore I	21.31
29042 - Stevedore II	24.24
30000 - Technical Occupations	
30010 - Air Traffic Control Specialist, Center (HFO) (see 2)	38.00
30011 - Air Traffic Control Specialist, Station (HFO) (see 2)	26.21
30012 - Air Traffic Control Specialist, Terminal (HFO) (see 2)	28.86
30021 - Archeological Technician I	18.93
30022 - Archeological Technician II	21.11
30023 - Archeological Technician III	27.56
30030 - Cartographic Technician	27.56
30040 - Civil Engineering Technician	24.01
30061 - Drafter/CAD Operator I	19.89
30062 - Drafter/CAD Operator II	22.25
30063 - Drafter/CAD Operator III	24.80
30064 - Drafter/CAD Operator IV	30.52
30081 - Engineering Technician I	21.63
30082 - Engineering Technician II	24.29
30083 - Engineering Technician III	27.17
30084 - Engineering Technician IV	33.66
30085 - Engineering Technician V	41.16
30086 - Engineering Technician VI	49.81
30090 - Environmental Technician	24.92
30210 - Laboratory Technician	23.38
30240 - Mathematical Technician	28.94
30361 - Paralegal/Legal Assistant I	21.36
30362 - Paralegal/Legal Assistant II	26.47
30363 - Paralegal/Legal Assistant III	32.36
30364 - Paralegal/Legal Assistant IV	39.16
30390 - Photo-Optics Technician	27.56
30461 - Technical Writer I	21.84
30462 - Technical Writer II	26.70
30463 - Technical Writer III	32.31
30491 - Unexploded Ordnance (UXO) Technician I	24.15
30492 - Unexploded Ordnance (UXO) Technician II	29.22
30493 - Unexploded Ordnance (UXO) Technician III	35.03
30494 - Unexploded (UXO) Safety Escort	24.15
30495 - Unexploded (UXO) Sweep Personnel	24.15
30620 - Weather Observer, Combined Upper Air Or (see 2)	24.80
Surface Programs	
30621 - Weather Observer, Senior (see 2)	27.56
31000 - Transportation/Mobile Equipment Operation Occupations	
31020 - Bus Aide	13.02
31030 - Bus Driver	18.95
31043 - Driver Courier	12.71
31260 - Parking and Lot Attendant	10.07
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	11.58
99095 - Embalmer	23.05
99251 - Laboratory Animal Caretaker I	11.30
99252 - Laboratory Animal Caretaker II	12.35
99310 - Mortician	31.73
99410 - Pest Controller	16.01
99510 - Photofinishing Worker	12.75
99710 - Recycling Laborer	16.82

Attachment J 2 Wage Determination.txt

99711 - Recycling Specialist	20.65
99730 - Refuse Collector	14.91
99810 - Sales Clerk	12.09
99820 - School Crossing Guard	13.43
99830 - Survey Party Chief	21.94
99831 - Surveying Aide	13.63
99832 - Surveying Technician	20.85
99840 - Vending Machine Attendant	14.43
99841 - Vending Machine Repairer	18.73
99842 - Vending Machine Repairer Helper	14.43

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$3.35 per hour or \$134.00 per week or \$580.66 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 NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: 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

Attachment J 2 Wage Determination.txt

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.

Attachment J 2 Wage Determination.txt

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 link 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(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), 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.

Attachment J 2 Wage Determination.txt

Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.

ATTACHMENT J.3

Government of the District of Columbia Office of Local Business
Development Equal Employment Opportunity Information Report
and Mayor's Order 85-85.

YOUR LETTERHEAD

EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY STATEMENT

_____ 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, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS.

_____ AGREES TO 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, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, 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 OR 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

DATE

AUTHORIZED SIGNATURE
NAME

FIRM/ORGANIZATION

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 th Street, NW, Suite 700 South Washington, DC 20001
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.	
a. Name of establishment	
Address (Number and street)	
City or Town	
Country	
State	
Zip Code	
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). <input type="checkbox"/> Yes <input type="checkbox"/> No	

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)	Asian (5)	American Indian (6)	Hispanic (7)	Black (8)	Asian (9)	American Indian (10)	Hispanic (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		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
		White collar										
Production												

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

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

Section F - CERTIFICATION

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

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

INFORMATION CITED HEREIN SHALL BE HELD IN CONFIDENCE.

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT
 CONTRACT COMPLIANCE DIVISION

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. _____%

SOLICITATION NO: _____

PROJECTED GOALS AND TIMETABLES FOR FUTURE HIRING

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

District of Columbia Register
GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

SUBJECT: Compliance with Equal Opportunity Obligations in Contracts

ORIGINATING AGENCY: Office of the Mayor

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

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

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

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

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

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

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

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

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

Signed by Marion Barry, Jr.
Mayor

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

OFFICE OF HUMAN RIGHTS

NOTICE OF FINAL RULEMAKING

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

CHAPTER 11 EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS IN CONTRACTS

1100. PURPOSE

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

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

1101 SCOPE

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

1102 COVERAGE

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

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

1103 CONTRACT PROVISIONS

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

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

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

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

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

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

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

- 1104.18 The contractor shall make specific recruitment efforts, both written and oral, directed at all minority and women's training organizations within the contractor's recruitment area.
- 1104.19 The contractor shall encourage present employees to assist in the recruitment of minorities and women for employment.
- 1104.20 The contractor shall validate all qualifications, selection requirements, and tests in accordance with the guidelines of the Equal Employment Opportunity Commission.

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

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

1106 NONRESPONSIBLE CONTRACTORS

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

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

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

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

1107 NOTICE OF COMPLIANCE

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

1108 MINIMUM STANDARDS FOR MINORITY AND FEMALE EMPLOYMENT

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

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

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

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

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

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

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

1109 WAIVERS

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

1110 SOLICITATION OF CONTRACT

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

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

1111 PRIOR TO EXECUTION OF CONTRACT

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

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

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

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

1111.4 The apparent low bidder or offeror shall submit an Affirmative Action Program within a period of time to specified by each Contracting Agency, but which shall not exceed ten (10) working days after becoming the apparent contractor.

1111.5 The apparent low bidder or offeror shall furnish all information and reports to the Contracting Agency as required by this chapter, and shall permit access to all books or records pertaining to its employment practices or worksites.

1111.6 No contract subject to section 1104 shall be executed by the Contracting Agency, if the apparent low bidder or offeror does not submit an Affirmative Action Program, or if the Program has been disapproved in writing by the Director.

1111.7 If there is disagreement between the contractor and the Contracting Officer as to the adequacy of the Affirmative Action Program, the matter shall be referred to the Director for a decision.

1112 AFTER EXECUTION OF CONTRACT

1112.1 Each contractor shall maintain throughout the term of the contract the minimum standards for the employment of minorities and women, as set forth in the approved Affirmative Action Program.

1112.2 Each contractor shall require that each subcontractor, or vendor under the contract comply with the provision of the contract and the Affirmative Action Program.

1112.3 Each contractor shall furnish all information as required by this chapter, and permit access to all books and records pertaining to the contractor's employment practices and work sites by the Director and the Contracting Agency for purposes of investigation to ascertain compliance with this chapter.

1113 MONITORING AND EVALUATION

1113.1 The Director shall, from time to time, monitor and evaluate all District of Columbia Government agencies, including those independent agencies and commissions not required to submit the Affirmative Action Program of their contractors, to ensure compliance with the equal opportunity obligations in contracts, as provided for in this chapter.

1114 AFFIRMATIVE ACTION TRAINING PROGRAM

1114.1 Each contractor, in fulfilling its affirmative action responsibilities under a contract with the District of Columbia Government, shall be required to have, as part of its Affirmative Action Program, an existing training program for the purpose of training, upgrading, and promotion of minority and female employees or to utilize existing programs. Those programs shall include, but not be limited to, the following:

- (a) To be consistent with its personnel requirements, the contractor shall make full use of the applicable training programs, including apprenticeship, on-the job training, and skill refinement training for journeymen. Recruitment for the program shall be designed to provide for appropriate participation by minority group members and women;
- (b) The contractor may utilize a company-operated skill refinement training program. This program shall be formal and shall be responsive to the work to be performed under the contract;
- (c) The contractor may utilize formal private training institutions that have as their objective training and skill refinement appropriate to the classification of the workers employed. When training is provided by a private organization the following information shall be supplied:

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

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

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

1115 COMPLIANCE REVIEW

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

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

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

1116 ENFORCEMENT

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

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

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

- 1117 COMPLAINTS
- 1117.1 The Director may initiate investigations of individual instances and patterns of discriminatory conduct, initiate complaints thereupon and keep the Contracting Agency informed of those actions.
- 1117.2 If the investigation indicates the existence of an apparent violation of the non-discrimination provisions of the contract required under section 1103 of this chapter the matter may be resolved by the methods of conference, conciliation, mediation, or persuasion.
- 1117.3 If an apparent violation of the non-discrimination provisions of the contract required under section 1103 of this chapter is not resolved by methods of conference, conciliation, mediation, or persuasion, the Director of the Contracting Officer may issue a notice requiring the contractor in question to show cause, within thirty (30) days, why enforcement proceedings or other appropriate action should not be initiated.
- 1117.4 Any employee of any District of Columbia Government contractor or applicant for employment who believes himself or herself to be aggrieved may, in person or by an authorized representative, file in writing, a complaint of alleged discrimination with the Director.
- 1118 HEARINGS
- 1118.1 In the event that a dispute arises between a bidder, offeror or prospective contractor and the Director or the Contracting Officer as to whether the proposed program of affirmative action for providing equal employment opportunity submitted by such bidder, offeror or prospective contractor complies with the requirements of this chapter and cannot be resolved by the methods of conference, conciliation, mediation, or persuasion, the bidder, offeror or prospective contractor in question shall be afforded the opportunity for a hearing before the Director.
- 1118.2 If a case in which an investigation by the Director or the Contracting Agency has shown the existence of an apparent violation of the non-discrimination provisions of the contract required under section 1103 is not resolved by the methods specified in subsection 1117.2, the Director may issue a notice requiring the contractor in question to show cause, within thirty (30) days, why enforcement proceedings or other appropriate action should not be initiated. The contractor in question shall also be afforded the opportunity for a hearing before the Director.
- 1118.3 The Director may hold a hearing on any complaint or violation under this chapter, and make determinations based on the facts brought before the hearing.
- 1118.4 Whenever the Director holds a hearing it is to be held pursuant to the Human Rights Act of 1977, a notice of thirty (30) working days for the hearing shall be given by registered mail, return receipt requested, to the contractor in question. The notice shall include the following:
- (a) A convenient time and place of hearing;
 - (b) A statement of the provisions in this chapter or any other laws or regulations pursuant to which the hearing is to be held; and
 - (c) A concise statement of the matters to be brought before the hearing.
- 1118.5 All hearings shall be open to the public and shall be conducted in accordance with rules, regulations, and procedures promulgated pursuant to the Human Rights Act of 1977.
- 1119 SANCTIONS

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

1199.1

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

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

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

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

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

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

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

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

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

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

ATTACHMENT J.4

Government of the District of Columbia Department of
Employment Services First Source Employment Agreement

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					

ATTACHMENT J.5

Government of the District of Columbia Living Wage Notice

“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 per hour.

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 or www.ocp.dc.gov

To file a complaint contact: Department of Employment Services

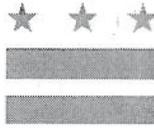
Office of Wage-Hour

64 New York Avenue, N.E., Room 3105, Washington, D.C. 20002

(202) 671-1880

ATTACHMENT J.6

Government of the District of Columbia Living Wage Fact Sheet



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.*

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: _____

ATTACHMENT J.8

Past Performance Evaluation Form

PERFORMANCE EVALUATION FORM

(Check appropriate box)

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. Remarks on Excellent Performance: Provide data supporting this observation. (Continue on separate sheet if needed)
6. 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.

	Quality Product/Service	Cost Control	Timeless of Performance	Business Relations
	<ul style="list-style-type: none"> -Compliance with contract requirements -Accuracy of reports -Appropriateness of personnel -Technical excellence 	<ul style="list-style-type: none"> -Within budget (over/ under target costs) -Current, accurate, and complete billings -Relationship of negated costs to actual -Cost efficiencies -Change order issue 	<ul style="list-style-type: none"> -Meet Interim milestones -Reliable -Responsive to technical directions -Completed on time, including wrap-up and contract administration -No liquidated damages assessed 	<ul style="list-style-type: none"> -Effective management -Businesslike correspondence -Responsive to contract requirements -Prompt notification of contract problems -Reasonable/cooperative -Flexible -Pro-active -effective contractor recommended solutions -Effective snail/small disadvantaged business Subcontracting program
0. Unacceptable	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.
1, Poor	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.
2. Acceptable	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.
3. Good	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.
4. Excellent	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,
++Plus	The contractor has demonstrated an exceptional performance level in any or all of the above four categories that justifies adding points to the score. It is expected that this rating will be used in those rate circumstances when contractor performance clearly exceeds the performance levels described as "Excellent."			

**Pharmaceutical Marketing Expenditures in the
District of Columbia, 2007**

Prepared by

**The George Washington University
School of Public Health and Health Services
Washington, DC**

**for the
District of Columbia Department of Health**

February 26, 2009

**Summary of Pharmaceutical Marketing Expenditures
in the District of Columbia
Calendar Year 2007**

Index

I. EXECUTIVE SUMMARY.....	3
Overview.....	3
Key Findings.....	3
II. SUMMARY OF PHARMACEUTICAL MARKETING EXPENDITURES.....	6
Total Expenses.....	6
Gift Recipient Type Analysis (Frequency and Total Amount).....	12
Gift Nature of Payment Analysis (Frequency and Total Amount).....	13
Gift Primary Purpose Analysis (Frequency and Total Amount).....	15
III. ANALYSIS OF GIFT RECIPIENTS.....	17
Payments to Non-Individual Recipients.....	18
Payments to Individual Recipients.....	26
IV. SUBGROUP ANALYSIS.....	33
Gift Expenses Subgroups.....	33
Gift Expenses: Subgroup A.....	33
Gift Expenses: Subgroup B.....	36
Gift Expenses: Subgroup C.....	39
Gift Expenses Subgroup Comparison.....	42
Advertising Expenses Subgroup Comparison.....	43
V. OVERVIEW OF COMPANY SUBMISSIONS.....	50
Method of Submission.....	50
Trade Secret Declaration.....	50
Wet Signature/Certification.....	51
Quality of Submissions.....	51
VI. BENCHMARKS.....	53
VII. RECOMMENDATIONS.....	55
Unique Identifiers & Product Marketed.....	55
Instructions for Calculating Aggregate Expenses.....	56
Improving Compliance with Instructions.....	56
Accepted Values in Recipient Type Category.....	57
APPENDIX A: Review of AccessRx Requirements.....	58
APPENDIX B: Instructions to Manufacturers and Labelers.....	60

I. EXECUTIVE SUMMARY

Overview

Title III of the AccessRx Act of 2004 requires that any “manufacturer or labeler of prescription drugs dispensed in the District that employs, directs, or utilizes marketing representatives in the District” annually report marketing costs for prescription drugs in the District. Companies are required to report expenses for advertising to District residents; gifts valued at more than \$25 given to District health professionals; and the costs associated with employees or contractors who directly or indirectly engage in advertising and promotional activities in the District.

This evaluation is a summary of the marketing expenses reported by pharmaceutical manufacturers and labelers to the District of Columbia (DC) during the 2007 calendar year. For the previous calendar year (2006), limited time and instructions for companies yielded submissions whose quality varied substantially, and only a basic analysis of expenditures could be conducted. Prior to the deadline for submission of 2007 data (July 1, 2008), the submission spreadsheet and instructions to pharmaceutical manufacturers and labelers were improved.

The quality of submissions for 2007 improved dramatically. In addition, twelve more companies made submissions (113, up from 101 in 2006). The total of reported expenditures increased from \$145.5 million in 2006 to \$158.2 million in 2007 (an increase of \$12.7 million). Submissions in a standardized format allowed for detailed analyses of the nature and type of gift payments made by pharmaceutical companies and of the individuals and organizations that received the gifts.

This report presents findings in aggregate format, and also provides information on the quality of submissions and recommendations for continuing to improve the quality and utility of data in future years.

Key findings

As in 2006, expenses for employees and contractors engaged in advertising and marketing (termed “Aggregate Expenses”) constituted the largest share of total expenditures: \$116.6 million, or 74% of total expenditures. Because neither the regulation nor instructions to pharmaceutical companies currently provide detailed requirements for reporting these figures, we know very little about how most companies calculate their *Aggregate Expenses*, or whether the figures are comparable across companies. (Some submissions did include explanations of how aggregate costs were computed; they generally totaled the salaries and benefits of staff members involved in District marketing activities, and some included a share of national marketing staff members’ salaries and benefits.)

Gift Expenses – which include grants, speaker fees, product samples, and promotional items – totaled \$31.3 million, or approximately 20% of all expenditures. As in 2006, doctors were the recipients of the greatest number of payments, and food was the type of gift most frequently given. However, the more detailed analysis made possible by the

higher quality of the 2007 submissions showed that the most frequently made types of payments did not account for the greatest share of the gift expenses in dollar terms. Food was by far the most frequently given gift, but it accounted for a relatively small share of the gift expenditure total. By contrast, a very small percentage of gifts took the form of grants, but grants accounted for \$12.7 million, or 41%, of the dollar value of all gifts.

Non-individual recipients of gifts (including hospitals, clinics, universities, and organizations) received nearly \$20 million; ten professional organizations accounted for \$9.4 million of that amount. Individual recipients (including doctors, nurses, other health care providers, and pharmacists) received \$11.3 million, and recipients with MD credentials got nearly 90% of that, or \$10.2 million. The majority of gifts to doctors were described as being speaker fees.

Approximately half of all companies (54) reported *Advertising Expenses*, which totaled \$10.3 million. Most of the companies that did not report advertising expenses explained that they conducted their promotional campaigns at the national level, and did not have advertising expenses related specifically to District residents.

Findings related to overall expenditures include the following:

- In 2007, a total of 113 pharmaceutical manufacturers and labelers disclosed payments totaling \$158.2 million for *Advertising, Gift, and Aggregate expenses* in DC. Of this grand total, \$10.3 million were reported for *Advertising Expenses* (6.5%), \$31.3 million were *Gift Expenses* (20%), and \$116.6 million were *Aggregate Expenses* (74%).
- Compared to 2006, *Aggregate Expenses* (costs associated with persons engaged in advertising and marketing) accounted for a greater share of the total, while *Advertising* and *Gift* expenses fell as percentages of the total.
- Twenty-six companies reported over \$1 million apiece in total expenses; their expenditures represented 86% of the total reported expenses.
- Twenty companies spent more than \$1 million in *Aggregate Expenses*.
- Twelve companies spent more than \$1 million on *Advertising* and *Gift* expenses combined.
- For 42 companies, *Aggregate Expenses* constituted 90% of their total expenses.

Findings from our analysis of gift recipients include the following:

- Non-individual recipients (hospitals, organizations, etc.) received a total of \$19.9 million in gifts, while individual recipients received \$11.3 million.
- Analyzing gifts by the recipient types listed found that *Doctors* received \$7.9 million in gifts, while the *Other* category received \$9.4 million. However, when we analyzed gifts according to the recipient credentials, we found that \$10.2 million went to recipients with MD credentials – accounting for nearly 90% of the \$11.3 million in gifts given to individuals.
- Organizations received only a small percentage of the number of gifts (0.45%), but the gifts that they did receive tended to be large, totaling \$7.4 million, or 24% of the total dollar value of all gifts.

- The majority of gifts, 84%, took the form of *Food*, but *Food* only accounted for 15% of the total dollar amount spent.
- Although less than 1% of gifts were given in the form of *Grants*, this category accounted for \$12.7 million, or 41% of the total dollar value of all gifts.
- *Education* was reported most frequently as the primary purpose of gifts (42% of the time), and it accounted for 54% of the total dollar value of all gifts (\$16.9 million).
- *Doctors* received \$6.7 million for which the *Primary Purpose* was *Speaker Fees*.
- The top ten Professional Organizations (representing doctors in a specific specialty or demographic group) received \$9.4 million, with a median gift value of \$20,750.

We also analyzed the individuals receiving the highest total amount of gift payments, and found the following:

- 17 individuals received gifts with values totaling \$100,000 or more.
- This group of 17 individuals included multiple internal medicine doctors and multiple psychiatrists.
- The number of companies from which these individuals received gifts ranged from one to 12.
- For six of the 10 individuals receiving the largest gift totals, Speaker Fees accounted for more than 90% of the total value of their payments.

Overall, 2007 submissions were far more consistent and complete than 2006 submissions.

- 65% of submissions were classified as complete.
- 17% were almost complete, containing most of the required data but omitting information for a relatively small number of the reported items.
- 9% were incomplete, omitting important required information.
- The remaining 8% of submissions stated that the companies had no pharmaceutical marketing expenses to report.

