SOLICITATION, OFFER, AND AWARD

1. Caption	Page of Pages	
Refine the existing Energy Emergency Plan	1	30

2. Contract Number	3. Solicitation Number	4. Type of Solicitation	5. Date Issued	6. Type of Market
	DCKG-2010-R-1261	[ ] Sealed Bid (IFB) [x] Sealed Proposals (RFP) [ ] Sole Source [ ] Human Care Agreements [ ] Emergency	5/14/2010	[x] Open [ ] Set Aside [ ] Open with Sub-Contracting Set Aside

7. Issued By:	8. Address Offer to:
Office of Contracting and Procurement 441 4th Street, NW, Suite 700 South Washington, DC 20001	Office of Contracting and Procurement 441 4th Street, NW, Suite 703 South, Bid Counter Washington, DC 20001

NOTE: In sealed bid solicitations "offer" and offeror" means "bid" and "bidder"

SOLICITATION

9. Sealed offers in original and 2 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried to the bid counter located at 441 4th Street Northwest, Suite 703 South Washington, DC 20001 until 2:00 PM (Hour) local time 20-May-10 (Date)

CAUTION: Late Submissions, Modifications and Withdrawals: See 27 DCMR chapters 15 & 16 as applicable. All offers are subject to all terms & conditions contained in this solicitation.

10. For Information Contact	A. Name	B. Telephone (Area Code)	(Number)	(Ext)	C. E-mail Address
	Chris Yi	202	724-5069		chris.yi@dc.gov

11. Table of Contents

(X)	Section	Description	Page No.	(X)	Section	Description	Page No.
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
X	A	Solicitation/Contract Form	1	X	I	Contract Clauses	18
X	B	Supplies or Services and Price/Cost	2	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS			
X	C	Specifications/Work Statement	3	X	J	List of Attachments	22
x	D	Packaging and Marking	9	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
X	E	Inspection and Acceptance	10			Representations, certifications and other statements of offerors	
X	F	Deliveries or Performance	11	X	K		23
X	G	Contract Administration Data	13	X	L	Instructions, conditions & notices to offerors	25
X	H	Special Contract Requirements	16	X	M	Evaluation factors for award	28

OFFER

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 150 calendar days from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.

13. Discount for Prompt Payment	10 Calendar days %	20 Calendar days %	30 Calendar days %	____ Calendar days %

14. Acknowledgement of Amendments (The offeror acknowledges receipt of amendments to the SOLICITATION):	Amendment Number	Date	Amendment Number	Date

15A. Name and Address of Offeror	16. Name and Title of Person Authorized to Sign Offer/Contract

15B. Telephone (Area Code)	(Number)	(Ext)	15 C. Check if remittance address is different from above - Refer to Section G	17. Signature	18. Offer Date
			[ ]		

AWARD (TO BE COMPLETED BY GOVERNMENT)

19. Accepted as to Items Numbered	20. Amount	21. Accounting and Appropriation

22. Name of Contracting Officer (Type or Print)	23. Signature of Contracting Officer (District of Columbia)	24. Award Date
James Marshall Contracting Officer		

Government of the District of Columbia — Office of Contracting & Procurement

SECTION B: CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE

B.1 The District of Columbia Office of Contracting and Procurement, on behalf of the District Department of Environment seeks a contractor to provide refine the existing Energy Emergency Plan (Attachment J.5) to incorporate response actions to address new energy portfolios, including Smart Grid technologies. The Contractor shall provide training for appropriate personnel on energy assurance planning and resiliency, focusing on Smart Grid applications and vulnerabilities, critical infrastructure interdependencies, cyber security, energy supply systems, energy data analysis, and communication.

B.2 This procurement is being funded by the District of Columbia with funds made available by the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (Recovery Act). The Contractor shall be subject to the additional requirements included on Attachment J.3.

B.3 The District contemplates award of a Firm Fixed Price contract. The prices stated shall include all items to effectively conduct and complete the required service described in Statement of Work, Section C.

B.4 PRICE SCHEDULE

B.4.1 Base year (one year from the date of award)

Contract Line Item No. (CLIN)	Item Description	Quantity	Total Price
0001	Refine the existing Energy Emergency Plan and Energy Supply disruption Tracking Plan in accordance with Section C.	1 Job	$_____

B.4.2 1st Option Year

CLIN	Item Description	Quantity	Total Price
0101	Conduct Intrastate and interstate training and exercise in accordance with Section C.	1 Job	$_____

B.4.3 Grand Total

Base Year: $_____

1st Option Year: $_____

Grand Total: $_____

SECTION C: SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE

The District of Columbia Office of Contracting and Procurement, on behalf of the District Department of Environment seeks a contractor to refine the existing Energy Emergency Plan (Applicable Document 2) to incorporate response actions to address new energy portfolios, including Smart Grid technologies. The Contractor shall provide training for appropriate personnel on energy assurance planning and resiliency, focusing on Smart Grid applications and vulnerabilities, critical infrastructure interdependencies, cyber security, energy supply systems, energy data analysis, and communication.

C.2 BACKGROUND

Recovery Act – Enhancing State Government Energy Assurance Capabilities and Planning for Smart Grid Resiliency

The Enhancing State Government Energy Assurance Capabilities and Planning for Smart Grid Resiliency grant focuses on developing new, or refining existing, plans to integrate new energy portfolios (renewable energy, biofuels, etc.) and new applications, such as Smart Grid technology, into energy assurance and emergency preparedness plans. Better planning efforts shall help contribute to the resiliency of the energy sector, including the electricity grid, by focusing on the entire energy supply system, which includes refining, storage, and distribution of fossil and renewable fuels.

The Contract will be funded by the U.S. Department of Energy (U.S. DOE), Office of Electricity Delivery and Energy Reliability, and the District Department of the Environment (DDOE) using American Reinvestment and Recovery Act of 2009 (ARRA) funds. Since the goal of ARRA, in part, is to: "facilitate recovery from disruptions to the energy supply" and "enhanced reliability and quicker repair of outages," this initiative will create jobs in the District of Columbia and allow the District to develop, standardized energy assurance and resiliency plans to use during energy emergencies and supply disruptions. This initiative will address energy supply disruption risks and vulnerabilities to minimize the devastating impact that such incidents can have on the economy and the health and safety of citizens.

C.3 APPLICABLE DOCUMENTS

No.	Document Type	Name & Location	Version
1	**ACT**	American Reinvestment and Recovery Act of 2009 (ARRA) **http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf**	**2009**
2	**Circular**	**OMB Circular A-133** **http://www.whitehouse.gov/omb/rewrite/circulars/a133/a133.html**	**2003**

C.4 DEFINITIONS

C.4.1 **Critical Infrastructure** - is a term used by governments to describe assets that are essential for the functioning of a society and economy. Most commonly associated with the term are facilities for: electricity generation, transmission and distribution; gas production, transport and distribution; oil and oil products production, transport and distribution; telecommunication; water supply (drinking water, waste water/sewage, stemming of surface water (e.g. dikes and sluices)); agriculture, food production and distribution; heating (e.g. natural gas, fuel oil, district heating); public health (hospitals, ambulances); transportation systems (fuel supply, railway network, airports, harbors, inland shipping); financial services (banking, clearing); and security services (police, military).

C.4.2 **Cyber Security** - is a branch of computer technology known as information security as applied to computers and networks. The objective of computer security includes protection of information and property from theft, corruption, or natural disaster, while allowing the information and property to remain accessible and productive to its intended users.

C.4.3 **Energy Emergency Plan** – also referred to as the Energy Assurance Plan; include but are not limited contributing to building local energy assurance capability to allow cities to better coordinate and communicate state-wide, regionally and with one another, on energy security and reliability and related emergency response issues.

C.4.4 **New energy portfolios** – solar photovoltaic and petrodiesel/biodiesel blends.

C.4.5 **Smart Grid Technology** - A smart grid delivers electricity from suppliers to consumers using two-way digital technology to control appliances at consumers' homes to save energy, reduce cost and increase reliability and transparency. A smart grid includes an intelligent monitoring system that keeps track of all electricity flowing in the system. It also incorporates the use of superconductive transmission lines for less power loss, as well as the capability of integrating alternative sources of electricity such as solar and wind.

C.4.6 **Sub-Recipient** - also known as the Contractor. Entity that receives the funds from a District agency to carry out or contract out to perform the project set forth in the award.

C.4.7 **Sub-Recipient Vendor** - an entity that contracts directly with the Sub-Recipient entity to provide supplies, equipment ancillary to the performance of the project set forth in the award.

C.4.8 **Total compensation -** the cash and noncash dollar value earned by the executive during the Co-Prime Recipient Contractor/Vendor's or Sub-Contractors past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus*.

(2) *Awards of stock, stock options, and stock appreciation rights*. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

(3) *Earnings for services under non-equity incentive plans*. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.

(5) *Above-market earnings on deferred compensation which is not tax-qualified*.

(6) *Other compensation*. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds $10,000.

C.4.9 **Vendor -** as a dealer, distributor, merchant or other seller providing goods or services that are required for the conduct of a Federal program but are ancillary to the operation of the Federal program.

C.5 REQUIREMENTS

The Contractor shall

C.5.1 Provide DDOE with written suggestions or recommendations for revisions of appropriate State policies, procedures and practices for successful implementation of the updated Energy Emergency Plan.

C.5.2 In coordination with DDOE, meet with District agencies, such as DC Homeland Security and Emergency Management, the Metropolitan Council of Governments to seek input for the updated Energy Emergency Plan.

C.5.3 Provide updates for the 2005 Energy Emergency Plan to include response actions to new energy portfolios, including Smart Grid technologies and vulnerabilities, critical infrastructure interdependencies, cyber security, energy supply systems, energy data analysis, and communication.

C.5.4 Prepare and conduct one (1) intrastate and one (1) interstate emergency response training and exercise to evaluate the effectiveness of the energy assurance plan.

C.5.4.1 Trainings for exercise shall be developed for a minimum of fifteen (15) personnel on energy infrastructure, supply systems, and Smart Grid applications and vulnerabilities, critical infrastructure interdependencies, cyber security, energy supply systems, energy data analysis, and communications; and, the content and execution of energy assurance plans.

C.5.4.2 Develop a training program manual for DDOE Emergency Liaison Officers based on the updated Energy Emergency Plan, focusing on the updates to the 2005 Energy Emergency Plan, specifically energy assurance planning and resiliency, focusing on Smart Grid applications and vulnerabilities, critical infrastructure interdependencies, cyber security, energy supply systems, energy data analysis, and communications.

C.5.4.3 Develop and conduct two (2) annual energy emergency exercises, (one intrastate and one interstate) based on updated Energy Assurance Plan and produce an after-action report to evaluate the effectiveness of the updated Energy Assurance Plan.

C.5.5 Create and provide an Energy Supply Disruption Tracking Process to analyze the duration, response, restoration, and recovery time of energy supply disruption events using electric and natural gas utility data necessary.

C.6 ARRA REQUIREMENTS

C.6.1 In general, as this program is being funded by US DOE through DDOE under the ARRA, the Contractor is responsible for ensuring its Subcontractors, and Vendors comply with the US DOE Special Terms and Conditions included in **Attachment J.6**. This includes compliance with requirements related to the Federal laws for Equal Employment Opportunities, Whistle Blower Protections and related job site notice posting. Any of the Contractor's Subcontractors and Vendors identified as being out of compliance with the terms and conditions of this award may be required to return or reimburse ARRA funding by DDOE.

C.6.2 An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number(s) DE-OE0000073."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

C.6.3 To satisfy ARRA grant reporting requirements, the Contractor serves as the Sub-Recipient and shall participate in ARRA reporting training and shall assemble and provide to the COTR the data necessary for DDOE to comply with ARRA reporting requirements, and shall ensure that its Subcontractors, and Vendors participate in these trainings, where necessary.

C.6.4 The Contractor shall manually enter the required Sub-recipient, Subcontractor, and Vendor data into the District's ARRA data management system at reporting.dc.gov by the fifth (5th) calendar day of each month, except that such data shall be entered into reporting.dc.gov by the third (3rd) calendar day of each month following the end of a federal fiscal quarter (each January, April, July, and October for the term of this contract). **In instances where the due date for entering data into reporting.dc.gov falls on a weekend, the due date will be the Friday prior to such**

weekend. If required to manually report, the Contractor shall ensure that its Subcontractors and Vendors comply with the manual reporting requirements set forth herein this paragraph.

C.6.5 The Contractor shall submit quarterly progress reports using the Progress Reporting Template provided in **Attachment J.4** by the 15th calendar day of the month following the end of each fiscal quarter. Each report shall provide quarterly updates as well as a cumulative summary for all previous reports.

C.6.6 As this program is being funded by US DOE through DDOE, The Contractor shall be subject to the US DOE Assurances shown in **Attachment J.7**, which includes the following policies: Nondiscrimination, Environmental, Live Organisms, Debarment and suspension, Drug-free Workplace, and lobbying. The Contractor must ensure that its Subcontractors and Vendors comply with these Assurances and place a copy of the **Attachment J.7** in each agreement.

C.6.7 The Contractor shall create and maintain the programmatic and financial records necessary for DDOE to fulfill ARRA and US DOE reporting and audit responsibilities, and shall make such records available to the COTR upon request following reasonable notice. The Contractor shall ensure that its Subcontractors and Vendors comply with the requirements of this paragraph.

C.6.8 If the Contractor expends an aggregate of $500,000 or more from all federal sources in a calendar year, they each shall obtain an independent audit, at their own expense, of program expenditures in accordance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (see **Applicable Document #2**). The Contractor shall ensure that its Subcontractors and Vendors shall comply with OMB A-133. A hardcopy of the audit findings will be submitted to the COTR no later than 30 days from the issuance of the audit findings. The Contractor shall make all audit information available and/or their audit reports to DDOE. If the Contractor already conducts an independent annual audit, such audit will comply with the OMB requirement. The Contractor shall ensure that its Subcontractors and Vendors comply with the requirements of this paragraph.

C.6.9 The Contractor shall budget and track all ARRA funding transferred pursuant to this contract. The Contractor shall ensure that its Subcontractors maintain a strict, and separate, dollar-for-dollar accounting on how ARRA funds are spent complies with the requirements set forth herein this paragraph. In no event shall the Contractor, its Subcontractors, or Vendors commingle ARRA funds with any other funds or use ARRA funds for a purpose other than that of making payments for costs allowable for the ARRA projects authorized by this contract.

C.6.10 Funding for the goods and services shall not exceed the actual cost of the goods and services, including labor, materials, benefits and reasonable overhead. The Contractor is responsible for any costs incurred prior to any advancement of funds. The Contractor shall notify its Subcontractors and Vendors of their responsibility for any costs incurred prior to any advancement of funds.

C.6.11 The Contractor shall promptly refer to an appropriate inspector general any credible evidence that a principal, employee, agent, Sub-Recipient, Subcontractor, or Vendor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil

violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

C.6.12 The Contractor shall comply with such additional conditions not specified herein that DDOE may impose so as to ensure compliance with ARRA. The Contractor shall ensure that its Subcontractors and Vendors comply with the requirements of this paragraph.

C.6.13 The Contractor, its heirs, executors, assigns, agents and successors hereby covenant and agree to indemnify, defend, and hold harmless the District of Columbia, a municipal corporation and its agents, employees and assigns, and any and all other persons, firms or corporations who are or might be liable, from any and all claims of any kind or character, including health claims related to lead paint, which they may now or hereafter have or claim to have, whether known or unknown, foreseen or unforeseen, including all damages of any kind, losses or injuries which are in any way connected to or arising out of, or as a consequence of or result of, any act, omission or default of the Contractor, its Subcontractors, and/or Vendors' employees in the performance of the project under this contract.

C.6.14 The Contractor shall be responsible for ensuring that its Subcontractors and Vendors agree to defend, indemnify, and hold harmless the District of Columbia, a municipal corporation and its agents, employees and assigns from any and all claims of any kind or character which they may now have or hereafter have or claim to have, whether known or unknown, foreseen or unforeseen, including all damages of any kind, losses or injuries which are in any way connected to or arising out of, or as a consequence of or result of, any act, omission or default of the Contractor, its Vendors, and/or Subcontractors' employees in the performance of this contract.

C.7 RECORDS AND REPORTS

The contractor shall maintain records and receipts for the expenditure of all funds provided for a period of no less than three years from the date of expiration or termination of the contract and, upon the District's request, make these documents available for inspection by duly authorized representatives of DDOE and other officials as may be specified by the Office of the Chief Financial Officer and U.S. DOE.

SECTION D: PACKAGING AND MARKING

D.1 The packaging and marking requirements for this contract shall be governed by clause number (2), Shipping Instructions-Consignment, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007. (Attachment J.1)

SECTION E: INSPECTION AND ACCEPTANCE

E.1 The inspection and acceptance requirements for this contract shall be governed by clause number six (6), Inspection Services of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007. (Attachment J.1)

SECTION F: PERIOD OF PERFORMANCE AND DELIVERABLES

F.1 TERM OF CONTRACT

The term of the contract shall be from date of award through one year specified on the cover page of this contract.

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

F.2.1 The District may extend the term of this contract for a period of **one (1), one-year** option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

F.2.2 If the District exercises this option, the extended contract shall be considered to include this option provision.

F.2.3 The price for the option period shall be as specified in the Section B of the contract.

F.2.4 The total duration of this contract, including the exercise of any options under this clause, shall not exceed two (2) years.

F.3 DELIVERABLES

The Contractor shall perform the activities required to successfully complete the District's requirements and submit each deliverable to the COTR identified in section G.6 in accordance with the following:

Item #	Deliverable	Due	To	Format
1	**Written suggestions and recommendations (C.5.1)**	**Within 15 calendar days of date of award**	**COTR**	**One (1) hardcopy/1 electronic (PDF)**
2	**Updated Energy Assurance Plan (C.5.3)**	**Within 2 weeks of receipt of required data**	**COTR unless otherwise specified**	**One (1) Hardcopy/1 electronic (PDF)**
3	**Conduct an Intra-state training/exercise (C.5.4)**	**No later than August 12, 2011**	**COTR unless otherwise specified**	**Training Manual**
4	**Conduct an Inter-state training/exercise (C.5.4)**	**No later than February 2012**	**COTR unless otherwise specified**	**Training Manual**
5	**Intra-state after-action report (C.5.4)**	**30 days after exercise (No later than September 11, 2011)**	**COTR unless otherwise specified**	**Hardcopy/ Electronic (PDF)**
6	**Inter-state after-action report (C.5.4)**	**30 days after exercise (No later than March 9, 2012)**	**COTR unless otherwise specified**	**Hardcopy/ Electronic (PDF)**

7	**Create Energy Supply Disruption Tracking Process and updates on progress (C.5.5)**	**No later than August 13, 2010 with updates submitted in Quarterly reports**	**COTR unless otherwise specified**	**Hardcopy/ Electronic (PDF)**
8	**Quarterly Progress reports (C.6.5)**	**Within 15 calendar days of the end of the fiscal quarter**	**COTR unless otherwise specified**	**One (1) Hardcopy/1 electronic (PDF)**

SECTION G: CONTRACT ADMINISTRATION

G.1 INVOICE PAYMENT

G.1.1 The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.