Our analysis of marketing expenses in the District of Columbia can also inform the national discussion about disclosure of pharmaceutical marketing payments. In 2008, medical organizations and the Pharmaceutical Research and Manufacturers of America supported a version of the Physician Payments Sunshine Act (S. 2029) that would require disclosure of payments exceeding \$500 and preempt state reporting requirements. Of the 52,275 gift payments reported in the District in 2007, 47,141 of them were valued at or below \$500. These payments represented 90% of all reported gift payments and totaled \$4.1 million – but under the revised federal legislation, companies would not have been required to report them. Another version of the act, introduced in 2009, would lower the limit to \$100, and also preempt state reporting requirements. Using the \$100 threshold, reporting would not have been required for 34,532 of these payments. These payments represented 66% of all reported gift payments and totaled \$1.7 million.

II. SUMMARY OF PHARMACEUTICAL MARKETING EXPENDITURES

In 2007, 113 pharmaceutical manufacturers and labelers reported payments totaling \$158.2 million for *Advertising*, *Gift*, and *Aggregate* expenses in DC.

Total Expenses

Table 1 shows the totals spent in each category and compares the amounts to 2006 figures.

Table 1

2006 and 2007 Total Pharmaceutical Marketing Expenses in DC by Type of Expense				
Type of Disclosure	Total Value Disclosed for 2006 (\$)	% of Grand Total	Total Value Disclosed for 2007 (\$)	% of Grand Total
Advertising Expenses	10,892,163	7.5%	10,253,274	6.50%
Gift Expenses	34,461,608	23.7%	31,337,226	19.80%
Aggregate Expenses	100,141,658	68.8%	116,573,964	73.70%
Grand Total	145,495,429	100.0%	158,164,464	100.00%

Aggregate Expenses, or expenses associated with compensation for employees or contractors engaging in promotional activities in DC, accounted for 74% of the total figure in 2007, at \$116.6 million; this represents an increase from 69% and \$100.1 million in 2006. Of the 113 companies, 42 (37%) reported that *Aggregate Expenses* accounted for 90% or more of their total marketing expenses. Of those 42 companies, five companies reported that *Aggregate Expenses* accounted for 100% of their total marketing expenses.

*Gift Expenses*¹ – associated with educational programs, gifts, travel, or product samples – in 2007 represented approximately 20% of the grand total, at \$31.3 million, decreasing from 24% and \$34.5 million last year. Four companies (4%) reported that *Gift Expenses* accounted for 100% of their total marketing expenses.

As in 2006, companies spent less on *Advertising Expenses*, or those associated with the direct promotion of prescription drugs to DC residents (e.g., radio or print advertisements), than on the other two categories. *Advertising Expenses* accounted for

¹ Our analysis of gift expenses was conducted using the gift expense totals supplied on the main sheets of the submission files. (The main sheet of a submission file lists the totals for advertising, gift, and aggregate expenses, while each of the following spreadsheets reports details on one of those categories.) Eleven companies submitted files that had discrepancies between the gift expense total on the main sheet and the gift expense total from the gift expense detail sheet. All companies were asked to resolve the discrepancies, but only two had complied by the date of this report; for the companies that did not reply, figures from the main spreadsheets were used to report total expenditures, and the gift spreadsheets were used for the gift recipient analyses.

6.5% at \$10.3 million, compared to 7.5% and \$10.9 million in 2006. No companies reported that *Advertising Expenses* accounted for 90% or more of their total marketing expenses.

Total Advertising Expenses

Drug companies reported total *Advertising Expenses* of \$10.3 million in 2007. Company reports of total *Advertising Expenses* ranged from \$25 to \$1.4 million.

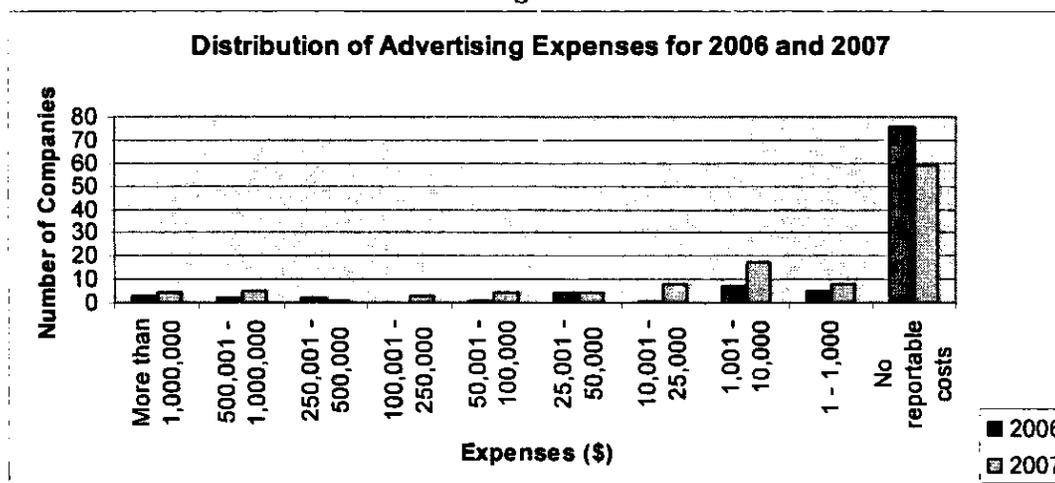
Approximately half of all companies did not disclose any payments related to *Advertising Expenses*. Most of these companies declared that any advertising and direct promotion campaign activities were conducted at a national level and therefore not specific to DC residents.

For the 54 companies that did disclose *Advertising Expenses*, 25 of them spent less than \$10,000. Ten companies spent over \$250,000. The remaining companies fell within the \$10,000 – \$100,000 range of total *Advertising Expenses*. This information is depicted in Table 2. A side-by-side comparison of 2007 and 2006 *Advertising Expenses* is depicted in Figure 1.

Table 2

Distribution of 2007 Total Pharmaceutical Advertising Expenses in DC				
Total Advertising Expenses (\$)	Number of Companies	% of Total	Total Value (\$)	% of Total
More than 1,000,000	4	4%	5,031,524	49.1%
500,001 - 1,000,000	5	4%	3,766,855	36.7%
250,001 - 500,000	1	1%	261,449	2.5%
100,001 - 250,000	3	3%	529,295	5.2%
50,001 - 100,000	4	4%	315,517	3.1%
25,001 - 50,000	4	4%	147,925	1.4%
10,001 - 25,000	8	7%	130,035	1.3%
1,001 - 10,000	17	15%	69,205	0.7%
1 - 1,000	8	7%	2,728	0.0%
No reportable costs	59	52%	0	0.0%
Total	113	100%	10,254,533	100.0%

Figure 1



Total Gift Expenses

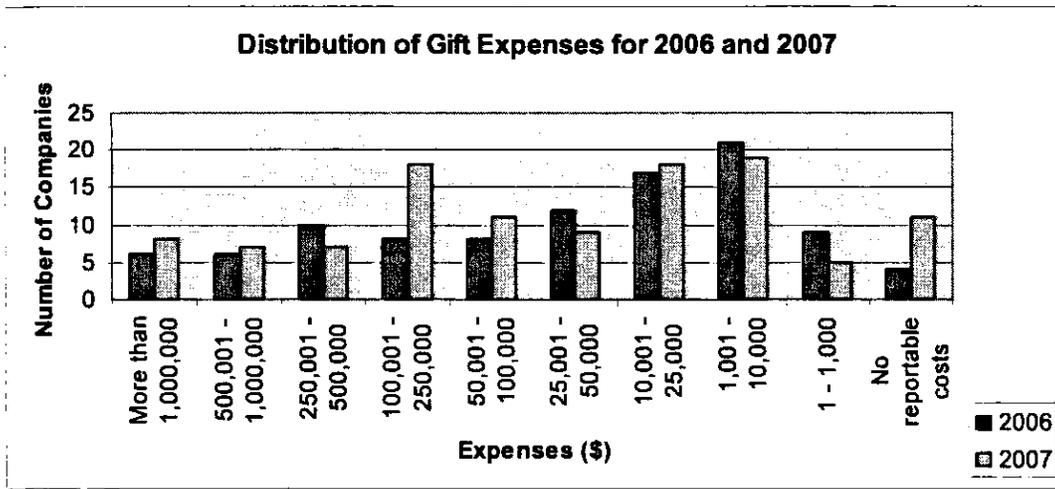
Total *Gift Expenses* for all companies amounted to \$31.3 million in 2007. Company reports of total *Gift Expenses* ranged from \$113 to \$3.8 million. There were eleven companies that reported no *Gift Expenses* in 2007.

Almost half of all companies (51 companies) reported *Gift Expense* totals under \$50,000; 32% (35 companies) spent between \$50,000 and \$500,000; 6% (7 companies) spent between \$500,000 and \$1 million; and 7% (8 companies) spent over \$1 million. The distribution of total *Gift Expenses* is shown in Table 3. A side-by-side comparison of the distribution of total *Gift Expenses* for 2007 and 2006 is depicted in Figure 2.

Table 3

Distribution of 2007 Pharmaceutical Total Gift Expenses in DC				
Total Gift Expenses (\$)	Number of Companies	% of Total	Total Value (\$)	% of Total
More than 1,000,000	8	7%	20,518,480	65.5%
500,001 - 1,000,000	7	6%	4,371,529	13.9%
250,001 - 500,000	7	6%	2,499,915	8.0%
100,001 - 250,000	18	16%	2,514,431	8.0%
50,001 - 100,000	11	10%	754,524	2.4%
25,001 - 50,000	9	8%	309,596	1.0%
10,001 - 25,000	18	16%	280,876	0.9%
1,001 - 10,000	19	17%	86,368	0.3%
1 - 1,000	5	4%	1,508	0.0%
No reportable costs	11	10%	0	0.0%
Total	113	100%	31,337,226	100.0%

Figure 2



Disclosure of pharmaceutical marketing expenses has become the subject of proposed national legislation. In September 2007, the Physician Payment Sunshine Act (S. 2029) introduced in the Senate would have required reporting of pharmaceutical marketing payments whose value exceeded \$25, as the District and Vermont already require. By July 2008, however, the act had been revised to raise that reporting threshold to \$500, and also to preempt state reporting requirements.² Medical organizations and the Pharmaceutical Research and Manufacturers of America have voiced their support for this revised version of the legislation. In another revised version of the legislation introduced in January of 2009, the threshold amount was reduced to \$100.

Because this national debate on pharmaceutical marketing is occurring, we also analyzed how different gift-reporting thresholds would have affected this year's data. National legislation would likely preempt the District's reporting requirements, which use the \$25 threshold. Under the \$500 threshold, a great deal of the information reported by manufacturers and labelers in 2007 would no longer qualify for reporting. Of the 52,275 gift payments reported in the District in 2007, 47,141 of them were valued at or below \$500. These payments represented 90% of all reported gift payments and totaled \$4.1 million, about 13% of the total dollar value of gift payments. Under the \$100 threshold, 34,532 of the 52,275 payments, totaling \$1.7 million, would not qualify for reporting.

Total Advertising and Gift Expenses

Drug companies spent \$41.6 million on all *Advertising and Gift* payments in 2007. Combined advertising and marketing expense totals ranged from \$113 to \$5.2 million.

The majority of total *Advertising and Gift* expense totals fell within the \$1 to \$25,000 range (38% of companies). Twenty-one percent of all companies reported *Advertising and Gift* expense totals in the \$25,001 to \$100,000 range, and another 21% reported totals in the \$100,001 to \$500,000 range. Four percent spent between \$500,000 and \$1 million,

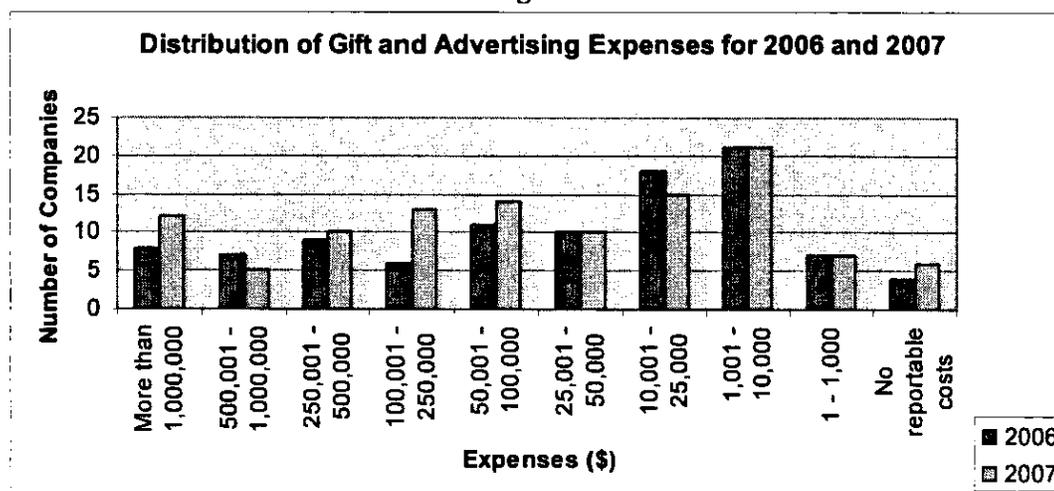
² See "Disclosure of Industry Payments to Physicians" by Robert Steinbrook, MD in the *New England Journal of Medicine*, August 7, 2008.

and 11% spent over \$1 million in total *Advertising and Gift* expenses. Six companies, or 5%, reported no *Advertising and Gift* expenses. Table 4 depicts the distribution of total *Advertising and Gift* expenses, and Figure 3 displays the side-by-side comparison of the 2007 and 2006 *Advertising and Gift* expense distributions.

Table 4

Distribution of 2007 Pharmaceutical Total Gift and Advertising Expenses in DC				
Total Gift & Advertising Expenses (\$)	Number of Companies	% of Total	Total Value (\$)	% of Total
More than 1,000,000	12	11%	31,209,961	75.1%
500,001 - 1,000,000	5	4%	3,459,983	8.3%
250,001 - 500,000	10	9%	3,422,014	8.2%
100,001 - 250,000	13	12%	1,785,063	4.3%
50,001 - 100,000	14	12%	963,234	2.3%
25,001 - 50,000	10	9%	358,192	0.9%
10,001 - 25,000	15	13%	257,540	0.6%
1,001 - 10,000	21	19%	109,503	0.3%
1 - 1,000	7	6%	2,623	0.0%
No reportable costs	6	5%	0	0.0%
Total	113	100%	41,568,113	100.0%

Figure 3



Total Aggregate Expenses

Pharmaceutical companies reported total *Aggregate Expenses* of \$116.6 million in 2007. *Aggregate Expenses* accounted for almost three-quarters of total marketing expenses. Total aggregate expenses ranged from \$1,176 to \$23.5 million. Several companies also included worksheets detailing employee compensation.

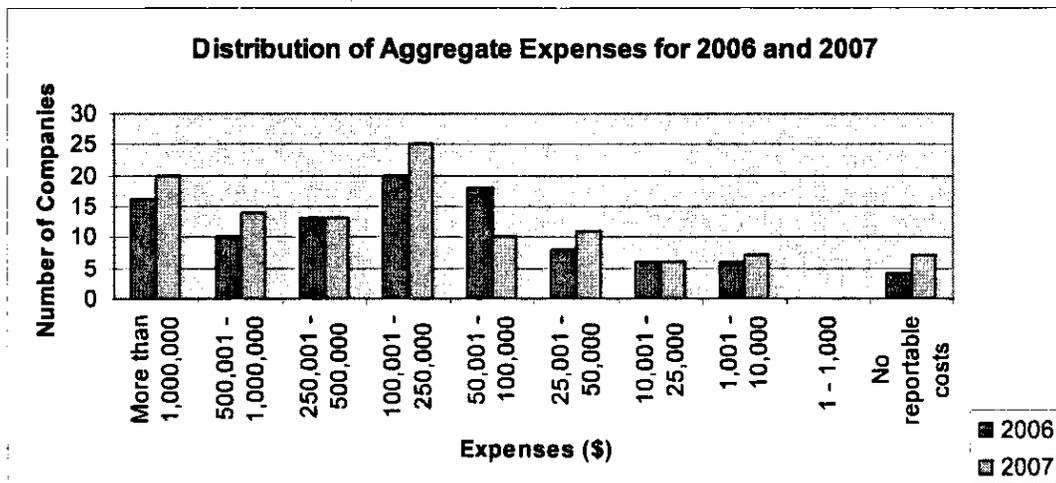
Nearly three-fourths of companies reported more than \$50,000 in total *Aggregate Expenses*, and more than half of these companies' totals fell within the \$50,000 to \$500,000 range. Thirteen percent of companies reported spending between \$500,000 and \$1 million in total *Aggregate Expenses*, and 18% spent over \$1 million.

Twenty-one percent of companies spent less than \$50,000 in total *Aggregate Expenses*. Ten percent of companies spent between \$25,000 and \$50,000, 5% spent between \$10,000 and \$25,000, and 6% spent between \$1,000 and \$10,000. Seven companies, or 6%, had no reportable *Aggregate Expenses*. The distribution of total *Aggregate Expenses* is shown in Table 5. A comparison of *Aggregate Expenses* distributions for 2007 and 2006 is depicted in Figure 4.

Table 5
Distribution of 2007 Pharmaceutical Total Aggregate Expenses in DC

Total Aggregate Expenses (\$)	Number of Companies	% of Total	Total Value (\$)	% of Total
More than 1,000,000	20	18%	96,765,316	83.0%
500,001 - 1,000,000	14	12%	9,824,919	8.4%
250,001 - 500,000	13	12%	4,806,874	4.1%
100,001 - 250,000	25	22%	3,934,502	3.4%
50,001 - 100,000	10	9%	720,126	0.6%
25,001 - 50,000	11	10%	402,959	0.3%
10,001 - 25,000	6	5%	97,757	0.1%
1,001 - 10,000	7	6%	21,512	0.0%
1 - 1,000	0	0%	0	0.0%
No reportable costs	7	6%	0	0.0%
Total	113	100%	116,573,964	100.0%

Figure 4

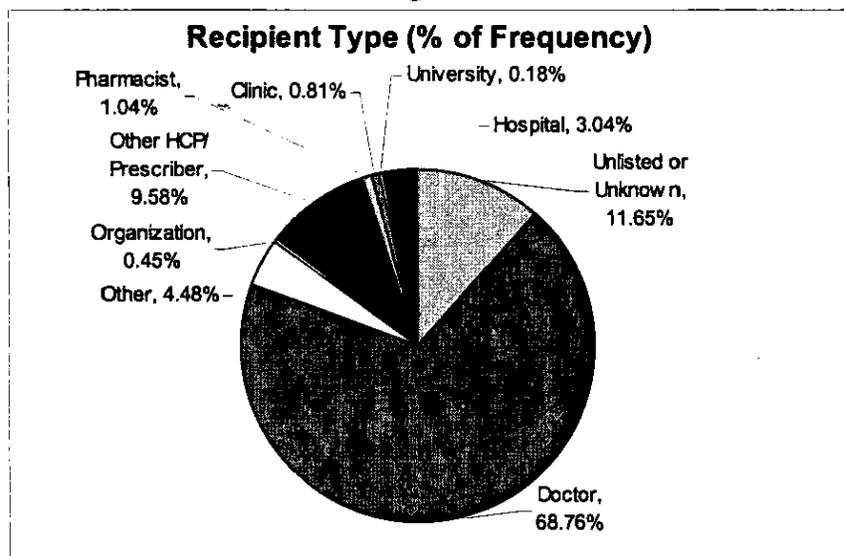


Gift Recipient Type Analysis (Frequency and Total Amount)

For this analysis, *Gift Expenses* for each company were compiled into an Access database. A basic filter was then run for each company to identify expenses by *Recipient Type*, and for each *Recipient Type* an Excel spreadsheet was created in order to count both the frequency and dollar amount for each *Recipient Type* category. *Recipient Types* were broken down into nine categories, which include *Unlisted or Unknown*, *Doctor*, *Other*, *Organization*, *Other Healthcare Provider/Other Prescriber*, *Pharmacist*, *Clinic*, *Hospital*, and *University*. For those companies that listed *Other* for *Recipient Type* and also provided information in the *Other Type Category*, the types they specified varied considerably and included *Social Worker*, *Psychologist*, and *Medical Society*.

Doctors constituted the most frequently occurring recipient type, with 69% of all payments going to *Doctors*; this is consistent with 2006 findings. Figure 5 reflects the frequency of payments to each recipient type.