G.1.2 The District will pay the Contractor on or before the 30th day after receiving a proper invoice from the Contractor.

G.2 INVOICE SUBMITTAL

G.2.1 The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in Section G.3. Invoices shall be prepared in duplicate and submitted to the agency Chief Financial Officer with concurrent copies to the Contracting Officer's Technical Representative (COTR) specified in Section G.6 below. The address of the CFO is:

District of Columbia
Office of the Chief Financial Officer
Government Services Cluster – Acct Pay Div.
2000 14th Street, NW, 6th Floor
Washington, DC 20009
202-671-2741

G.2.2 To constitute a proper invoice, the Contractor shall submit the following information on the invoice:

G.2.2.1 Contractor's name, federal tax ID and invoice date (date invoices as of the date of mailing or transmittal);

G.2.2.2 Contract number and invoice number;

G.2.2.3 Description, price, quantity and the date(s) that the supplies or services were delivered or performed;

G.2.2.4 Other supporting documentation or information, as required by the Contracting Officer;

G.2.2.5 Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;

G.2.2.6 Name, title, phone number of person preparing the invoice;

G.2.2.7 Name, title, phone number and mailing address of person (if different from the person identified in G.2.2.6 above) to be notified in the event of a defective invoice; and

G.2.2.8 Authorized signature.

G.3 PAYMENT

G.3.1 The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.

G.3.2 The District will pay the Contractor on or before the 30th day after receiving a proper invoice from the Contractor.

G.3.3 The Contractor shall invoice monthly based upon the deliverables completed to date throughout the contract period.

G.4 CONTRACTING OFFICER (CO)

Contracts will be entered into and signed on behalf of the District only by contracting officers. The contact information for the Contracting Officer is:

James H. Marshall
Office of Contracting and Procurement
441 4th Street, N.W., Suite 700S
Washington, D.C. 20001
(202) 724-4197
jim.marshall@dc.gov

G.5 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

G.5.1 The CO is the only person authorized to approve changes in any of the requirements of this contract.

G.5.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.

G.5.3 In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

G.6 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

G.6.1 The COTR is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract**.** The COTR has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

G.6.1.1 Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

G.6.1.2 Coordinating site entry for Contractor personnel, if applicable;

G.6.1.3 Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

G.6.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

G.6.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

G.6.2 The address and telephone number of the COTR is:

Sylvia Y. Jones
Energy Office
District Department of the Environment
1200 1st Street, NE
5th Floor
Washington, DC 20002

G.6.3 The COTR shall NOT have the authority to:

1. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
2. Grant deviations from or waive any of the terms and conditions of the contract;
3. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
4. Authorize the expenditure of funds by the Contractor;
5. Change the period of performance; or
6. Authorize the use of District property, except as specified under the contract.

G.6.4 The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H.1 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No. 8 dated May 26, 2009**,** issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. §351 *et seq*., and incorporated herein as Section J.2. The Contractor shall be bound by the wage rates for the term of the contract subject to revision as stated herein and in accordance with Section 24 of the SCP. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

H.2 PUBLICITY

The Contractor shall at all times obtain the prior written approval from the CO before it, any of its officers, agents, employees or subcontractors, either during or after expiration or termination of the contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this contract.

H.3 FREEDOM OF INFORMATION ACT

The District of Columbia Freedom of Information Act, at D.C. Official Code §2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the COTR who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the COTR will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the COTR within the timeframe designated by the COTR. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code §2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

H.4 DISTRICT RESPONSIBLITIES

H.4.1 DDOE will complete management and reporting functions required by the Energy Assurance Planning grant and the District, and will coordinate with the Contractor to complete those reporting functions assigned to the Contractor pursuant to this contract.

H.4.2 DDOE will be responsible for verifying submitted ARRA project data to FederalReporting.gov and reporting.dc.gov.

H.4.3 DDOE, will have the right to conduct a performance audit of the Contractor, its Subcontractors and Vendors, regarding the use of ARRA funds, and will conduct an audit or series of audits as required. To the fullest extent possible, DDOE will provide reasonable notice of such performance audits to the Contractor its Subcontractors and/or Vendors.

H.4.4 DDOE, as the recipient of ARRA funds, will allow US DOE to conduct an audit or series of audits. These audits will conform to OMB Circular A-133 (see **Applicable Document #2**).

H.4.5 DDOE will promptly refer to an appropriate inspector general any credible evidence that an employee, agent, the Contractor, Vendor, Subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

H.4.6 DDOE will provide the training to meet the required reporting under **Section C.6.4** of this contract. DDOE will provide such training to successful Contractor(s) no less than fourteen (14) calendar days after execution. DDOE will promptly provide subsequent training to the Contractor upon their request. DDOE will provide such training to the Contractor and its Subcontractors, if necessary within thirty (30) calendar days of each contract award pursuant to a solicitation funded by this contract.

SECTION I: CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March 2007 ("SCP") are incorporated as part of the contract. To obtain a copy of the SCP go to www.ocp.dc.gov, click on OCP Policies under the heading "Information", then click on "Standard Contract Provisions – Supplies and Services Contracts".

I.2 CONFIDENTIALITY OF INFORMATION

The Contractor shall keep all information relating to any employee or customer of the District in absolute confidence and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, in accordance with the District and federal laws governing the confidentiality of records.

I.3 RESERVED

I.4 TIME

Time, if stated in a number of days, will include Saturdays, Sundays, and holidays, unless otherwise stated herein.

I.5 RIGHTS IN DATA

I.5.1 "Data," as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

I.5.2 The term "Technical Data", as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

I.5.3 The term "Computer Software", as used herein means computer programs and computer databases. "Computer Programs", as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such

as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.

I.5.4 The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.

I.5.5 All data first produced in the performance of this Contract shall be the sole property of the District. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the District under this Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. The Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. The Contractor agrees not to assert any rights in common law or in equity in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.

I.5.6 The District will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:

I.5.6.1 Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any District installation to which the computer may be transferred by the District;

I.5.6.2 Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;

I.5.6.3 Copy computer programs for safekeeping (archives) or backup purposes; and modify the computer software and all accompanying documentation and manuals or instructional materials, or combine it with other software, subject to the provision that the modified portions shall remain subject to these restrictions.

I.5.7 The restricted rights set forth in section I.5.6 are of no effect unless

(i) the data is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure is subject to restrictions stated in Contract No._____with (Contractor's Name); and

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

I.5.8 In addition to the rights granted in Section I.5.6 above, the Contractor hereby grants to the District a nonexclusive, paid-up license throughout the world, of the same scope as restricted rights set forth in Section I.5.6 above, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the District under this contract. Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the District under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the District any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.

I.5.9 Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, the Contractor shall use this clause, I.5, Rights in Data, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.

I.5.10 For all computer software furnished to the District with the rights specified in Section I.5.5, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope specified in Section I.5.5. For all computer software furnished to the District with the restricted rights specified in Section I.5.6, the District, if the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under this contract or any paid-up maintenance agreement, or if Contractor should be declared bankrupt or insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

I.5.11 The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

I.5.12 Nothing contained in this clause shall imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.

I.5.13 Paragraphs I.5.6, I.5.7, I.5.8, I.5.11 and I.5.12 above are not applicable to material furnished to the Contractor by the District and incorporated in the work furnished under contract, provided

that such incorporated material is identified by the Contractor at the time of delivery of such work.

I.6 OTHER CONTRACTORS

The Contractor shall not commit or permit any act that will interfere with the performance of work by another District contractor or by any District employee.

I.7 SUBCONTRACTS

The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior written consent of the CO. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by the Contractor. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

I.6 GOVERNING LAW

This contract, and any disputes arising out of or related to this contract, shall be governed by, and construed in accordance with, the laws of the District of Columbia.

SECTION J: ATTACHMENTS

The following list of attachments is incorporated into the solicitation by reference.

Attachment Number	Document
J.1	Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (March 2007) available at www.ocp.dc.gov click on "Solicitation Attachments"
J.2	U.S. Department of Labor Wage Determination Rev. No 8 dated May 26, 2009
J.3	Provisions Applicable to Procurements Under the American Recovery And Reinvestment Act
J.4	Progress Report Template
J.5	2005 Energy Emergency Plan
J.6	ARRA Energy Assurance Grant Special Terms and Conditions
J.7	US Department of Energy Assurances, 2008

SECTION K: REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

K.1 AUTHORIZED NEGOTIATORS

The offeror represents that the following persons are authorized to negotiate on its behalf with the District in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators).

_____
_____
_____

K.2 TYPE OF BUSINESS ORGANIZATION

K.2.1 The offeror, by checking the applicable box, represents that:

(a) It operates as:

__ a corporation incorporated under the laws of the state of: _____
__ an individual,
__ a partnership,
__ a nonprofit organization, or
__ a joint venture.

(b) If the offeror is a foreign entity, it operates as:

__ an individual,
__ a joint venture, or
__ a corporation registered for business in _____
(Country)

K.5 DISTRICT EMPLOYEES NOT TO BENEFIT CERTIFICATION

Each offeror shall check one of the following:

____ No person listed in Clause 13 of the SCP (Attachment J.1), "District Employees Not To Benefit" will benefit from this contract.

____ The following person(s) listed in Clause 13 of the SCP (Attachment J.1), "District Employees Not To Benefit" may benefit from this contract. For each person listed, attach the affidavit required by Clause13.

_____
_____

K.6 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

(a) Each signature of the offeror is considered to be a certification by the signatory that:

1) The prices in this contract have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any offeror or competitor relating to:

(i) those prices,
(ii) the intention to submit a contract, or
(iii) the methods or factors used to calculate the prices in the contract.

2) The prices in this contract have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before contract opening unless otherwise required by law; and

3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit a contract for the purpose of restricting competition.

(b) Each signature of the offeror is considered to be a certification by the signatory that the signatory:

1) Is the person in the offeror's organization responsible for determining the prices being offered in this contract, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

2) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above:

_____

(*insert full name of person(s) in the organization responsible for determining the prices offered in this contract and the title of his or her position in the offeror's organization);*

(i) As an authorized agent, does certify that the principals named in subdivision (b)(2) have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(ii) As an agent, has not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

SECTION L: INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

L.1 CONTRACT AWARD

L.1.1 Most Advantageous to the District

The District intends to award a single contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the District, cost or price, technical and other factors, specified elsewhere in this solicitation considered.

L.1.2 Initial Offers

The District may award a contract on the basis of initial offers received, without discussion. Therefore, each initial offer should contain the offeror's best terms from a standpoint of cost or price, technical and other factors.

L.2 PROPOSAL FORM, ORGANIZATION AND CONTENT

One original, one copy on compact disk, and two copies of the written proposals shall be submitted in two parts, titled "Technical Proposal" and "Price Proposal". Proposals shall be typewritten in 12 point font size on 8.5" by 11" bond paper. Telephonic, telegraphic, and facsimile proposals will not be accepted. Each proposal shall be submitted in a sealed envelope conspicuously marked: "Proposal in Response to **Solicitation No DCKG-2010-R-1261** Energy Assurance Plan **with offeror's name"**

Offerors are directed to the specific proposal evaluation criteria found in Section M of this solicitation, Evaluation Factors. The offeror shall respond to each factor in a way that will allow the District to evaluate the offeror's response. The offeror shall submit information in a clear, concise, factual and logical manner providing a comprehensive description of program supplies and services and delivery thereof. The information requested below for the technical proposal shall facilitate evaluation for all proposals. The technical proposal must contain sufficient detail to provide a clear and concise response fully reflecting the manner in which the offeror proposes to fully meet the requirements in Section C.

L.2.1 Technical Proposal

L.2.1.1 Technical Approach

a. The Offeror shall outline in detail, their understanding of this project.
b. The Offeror shall provide describing the approach to meeting the requirements outlined in Scope of Services that demonstrates the Offeror's ability to provide the required services and deliverables. The Offeror should describe its approach to working with the District to meet the required deliverables date. Responses should draw upon past experience, industry standards, and best practices in the project approach.
c. The Offeror shall describing the understanding/familiarity of Smart Grid and cyber issues

L.2.1.2 Past Performance

a. A narrative to describe demonstration of past performance on project of similar size and scope by providing references and project list.
b. Narrative description of the qualifications of the team members, including the team leader or principal. Demonstrated experience both emergency planning and energy emergency planning.

L.2.2 Price Proposal

The Offeror's Price Proposal shall include the following:

a) Completed Section B Price Schedule
b) Cost Breakdown

L.3 PROPOSAL SUBMISSION DATE AND TIME, AND LATE SUBMISSIONS, LATE MODIFICATIONS, WITHDRAWAL OR MODIFICATION OF PROPOSALS AND LATE PROPOSALS

L.3.1 Proposal Submission

Proposals must be submitted no later than **May 20, 2010 2:00 pm**. Proposals, modifications to proposals, or requests for withdrawals that are received in the designated District office after the exact local time specified above, are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

(a) The proposal or modification was sent by registered or certified mail not later than the fifth (5th) day before the date specified for receipt of offers;

(b) The proposal or modification was sent by mail and it is determined by the CO that the late receipt at the location specified in the solicitation was caused by mishandling by the District, or

(c) The proposal is the only proposal received.

L.4 GENERAL STANDARDS OF RESPONSIBILITY

The prospective contractor must demonstrate to the satisfaction of the District its capability in all respects to perform fully the contract requirements; therefore, the prospective contractor must submit the documentation listed below, within five (5) days of the request by the District.

L.4.1 Evidence of adequate financial resources, credit or the ability to obtain such resources as required during the performance of the contract.

L.4.2 Evidence of the ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.

L.4.3 Evidence of the necessary organization, experience, accounting and operational control, technical skills or the ability to obtain them.

L.4.4 Evidence of compliance with the applicable District licensing and tax laws and regulations.

L.4.5 Evidence of a satisfactory performance record, record of integrity and business ethics.

L.4.6 Evidence of the necessary production, construction and technical equipment and facilities or the ability to obtain them.

L.4.7 Evidence of other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

L.4.8 If the prospective contractor fails to supply the information requested, the CO shall make the determination of responsibility or nonresponsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the CO shall determine the prospective contractor to be nonresponsible.

SECTION M - EVALUATION FACTORS

M.1 EVALUATION FOR AWARD

The contract will be awarded to the responsible offeror whose offer is most advantageous to the District, based upon the evaluation criteria specified below. Thus, while the points in the evaluation criteria indicate their relative importance, the total scores will not necessarily be determinative of the award. Rather, the total scores will guide the District in making an intelligent award decision based upon the evaluation criteria.

M.2 TECHNICAL RATING

M.2.1 The Technical Rating Scale is as follows:

Numeric Rating	Adjective	Description
0	Unacceptable	Fails to meet minimum requirements; e.g., no demonstrated capacity, major deficiencies which are not correctable; offeror did not address the factor.
1	Poor	Marginally meets minimum requirements; major deficiencies which may be correctable.
2	Minimally Acceptable	Marginally meets minimum requirements; minor deficiencies which may be correctable.
3	Acceptable	Meets requirements; no deficiencies.
4	Good	Meets requirements and exceeds some requirements; no deficiencies.
5	Excellent	Exceeds most, if not all requirements; no deficiencies.

M.2.2 The technical rating is a weighting mechanism that will be applied to the point value for each evaluation factor to determine the offeror's score for each factor. The offeror's total technical score will be determined by adding the offeror's score in each evaluation factor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, using the Technical Rating Scale above, if the District evaluates the offeror's response as "Good," then the score for that evaluation factor is 4/5 of 40 or 32.

If subfactors are applied, the offeror's total technical score will be determined by adding the offeror's score for each subfactor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, with two subfactors of twenty (20) points each, using the Technical Rating Scale above, if the District evaluates the offeror's response as "Good" for the first subfactor and "Poor" for the second subfactor, then the total score for that evaluation

factor is 4/5 of 20 or 16 for the first subfactor plus 1/5 of 20 or 4 for the second subfactor, for a total of 20 for the entire factor.

M.2.3 EVALUATION STANDARDS

M.2.3.1 In accordance with M.1, the District will make an award to the responsible Offeror(s) whose offer conforms to the solicitation and is most advantageous to the District, cost or price and technical factors listed below considered.

M.2.3.2 Technical Proposals will be evaluated based on the following technical evaluation factors which are listed in descending order of importance:

M.2.3.2.1 Technical Approach

M.2.3.2.1.1 This factor considers the Technical Approach to be utilized by the offeror to perform the requirements as described in Section C of this solicitation. This factor examines the offeror's understanding and overall technical approach and methodology including the offeror's service description, service delivery, and knowledge and application of applicable District and federal laws and regulations to perform the required work. The offeror's knowledge and application of recognized industry standards and best practice models. This factor examines all elements of the technical approach and the interdependency of each element in the successful delivery of the required services.

M.2.3.2.1.2 The District will evaluate offeror's proposal vis-à-vis this factor, including those portions of the proposal in which the Offeror provides the information requested in L.2.1.1.

M.2.3.2.2 Past Performance

M.2.3.2.2.1 This factor considers the offeror's past performance in performing services similar to the required services as described in Section C of this solicitation. This factor includes an examination of the quality of services provided, timeliness in service delivery, business practices, and overall satisfaction of the offeror's performance

M.2.3.2.2.2 The District will evaluate offeror's proposal vis-à-vis this factor, including those portions of the proposal in which the Offeror provides the information requested in L.2.1.2.

M.3 EVALUATION CRITERIA

M.3.1 The technical evaluation criteria set forth below have been developed by agency technical personnel and have been tailored to the requirements of this particular solicitation. Contractor is informed that these criteria will serve as the standard against which all proposals will be evaluated and serve to establish the evaluation criteria including the evaluation factors and significant sub factors which the Contractor should specifically address in complying with the requirements of the solicitation as described in Section C and instructions and notices to Offerors described in Section L.2.

M.3.2 The relative probabilities of the Offeror to accomplish the requirements of the solicitation will be evaluated based on the specific information requested in Section L.2 in accordance with the evaluation factors described below. Contractor should respond to

each factor and significant sub factor in a way that will allow the District to evaluate Contractor's response. The scoring for each evaluation factor will be based on the District's determination of the degree to which the Offeror satisfies the requirements within the evaluation factor and significant sub factors. Deficiencies and weaknesses identified in the proposal as well as the District's risk will also be considered.