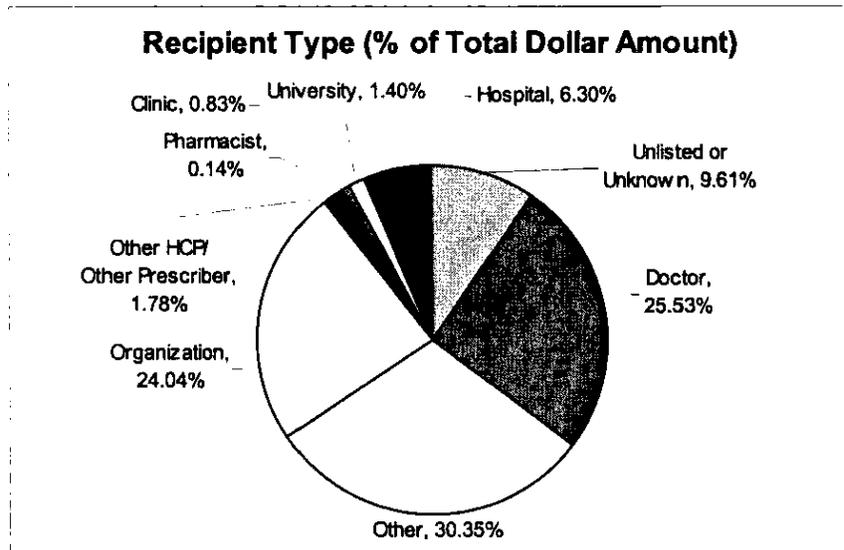
Figure 5



102 Total Companies with Reportable Gift Expenses

However, in terms of total dollar amounts, the *Other* category accounted for the largest amount, claiming 30% of total gift dollars (approximately \$9.4 million) while only being listed 4.5% of the time. The second-highest beneficiary in total dollar amounts was *Doctors*, who received 26% (\$7.9 million) of the total gift expenditures, and the third-highest recipient was *Organization*, which received 24% (\$7.4 million). It is important to note that although *Organization* was the third-highest *Recipient Type* in total dollar amount, it was the second-to-lowest in frequency, only being explicitly listed as a *Recipient Type* 0.5% of the time. Figure 6 depicts the percent of total dollar amounts that each type received.

Figure 6



102 Total Companies with Reportable Gift Expenses

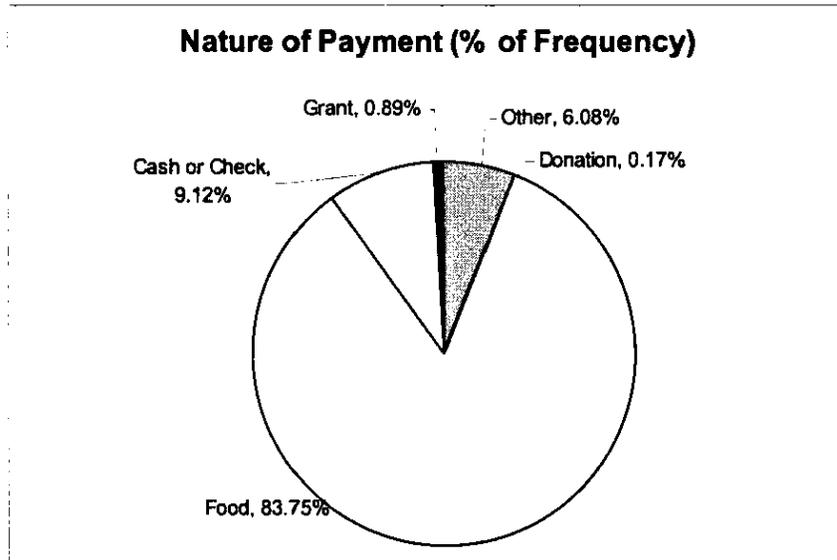
Also worth noting are both the frequency and the dollar amount for the *Unlisted or Unknown* category. The *Unlisted or Unknown* category designation was selected for approximately 12% of total reported gifts and accounts for 10% of the total dollar value of *Gift Expenses*, for a total of nearly \$3 million. The relatively large amount of unlisted *Recipient Types* can be primarily accounted for by one of the largest companies failing to list *Recipient Types* for any of its payments. However, 22 companies out of the 113 had at least one payment for which the *Recipient Type* was unlisted.

Gift Nature of Payment Analysis (Frequency and Total Amount)

For this analysis, each company's marketing expenses were entered into a common database and filtered by the *Nature of Payment*; then, an Excel worksheet was created for each category in order to count both frequency and total dollar amount per *Nature of Payment* category. For this analysis, five primary categories were used: *Food, Grant, Cash or Check, Donation, and Other*. The category of *Other* for the purposes of this analysis is defined as *Nature of Payments* listed as *Other* as well as *Book, Lodging, Transportation, Honorarium, and Expenses*. These existing categories were placed under the *Other* umbrella because they constituted such small percentages of the frequency and total dollar amount. The *Other* category also includes other terms that were not on the list of options for *Nature of Payment*, but that were entered by users (e.g., *Speaker Fee* or *Consulting*, which are options for the *Purpose* categories but not for *Nature of Payment*).

As we found in 2006, *Food* was the most frequent *Nature of Payment*, accounting for 84% of all payments. For the remaining 16%, *Cash or Checks* and *Other* constituted the majority, being listed 9% and 6% of the time, respectively. The frequency of *Nature of Payments* is depicted in Figure 7.

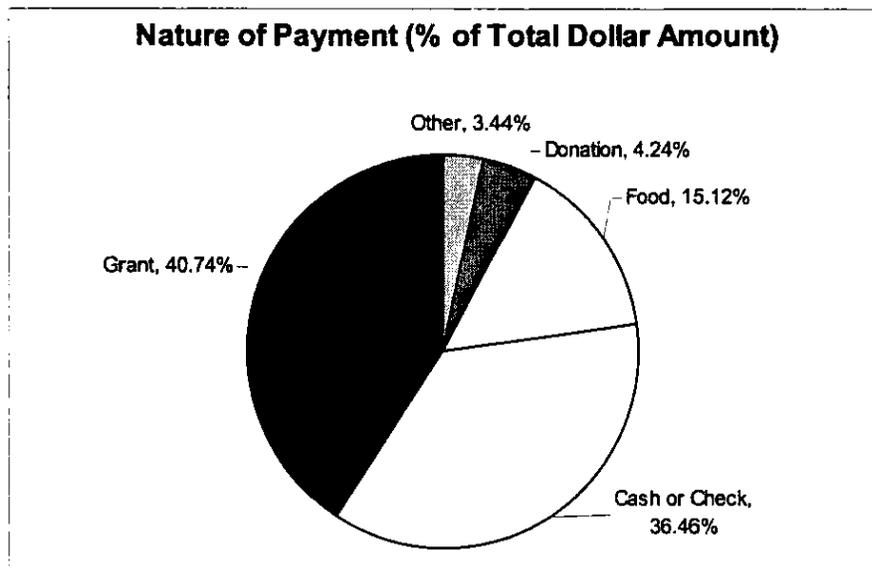
Figure 7



102 Total Companies with Reportable Gift Expenses

However, when considering the *Nature of Payment* by total dollar amount received, the picture is dramatically different. Only 0.9% of payments were classified as *Grants*, but this category accounted for 41% of the total dollar amount of gifts (\$12.7 million). The next-largest category, *Cash or Checks*, accounted for 36% of that total sum (\$11.4 million). While *Food* was listed 86% of the time as the *Nature of Payment*, it only accounted for 15% (\$4.7 million) of the total dollar amount spent. *Donations* accounted for 4% of the total dollar amount but were only listed as the *Nature of Payment* 0.2% of the time. Lastly, *Other* received 3.5% of the total amount spent. Figure 8 shows the percent of the total dollar amount by *Nature of Payment*.

Figure 8



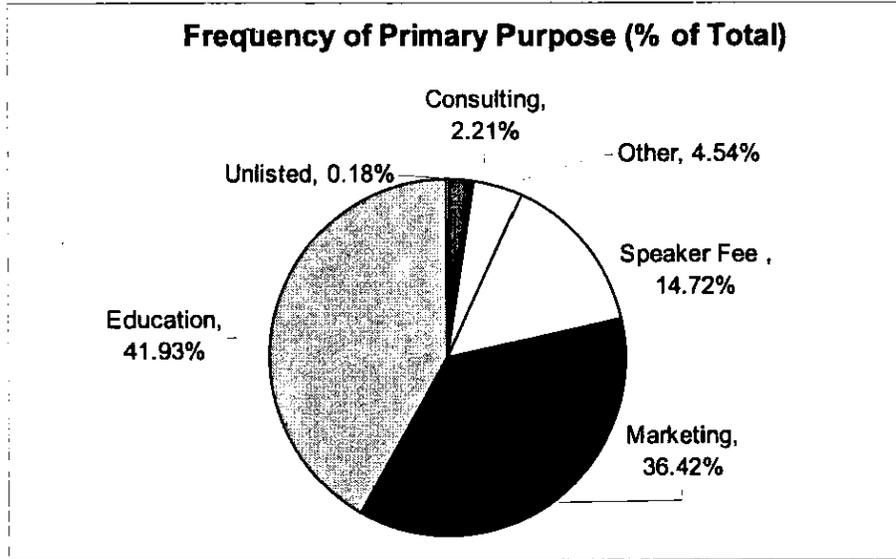
102 Total Companies with Reportable Gift Expenses

Gift Primary Purpose Analysis (Frequency and Total Amount)

For this analysis, we used the same procedure to determine the frequency and total dollar amounts of *Primary Purpose* that we used for *Recipient Type* and *Nature of Payment* (see pages 12 and 13). *Primary Purpose* was broken down into the following categories: *Unlisted*, *Consulting*, *Other*, *Speaker Fee*, *Marketing*, and *Education*. In this case, the *Other* category is composed not only of those payments listed as *Other*, but terms that were not on the list of options for *Primary Purpose of Payment*, but that were entered by users.

As was the case last year, *Education* was the *Primary Purpose* listed most often, for 42% of payments. *Marketing* and *Speaker Fees* constituted the majority of the remaining most frequently listed purposes, being listed 36% and 15% of the time, respectively. *Other* was listed as the *Primary Purpose* approximately 5% of the time, *Consulting* 2% of the time, and *Unlisted or Unknown* 0.2% of the time. Some submissions left the *Primary Purpose* field blank, but these omissions were less frequent than those of *Recipient Type*. The frequency of *Primary Purpose* is depicted in Figure 9.

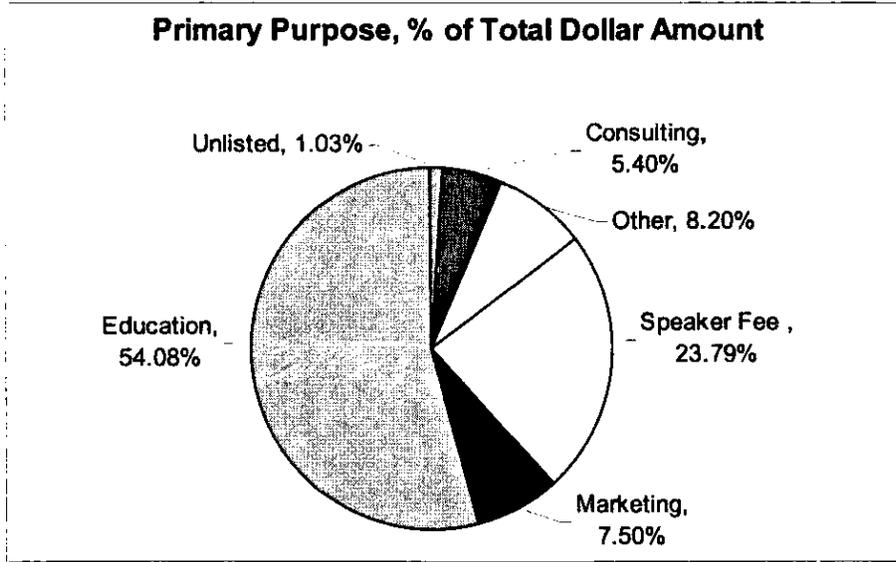
Figure 9



102 Total Companies with Reportable Gift Expenses

Education also received the greatest proportion of the total gift dollar amount, with 54% of total expenses (\$16.9 million). *Speaker Fees* accounted for the second-greatest proportion of the total dollar amount, with 24% (\$7.4 million), even though that category only accounted for 15% of the payments. *Other* and *Marketing* had almost equal proportions of total dollar amounts, receiving 8% and 7.5%, respectively. Collectively *Consulting* and *Unlisted* accounted for approximately 6% of the total dollar amount spent on gifts. The percentage of total dollar amounts for each *Primary Purpose* category is depicted in Figure 10.

Figure 10



102 Total Companies with Reportable Gift Expenses

III. ANALYSIS OF GIFT RECIPIENTS

To characterize the recipients of gifts from pharmaceutical companies, we first separated the gift payments given to organizations and institutions from those given to individuals. This determination was based on whether the *Non-Individual Recipient* cell or the *Recipient Last Name* cell in the submission spreadsheet was populated.³ We found that organizations and institutions (hereafter referred to as “non-individual recipients”) received \$19.9 million in gifts, and individuals received \$11.3 million.

From the non-individual recipients, we identified three types of organizations: Clinical Organizations (hospitals, health clinics, etc.), Disease-Specific Organizations, and Professional Organizations (representing doctors in a specific specialty or demographic group). We identified the ten organizations within each category that received the largest amounts from pharmaceutical companies.

Out of these three groups, the top ten Professional Organizations received the largest sum: \$9.4 million. For both the top ten Disease-Specific and Professional Organizations, *Grants* designated as being for educational purposes were the most frequent gifts and accounted for the largest dollar values. The top ten Clinical Organizations received *Food* gifts most frequently, but *Grants* for educational purposes also accounted for the largest dollar share of their gifts.

In examining gifts given to individuals, we analyzed gifts where the recipient’s credentials were listed as MD and those where the recipient’s credentials matched the nursing profession (RN, NP, APRN). Doctors received a total of \$10.2 million in gifts (nearly 90% of the amount given to individuals), while nurses received less than \$300,000. For both groups, gifts were most frequently given in the form of *Food*, but for doctors *Speaker Fees* accounted for the largest percentage of the dollar value. The top three individual recipients collectively received around \$650,000 in speaker fees alone. The median values of gifts for both groups were well under \$100, but the value of gifts to doctors went as high as \$42,750, while for nurses the largest payment was just \$5,000.

We also analyzed the individuals receiving the highest total amount of gift payments, and found that 17 individuals received gifts with values totaling \$100,000 or more. This group of 17 individuals included multiple internal medicine doctors and multiple psychiatrists. While some of these individuals collected all of their gifts from one or two companies, the number of companies making gifts to a single doctor ranged up to 12. For six of the 10 individuals receiving the largest gift totals, *Speaker Fees* accounted for more than 90% of the total value of their payments.

Table 6 summarizes the findings of our analysis on recipients.

³ In a relatively small number of instances, both the Non-Individual Recipient and Recipient Last Name cells were populated for a single gift item, leading to that item being counted in both the Individual and Non-Individual tallies. To reduce the amount of double-counting, we checked all gifts over \$1,000 that had both cells populated and determined which of the two categories they belonged in based on the description of the gift.

Table 6

Recipients of Gifts from Pharmaceutical Companies, 2007							
Recipient Type	Total Amount Received (\$)	Median Gift Value (\$)	Range of Gift Values (\$)	Most Frequent Nature of Payment	Nature of Payment Receiving Most Money	Most Frequent Primary Purpose	Primary Purpose Receiving Most Money
All Non-Individual Recipients	19,867,540	201	6 - 600,000	Food	Grant	Marketing	Education
Top Ten Clinical Organizations	1,835,455	224	9 - 295,808	Food	Cash or Check	Marketing	Education
Top Ten Disease-Specific Organizations	2,052,639	36,100	5,000 - 171,350	Grant	Grant	Education	Education
Top Ten Professional Organizations	9,412,515	20,750	175 - 600,000	Grant	Grant	Education	Education
All Individual Recipients	11,321,042	67	0 - 42,750	Food	Cash or Check	Education	Speaker Fee
Doctors	10,187,515	70	0.15 - 42,750	Food	Cash or Check	Education	Speaker Fee
Nurses	298,538	48	0.41 - 4,931	Food	Food	Marketing	Speaker Fee ⁴

Payments to Non-Individual Recipients

Non-Individual Recipients were analyzed first as a whole group and then broken into three subgroups, which consisted of the top ten recipients within Clinical Organizations, Disease-Specific Organizations, and Professional Organizations.

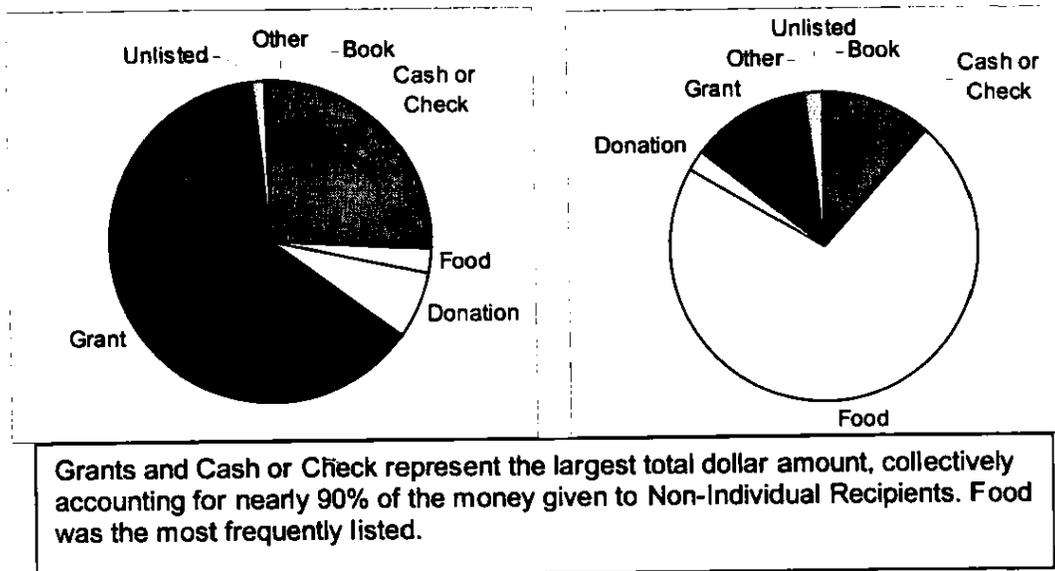
Non-Individual Recipients as a whole

As noted above, Non-Individual Recipients received a total of \$19.9 million. The median value for all payments to Non-Individual Recipients was \$201, and payments ranged from \$6 to \$600,000. *Grants* constituted the *Nature of Payment* with the highest dollar amount, with \$12.6 million; *Cash or Check* was the second-highest, with \$5.1 million; and *Donations* constituted the third-highest, with \$1.3 million. The four remaining categories – *Book*, *Food*, *Other*, and *Unlisted* – received less than 3% of the total dollar value. As was the case for all recipients, *Food* was listed as the *Nature of Payment* for the largest number of payments; in the case of Non-Individual Recipients, it was listed 71% of the time. *Grants* were listed with the second-highest frequency, at around 13%. *Cash or Check* was listed around 12% of the time. The remaining categories of *Book*, *Donation*, *Other*, and *Unlisted* were listed with less than 2% frequency.

⁴ Some of the gifts that listed nurses as recipients took the form of Food but specified Speaker Fee as a payment.

Figure 11 shows the percent of total dollar amount versus the percent of frequency for each *Nature of Payment*.

Figure 11
Non-Individual Recipients: Nature of Payment
% of Total Value (Left) vs. % of Frequency (Right)

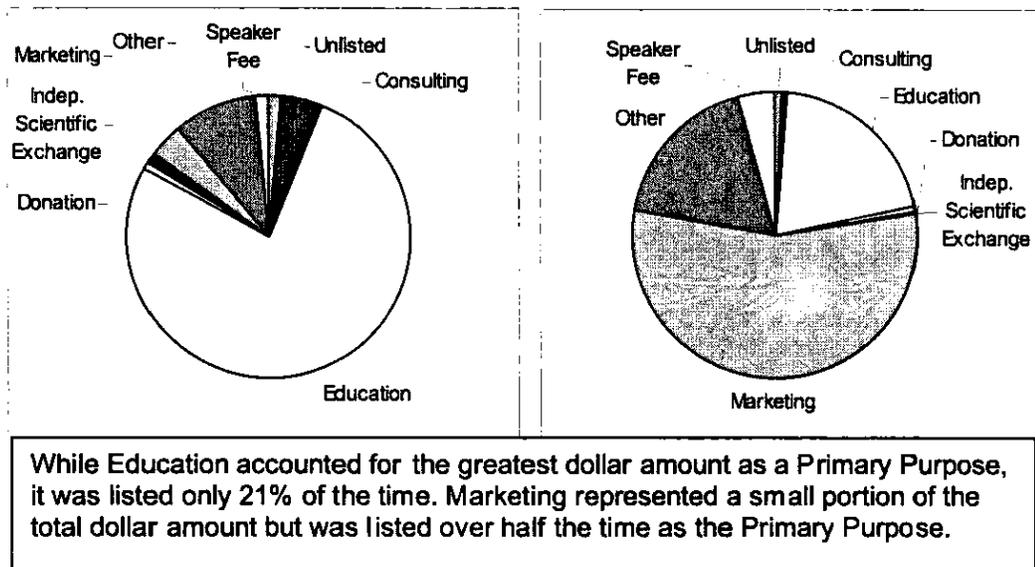


Education was identified as the *Primary Purpose* with the highest dollar amount of gift payments to Non-Individual Recipients; it accounted for \$15.2 million, over three-quarters of the total value of gift payments to Non-Individual Recipients. The *Other* category had the second-highest amount, with \$1.9 million. *Consulting* as a *Primary Purpose* accounted for close to \$1 million, and *Marketing* for \$0.8 million. The remaining categories – *Unlisted*, *Donation*, *Independent Scientific Exchange*, and *Speaker Fee* – each accounted for less than \$300,000.