M.3.3 TECHNICAL CRITERIA (0 – 80 POINTS)

M.3.3.1 Technical Approach (0 – 30 Points)

M.3.3.3 Past Performance (0 – 50 Points)

M.3.4 PRICE CRITERIA (0 – 20 POINTS)

The price evaluation will be objective. The offeror with the lowest price will receive the maximum price points. All other proposals will receive a proportionately lower total score. The following formula will be used to determine each offeror's evaluated price score:

Lowest price proposal
---------- x weight = Evaluated price score
Price of proposal being evaluated

C.3.5	**Certified Business Enterprise preference**	**12 Points**
TOTAL:		**112 Points**

GOVERNMENT OF THE DISTRICT OF COLUMBIA

STANDARD CONTRACT PROVISIONS

FOR USE WITH

DISTRICT OF COLUMBIA GOVERNMENT
SUPPLIES AND SERVICES CONTRACTS

March 2007

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

STANDARD CONTRACT PROVISIONS

TABLE OF CONTENTS

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

1. Covenant Against Contingent Fees:

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

2. Shipping Instructions – Consignment:

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

3. Patents:

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

4. Quality:

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

5. Inspection Of Supplies:

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

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

(c) The Contractor shall provide and maintain an inspection system acceptable to the District covering supplies under this contract and shall tender to the District for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the

system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the District during contract performance and for as long afterwards as the contract requires. The District may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under this contract.

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

(e) If the District performs inspection or test on the premises of the Contractor or subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the District will bear the expense of District inspections or tests made at other than Contractor's or subcontractor's premises; provided, that in case of rejection, the District will not be liable for any reduction in the value of inspection or test samples.

(1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

(2) Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest

(f) The District has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or otherwise not in conformity with contract requirements. The District may reject nonconforming supplies with or without disposition instructions.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required, shall disclose the corrective action taken.

(h) If the Contractor fails to remove, replace, or correct rejected supplies that are required to be replaced or corrected within ten (10) days, the District may either (1) by contract or otherwise, remove, replace or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i) If this contract provides for the performance of District quality assurance at source, and if requested by the District, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract, and (ii) when the supplies will be ready for District inspection.

(j) The District request shall specify the period and method of the advance notification and the District representative to whom it shall be furnished. Requests shall not require more than 2 business days of advance notification if the District representative is in residence in the Contractor's plant, nor more than 7 business days in other instances.

(k) The District will accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. District failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability upon the District, for non-conforming supplies.

(l) Inspections and tests by the District do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(m) If acceptance is not conclusive for any of the reasons in subparagraph (l) hereof, the District, in addition to any other rights and remedies provided by law, or under provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or noncompliance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the District will have the right to return the rejected materials at Contractor's risk and expense or contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the District thereby.

6. <u>Inspection Of Services:</u>

(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.

(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. <u>Waiver:</u>

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. <u>Default:</u>

(a) The District may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(1) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the District terminates this contract in whole or in part as provided in paragraph (a) of this clause, the District may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or service similar to those so terminated, and the Contractor shall be liable to the District for any excess costs for similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the District or Federal Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without fault or negligence of the Contractor. If the failure to perform is caused by the default of the subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess cost for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the District, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the District, in the manner and to the extent directed by the Contracting Officer, (i) completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures plans, drawing information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the District has an interest. Payment for completed supplies delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". The District may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the District against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination of convenience of the District, be the same as if the notice of termination had been issued pursuant to such clause. See Clause 20 for Termination for Convenience of the District.

(f) The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (c) of this clause, the terms "subcontractor(s) means subcontractor(s) at any tier.

9. Indemnification:

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

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

10. Transfer:

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

11. Taxes:

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

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

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

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

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

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

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

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

12. Appointment of Attorney:

(a) The bidder/offeror or contractor (whichever the case may be) does hereby irrevocably designate and appoint the Clerk of the District of Columbia Superior Court and his successor in office as the true and lawful attorney of the Contractor for the purpose of receiving service of all notices and processes issued by any court in the District of Columbia, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to this contract or the work required or performed hereunder.

(b) The bidder/offeror or contractor (whichever the case may be) expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the contractor was personally within the District of Columbia and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the contractor failed to receive a copy of such process, notice or other paper so served upon the said Clerk provided the said Clerk shall have deposited in the United States mail, registered and postage prepaid, a copy of such process, notice, pleading or other paper addressed to the bidder/offeror or contractor at the address stated in this contract.

13. District Employees Not To Benefit:

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

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

14. Disputes:

A. All disputes arising under or relating to this contract shall be resolved as provided herein.

B. Claims by a Contractor against the District.

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

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

(a) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision. The contractor's claim shall contain at least the following:

(1) A description of the claim and the amount in dispute;

(2) Any data or other information in support of the claim;

(3) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and

(4) The Contractor's request for relief or other action by the Contracting Officer.

(b) The Contracting Officer may meet with the Contractor in a further attempt to resolve the claim by agreement.

(c) For any claim of $50,000 or less, the Contracting Officer shall issue a decision within sixty (60) days from receipt of a written request from a Contractor that a decision be rendered within that period.

(d) For any claim over $50,000, the Contracting Officer shall issue a decision within ninety (90) days of receipt of the claim. Whenever possible, the Contracting Officer shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

(e) The Contracting Officer's written decision shall do the following:

(1) Provide a description of the claim or dispute;

(2) Refer to the pertinent contract terms;

(3) State the factual areas of agreement and disagreement;

(4) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

(5) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;

(6) Indicate that the written document is the contracting officer's final decision; and

(7) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(f) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as authorized by D.C. Official Code § 2-309.04.

(g) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.

(2) Liability under paragraph (g)(1) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(h) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D. C. Official Code § 2-309.04.

(i) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

C. Claims by the District against a Contractor

(a) Claim as used in Section C of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(b) (1) All claims by the District against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer.

(2) The Contracting Officer shall send written notice of the claim to the Contractor. The Contracting Officer's written decision shall do the following:

(a) Provide a description of the claim or dispute;

(b) Refer to the pertinent contract terms;

(c) State the factual areas of agreement and disagreement;

(d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

(e) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;

(f) Indicate that the written document is the Contracting Officer's final decision; and

(g) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(3) The decision shall be supported by reasons and shall inform the Contractor of its rights as provided herein.

(4) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.

(5) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(c) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D.C. Official Code §2-309.04.

(d) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

15. Changes:

The Contracting Officer may, at any time, by written order, and without notice to the surety, if any, make changes in the contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of this contract, or in the time required for performance, an equitable adjustment shall be made. Any claim for adjustment under this paragraph must be asserted within ten (10) days from the date the change is offered; provided, however, that the Contracting Officer, if he or she determines that the facts justify such action, may receive, consider and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in the Disputes clause at Section 18. Nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

16. Termination For Convenience Of The District:

(a) The District may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the District's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all contracts to the extent they relate to the work terminated.

(4) Assign to the District, as directed by the Contracting Officer, all rights, title and interest of the Contractor under the subcontracts terminated, in which case the District will have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts. The approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the District (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other materials produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to the District.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the District has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the District under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) After the expiration of ninety (90) days (or such longer period as may be agreed to) after receipt by the Contracting Officer of acceptable inventory schedules, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality of termination inventory not previously disposed of excluding items authorized for disposition by the Contracting Officer. The Contractor may request the District to remove those items or enter into an agreement for their storage. Within fifteen (15) days, the District will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within forty five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this one year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be

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

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (1) the amount of payment previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:

(1) The contract price for completed supplies or services accepted by the District (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of :

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (f)(1) above; and

(iii) A sum, as profit on subparagraph f(1) above, determined by the Contracting Officer to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable cost of settlement of the work terminated, including-

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontractors (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(g) Except for normal spoilage, and except to the extent that the District expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the District or to a buyer.

(h) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraphs (d), (f) or (j), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (j), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f) or (j), the District will pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(i) In arriving at the amount due the Contractor under this clause, there shall be deducted:

(1) All unliquidated advances or other payments to the Contractor under the termination portion of the contract;

(2) Any claim which the District has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the District.

(j) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the Contracting Officer.

(k) (1) The District may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor shall be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the District upon demand together with interest computed at the rate of 10 percent (10%) per year. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess payment is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or

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

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

17. Recovery Of Debts Owed The District:

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

18. Retention and Examination Of Records:

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

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

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

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

19. Non-Discrimination Clause:

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

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

(1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.

(2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business.

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

(a) employment, upgrading or transfer;

(b) recruitment, or recruitment advertising;

(c) demotion, layoff, or termination;

(d) rates of pay, or other forms of compensation; and

(e) selection for training and apprenticeship.

(3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections (b)(1) and (b)(2) concerning non-discrimination and affirmative action.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in subsection (b)(2).

(5) The Contractor agrees to send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor agrees to permit access to his books, records and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of Human Rights or designee, for purposes of investigation to ascertain compliance with this chapter, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.

(7) The Contractor agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.

(8) The Contractor shall include in every subcontract the equal opportunity clauses, subsections (b)(1) through (b)(9) of this section, so that such provisions shall be binding upon each subcontractor or vendor.

(9) The Contractor shall take such action with respect to any subcontract as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the District to enter into such litigation to protect the interest of the District.

20. <u>Definitions:</u>

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. <u>Health And Safety Standards:</u>

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. <u>Appropriation Of Funds:</u>

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. <u>Buy American Act:</u>

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

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

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

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

(b) The Contractor shall deliver only domestic end products, except those-

(1) For use outside the United States;

(2) That the District determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the District determines that domestic preference would be inconsistent with the public interest; or

(4) For which the District determines the cost to be unreasonable.

24. <u>Service Contract Act of 1965:</u>

(a) <u>Definitions.</u> "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) <u>Applicability.</u> 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) <u>Compensation</u>.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any wage determination attached to this contract.

(2) If a wage determination is attached to this contract, the Contractor shall classify any class of service employees not listed in it, but to be employed under this contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph. This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee.

(a) The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration (ESA), Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary;

(b) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contracting Officer with a written copy of such determination or it shall be posted as a part of the wage determination;

(c) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General

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

(d) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds to a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e*., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in this clause need not be followed;

(e) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;

(f) The wage rate and fringe benefits finally determined under this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract;

(g) Upon discovery of failure to comply with this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) If the term of this contract is more than 1 year, the minimum wages and fringe benefits required for service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by ESA.

(4) The Contractor can discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (2) of this clause by furnishing any equivalent combinations of bona fide fringe

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

(d) Minimum wage: In the absence of a minimum wage attachment for this contract, the Contractor shall not pay any service or other employees performing this contract less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §206). Nothing in this clause shall relieve the Contractor of any other legal or contractual obligation to pay a higher wage to any employee.

(e) Successor contracts: If this contract succeeds a contract subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to this contract, the Contractor may not pay any service employee performing this contract less than the wages and benefits, including those accrued and any prospective increases, provided for under that agreement. No Contractor may be relieved of this obligation unless the limitations of 29 CFR 4.1c(b) apply or unless the Secretary of Labor or the Secretary's authorized representative:

(1) Determines that the agreement under the predecessor was not the result of arms-length negotiations; or

(2) Finds, after a hearing under 29 CFR 4.10, that the wages and benefits provided for by that agreement vary substantially from those prevailing for similar services in the locality or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and 4.11 and parts 6 and 8 that some or all of the wages and fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(f) Notification to employees: The Contractor shall notify each service employee commencing work on this contract of a minimum wage and any fringe benefits required to be paid, or shall post a notice of these wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

(g) Safe and sanitary working conditions: The Contractor shall not permit services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Contractor shall comply with the health standards applied under 29 CFR Part 1925.

(h) Records: The Contractor shall maintain for 3 years from the completion of work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:

(1) For each employee subject to the Act:

(a) Name and address;

(b) Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(c) Daily and weekly hours worked; and

(d) Any deductions, rebates, or refunds from total daily or weekly compensation.

(2) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of paragraph (c)(3) of this clause. A copy of the report required by paragraph (e) of this clause will fulfill this requirement.

(3) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by this clause. The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases. The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(i) Pay periods: The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(j) Withholding of payments and termination of contract: The Contracting Officer shall withhold from the prime Contractor under this or any other District contract

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

(k) Subcontracts: The Contractor agrees to insert this clause in all subcontracts.

(l) Contractor's report:

(1) If there is a wage determination attachment to this contract and any classes of service employees not listed on it are to be employed under the contract, the Contractor shall report promptly to the Contracting Officer the wages to be paid and the fringe benefits to be provided each of these classes, when determined under paragraph (c) of this clause.

(2) If wages to be paid or fringe benefits to be furnished any service employees under the contract are covered in a collective bargaining agreement effective at any time when the contract is being performed, the Contractor shall provide to the Contracting Officer a copy of the agreement and full information on the application and accrual of wages and benefits (including any prospective increases) to service employees working on the contract. The Contractor shall report when contract performance begins, in the case of agreements then in effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.

(m) Contractor's Certification: By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded District contracts by virtue of the sanctions imposed under section 5 of the Act. No part of this contract shall be subcontracted to any person or firm ineligible for award of a District contract under section 5 of the Act. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. §1001.

(n) Variations, tolerances, and exemptions involving employment: Notwithstanding any of the provisions in paragraphs (c) through (l) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor.

(1)(i) In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division, ESA (29 CFR 520, 521, 524, and 525), apprentices, student learners, and workers whose earning capacity is impaired by age or by physical or mental deficiency or injury, may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1)

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

(ii) The Administrator will issue certificates under the Act for employing apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages, but without changing requirements concerning fringe benefits or supplementary cash payments in lieu of these benefits.

(iii) The Administrator may also withdraw, annul, or cancel such certificates under 29 CFR 525 and 528.

(2) An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips shall be credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with regulations in 29 CFR 531. However, the amount of credit shall not exceed 40 percent of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended.

25. <u>Cost and Pricing Data:</u>

(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.

(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;

(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. <u>Multiyear Contract:</u>

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. <u>Termination Of Contracts For Certain Crimes And Violations:</u>

(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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

STANDARD CONTRACT PROVISIONS

FOR USE WITH

DISTRICT OF COLUMBIA GOVERNMENT
SUPPLIES AND SERVICES CONTRACTS

March 2007

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

STANDARD CONTRACT PROVISIONS

TABLE OF CONTENTS

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

1. Covenant Against Contingent Fees:

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

2. Shipping Instructions – Consignment:

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

3. Patents:

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

4. Quality:

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

5. Inspection Of Supplies:

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

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

(c) The Contractor shall provide and maintain an inspection system acceptable to the District covering supplies under this contract and shall tender to the District for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the

system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the District during contract performance and for as long afterwards as the contract requires. The District may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under this contract.

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

(e) If the District performs inspection or test on the premises of the Contractor or subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the District will bear the expense of District inspections or tests made at other than Contractor's or subcontractor's premises; provided, that in case of rejection, the District will not be liable for any reduction in the value of inspection or test samples.

(1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

(2) Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest

(f) The District has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or otherwise not in conformity with contract requirements. The District may reject nonconforming supplies with or without disposition instructions.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required, shall disclose the corrective action taken.

(h) If the Contractor fails to remove, replace, or correct rejected supplies that are required to be replaced or corrected within ten (10) days, the District may either (1) by contract or otherwise, remove, replace or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i) If this contract provides for the performance of District quality assurance at source, and if requested by the District, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract, and (ii) when the supplies will be ready for District inspection.

(j) The District request shall specify the period and method of the advance notification and the District representative to whom it shall be furnished. Requests shall not require more than 2 business days of advance notification if the District representative is in residence in the Contractor's plant, nor more than 7 business days in other instances.

(k) The District will accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. District failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability upon the District, for non-conforming supplies.

(l) Inspections and tests by the District do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(m) If acceptance is not conclusive for any of the reasons in subparagraph (l) hereof, the District, in addition to any other rights and remedies provided by law, or under provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or noncompliance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the District will have the right to return the rejected materials at Contractor's risk and expense or contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the District thereby.

6. <u>Inspection Of Services:</u>

(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.

(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. <u>Waiver:</u>

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. <u>Default:</u>

(a) The District may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(1) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the District terminates this contract in whole or in part as provided in paragraph (a) of this clause, the District may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or service similar to those so terminated, and the Contractor shall be liable to the District for any excess costs for similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the District or Federal Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without fault or negligence of the Contractor. If the failure to perform is caused by the default of the subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess cost for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the District, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the District, in the manner and to the extent directed by the Contracting Officer, (i) completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures plans, drawing information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the District has an interest. Payment for completed supplies delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". The District may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the District against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination of convenience of the District, be the same as if the notice of termination had been issued pursuant to such clause. See Clause 20 for Termination for Convenience of the District.

(f) The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (c) of this clause, the terms "subcontractor(s) means subcontractor(s) at any tier.

9. Indemnification:

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

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

10. Transfer:

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

11. Taxes:

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

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

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

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

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

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

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

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

12. Appointment of Attorney:

(a) The bidder/offeror or contractor (whichever the case may be) does hereby irrevocably designate and appoint the Clerk of the District of Columbia Superior Court and his successor in office as the true and lawful attorney of the Contractor for the purpose of receiving service of all notices and processes issued by any court in the District of Columbia, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to this contract or the work required or performed hereunder.

(b) The bidder/offeror or contractor (whichever the case may be) expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the contractor was personally within the District of Columbia and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the contractor failed to receive a copy of such process, notice or other paper so served upon the said Clerk provided the said Clerk shall have deposited in the United States mail, registered and postage prepaid, a copy of such process, notice, pleading or other paper addressed to the bidder/offeror or contractor at the address stated in this contract.

13. District Employees Not To Benefit:

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

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

14. Disputes:

A. All disputes arising under or relating to this contract shall be resolved as provided herein.

B. Claims by a Contractor against the District.

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

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

(a) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision. The contractor's claim shall contain at least the following:

(1) A description of the claim and the amount in dispute;

(2) Any data or other information in support of the claim;

(3) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and

(4) The Contractor's request for relief or other action by the Contracting Officer.

(b) The Contracting Officer may meet with the Contractor in a further attempt to resolve the claim by agreement.

(c) For any claim of $50,000 or less, the Contracting Officer shall issue a decision within sixty (60) days from receipt of a written request from a Contractor that a decision be rendered within that period.

(d) For any claim over $50,000, the Contracting Officer shall issue a decision within ninety (90) days of receipt of the claim. Whenever possible, the Contracting Officer shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

(e) The Contracting Officer's written decision shall do the following:

(1) Provide a description of the claim or dispute;

(2) Refer to the pertinent contract terms;

(3) State the factual areas of agreement and disagreement;

(4) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

(5) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;

(6) Indicate that the written document is the contracting officer's final decision; and

(7) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(f) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as authorized by D.C. Official Code § 2-309.04.