Marketing was listed as the *Primary Purpose* most frequently, about 55% of the time. *Education* was listed with the second-highest frequency, roughly 21% of the time; and *Other* had the third-highest frequency, being listed 18% of the time. The remaining categories were collectively listed less than 7% of the time.

The percent of total dollar value compared to the percent of frequency for each *Primary Purpose* is depicted in Figure 12.

Figure 12
Non-Individual Recipients: Primary Purpose
% of Total Value (Left) vs. % of Frequency (Right)



Clinical Organizations

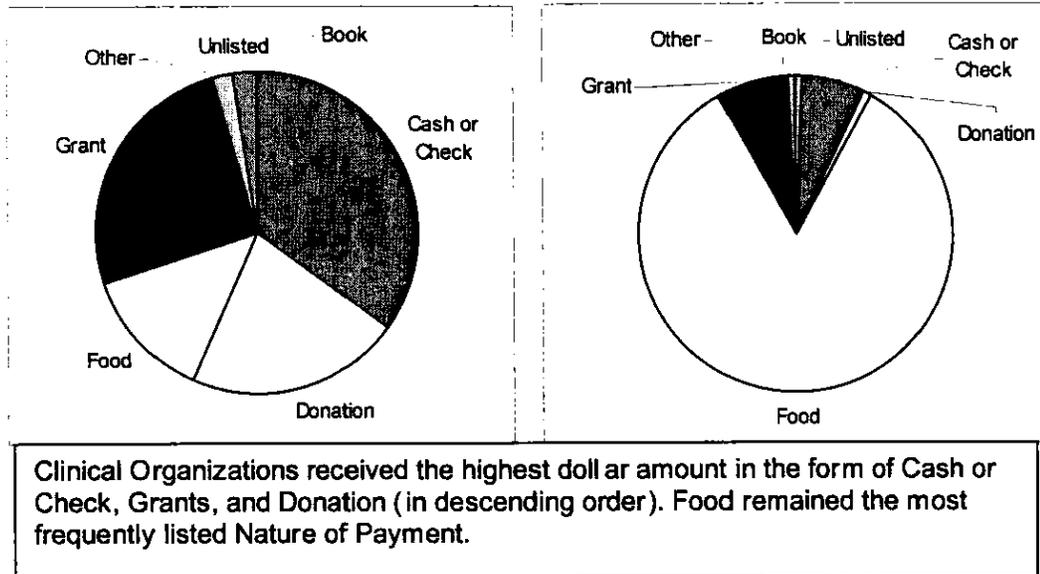
The top ten Clinical Organizations in our analysis, including hospitals or local area health clinics, received approximately \$1.8 million from pharmaceutical companies in 2007. These organizations were listed as recipients by 53 of the 102 companies that reported gift expenditures. The median value for all payments made to these organizations was \$224, and the payments ranged from \$9 to \$295,808. In addition, five clinical organizations received over \$100,000 in 2007.

Cash or Check was the *Nature of Payment* accounting for the largest dollar amount, with close to \$650,000; *Grants* had the second-highest total, with close to \$470,000. *Donations* represented the third-highest *Nature of Payment*, with almost \$400,000, and *Food* fourth-highest with \$240,000. The remaining three categories – *Unlisted*, *Other*, and *Book* – received less than \$50,000 each.

Food, listed 84% of the time, had the highest frequency among the different categories of *Nature of Payment*. Another 7% of the payments were listed as *Grants*, and slightly less than 7% as *Cash or Check*. The remaining categories were listed less than one percent of the time.

Figure 13 depicts the percent of total dollars versus percent of frequency for *Nature of Payment*.

Figure 13
Clinical Organizations: Nature of Payment
% of Total Value (Left) vs. % of Frequency (Right)

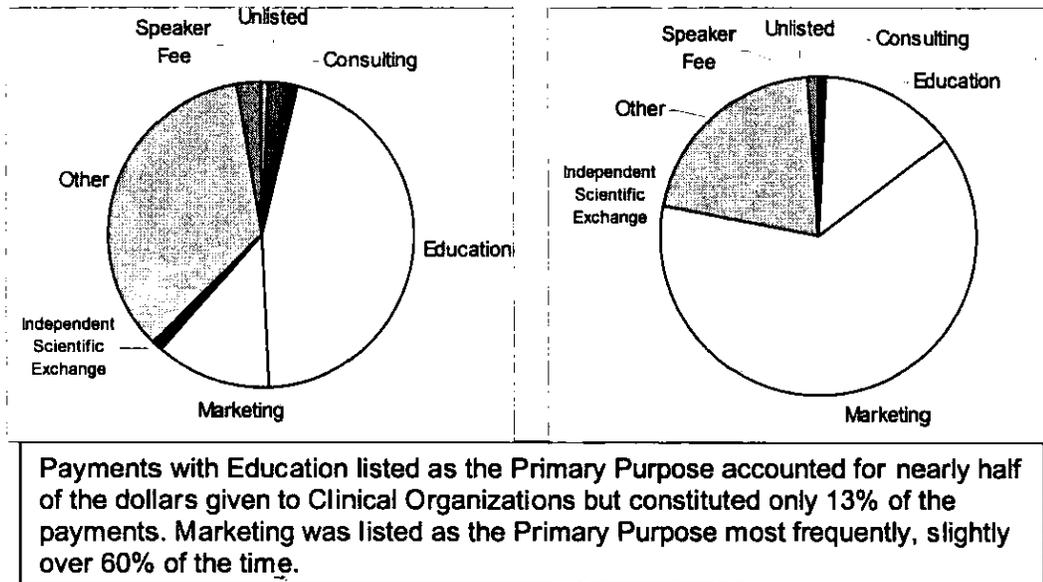


Education and Other were the top *Primary Purposes* for Clinical Organizations. *Education* payments totaled \$830,000, and *Other* payments totaled \$640,000. *Marketing* had the third-highest dollar total, with \$230,000. The four remaining categories – *Consulting, Speaker Fees, Unlisted, and Independent Scientific Exchange* – accounted for less than \$60,000 each.

Marketing was the most frequently listed *Primary Purpose*, constituting 63% of all payments. Another 21% of the payments listed *Other* as the *Primary Purpose*, and 14% of them listed *Education*. The four remaining categories were collectively listed for fewer than two percent of the payments.

Figure 14 illustrates the percent of the total value compared to percent of frequency for each *Primary Purpose*.

Figure 14
Clinical Organizations: Primary Purpose
% of Total Value (Left) vs. % of Frequency (Right)



Disease-Specific Organizations

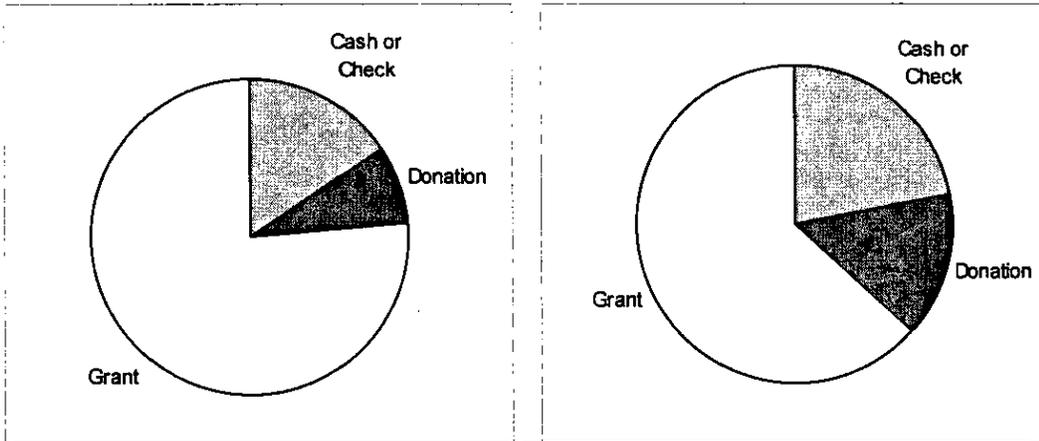
The top ten Disease-Specific Organizations in our database collectively received almost \$2.1 million. These organizations were listed by only eight of the 102 companies that reported gift expenses. The median value for all payments received by these organizations equaled \$36,100, and payments ranged from \$5,000 to \$171,350. Seven of the top ten Disease-Specific Organizations received more than \$100,000 from pharmaceutical companies in 2007.

There were only three different forms reported for *Nature of Payments* to Disease-Specific Organizations: *Cash or Check*, *Donation*, and *Grant*. The largest portion of the \$2.1 million took the form of *Grants*, which totaled close to \$1.6 million. Another \$322,000 was given in the form of *Cash or Check*, and \$163,000 as *Donations*.

For this group, *Nature of Payment* frequency corresponds well to the total dollar amount. *Grant* was listed around 63% of the time, *Cash or Check* was listed 22% of the time, and *Donation* was listed about 15% of the time as the *Nature of Payment*.

Figure 15 shows the percent of the total dollar amount versus the percent of frequency for the *Nature of Payment*.

Figure 15
Disease-Specific Organizations: Nature of Payment
% of Total Value (Left) vs. % of Frequency (Right)



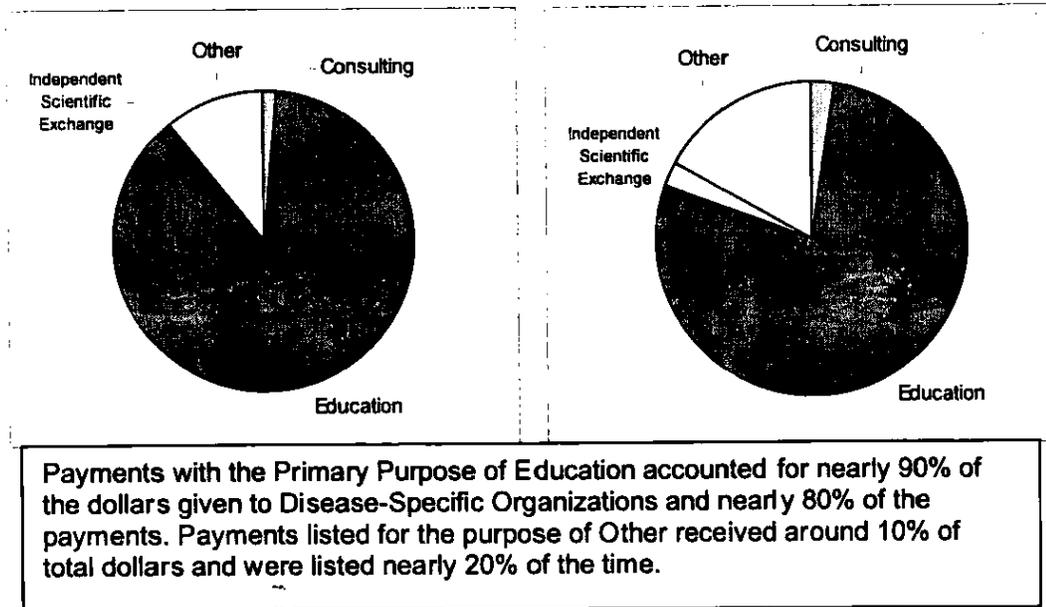
Grants were the primary form of payment to Disease-Specific Organizations, representing around three-quarters of all money received. Grants were also listed with the highest frequency, accounting for a little over 60% of all payments. Cash or Check represented about 15% of total dollars received and slightly more than 20% of payments.

For Disease-Specific Organizations, 88% of the total dollar amount, or \$1.8 million, was classified as having the *Primary Purpose of Education*. *Other* as a *Primary Purpose* accounted for the second-highest dollar amount, with \$220,000. *Consulting* accounted for almost \$33,000, and *Independent Scientific Exchange* for only \$5,000.

For this group, the frequency with which each *Primary Purpose* was listed corresponds to the relative share of money for each purpose. *Education* was listed most often, 78% of the time; *Other* was listed for about 17% of the payments; and each of the remaining categories was listed for 2-3% of the gift payments.

The percent of total dollar amount compared to percent of frequency for each *Primary Purpose* is depicted in Figure 16.

Figure 16
Disease-Specific Organizations: Primary Purpose
% of Total Value (Left) vs. % of Frequency (Right)



Professional Organizations

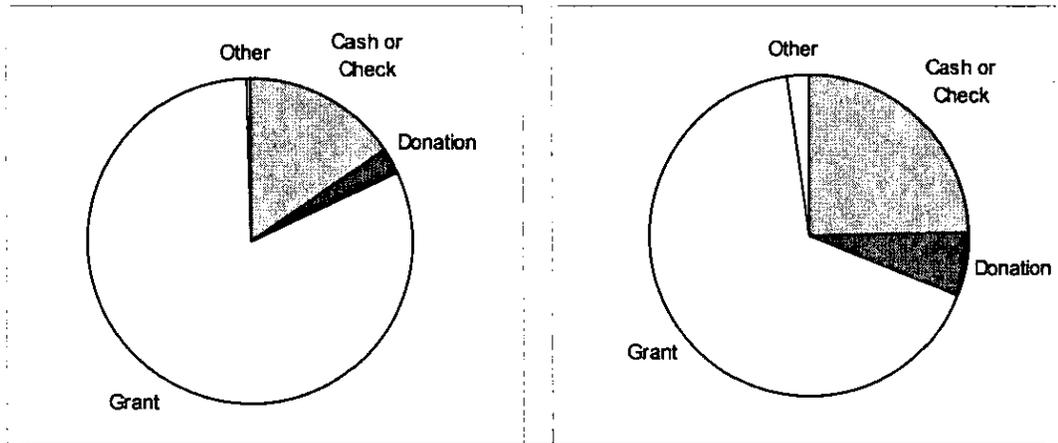
For the purpose of our study, Professional Organizations included organizations that represent healthcare professionals of particular demographic groups, or those that promote research activity within certain fields of medicine. The top ten Professional Organizations received more money than the top ten Clinical and Disease-Specific Organizations; gifts to Professional Organizations totaled \$9.4 million, which is almost half of all money received by Non-Individual Recipients. The median payment value was \$20,750, and payments ranged from \$175 to \$600,000. These organizations were listed as gift recipients by 26 of the 102 companies that reported gift expenses. In 2007, 23 Professional Organizations received more than \$100,000 from pharmaceutical companies, and three of these organizations received over one million dollars.

There were four categories for *Nature of Payment* for Professional Organizations: *Cash or Check*, *Donation*, *Grant*, and *Other*. *Grants* accounted for the highest dollar amount, with 82% of the total amount, or \$7.7 million. *Cash or Check* had the second-highest dollar amount, with \$1.5 million. *Donations* accounted for only \$225,000, and *Other* for \$29,000.

Professional Organizations are similar to Disease-Specific Organizations in that the number of payments corresponds to the total dollar amount. *Grants* were listed as the *Nature of Payment* for 67% of the gifts, *Cash or Check* for 25%, *Donation* for 6%, and *Other* for 2%.

Figure 17 shows the percent of the total dollar amount versus the percent of frequency for *Nature of Payment*.

Figure 17
Professional Organizations: Nature of Payment
% of Total Value (Left) vs. % of Frequency (Right)



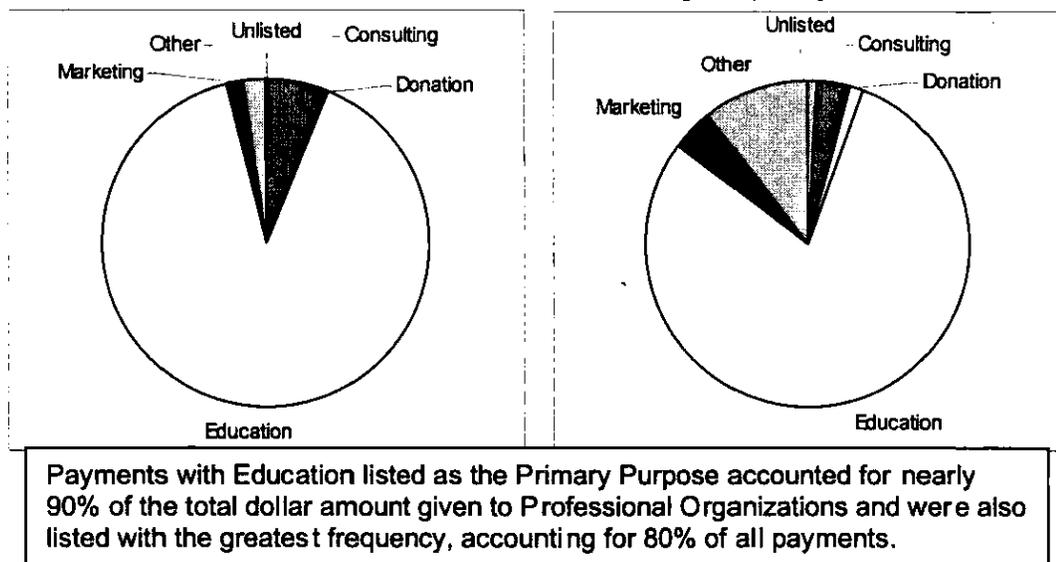
Grants were the primary form of payment to Professional Organizations, accounting for around 80% of the total amount received and being listed nearly 70% of the time. Cash or Checks constituted about 15% of the total dollar amount and 25% of the gifts listed.

For Professional Organizations, *Education* as a *Primary Purpose* accounted for nearly 90% of all payments, equaling around \$8.4 million. All remaining categories of purpose totaled less than \$1 million. *Consulting* had the second-highest dollar amount with about \$600,000, and *Other* had the third-highest with \$220,000. *Marketing* had the next-largest dollar amount with close to \$140,000. *Donation* was listed as both a *Nature of Payment* and *Primary Purpose*. As a *Primary Purpose* it accounted for only \$7,500. *Unlisted* was the final category, with only \$2,000.

Education was also the *Primary Purpose* listed most frequently, about 80% of the time. Another 11% of payments listed *Other* as the *Primary Purpose*. All remaining categories were listed less than five percent of the time.

Figure 18 depicts the percent of the total dollar amount compared to percent of frequency for each *Primary Purpose*.

Figure 18
Professional Organizations: Primary Purpose
% of Total Value (Left) vs. % of Frequency (Right)



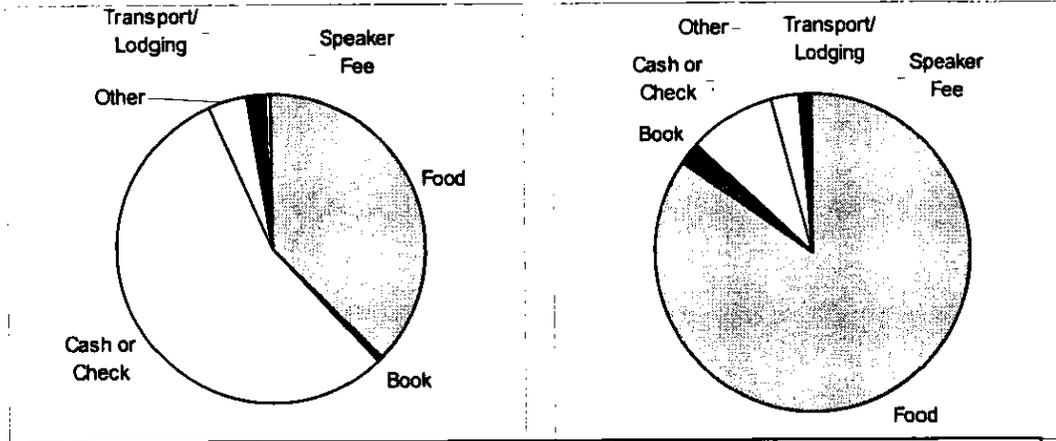
Payments to Individual Recipients

As mentioned previously, Individual Recipients received a total of \$11.3 million. The median value for all payments to Individual Recipients was \$67, and payments ranged from less than \$1 to \$42,750. In addition, 17 individuals received more than \$100,000 in 2007 from pharmaceutical companies. All of these individuals were listed with MD credentials. When considering *Nature of Payment*, \$6.2 million took the form of *Cash or Check*; \$4.2 million took the form of *Food*; and under \$500,000 in gifts was classified as *Other*. The four remaining categories – *Book*, *Transportation/Lodging*, *Grant*, and *Speaker Fee* – accounted for less than \$250,000 each.

Looking at the frequency of *Nature of Payment* categories presents a different picture: 85% of the gift payments took the form of *Food*, and only 9% took the form of *Cash or Check*. The remaining categories of *Book*, *Other*, *Transportation/Lodging*, *Grant*, and *Speaker Fee* were listed for fewer than 3% of the payments.

Figure 19 depicts the percent of total dollar amount compared to percent of frequency given for each *Nature of Payment*.