(g) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.

(2) Liability under paragraph (g)(1) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(h) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D. C. Official Code § 2-309.04.

(i) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

C. Claims by the District against a Contractor

(a) Claim as used in Section C of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(b) (1) All claims by the District against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer.

(2) The Contracting Officer shall send written notice of the claim to the Contractor. The Contracting Officer's written decision shall do the following:

(a) Provide a description of the claim or dispute;

(b) Refer to the pertinent contract terms;

(c) State the factual areas of agreement and disagreement;

(d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

(e) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;

(f) Indicate that the written document is the Contracting Officer's final decision; and

(g) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(3) The decision shall be supported by reasons and shall inform the Contractor of its rights as provided herein.

(4) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.

(5) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(c) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D.C. Official Code §2-309.04.

(d) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

15. Changes:

The Contracting Officer may, at any time, by written order, and without notice to the surety, if any, make changes in the contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of this contract, or in the time required for performance, an equitable adjustment shall be made. Any claim for adjustment under this paragraph must be asserted within ten (10) days from the date the change is offered; provided, however, that the Contracting Officer, if he or she determines that the facts justify such action, may receive, consider and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in the Disputes clause at Section 18. Nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

16. Termination For Convenience Of The District:

(a) The District may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the District's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all contracts to the extent they relate to the work terminated.

(4) Assign to the District, as directed by the Contracting Officer, all rights, title and interest of the Contractor under the subcontracts terminated, in which case the District will have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts. The approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the District (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other materials produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to the District.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the District has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the District under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) After the expiration of ninety (90) days (or such longer period as may be agreed to) after receipt by the Contracting Officer of acceptable inventory schedules, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality of termination inventory not previously disposed of excluding items authorized for disposition by the Contracting Officer. The Contractor may request the District to remove those items or enter into an agreement for their storage. Within fifteen (15) days, the District will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within forty five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this one year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be

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

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (1) the amount of payment previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:

(1) The contract price for completed supplies or services accepted by the District (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of :

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (f)(1) above; and

(iii) A sum, as profit on subparagraph f(1) above, determined by the Contracting Officer to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable cost of settlement of the work terminated, including-

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontractors (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(g) Except for normal spoilage, and except to the extent that the District expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the District or to a buyer.

(h) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraphs (d), (f) or (j), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (j), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f) or (j), the District will pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(i) In arriving at the amount due the Contractor under this clause, there shall be deducted:

(1) All unliquidated advances or other payments to the Contractor under the termination portion of the contract;

(2) Any claim which the District has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the District.

(j) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the Contracting Officer.

(k) (1) The District may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor shall be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the District upon demand together with interest computed at the rate of 10 percent (10%) per year. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess payment is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or

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

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

17. Recovery Of Debts Owed The District:

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

18. Retention and Examination Of Records:

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

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

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

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

19. Non-Discrimination Clause:

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

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

(1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.

(2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business.

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

(a) employment, upgrading or transfer;

(b) recruitment, or recruitment advertising;

(c) demotion, layoff, or termination;

(d) rates of pay, or other forms of compensation; and

(e) selection for training and apprenticeship.

(3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections (b)(1) and (b)(2) concerning non-discrimination and affirmative action.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in subsection (b)(2).

(5) The Contractor agrees to send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor agrees to permit access to his books, records and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of Human Rights or designee, for purposes of investigation to ascertain compliance with this chapter, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.

(7) The Contractor agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.

(8) The Contractor shall include in every subcontract the equal opportunity clauses, subsections (b)(1) through (b)(9) of this section, so that such provisions shall be binding upon each subcontractor or vendor.

(9) The Contractor shall take such action with respect to any subcontract as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the District to enter into such litigation to protect the interest of the District.

20. <u>Definitions:</u>

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. <u>Health And Safety Standards:</u>

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. <u>Appropriation Of Funds:</u>

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. <u>Buy American Act:</u>

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

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

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

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

(b) The Contractor shall deliver only domestic end products, except those-

(1) For use outside the United States;

(2) That the District determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the District determines that domestic preference would be inconsistent with the public interest; or

(4) For which the District determines the cost to be unreasonable.

24. <u>Service Contract Act of 1965:</u>

(a) <u>Definitions.</u> "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) <u>Applicability.</u> 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) <u>Compensation</u>.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any wage determination attached to this contract.

(2) If a wage determination is attached to this contract, the Contractor shall classify any class of service employees not listed in it, but to be employed under this contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph. This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee.

(a) The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration (ESA), Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary;

(b) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contracting Officer with a written copy of such determination or it shall be posted as a part of the wage determination;

(c) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General

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

(d) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds to a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e*., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in this clause need not be followed;

(e) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;

(f) The wage rate and fringe benefits finally determined under this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract;

(g) Upon discovery of failure to comply with this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) If the term of this contract is more than 1 year, the minimum wages and fringe benefits required for service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by ESA.

(4) The Contractor can discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (2) of this clause by furnishing any equivalent combinations of bona fide fringe

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

(d) Minimum wage: In the absence of a minimum wage attachment for this contract, the Contractor shall not pay any service or other employees performing this contract less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §206). Nothing in this clause shall relieve the Contractor of any other legal or contractual obligation to pay a higher wage to any employee.

(e) Successor contracts: If this contract succeeds a contract subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to this contract, the Contractor may not pay any service employee performing this contract less than the wages and benefits, including those accrued and any prospective increases, provided for under that agreement. No Contractor may be relieved of this obligation unless the limitations of 29 CFR 4.1c(b) apply or unless the Secretary of Labor or the Secretary's authorized representative:

(1) Determines that the agreement under the predecessor was not the result of arms-length negotiations; or

(2) Finds, after a hearing under 29 CFR 4.10, that the wages and benefits provided for by that agreement vary substantially from those prevailing for similar services in the locality or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and 4.11 and parts 6 and 8 that some or all of the wages and fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(f) Notification to employees: The Contractor shall notify each service employee commencing work on this contract of a minimum wage and any fringe benefits required to be paid, or shall post a notice of these wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

(g) Safe and sanitary working conditions: The Contractor shall not permit services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Contractor shall comply with the health standards applied under 29 CFR Part 1925.

(h) Records: The Contractor shall maintain for 3 years from the completion of work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:

(1) For each employee subject to the Act:

(a) Name and address;

(b) Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(c) Daily and weekly hours worked; and

(d) Any deductions, rebates, or refunds from total daily or weekly compensation.

(2) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of paragraph (c)(3) of this clause. A copy of the report required by paragraph (e) of this clause will fulfill this requirement.

(3) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by this clause. The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases. The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(i) Pay periods: The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(j) Withholding of payments and termination of contract: The Contracting Officer shall withhold from the prime Contractor under this or any other District contract

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

(k) Subcontracts: The Contractor agrees to insert this clause in all subcontracts.

(l) Contractor's report:

(1) If there is a wage determination attachment to this contract and any classes of service employees not listed on it are to be employed under the contract, the Contractor shall report promptly to the Contracting Officer the wages to be paid and the fringe benefits to be provided each of these classes, when determined under paragraph (c) of this clause.

(2) If wages to be paid or fringe benefits to be furnished any service employees under the contract are covered in a collective bargaining agreement effective at any time when the contract is being performed, the Contractor shall provide to the Contracting Officer a copy of the agreement and full information on the application and accrual of wages and benefits (including any prospective increases) to service employees working on the contract. The Contractor shall report when contract performance begins, in the case of agreements then in effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.

(m) Contractor's Certification: By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded District contracts by virtue of the sanctions imposed under section 5 of the Act. No part of this contract shall be subcontracted to any person or firm ineligible for award of a District contract under section 5 of the Act. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. §1001.

(n) Variations, tolerances, and exemptions involving employment: Notwithstanding any of the provisions in paragraphs (c) through (l) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor.

(1)(i) In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division, ESA (29 CFR 520, 521, 524, and 525), apprentices, student learners, and workers whose earning capacity is impaired by age or by physical or mental deficiency or injury, may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1)

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

(ii) The Administrator will issue certificates under the Act for employing apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages, but without changing requirements concerning fringe benefits or supplementary cash payments in lieu of these benefits.

(iii) The Administrator may also withdraw, annul, or cancel such certificates under 29 CFR 525 and 528.

(2) An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips shall be credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with regulations in 29 CFR 531. However, the amount of credit shall not exceed 40 percent of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended.

25. <u>Cost and Pricing Data:</u>

(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.

(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;

(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. <u>Multiyear Contract:</u>

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. <u>Termination Of Contracts For Certain Crimes And Violations:</u>

(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.

WD 05-2103 (Rev.-8) was first posted on www.wdol.gov on 06/02/2009
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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
Director

Division of
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 - Receptionist		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
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
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
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 Contditioning 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
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 - Pneudraulic 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 Equpment 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
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 Surface Programs	(see 2)	24.80
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
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 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 ordinance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordance, 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 ordance, (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 ordance, 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 ordance, explosives, and incendiary material differential pay.

** UNIFORM ALLOWANCE **

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

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

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

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

Conformance Process:

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

The process for preparing a conformance request is as follows:

1) When preparing the bid, the contractor identifies the need for a conformed occupation(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. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.