Figure 19
Individual Recipients as a Whole: Nature of Payment
% of Total Value (Left) vs. % of Frequency (Right)



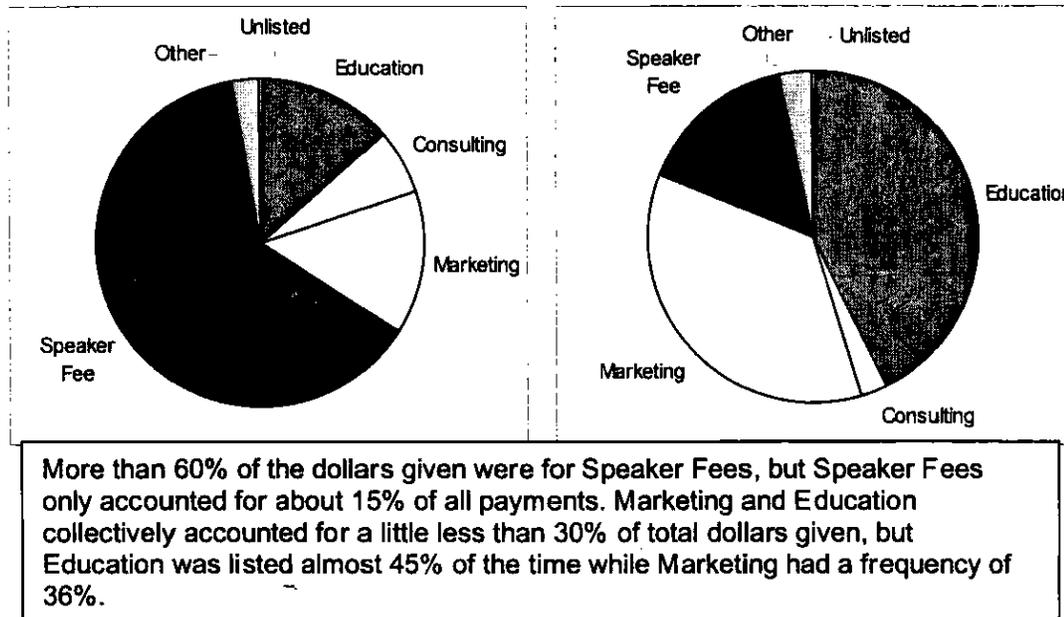
For Individual Recipients as a whole, the largest dollar amount was paid by Cash or Check, which accounted for 55% of total dollars given. Payment in the form of Food accounted for almost 40% of the total amount but was listed with the most frequency, representing nearly 85% of all payments. Cash or Check as the form of payment was listed less than 10% of the time.

For Individual Recipients, *Speaker Fees* as a *Primary Purpose* accounted for approximately 63% of the total payments, equaling \$7.1 million. *Marketing* accounted for \$1.6 million, *Education* for close to \$1.5 million, and *Consulting* for \$0.7 million. The remaining two categories, *Unlisted* and *Other*, accounted for around \$300,000 and \$34,000, respectively.

Education was listed as the *Primary Purpose* most frequently, about 43% of the time. *Marketing* was listed roughly 36% of the time, and *Speaker Fees* 16%. The remaining categories were collectively listed less than 7% of the time.

The percent of total dollar value versus percent of frequency for each *Primary Purpose* is shown in Figure 20.

Figure 20
Individual Recipients as a Whole: Primary Purpose
% of Total Value (Left) vs. % of Frequency (Right)



Doctors

Different methods for identifying doctors who received gifts yielded different results. Selecting all of the gifts for which the *Recipient Type* was listed as *Doctor* resulted in doctors being identified as the recipients for 69% of all gifts and accounting for \$7.9 million of the gift total. Selecting all of the gifts for which the *Recipient Credentials* were listed as MD, on the other hand, resulted in doctors being identified as the recipients for 81% of all gifts and accounting for \$10.2 million in gift payments from pharmaceutical companies. This suggests that submission forms frequently list a *Recipient Type* other than *Doctor* even when the recipient has an MD. For our analysis, we used the group identified by the MD credential.

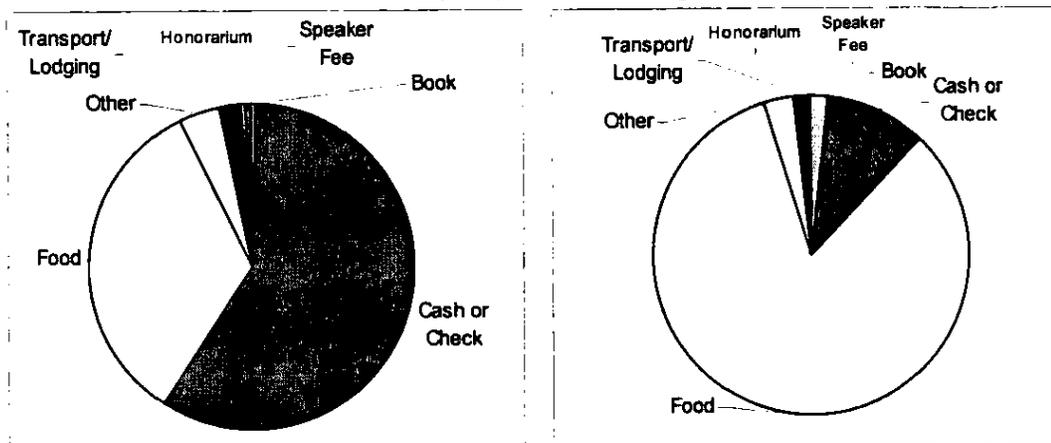
We identified approximately 8,000 unique Individual Recipients with MD credentials, but the figure is probably substantially lower due to variations in spelling that lead to the same individual being classified as multiple unique recipients. Doctors received about \$10.2 million from pharmaceutical companies in 2007, representing almost 90% of payments to individual recipients. The median payment value was \$70, and payments ranged in value from \$0.15 to \$42,750. The top ten doctor recipients received a little less than \$2 million, roughly 20% of the total payments received by individuals with MD credentials.

Cash or Check was the *Nature of Payment* accounting for the largest dollar amount, totaling almost \$6 million; *Food* had the second-highest total, with \$3.4 million. *Other* represented the third-highest *Nature of Payment*, with \$400,000. *Transportation* and *Lodging* accounted for a little over \$200,000, and *Books* and *Honorarium* for less than \$50,000 each.

In terms of frequency, 83% of the payments identified *Food* as the *Nature of Payment*, and 10% identified *Cash or Check*. The remaining categories of *Book*, *Other*, *Transportation/Lodging*, *Grant*, and *Honorarium* were each listed for fewer than 3% of the payments.

Figure 21 shows the percent of total dollar amount compared to percent of frequency for each *Nature of Payment*.

Figure 21
Individual Doctor Recipients: Nature of Payment
% of Total Value (Left) vs. % of Frequency (Right)



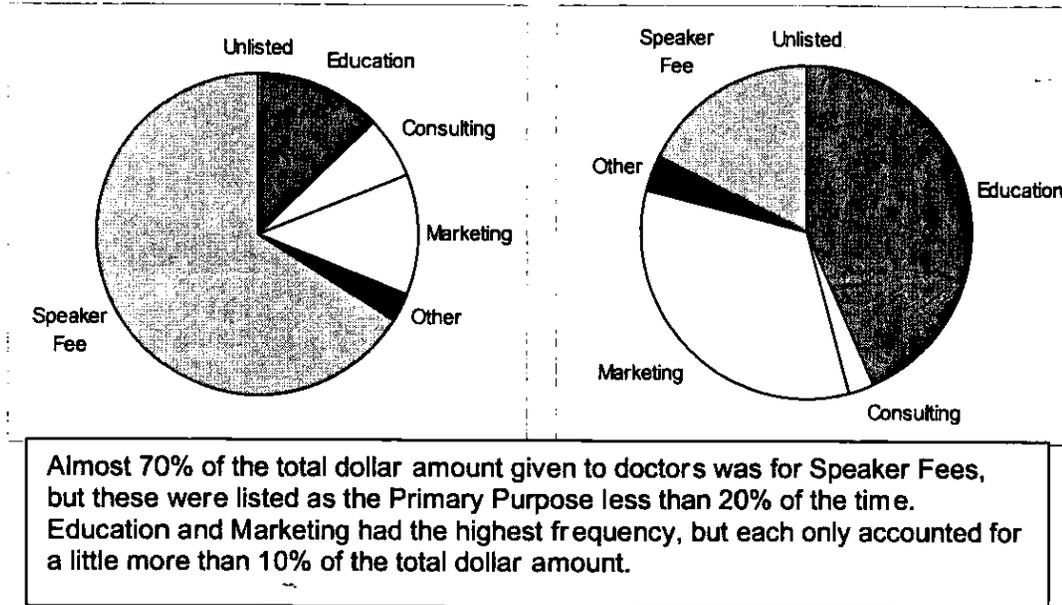
A majority of the gifts given to doctors took the form of Cash or Check, which accounted for nearly 60% of the total dollar amount. However, Cash or Check was only listed as the form of payment a little more than 10% of the time. Food was listed with the most frequency, for almost 85% of payments, but it only accounted for slightly more than 30% of the total dollar amount.

A total of \$6.7 million of the gifts given to doctors had the *Primary Purpose* of *Speaker Fees*; \$1.3 million was for *Education*, and \$1.2 million for *Marketing*. Approximately \$630,000 had the *Primary Purpose* of *Consulting*, and *Other* accounted for \$280,000. Almost \$27,000 worth of payments had no *Primary Purpose* listed.

Education was listed as the *Primary Purpose* most frequently, about 43% of the time. *Marketing* was listed approximately 33% of the time, and *Speaker Fees* 17%. The remaining categories were collectively listed less than 7% of the time.

Figure 22 depicts the percent of total dollar value versus the percent of frequency for each *Primary Purpose*.

Figure 22
Individual Doctor Recipients: Primary Purpose
% of Total Value (Left) vs. % of Frequency (Right)



Nurses

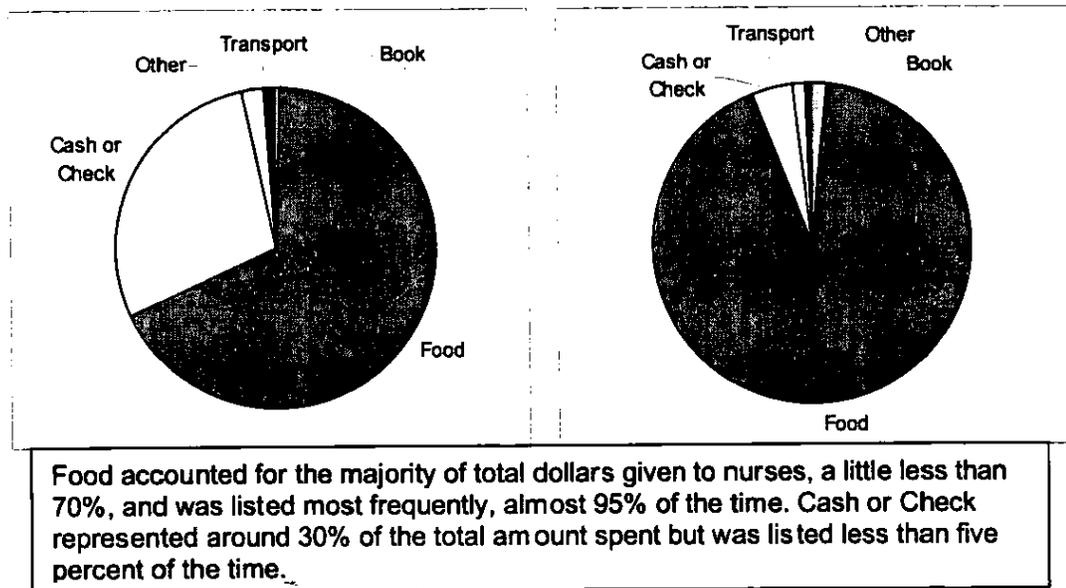
As with doctors, the identification of individual recipients as nurses was based on credential entries of *RN*, *NP*, *APRN*, or *Nurse*. (Although *Nurse* was not one of the options given for the credentials field, some submissions included it there.) There were about 1,500 unique individual recipients who fit these credential criteria – although, as was the case with doctors, spelling variations likely mean that some individuals appear multiple times in this count. Gift payments to nurses totaled almost \$300,000, which is about 3% of the value of gift payments to individuals; doctors, on the other hand, received almost 90% of the total value of gift payments to individuals. The median value of payments to nurses was \$48, and payments ranged from \$0.41 to \$4,931.

Out of the total of nearly \$300,000, \$200,000 took the form of *Food* and \$85,000 took the form of *Cash or Check*. The three remaining payment categories – *Book*, *Other*, and *Transportation* – each accounted for less than \$7,000.

In terms of frequency, *Food* was listed for 92% of the payments, and *Cash or Check* was listed for approximately 4%. The remaining categories of *Book*, *Other*, and *Transportation* were collectively listed less than 4% of the time.

Figure 23 shows the percent of total dollar amount compared to percent of frequency for each *Nature of Payment*.

Figure 23
Individual Nurse Recipients: Nature of Payment
% of Total Value (Left) vs. % of Frequency (Right)

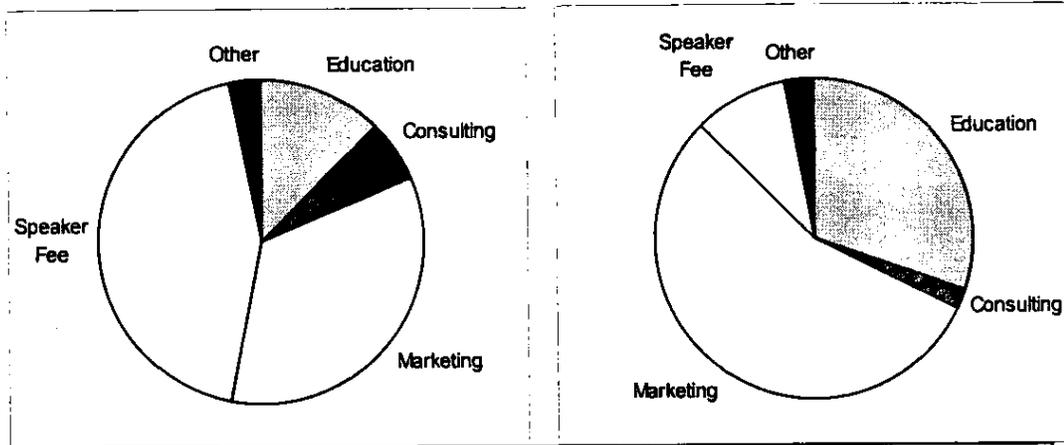


For nurses, *Speaker Fees* as a *Primary Purpose* accounted for \$130,000. *Marketing* accounted for \$100,000, and *Education* for \$37,500. The remaining two categories, *Consulting* and *Other*, accounted for around \$18,000 and \$9,000, respectively.

Marketing was listed as the *Primary Purpose* most frequently, about 55% of the time. *Education* was listed roughly 30% of the time and *Speaker Fees* 10%. The remaining categories were collectively listed less than 5% of the time.

Figure 24 depicts the percent of total dollar value versus percent of frequency for each *Primary Purpose*.

Figure 24
Individual Nurse Recipients: Primary Purpose
% of Total Value (Left) vs. % of Frequency (Right)



Speaker Fees accounted for a little over 40% of the total dollar amount given to nurses, although Speaker Fee was listed as the Primary Purpose less than 10% of the time. Marketing accounted for 35% of the total dollar amount but was listed more than half the time as the Primary Purpose.

IV. SUBGROUP ANALYSIS

Gift Expenses Subgroups

We conducted additional analyses on three subgroups to obtain further information on patterns of gift expenses. Based on total *Gift Expenses* rank, the three subgroups represent three to four high-level, medium-level, and low-level spending pharmaceutical manufacturers.

Gift Expenses: Subgroup A

Subgroup A includes the three companies that spent the most in the *Gift Expenses* category. Their total *Gift Expenses* equaled close to \$10.7 million, about one-third of the total gift expenses for all companies.

Recipient Type

For Subgroup A, *Doctor* constituted the most frequently named *Recipient Type*, being listed 93% of the time. However, *Other* was the *Recipient Type* accounting for the most gift dollars: close to \$7.7 million.

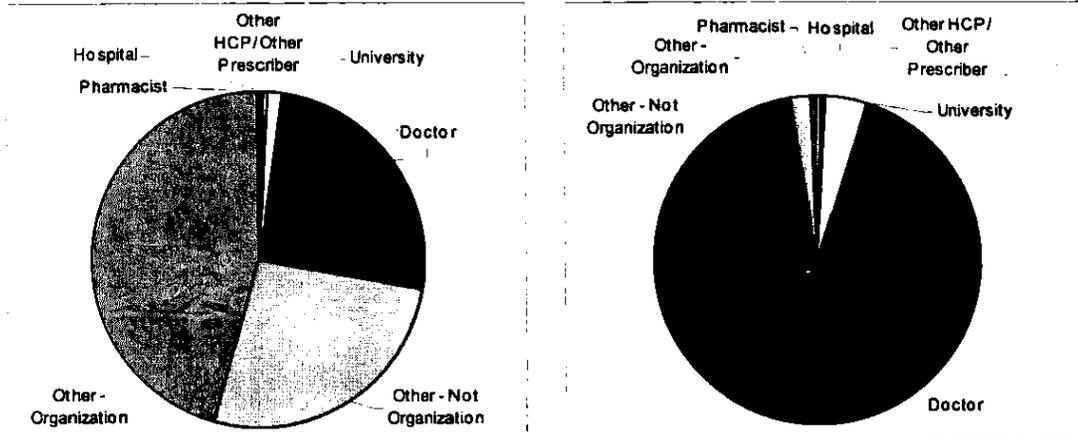
Where *Recipient Type* was listed as *Other*, we used the details provided in the *Other Recipient Type* cell to classify the *Recipient Type* as either *Other-Organization* or *Other-Not Organization*. After this was completed, *Other-Organization* was the highest-ranking recipient type, receiving almost \$4.9 million while only being listed as the recipient for less than one percent of the gifts. *Other-Not Organization* accounted for \$2.8 million and approximately two percent of the gifts. The third-highest recipient was *Doctors*, who received \$2.7 million and were listed as recipients most frequently. The other four categories – *Pharmacists*, *Hospitals*, *Universities*, and *Other Healthcare Providers* – only received a little over two percent of the total dollar amount and were listed as the recipients for approximately five percent of the gifts.

For the three top recipient types, the median value and range of payments was calculated:

- **Doctors:** median payment of \$63.33, with payments ranging from \$0.60 to \$6,750
- **Other-Not Organization:** median payment of \$480, ranging from \$19 to \$295,808
- **Other-Organization:** median payment of \$25,000, ranging from \$2,500 to \$600,000

The percent of total dollar amount received versus percent of total frequency is shown in Figure 25.

Figure 25
Subgroup A: Recipient Type
% of Total Value (Left) vs. % of Frequency (Right)



While Doctors received the largest number of payments from Subgroup A, recipients classified as Other-Organization received the highest dollar amount, followed by recipients classified as Other-Not Organization.

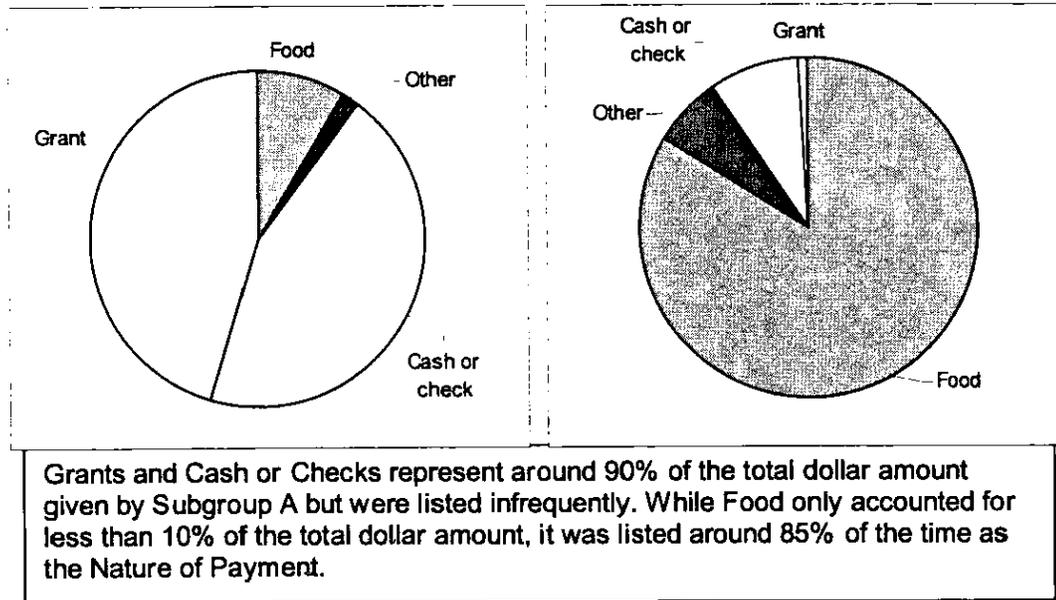
Nature of Payment

Gift Expenses for Subgroup A were broken down into four basic forms of payment: *Food, Cash or Check, Grant, and Other* (which includes *Book, Lodging, and Transportation*, as well as gifts for which *Other* was specified as the *Nature of Payment*). Payments in the form of *Grants* accounted for the highest dollar amount, about \$4.8 million; *Cash or Check* was the second-highest, with \$4.7 million. *Food* was listed most frequently – 84% of the time – as the *Nature of Payment*, but it accounted for only \$1 million of the total gift expenses. *Grants* were listed less than one percent of the time as a *Nature of Payment*, and *Cash or Checks* were only listed about 9% of the time. *Other* was listed about 7% of the time and accounted for less than \$0.2 million.

The median value of all payments was \$64, and payments ranged from \$0.41 to \$600,000.

The percent of total dollar amount compared to percent of frequency for each *Nature of Payment* is depicted in Figure 26.

Figure 26
Subgroup A: Nature of Payment
% of Total Value (Left) vs. % of Frequency (Right)



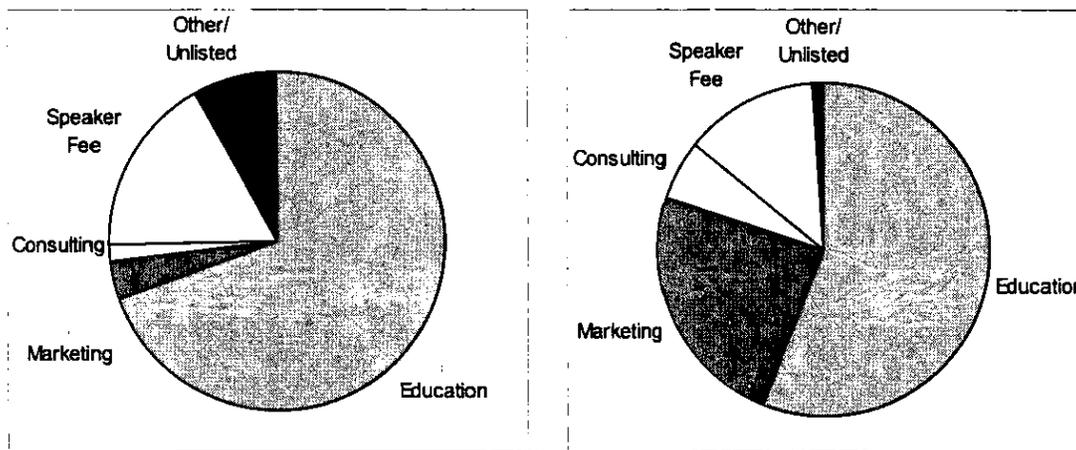
Primary Purpose

For Subgroup A, *Education* was listed most frequently as the *Primary Purpose*, occurring 56% of the time; it accounted for the largest dollar amount, at \$7.4 million (69% of the total amount). *Speaker Fee* accounted for \$1.8 million and was listed 13% of the time (third-highest frequency). *Other/Unlisted* was the third-highest *Primary Purpose*, accounting for \$0.8 million and being listed 7% of the time. *Marketing* accounted for the second-lowest dollar amount, \$0.38 million, and had the second-highest frequency, being listed 24% of the time.

For the two top *Primary Purpose* categories, *Education* and *Speaker Fee*, the median value and range of payments were calculated for each. For *Education*, the median payment value was \$45, and payments ranged from \$0.41 to \$600,000. For *Speaker Fees*, \$800 was the median value, and payments ranged from \$3.50 to \$6,750.

The percent of total dollar amount for each *Primary Purpose* is shown in Figure 27 compared to the percent of frequency.

Figure 27
Subgroup A: Primary Purpose
% of Total Value (Left) vs. % of Frequency (Right)



In this case, Education accounted for both the highest percentage of total dollars and the highest number of expenditures by Subgroup A. Speaker Fees claimed the second-highest dollar amount, almost 20%, while only being listed 13% of the time

Gift Expenses: Subgroup B

Subgroup B consisted of four companies whose *Gift Expense* totals centered on the median value for all *Gift Expense* totals greater than zero, which equaled \$46,356. This group represents the mid-level spending group of pharmaceutical companies. The four companies' *Gift Expenses* totaled \$189,586.

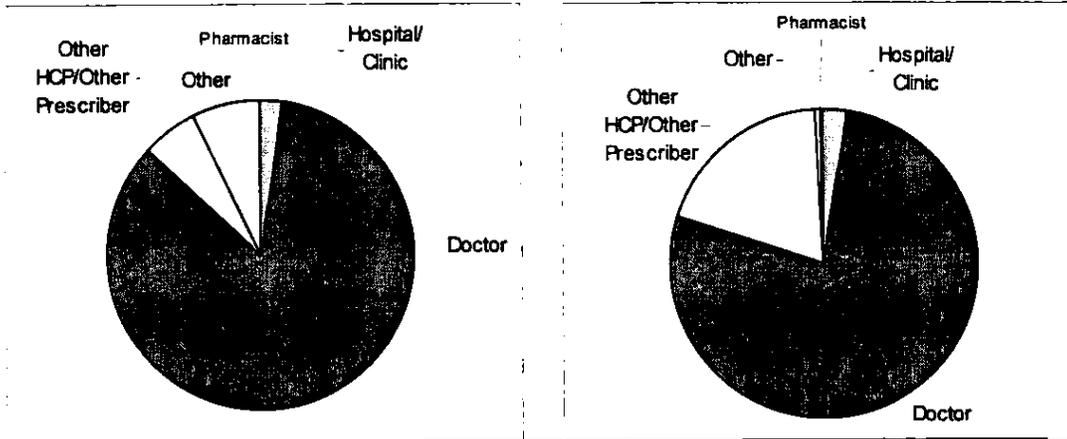
Recipient Type

For Subgroup B, *Doctors* received the largest share of the total dollar value as well as the most payments: They received \$160,285 and were listed 77% of the time. In a distant second place, recipients listed as *Other* received \$13,600 and accounted for less than one percent of the payments. *Other Health Care Provider/Other Prescribers* were the third-highest paid recipients, receiving about \$11,200 and being listed 19% of the time. *Hospital/Clinic* and *Pharmacist* were the remaining recipient types, receiving \$4,350 and \$155, respectively. *Hospital/Clinic* was listed about 3% of the time, and *Pharmacists* less than 1% of the time.

The median value for payments made to doctors was about \$80 and ranged from \$25 to \$3,750. However, the median value of payments listed for *Other* was \$4,249 and ranged from \$105 to \$5,000. Although recipients listed as *Other* received larger payments, they represented a smaller fraction of total payments, explaining the large value discrepancy between *Doctor* and *Other* recipient type payments.

Figure 28 depicts the percent of the total dollar amount for each Recipient Type versus the percent frequency.

Figure 28
Subgroup B: Recipient Type
% of Total Value (Left) vs. % of Frequency (Right)



For Subgroup B, in contrast to Subgroup A, Doctors represent both the highest-paid group and the Recipient Type listed with the greatest frequency. Other Healthcare Providers received the second-largest number of payments, but their payments only equaled about 6% of the total dollar amount. Recipients listed as Other received the second-highest dollar amount but were listed less than one percent of the time.

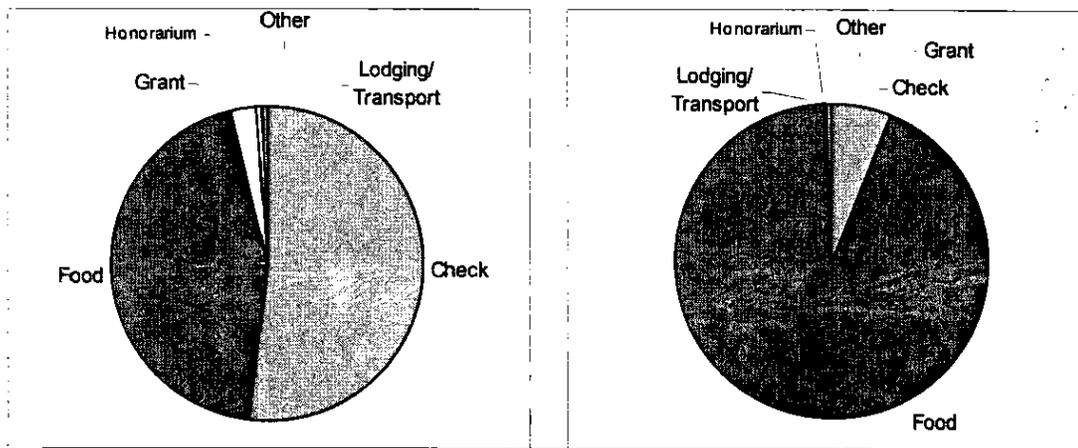
Nature of Payment

For Subgroup B, *Cash or Check* and *Food* are the two *Nature of Payment* types accounting for the largest dollar amount, and they were also the most frequently listed. *Cash or Check* accounted for approximately \$98,500 of the total dollar amount spent but was only listed 6% of the time. *Food* was listed as the *Nature of Payment* 93% of the time but was second in terms of dollar value, accounting for close to \$84,000. The next-highest-ranking *Nature of Payment* was *Grant*, which accounted for \$5,000 but was listed less than one percent of the time. *Honorarium*, *Other*, and *Lodging/Transportation* represented the remaining three categories for *Nature of Payment*, and all constituted less than one percent of the total dollar amount and overall frequency.

The median value of all payments for Subgroup B equaled \$73, with a range of values between \$25 and \$5,000.

The percent of total dollar amount compared to the percent of frequency for each *Nature of Payment* is shown in Figure 29.

Figure 29
Subgroup B: Nature of Payment
% of Total Value (Left) vs. % of Frequency (Right)



The two largest Nature of Payment categories for Subgroup B were Cash or Check and Food, but Food was listed around 90% of the time while Cash or Check was only listed about 6% of the time.

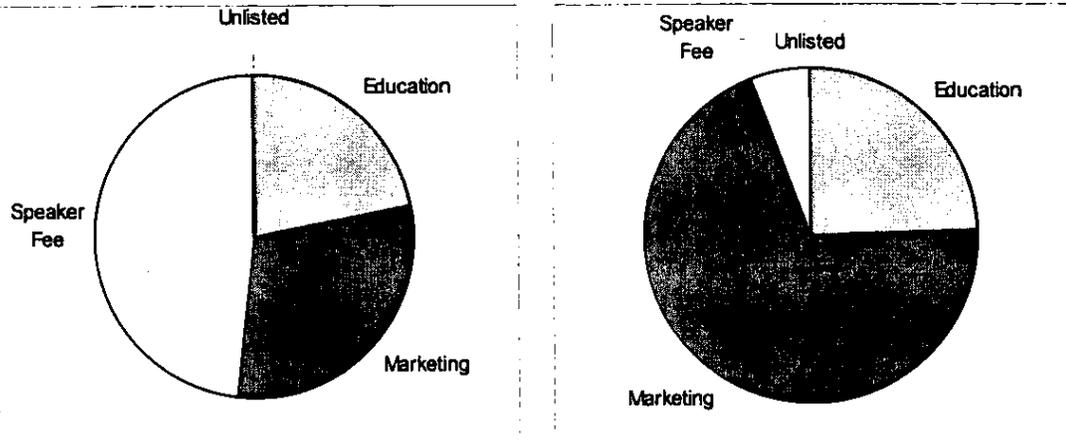
Primary Purpose

The four *Primary Purposes* listed for Subgroup B were *Education*, *Marketing*, *Speaker Fee*, and *Unlisted*. *Speaker Fees* accounted for the highest percent of total dollar value, accounting for close to \$91,500, although they were listed as the *Primary Purpose* for only 6% of the payments. *Marketing* had the second-highest dollar value with \$56,500, but had the highest frequency, being listed 70% of the time as the *Primary Purpose*. *Education* accounted for \$41,600 and had the second-highest frequency, being listed almost a quarter of the time. *Unlisted* accounted for less than one percent of the total dollar amount as well as the frequency.

The median value for *Speaker Fee* payments was \$1,260 and ranged from \$48.50 to \$3,750. *Marketing* payments had a median value of \$60 and ranged from \$25 to \$441.

The percent of total dollar amount versus percent of frequency for each *Primary Purpose* is shown in Figure 30.

Figure 30
Subgroup B: Primary Purpose
% of Total Value (Left) vs. % of Frequency (Right)



Speaker Fees account for nearly half of the total dollar amount of Subgroup B's gifts, but was listed less than 10% of the time. Marketing was listed most frequently but only accounted for about 30% of the total dollar amount. Education's number of expenditures was close in proportion to how much total money was received through Education payments.

Gift Expenses: Subgroup C

Subgroup C *Gift Expenses* are representative of the low-level spending pharmaceutical companies. This subgroup is composed of three companies whose *Gift Expenses* center around the median value of all *Gift Expenses* less than \$50,000 and greater than zero, which was equal to \$11,426. The total *Gift Expenses* of the three companies equaled \$34,195.

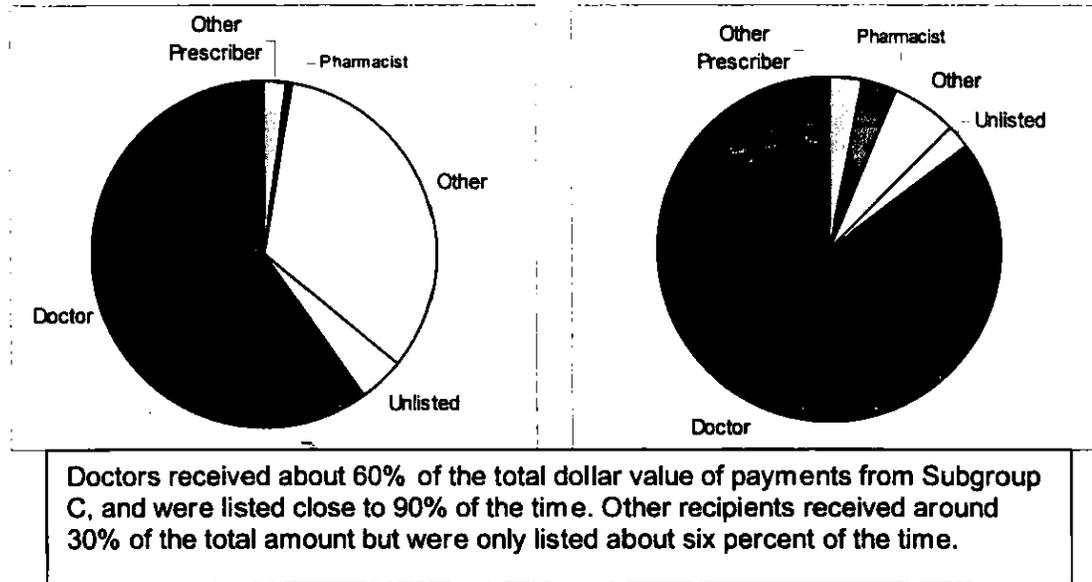
Recipient Type

As was the case with Subgroup B, *Doctors* represent both the highest-paid *Recipient Type* as well as the *Recipient Type* listed most often. For Subgroup C, *Doctors* received close to \$20,400 and were listed as the *Recipient Type* for 85% of the gifts. *Other* was the second-highest recipient with a little over \$11,000. The *Other* category included *Recipient Type* listed as *Other* and two payments (listed as *Grants*) to individuals whose credentials did not classify them as doctors, other prescribers, or pharmacists. Recipients in the *Other* category were listed for 6% of the gifts. The other three *Recipient Type* categories were *Unlisted*, *Other Prescriber*, and *Pharmacist*; they received \$1,500, \$730, and \$187, respectively, and each of these three categories accounted for 2-3% of the gifts from Subgroup C.

The median value for *Doctor* payments from Subgroup C was just under \$12, and the payments ranged from \$0.94 to \$3,000. The median value for payments received by *Other* recipients was \$33, and those payments ranged from \$3.74 to \$5,000.

The percent of total dollar amount compared to percent of frequency for each *Recipient Type* is shown in Figure 31.

Figure 31
Subgroup C: Recipient Type
% of Total Value (Left) vs. % of Frequency (Right)



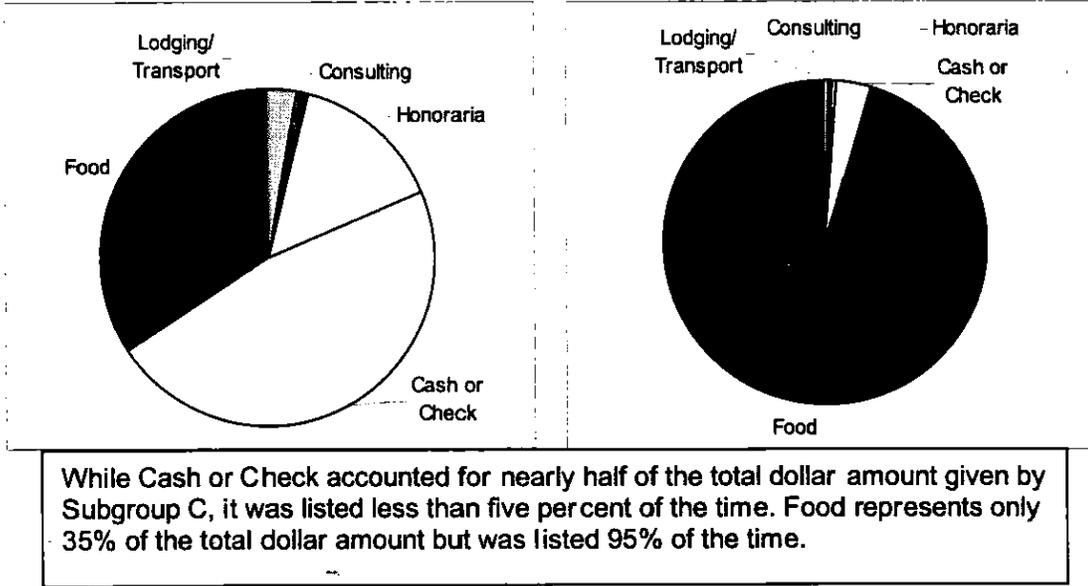
Nature of Payment

Subgroup C is similar to Subgroup B in that *Cash or Check* and *Food* represent the categories of *Nature of Payment* with the highest dollar values. *Cash or Check* accounted for a little over \$16,000 of the total *Gift Expenses* but was only listed 3% of the time. *Food* accounted for almost \$12,000 of the total amount and was listed with the highest frequency, 95% of the time. *Honoraria*, *Lodging/Transportation*, and *Consulting* were the three remaining categories for *Nature of Payment*; they accounted for \$5,000, \$945, and \$400, respectively. Each of those three categories accounted for less than one-half of one percent of the number of payments.

The median value for all payments was \$12, with a range of values from \$0.94 to \$5,000.

The percent of total dollar amount versus percent of frequency for each *Nature of Payment* is shown in Figure 32.

Figure 32
Subgroup C: Nature of Payment
% of Total Value (Left) vs. % of Frequency (Right)



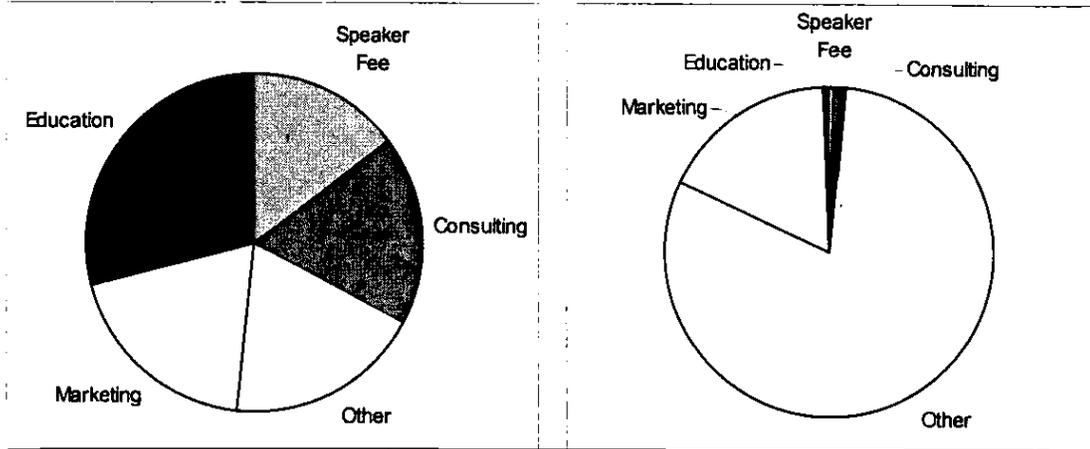
Primary Purpose

Education was the *Primary Purpose* for Subgroup C that accounted for the largest total dollar value, but it was listed for fewer than one percent of the payments. *Marketing*, *Other*, and *Consulting* accounted for similar dollar values: \$6,600, \$6,400, and \$6,200, respectively. *Other* had the highest frequency of all of the payment purposes, being listed 80% of the time. *Marketing* was listed as the purpose of approximately 18% of the payments, and *Consulting* for less than 2%. The last category, *Speaker Fee*, had a dollar value of \$5,000 and was listed less than one percent of the time.

Only two payments were designated as being for the purpose of *Education*, and both were equal to \$5,000. The median value for payments with the primary purpose of *Marketing* was \$62, and those payments ranged from \$0.94 to \$379.

Figure 33 depicts the percent of total dollar amount compared to the percent of frequency for each *Primary Purpose*.

Figure 33
Subgroup C: Primary Purpose
% of Total Value (Left) vs. % of Frequency (Right)



For Subgroup C, the percent of the total dollar amount was nearly equally distributed among the different categories of Primary Purpose, with Education having a slight majority of 30%. However, Other was listed with a frequency of 0%.

Gift Expenses Subgroup Comparison

From the analysis of the three Subgroups, comparisons can be drawn between the overall *Gift Expenses* as well as between the three groups. In terms of *Recipient Type*, for all three subgroups, *Doctors* were the most frequently listed type, similar to all companies as a whole. Subgroup A is similar to the overall analysis (which is not surprising, since Subgroup A accounts for nearly one-third of *Gift Expenses*) in that the *Recipient Types* of *Other* and *Organizations* accounted for the largest proportion of dollars. For Subgroups B and C, *Doctors* represented the highest-paid recipients.

The difference with regards to *Recipient Types* between Subgroup A and the other two Subgroups are clearly linked to the marked differences between *Nature of Payment* and *Primary Purpose* between the three groups. In the analysis of Subgroup A, *Grants* constitute the largest dollar value for *Nature of Payment* (45% of the total dollar amount), followed by *Cash or Check* (44%) and then *Food* (9%). This is very similar to the figures for companies as a whole, where *Grants* constituted 41%, *Cash or Check* 37%, and *Food* 15%. For Subgroup B and C, *Grants* are not even listed as a *Nature of Payment*, and organizations and institutions are not listed as recipients. The marketing efforts of medium-sized and small companies focus primarily on *Doctors*. For all three subgroups and the companies as a whole, *Food* was most frequently listed as the *Nature of Payment*.

From the analysis of the data it appears that grants paid to organization recipients are generally made for an educational primary purpose. For companies as a whole and Subgroup A, *Education* accounts for the majority of the total dollar value amount (54% and 69%, respectively) and is also listed with the most frequency (42% and 56% of the time, respectively). For Subgroup B, *Speaker Fees* represent the largest portion of total

dollars, and *Marketing* is the most frequently listed *Primary Purpose*, suggesting that medium-sized pharmaceutical companies focus on marketing their products to individual prescribers. *Education* represents the largest portion of total dollars for Subgroup C (30%), while *Consulting*, *Other*, and *Marketing* all represent around 20% each. In terms of number of payments, there are so few *Education* payments that the other categories represent the majority of payments.

In summary, these data suggest that high-spending pharmaceutical companies marketing in the District provide large educational grants to organizations, rather than focusing on gifts to individuals. Mid-level and low-level spending pharmaceutical companies in the District focus on marketing their products to individual doctors.

Table 7 presents information about the *Gift Expenses* of Subgroups A, B, and C.

Table 7

Comparison of Companies as a Whole to Subgroups A, B, and C							
	Total Amount Spent (\$)	Most Frequent Recipient Type	Recipient Type Receiving Most Money	Most Frequent Nature of Payment	Nature of Payment Receiving Most Money	Most Frequent Primary Purpose	Primary Purpose Receiving Most Money
Companies as a whole	31,337,226	Doctor	Other	Food	Grant	Education	Education
Subgroup A	1,835,455	Doctor	Other - Organization	Food	Grant	Education	Education
Subgroup B	189,586	Doctor	Doctor	Food	Cash or Check	Marketing	Speaker Fees
Subgroup C	34,195	Doctor	Doctor	Food	Cash or Check	Other	Education

Advertising Expenses Subgroup Comparison

An analysis was performed on all companies that reported advertising expenses, and also on two subgroups, one of companies that spent large amounts on advertising and another of companies that spent smaller amounts.⁵ Subgroups were drawn from the three companies with the highest advertising expenses and four companies whose advertising expenses centered on the median value for expenses greater than zero, which was \$11,905. Both the *Type of Activity* and *Medium Type* were compared.

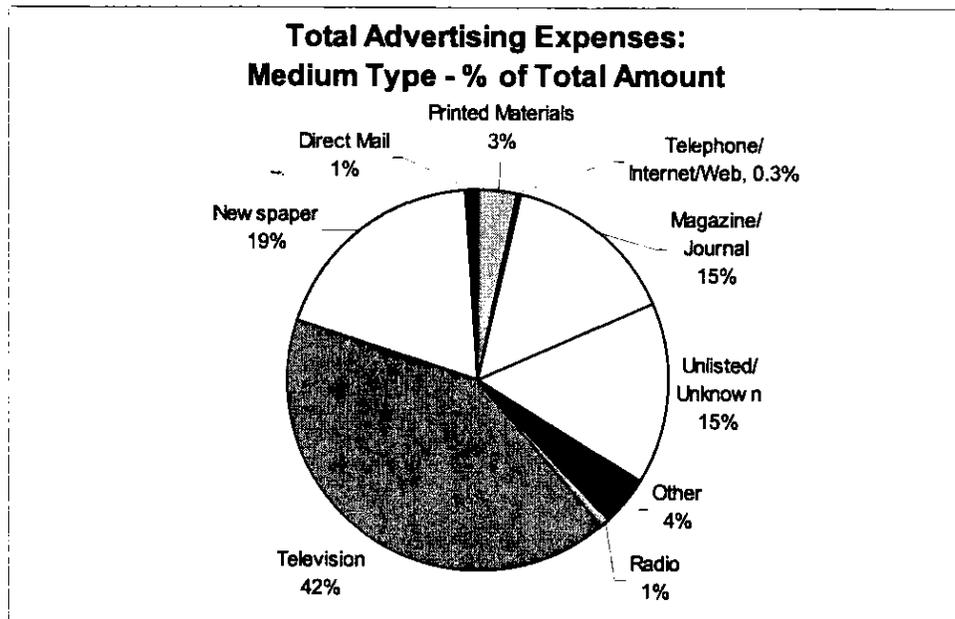
⁵ Due to a smaller number of companies that reported advertising expenses, the median value for all companies with a value greater than zero was a substantially smaller number than the value for the top three companies; therefore, the creation of subgroups was limited to these two groups.

Advertising Expenses: Companies as a Whole

As stated previously, 54 of the 113 companies reported *Advertising Expenses* totaling \$10.3 million. Advertising activities listed varied considerably among companies but could be sorted into ten general categories: *Advertising, Exhibit Fees, Direct Promotion, Education, Marketing, Media Placement, Other,*⁶ *Market Research, Sponsorship, and Direct-to-Consumer Advertising.* *Advertising* had the greatest dollar value, with slightly over \$5.8 million. *Education* had the second-highest dollar value, with \$1.7 million. *Marketing, Media Placement, and Direct-to-Consumer* activities had dollar values ranging from \$275,000 to \$620,000. The remaining five categories had dollar values smaller than \$150,000.

Figure 34 depicts the dollar amount breakdown for *Type of Activities* for companies as a whole.

Figure 34

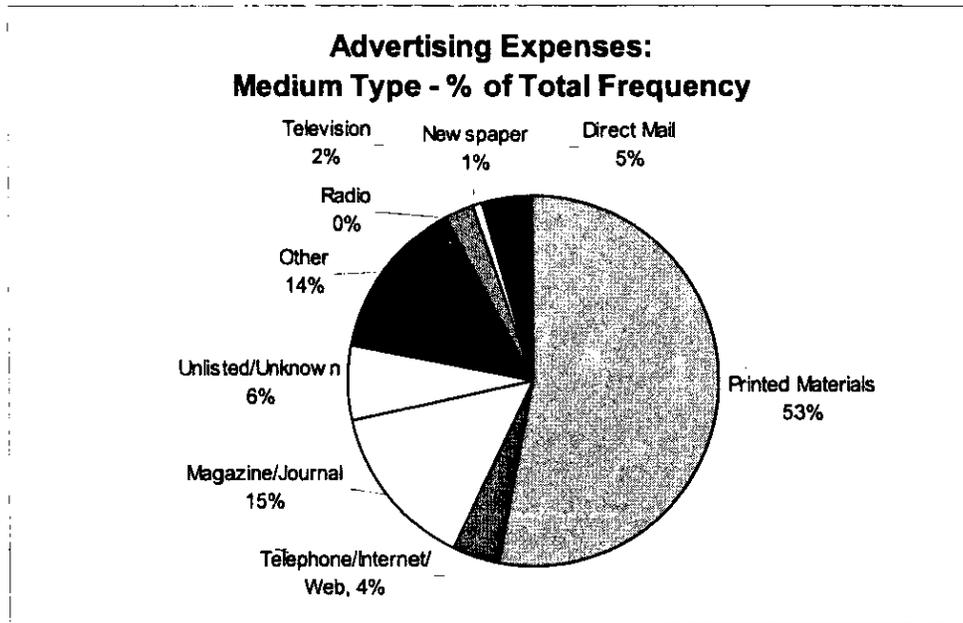


Medium Type also varied considerably among companies, and responses were classified into nine general categories: *Printed Materials, Telephone/Internet/Web, Magazine/Journal, Unlisted/Unknown, Other, Radio, Television, Newspaper, and Direct Mail.* *Television Advertising* had the highest dollar value, accounting for \$3.9 million. Following *Television, Newspaper, Unlisted/Unknown, and Magazine/Journals* had the highest dollar value amounts. Companies spent \$1.8 million on *Newspaper* advertising, \$1.5 million on *Unknown or Unlisted* media, and \$1.4 million on *Magazines/Journals.* *Other* media and *Printed Materials* were the next highest, with \$390,000 and \$318,000, respectively. For the three remaining medium types – *Telephone/Internet/Web, Radio, and Direct Mail* – \$100,000 or less was spent for each type.

⁶ Other includes Types of Activity listed as Development, Product Info, Reprints, Book, Detailing, Patient Starter Kit, Direct Sale, Speaker Related, and Unlisted Activities. All of these constituted percentages too small to be significant.

Figure 35 depicts the dollar amount breakdown for *Medium Types* for companies as a whole.

Figure 35

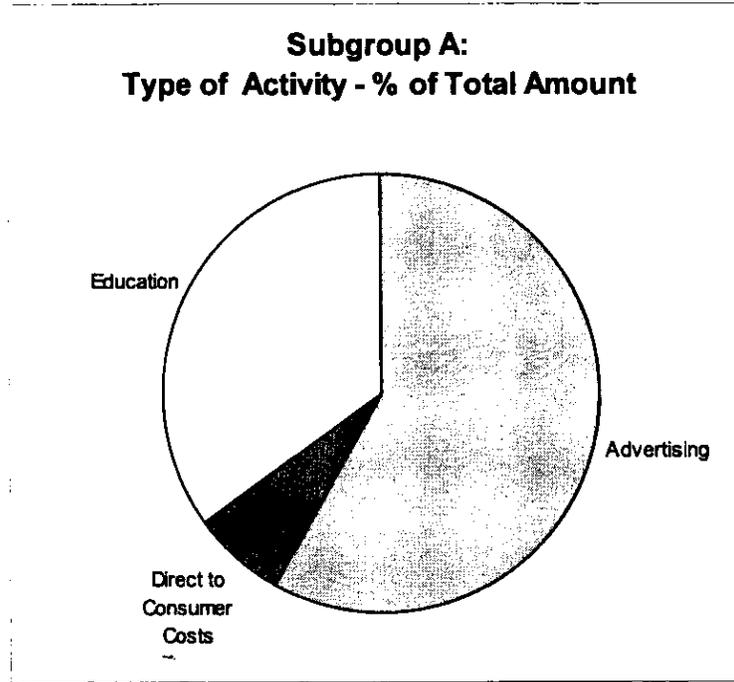


Advertising Expenses: Subgroup A

Subgroup A consisted of the three companies that reported the largest *Advertising Expense* totals. The advertising expenses for these three companies equaled almost \$4 million (39% of total advertising expenses for all companies). These companies listed only three types of activities: *Advertising*, *Direct-to-Consumer*, and *Education*. *Advertising* accounted for \$2.3 million, *Education* for \$1.4 million, and *Direct-to-Consumer* costs for less than \$300,000.

Figure 36 depicts the percent of total dollar amount for the three *Activity Types*.

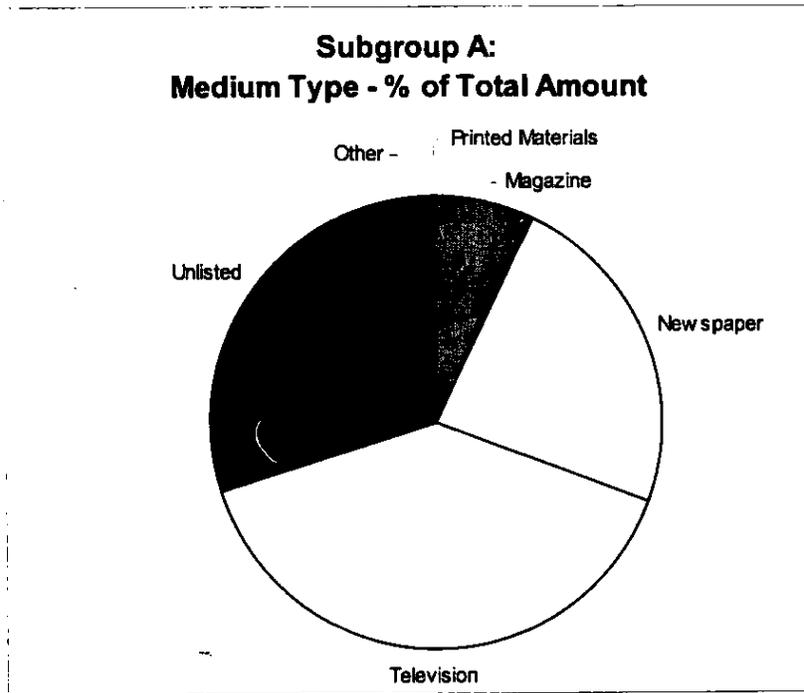
Figure 36



Advertising activities for Subgroup A can be categorized into six *Medium Types*: *Printed Materials*, *Magazine*, *Newspaper*, *Television*, *Unlisted*, and *Other*. The greatest dollar amount was spent on *Television* advertisements in 2007, reaching close to \$1.6 million, which represents 41% of *Television* advertising for companies as a whole. *Unlisted* advertising activities were the second-highest recipient, with almost \$1.2 million; this represents close to 80% of the value of *Unlisted Medium Types* for all companies. The next-highest recipient of advertising dollars from Subgroup A was *Newspaper* ads, receiving \$0.9 million, or half of total *Newspaper* advertising expenses for all companies. Close to \$300,000 was spent on *Magazines*, and less than \$3,000 was spent on each of the remaining two categories of *Printed Materials* and *Other*.

Figure 37 depicts the percent of total dollar amount for the *Medium Types*.

Figure 37



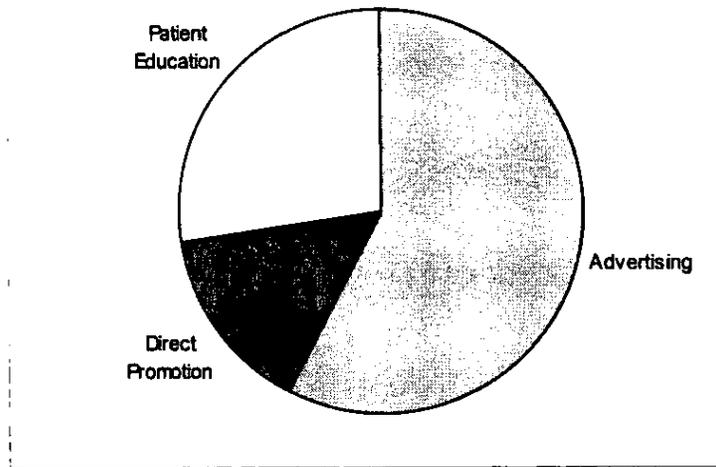
Advertising Expenses: Subgroup B

Subgroup B represents the smaller subgroup of companies that reported *Advertising Expenses*. Their total *Advertising Expenses* combined equaled \$44,135. Advertising activities for Subgroup B were limited to three types: *Advertising*, *Direct Promotion*, and *Patient Education*. Like Subgroup A and companies as a whole, Subgroup B spent the greatest dollar amount on *Advertising* activities, roughly \$25,000. *Patient Education* represented the activity with the second-greatest dollar amount spent, with a little over \$12,000. Lastly, a little over \$6,500 was spent on *Direct Promotion* activities for Subgroup B.

Figure 38 depicts the percent of total dollar amount for the *Activity Types*.

Figure 38

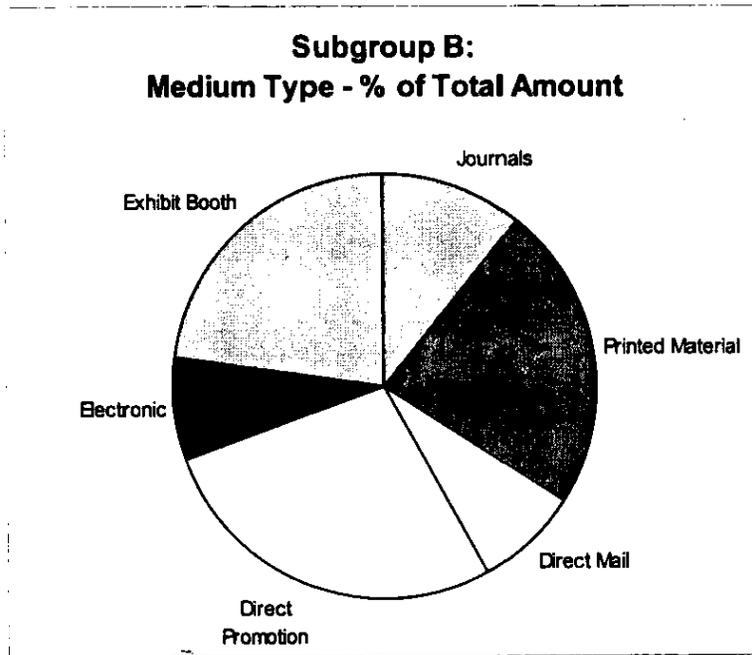
**Subgroup B:
Type of Activity - % of Total Amount**



Advertising activities for Subgroup B were broken down into six *Medium* type categories: *Journals*, *Printed Materials*, *Direct Mail*, *Direct Promotion*, *Electronic*, and *Exhibit Booth*. *Direct Promotion* (listed as both a *Type of Activity* and *Medium Type*) received the most in advertising dollars, around \$12,000, a little more than a quarter of the total. *Printed Materials* and *Exhibit Booths* closely follow, receiving \$10,300 and \$10,000, respectively in advertising dollars. Close to \$5,000 was spent on *Journal* advertisements, \$3,500 was spent on *Electronic* advertisements, and almost \$3,400 was spent on *Direct Mail*.

Figure 39 depicts the percent of the total dollar amount spent for each medium type for Subgroup B.

Figure 39



Advertising Expenses: Subgroup Comparisons

Comparing companies as a whole and the two subgroups, *Advertising* activities received the greatest proportion of total dollars for all the three groups. Because Subgroup A constitutes such a large proportion of the total *Advertising Expenses*, medium type percentages are consistent with companies as a whole. Subgroup B, with a substantially smaller advertising budget, reported spending no funds on expensive media of advertising such as *Television*. *Journal* advertising was also proportionally smaller in Subgroup B compared to companies as a whole and to Subgroup A.

V. OVERVIEW OF COMPANY SUBMISSIONS

Method of Submission

For the 2007 reporting period, drug companies disclosed reportable marketing expenses using the Excel worksheet found on the DC DOH website. Of the 113 companies, 105 submitted their reports in Excel format as requested (93%), five companies submitted both Excel and PDF versions of their reports (4%), one company submitted their report electronically but in a PDF format (1%), and two companies submitted only paper copies of their reports (2%). All companies who failed to submit reports that could be analyzed were contacted; all but one either supplied the required documents or information or provided enough information that we were able to incorporate it into our analysis (e.g., by manually entering data from a PDF document into an Excel spreadsheet).

Trade Secret Declaration

Chapter 18 of Title 22 of the DCMR, "Prescription Drug Marketing Costs," defines a trade secret as follows:

Trade secret- information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (A) Derives actual or potential independent economic value, from not being generally known to, and not being readily ascertainable by, proper means by another who can obtain economic value from its disclosure or use; and
- (B) Is the subject of reasonable efforts to maintain its secrecy.⁷

Of the 113 companies, 12% did not specify in their annual reports, cover letters, or assumptions and explanation documents if the information was designated as a trade secret. Nearly all of these companies did note that the data was confidential and not for public record, but did not expressly designate trade secret status.

Thirty-eight percent of all reporting companies declared their annual reports as trade secrets, 4% listed some information in their report as trade secrets and other information as not, and the majority, 53%, declared their annual reports as not trade secrets.

Trade secret explanations were consistent across pharmaceutical companies. An example of one company's justification for designating their report as a trade secret mirrors many others:

The information being disclosed pertaining to marketing activity in the State, including the name of the entity/physician, the amount of the payment, and the date the activity took place, qualifies as a trade secret for the following reasons:

⁷ §1899.1 of Chapter 18 of Title 22 of the DCMR

- 1) The information being disclosed has independent economic value to the Company that is not readily ascertainable to others;
- 2) The information, if manipulated by unauthorized personnel, may create an unfair business advantage for competitors of the Company;
- 3) The Company has made concerted efforts to maintain the secrecy of this information; and
- 4) The Company has determined that the information being disclosed warrants protection under D.C.'s law.

Wet Signature/Certification

§1801.4(c) of AccessRx requires companies to file wet signature certifications with their annual reports, ensuring the legality and accuracy of the report. Specifically, the certification should state that “under penalty of law the information contained in the report is to the best of [the responsible individual’s] knowledge after due diligence to inquire about the truthfulness and accuracy of the report,” and should also include an “acknowledgment that providing false information or omitting required information on the report is unlawful.”⁸ Approximately 98% of all companies provided various versions of this certification with their reports. The remaining 2% consisted of two companies that failed to provide wet signatures at all (i.e., did not provide signed paper copies of their reports).

Quality of Submissions

The quality of company submissions was evaluated based on overall completeness and compliance with disclosure requirements. Submissions were classified as follows:

- *Complete*: All required information is provided
- *Almost Complete*: Most required information is provided
- *Incomplete*: Required information is missing
- *N/A*: No marketing expenses were reported

Using these general categorizations, 65% of all companies provided complete submissions. These annual reports included all the information specifically required in §1802 (e.g., date of payment, full names and credentials of recipient, type of recipient, nature of payment, primary purpose of payment, and value of payment).

Another 17% of companies provided almost complete submissions. These reports contained most of the information required in §1802, but were missing information – often recipient type details – for a relatively small number of the items they reported.

Approximately 9% of companies provided incomplete submissions. Some important required information was absent from these annual reports, the most common being

⁸ §1801.4(c) of Chapter 18 of Title 22 of the DCMR

recipient type. These companies also cited "other" many times for required data fields but did not provide a corresponding explanation.

Finally, 8% of companies did not report any expenses associated with food, entertainment, or gifts as required by §1801.1(b)(2).

Submissions did not contain sufficient information to fully determine whether companies were using Generally Accepted Accounting Principles, but we found no indications that companies were failing to use them.

VI. BENCHMARKS

For 2006, 101 pharmaceutical manufacturers and labelers reported marketing expenses totaling \$145,495,429; for 2007, 113 manufacturers and labelers reported spending \$158,210,607. This represents an 8.74% increase from 2006 to 2007, but much of that increase may be attributable to improvements in reporting. Pharmaceutical companies had little time to prepare their 2006 submissions after the regulation was finalized, and some of them only submitted expenses for the last quarter of 2006 (as the regulation allowed, for 2006 only). With more companies submitting more-complete reports, an increase in the total reported expenses is expected. Data from future years will provide a better sense of the change in total marketing expenditures from year to year.

Regardless of how much of this increase is attributable to differences in reporting, pharmaceutical marketing expenditures in the District grew more slowly from 2006 – 2007 than did expenditures in Vermont. Because Vermont has similar disclosure requirements and analyzes and reports its data annually, we can compare their pharmaceutical marketing figures to ours. (Note, however, that Vermont uses a July 1-June 30 fiscal year, rather than the calendar year the District uses.) From FY 2006 to FY 2007, reported expenditures in Vermont jumped 33%. Since total reported expenditures in Vermont are far lower than those in the District, however, this large percentage increase translates into a relatively small dollar amount – \$771,790, versus an increase of \$12,715,178 in the District.

Table 8

Increase in Pharmaceutical Marketing Expenditures, 2006-2007, DC and Vermont				
	2006 total	2007 total	% change	\$ change
DC	\$145,495,429	\$158,210,607	8.7%	\$12,715,178
Vermont	\$2,367,004	\$3,138,794	32.6%	\$771,790

To provide a sense of pharmaceutical marketing expenditures relative to the size of the medical establishments in Vermont and the District, we divided the total expenses by the number of practicing physicians in each location. Last year, we reported that pharmaceutical companies spent \$34,691 per practicing District physician compared to just \$1,134 per practicing Vermont physician; however, we noted that many national organizations are headquartered in the District and likely accounted for a substantial portion of the total expenses.

With higher-quality submissions for 2007, we were able to separate total expenditures given to individuals from those given to organizations, and to arrive at a figure that better represents payments actually given to doctors, nurses, and other practitioners. We determined that individuals in the District received \$11,481,142 in 2007. Vermont determined that \$3,009,372 of the reported payments in its state went to healthcare providers. Using the figures representing total payments to individuals, we calculated that in reporting year 2007, pharmaceutical companies spent \$1,493 per practicing Vermont physician and \$2,716 per practicing District physician.

Table 9

2007 Pharmaceutical Gift Payments per Practicing Physician, DC and Vermont			
	Payments to Individuals	Practicing Physicians⁹	Payments per Physician
DC	\$11,481,142	4,228	\$2,715.50
Vermont ¹⁰	\$3,009,372	2,015	\$1,493.48

⁹ From the Federation of State Medical Boards' *Summary of 2007 Board Actions*

¹⁰ From *Pharmaceutical Marketing Disclosures: Report of Vermont Attorney General William H. Sorrell*, July 8, 2008

VII. RECOMMENDATIONS

Based on our analysis of the 2007 data, we identified the following steps to allow for more useful analyses of future data submissions. The first recommendation, requiring unique identifiers and product marketed information, will require changes to the regulation, while the remaining recommendations, pertaining to instructions and compliance, can be implemented without regulatory changes.

1. Require unique recipient identifiers and “product marketed” information

Information about the doctors and drugs that companies target with their marketing dollars is likely to be useful for efforts to reduce the District’s prescription-drug expenditures. Collecting that information for submissions will require changes to Chapter 18.

- **Unique recipient identifiers:** Without unique recipient identifiers, analyses may fail to identify all of the gifts that went to the same individual if that person’s name is entered differently in different instances. For instance, several companies may report payments to “Dr. John Anderson,” but there are several Dr. John Andersons working in the area; spelling variations – e.g., Anderson/Andersen – can further complicate the questions of how many doctors are receiving payments and how much each one has received from all of the reporting companies.

If manufacturers and labelers were to report a unique identifier, such as a National Provider Identifier, for recipients, that would improve speed and accuracy of matching efforts. Greater certainty about a recipient’s identity can also help researchers identify the specialties of doctors receiving payments, which can help demonstrate what types of pharmaceuticals (e.g., diabetes drugs, antidepressants) companies are marketing most heavily.

The National Provider Identifier is a good choice of unique identifier, since all providers who bill Medicare are required to have one.

- **“Product Marketed” information for gift expenses:** Chapter 18 requires reports of advertising/marketing expenses (TV ads, direct mail, etc.) to specify which product is being marketed during each activity. Reports of gift expenses (e.g., food or honoraria for doctors) are not required to specify which product is being marketed. Requesting “product marketed” information for gift expenses would help researchers determine how much companies are spending to market specific drugs. Vermont already requires reporting of this information.

2. Provide instructions for calculating aggregate expenses

The regulation requires pharmaceutical manufacturers and labelers to report:

The aggregate cost of, including all forms of payment to, all employees or contractors of the manufacturer or labeler who directly or indirectly engage in the advertising or promotional activities listed in paragraphs (a) and (b), limited to that portion of payment to the employees or contractors that pertains to activities within the District or to recipients of the advertising or promotional activities who are residents of or are employed in the District.

Instructions for 2006 and 2007 submissions did not elaborate on how companies should calculate aggregate costs, and as a result, companies may calculate them differently and produce numbers that are not comparable. We recommend revising the instructions to specify using a method that some companies indicated that they used: list the salaries, benefits, and commissions paid to both national/regional-level employees and contractors and to DC-based employees and contractors, and multiply the totals by the percentage of time they spend on promotional activities conducted within the District or targeted at recipients who work in the District.

3. Improve compliance with instructions

The most common failure to follow instructions involved a failure to comply with lists of acceptable values and to provide additional information when necessary. The instructions to manufacturers and labelers state that when *Other* is entered, users should provide specifics in the next column. For instance, if *Other* is selected for *Recipient Type*, the user should specify the recipient type in the next column, which is labeled *Other Type*. The same situation exists for *Recipient Credentials*, *Nature of Payment*, *Primary Purpose*, and *Secondary Purpose*. However, many of the submissions use the *Other* option extensively without specifying what *Other* refers to in the adjacent columns.

Additionally, 11 companies' submissions were found to have discrepancies between the gift expense total listed on the main page of their submission and the gift expense total from the gift expense spreadsheet. (The first sheet of the submission file require the totals for advertising, gift, and aggregate expenses, while each of the following spreadsheets collect details on one of those categories.)

In future years, instructions should emphasize the importance of complying with the list of acceptable values and providing more information when *Other* is selected as an option, and remind filers to check that the totals from the detail spreadsheets match the totals listed on the main spreadsheet. Formatting changes may make it easier for companies to follow directions. Follow-up with companies that failed to provide the necessary information may also improve compliance.

4. Alter the accepted values in the Recipient Type category

The category of "doctor" is broader than that of "physician"; pharmacists, psychiatrists, and dentists are doctors, but they are not physicians. The current list of accepted values for the Recipient Type column includes "doctor," "pharmacist," and "other prescriber." We suggest replacing "doctor" with "physician" and adding "psychiatrist." This will be in keeping with standard medical terminology and will also allow for an analysis of payments going to psychiatrists.

APPENDIX A: AccessRx Requirements

Review of AccessRx Requirements

Title III of the AccessRx Act of 2004 requires that any “manufacturer or labeler of prescription drugs dispensed in the District that employs, directs, or utilizes marketing representatives in the District” annually report marketing costs for prescription drugs in the District. §48-833.03 describes the content of the annual report:

(a) Except as provided in subsection (b) of this section, the annual report filed pursuant to § 48-853.02 shall include the following information as it pertains to marketing activities conducted within the District in a form that provides the value, nature, purpose, and recipient of the expense:

(1) All expenses associated with advertising, marketing, and direct promotion of prescription drugs through radio, television, magazines, newspapers, direct mail, and telephone communications as they pertain to District residents;

(2) With regard to all persons and entities licensed to provide health care in the District, including health care professionals and persons employed by them in the District, carriers licensed under Title 31, health plans and benefits managers, pharmacies, hospitals, nursing facilities, clinics, and other entities licensed to provide health care in the District, the following information:

(A) All expenses associated with educational or informational programs, materials, and seminars, and remuneration for promoting or participating in educational or informational sessions, regardless of whether the manufacturer or labeler provides the educational or informational sessions or materials;

(B) All expenses associated with food, entertainment, gifts valued at more than \$ 25, and anything provided to a health care professional for less than market value;

(C) All expenses associated with trips and travel; and

(D) All expenses associated with product samples, except for samples that will be distributed free of charge to patients; and

(3) The aggregate cost of all employees or contractors of the manufacturer or labeler who directly or indirectly engage in the advertising or promotional activities listed in paragraphs (1) and (2) of this subsection, including all forms of payment to those employees. The cost reported under this paragraph shall reflect only that portion of payment to employees or contractors that pertains to activities within the District or to

recipients of the advertising or promotional activities who are residents of or are employed in the District.

(b) The following marketing expenses are not subject to the requirements of this subchapter:

- (1) Expenses of \$25 or less;
- (2) Reasonable compensation and reimbursement for expenses in connection with a bona fide clinical trial of a new vaccine, therapy, or treatment; and
- (3) Scholarships and reimbursement of expenses for attending a significant educational, scientific, or policy-making conference or seminar of a national, regional, or specialty medical or other professional association if the recipient of the scholarship is chosen by the association sponsoring the conference or seminar.

The manufacturer or labeler must file the report by July 1st of each year, in the form and manner provided by the Department of Health. §48-833.04 describes the report that the Department must then provide to the City Council:

By November 30th of each year, the Department shall provide an annual report, providing information in aggregate form, on prescription drug marketing expenses to the Council and the Corporation Counsel. By January 1, 2005, and every 2 years thereafter, the Department shall provide a report to the Council and the Corporation Counsel, providing information in aggregate form, containing an analysis of the data submitted to the Department, including the scope of prescription drug marketing activities and expenses and their effect on the cost, utilization, and delivery of health care services, and any recommendations with regard to marketing activities of prescription drug manufacturers and labelers.

§48-833.04 addresses confidentiality:

Notwithstanding any provision of law to the contrary, information submitted to the Department pursuant to this subchapter is confidential and is not a public record. Data compiled in aggregate form by the Department for the purposes of reporting required by this subchapter is a public record as long as it does not reveal trade information that is protected by District, state, or federal law.

Chapter 18 of Title 22 of the District of Columbia Municipal Regulation specifies which information must be included in annual reports in each of the three categories (advertising expenses, marketing expenses, aggregate costs).

APPENDIX B: Instructions to Pharmaceutical Manufacturers and Labelers

The District provided these instructions to manufacturers and labelers for submitting 2007 data.

Prescription Drug Marketing Costs A Guide for Pharmaceutical Manufacturers and Labelers Published by the District of Columbia Department of Health Calendar Year 2007

Description of Requirements

Pursuant to the requirements of Chapter 18 of Title 22 of the District of Columbia Municipal Regulations (DCMR), entitled "Prescription Drug Marketing Costs," and Title III of the AccessRx Act of 2004, manufacturers and labelers of prescription drugs dispensed in the District of Columbia ("District") who engage in marketing in the District must report to the Department of Health ("Department") their costs for pharmaceutical drug marketing in each calendar year by July 1st of the following year.

Submission Procedures

Fill out the "Company Information," "Gift Expenses," and "Advertising Expenses" sheets of the spreadsheet titled "2007_Prescription_Drug_Marketing_Costs.xls," and email it to DC.Accessrx@dc.gov. In addition, print out the "Company Information" sheet *only*, provide wet signature certification, and mail it to the Department accompanied by a **\$2,500** check made payable to "D.C. Treasurer." The report must be submitted by July 1st, and the signed statement and check must be received within seven (7) days of the report's submission.

Mail signed "Company Information" sheets and checks to:

Department of Health
Pharmaceutical Control – AccessRx
ATTN: Helen Y. Saccone, PharmD
717 14th St N.W. Suite 600
Washington, D.C. 20005

Spreadsheet Instructions

The "2007_Prescription_Drug_Marketing_Costs.xls" document contains three sheets in which information should be entered: *Company Information*, *Gift Expenses*, and *Advertising Expenses*. (The fourth sheet, Instructions, is for reference purposes.) **Please make sure you fill out all three required sheets.**

Sheet 1: Company Information: The Company Information sheet includes fields for the company's contact information and the contact information of the individual responsible for the company's compliance. Pursuant to 22 DCMR 1801.5, the responsible individual "shall be a member of senior management or senior level company official within the manufacturer's or labeler's company or corporate structure."

The "2007 Marketing Expenses" section of this sheet should contain the relevant totals from the Gift and Advertising sheets (described below), plus the aggregate cost, as defined in 22 DCMR 1801.1:

The aggregate cost of, including all forms of payment to, all employees or contractors of the manufacturer or labeler who directly or indirectly engage in the advertising and promotional activities ... limited to that portion of payment to the employees or contractors that pertains to activities within the district or to recipients of the advertising or promotional activities who are residents of or are employed in the District.

Add the Gift Expenses, Advertising Expenses, and Aggregate Cost figures to get the Total Marketing Expenses.

Sheet 2: Gift Expenses: The Gift Expenses sheet collects the following information, as described in §48-833.03 of the AccessRx Act of 2004:

With regard to all persons and entities licensed to provide health care in the District, including health care professionals and persons employed by them in the District, carriers licensed under Title 31, health plans and benefits managers, pharmacies, hospitals, nursing facilities, clinics, and other entities licensed to provide health care in the District, the following information:

- (A) All expenses associated with educational or informational programs, materials, and seminars, and remuneration for promoting or participating in educational or informational sessions, regardless of whether the manufacturer or labeler provides the educational or informational sessions or materials;
- (B) All expenses associated with food, entertainment, gifts valued at more than \$ 25, and anything provided to a health care professional for less than market value;
- (C) All expenses associated with trips and travel; and
- (D) All expenses associated with product samples, except for samples that will be distributed free of charge to patients.

The following expenses are not subject to reporting requirements:

- (1) Marketing expenses of twenty-five dollars (\$25) or less per day and per health care provider or entity;
- (2) Reasonable compensation and reimbursement for expenses in connection with a bona fide clinical trial of a new vaccine, therapy, or treatment;
- (3) Scholarships and reimbursement of expenses for attending a significant educational, scientific, or policy-making conference or seminar of a national, regional, or specialty medical or other professional association if the recipient of the scholarship is chosen by the association sponsoring the conference or seminar; and
- (4) Expenses associated with advertising and promotional activities purchased for a regional or national market that includes advertising in the District if the portion of the costs pertaining to or directed at the District or cannot be reasonably allocated, distinguished, determined or otherwise separated out.

Using one line per payment, fill in the information required for each of the columns. Please note that for some columns, there is a limited set of accepted values. Detailed instructions about the information required for each column appear in the "Column Instructions" section on page 4 of this document.

Sheet 3: Advertising Expenses: §48-833.03 of the AccessRx Act of 2004 describes these expenses as:

All expenses associated with advertising, marketing, and direct promotion of prescription drugs through radio, television, magazines, newspapers, direct mail, and telephone communications as they pertain to District residents.

22 DCMR 1802.3 provides the following examples:

Advertising, marketing, direct promotion, market research survey, patient education including materials such as disease management information; materials/consulting to promote new uses of drugs.

Using one line per payment, fill in the information required for each of the columns. Please note that for some columns, there is a limited set of accepted values. Detailed instructions about the information required for each column appear in the "Column Instructions" section on the next page of this document.

Column Instructions

Column Instructions: Gift Expenses

If you have no gift expenses to report, enter "None" in the first available cell.

A. Payment Date

Enter the date on which the payment was made, in MM/DD/YYYY format.

B. Non-Individual Recipient

If the recipient is not an individual – e.g., if the payment was made to an organization, hospital, or department – enter the name of the recipient here. If the recipient is an individual, leave this cell blank.

C. Recipient Last Name

If the recipient of the payment is an individual, enter his or her last name here. If the recipient is not an individual, leave this cell blank.

D. Recipient First Name

If the recipient of the payment is an individual, enter his or her first name here. If the recipient is not an individual, leave this cell blank.

E. Recipient Middle Initial

If the recipient of the payment is an individual, enter his or her middle initial here. If the recipient is not an individual, leave this cell blank.

F. Recipient Credentials

Accepted values: APRN, DDS, DO, DPM, DVM, MD, ND, NP, OD, PA, RN, Other

If the recipient of the payment is an individual, enter his or her credentials here. If the recipient is not an individual, leave this cell blank.

G. Other Credentials

If "Other" is entered in the "Recipient Credentials" cell, enter the recipient's credentials here. Otherwise, leave this cell blank.

H. Recipient Affiliated Facility

Enter the name of the facility (e.g., George Washington University Medical Center, American Heart Association DC Office) with which the recipient is affiliated.

I. Recipient Type

Accepted values: Clinic, Doctor, Hospital, Pharmacist, University, Other Prescriber, Other Healthcare Provider, Other

Enter the above term that best describes the type of recipient.

J. Other Type

If "Other" is entered in the "Recipient Type" cell, enter the type of recipient here. Otherwise, leave this cell blank.

K. Nature of Payment

Accepted values: Book, Cash or Check, Donation, Entertainment, Food, Grant, Lodging, Product Samples, Transportation, Other

Enter the above term that best describes the nature of payment.

L. Other Nature

If "Other" is entered in the "Nature of Payment" cell, enter the nature of payment here. Otherwise, leave this cell blank.

M. Primary Purpose

Accepted values: Consulting, Education, Marketing, Speaker Fee or Payment, Other

Enter the above term that best describes the primary purpose of the payment.

N. Other Primary Purpose

If "Other" is entered in the "Primary Purpose" cell, enter the primary purpose of the payment here. Otherwise, leave this cell blank.

O. Secondary Purpose

Accepted values: None, Consulting, Education, Marketing, Speaker Fee or Payment, Other

Enter the above term that best describes the secondary purpose of the payment. (If the payment had no-secondary purpose, enter "None.")

P. Other Secondary Purpose

If "Other" is entered in the "Secondary Purpose" cell, enter the secondary purpose of the payment here. Otherwise, leave this cell blank.

Q. Value

Enter the dollar value of the payment in \$XXX.XX format.

R. Trade Secret?

If the company has designated this payment a trade secret, enter "Yes" in this cell; if it has not designated the payment a trade secret, enter "No."

22 DCMR 1899.1 defines a Trade Secret as follows: "Information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(A) Derives actual or potential independent economic value, from not being generally known to, and not being readily ascertainable by, proper means by another who can obtain economic value from its disclosure or use; and

(B) Is the subject of reasonable efforts to maintain its secrecy."

S. Trade Secret Explanation

If you answered "Yes" to the question "Is this payment a Trade Secret?" explain the justification for the trade secret designation. Otherwise, leave this cell blank.

T. Resubmission?

If this submission is a resubmission of data (i.e., an addition or correction to an earlier submission), enter "Yes." If this is the first time you are submitting this information, enter "No."

U. Original Submission Date

If you answered "Yes" to the question "Is this a resubmission of data?" enter the date of the original submission that this submission is amending or replacing. Otherwise, leave this cell blank.

V. Resubmission Description

If you answered "Yes" to the question "Is this a resubmission of data?" enter details about how this submission amends or replaces the submission whose date is entered in the "Original Submission Date" field. Otherwise, leave this cell blank.