ATTACHMENT J.3

PROVISIONS APPLICABLE TO PROCUREMENTS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT

I. APPLICABILITY OF THE AMERICAN RECOVERY AND REINVESTMENT ACT

This procurement is being funded by the District of Columbia with funds made available by the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (Recovery Act), and is subject to the reporting and operational requirements of the Recovery Act. All contractors and subcontractors are subject to audit by appropriate federal and District entities. The District has the right to cancel, terminate or suspend this contract if the Contractor or any subcontractor fails to comply with the reporting or operational requirements of the Recovery Act, as it may be amended.

II. REPORTING

A. This contract requires the Contractor to provide products and/or services that are funded under the Recovery Act. Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds. These reports will be made available to the public. The Contractor shall submit its reports for all work funded, in whole or in part, by the Recovery Act no later than the 5th calendar day after the end of each month for the duration of this contract.

B. The Contractor shall have a current 9-digit Data Universal Numbering System (DUNS) number provided by Dun & Bradstreet (see http://fedgov.dnb.com/webform)

C. The Contractor shall have a current registration with the Central Contractor Registration - CCR (see https://www.bpn.gov/ccr/)

D. Unless otherwise directed by the Contracting Officer, the Contractor shall report the following information monthly,
using the online reporting tools available at http://reporting.dc.gov:

a. If the Contractor is a "sub-recipient", as that term is defined in M-09-21, Implementing Guidance for the Reports and Use of Funds pursuant to the American Recovery and Reinvestment Act of 2009, issued by the Office of Management and Budget on June 22, 2009 and found on http://www.whitehouse.gov/omb/recovery_default/, the Contractor shall include in each monthly report:

(1) The Contractor's 9-digit Data Universal Numbering System (DUNS) number;
(2) The contract (subaward) number or number assigned by the Contracting Officer;
(3) The Contractor's "Doing Business As" name (as registered with CCR and/or Dun & Bradstreet);
(4) The Congressional District of the Contractor;
(5) The amount of the contract (subaward);
(6) The cumulative amount of cash disbursed to the Contractor as of the reporting period end date;

(7) The date the contract was awarded;
(8) The physical location of the primary place of performance;
(9) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if—
a. In the Contractor's preceding fiscal year, the Contractor received—
i. 80 percent or more of its annual gross revenues from federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
ii. $25,000,000 or more in annual gross revenues from federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
iii. The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986;
(10) Information on Resources (hours worked), including:
a. First and Last Name of Resource (employee)
b. Job Title
c. A Unique Identifier for Resource (first three digits of street number of residence address)
d. Residency Information (DC or not)
e. Total Hours Worked per Month on ARRA funded project
(11) For subcontracts valued at less than $25,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the reporting period and their aggregate total dollar amount;
(12) For any first-tier subcontract funded in whole or in part under the Recovery Act, the Contractor shall require the subcontractor to provide the information described below to the Contractor for the purposes of inclusion on the Contractor's monthly report. The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The Contractor shall provide information on these first-tier subcontracts as follows:
i. Either the subcontractor's DUNS number; or the subcontractor's name and its headquarters zip code + four;
ii. Name of the subcontractor;
iii. Payment amount; and
iv. A description of the overall purpose and expected outcomes or results of the subcontract, including significant deliverables and, if appropriate, associated units of measure.

b. If the Contractor is a "vendor", as that term is defined in M-09-21, Implementing Guidance for the Reports and Use of Funds pursuant to the American Recovery and Reinvestment Act of 2009, issued by the Office of Management and Budget on June 22, 2009 and found on http://www.whitehouse.gov/omb/recovery_default/, the Contractor shall report:

1. The Contractor's 9-digit DUNS number or its name and headquarters zip code + four;
2. The Contractor's name;
3. Amount of the contract award; and
4. A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.

E. The Contractor shall designate a responsible contact person who will ensure that the data described in Section II.D is reported by the required time. The Contractor designates the following person as the contact person:

Name:_____
Title:_____

Address:_____
_____

Telephone: _____
Email address: _____

F. A cumulative amount from all the reports submitted for this contract will be maintained by the District's on-line reporting tools.

G. The Contractor shall not use Recovery Act funds to meet the cost of its tracking and reporting requirements under its Recovery Act contracts.

III. POSTING AVAILABLE JOB OPENINGS

The Contractor shall promptly post all new job openings funded in whole or in part as a result of Recovery Act funding on the District Department of Employment Services' website at www.dcnetworks.org

IV. ACCESSIBILITY TO RECORDS REQUIREMENTS

1. Pursuant to section 1514 of the Recovery Act, the Contractor agrees to allow any appropriate federal entity, including an inspector general:
   a) access to examine any records of the Contractor and any subcontractor pursuant to this contract that pertain to, and involve transactions relating to, this Contract or any subcontract under this Contract; and
   b) to interview any officer or employee of the Contractor, or any subcontractor, regarding such transactions.

2. Pursuant to section 902 of the Recovery Act, the Contractor agrees to allow the Comptroller General and his representatives:

a) access to examine any records of the Contractor or any of its subcontractors that directly pertain to, and involve transactions relating to the Contract or subcontract under this Contract; and

b) to interview any officer or employee of the contractor or any of its subcontractors regarding such transactions.

IV. EQUAL EMPLOYMENT OPPORTUNITIES

In addition to the District's equal opportunity requirements, the Contractor shall comply with, and require its subcontractors to comply with, all of the following federal laws for equal employment opportunities, if applicable:

Titles VI and VII of the Civil Rights Act of 1964
Equal Pay Act of 1962
Age Discrimination in Employment Act of 1967
Title IX of the Educational Amendments of 1972
Section 504 of the Rehabilitation Act of 1973
Age Discrimination Act of 1975
Titles I and V of the Americans with Disabilities Act of 1990
Fair Housing Act
Fair Credit Reporting Act
Equal Educational Opportunities Act
Uniform Relocation Act

V. WHISTLEBLOWER PROTECTIONS

1. Pursuant to Section 1553 of the Recovery Act, the Contractor and all subcontractors are prohibited from discharging, demoting or otherwise discriminating against any employee of the Contractor or any subcontractor as a reprisal for disclosing any of the following information that the employee reasonably believes is evidence of:

a) gross mismanagement of the Contract related to Recovery Act funds;
b) gross waste of Recovery Act funds;
c) a substantial and specific danger to public health or safety related to the implementation or use of Recovery Act funds;
d) an abuse of authority related to the Contract, including the competition for or negotiation of the contract, related to Recovery Act funds; or
e) a violation of law, rule or regulation related to Recovery Act funds.

2. The inspector general shall receive and investigate all complaints alleging a violation of Paragraph 1 of this section.

3. All contractors and subcontractors receiving Recovery Act funds shall post a notice of employee rights as described in Paragraph 1 of this section in conspicuous locations with other required employee rights information.

VI. ADDITIONAL PROVISIONS APPLICABLE TO CONSTRUCTION CONTRACTS

1. **Department of Labor Wage Determinations**

a) The Contractor and its subcontractors shall pay all laborers and mechanics wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (Davis-Bacon Act). With respect to the labor standards, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code. The Contractor shall be bound by the wage rates for the term of the Contract.

b) All rulings and interpretations of the Davis-Bacon and related Acts contained in 20 CFR

Parts 1, 3 and 5 are herein incorporated by reference in this Contract.

2. Buy American

a) Pursuant to Section 1605 of the Recovery Act, the Contractor and all subcontractors must use steel, iron and manufactured goods that have been produced in the United States, unless the Government determines one of the following:

(i) The use of those materials would be inconsistent with the public interest;
(ii) That there is an insufficient quantity or quality of steel, iron or relevant manufactured goods that were produced in the United States; or
(iii) The use of those materials would increase the cost of the project by more than twenty-five percent (25%).

b) The Contractor may seek a waiver from the Buy American requirements by appealing to the appropriate agency under the rules at 2 CFR Part 176.

VI. PROVISIONS APPLICABLE TO SUBCONTRACTORS OR SUB-RECIPIENT VENDORS UNDER THIS CONTRACT

The Contractor shall provide a copy of this Attachment B to all of its subcontractors and sub-recipient vendors under this Contract.

STATE ENERGY OFFICE
DE-OE-0000073
Submitted By: _____
Progress Report for October 1, 2009 - December 31, 2009
January 30, 2010

U. S. DEPARTMENT OF ENERGY
NATIONAL ENERGY TECHNOLOGY LABORATORY
State Energy Assurance Plan Grant

1. **Accomplishments with the Goals and Objectives:**
   a. Include a comparison of the actual accomplishments with the goals and objectives established for the Project (per the Statement of Project Objectives and the Project Management Plan) and reasons why the established goals were not met.

2. **Discussion of Accomplishments:**
   a. Include a discussion of what was accomplished under these goals during this reporting period, including major activities identified in the Project Management Plan, significant results, major findings or conclusions, key outcomes or other achievements. This section should not contain any proprietary data or other information not subject to public release. If such information is important to reporting progress, do not include the information, but include a note in the report advising the reader to contact the Principal Investigator or the Project Director for further information.

3. **Cost Status:**
   a. Cost Status. Show approved project budget and spend plan (per the Project Management Plan) compared against the actual costs incurred.

4. **Schedule Status:**
   a. Schedule Status. List milestones, anticipated completion dates (using the Project Management Plan schedule as a baseline), actual completion dates, and percent complete.

5. **Significant Changes:**
   a. Any changes in approach or aims and reasons for change. Remember significant changes to the objectives and scope require prior approval by the contracting officer.

6. **Problems or Delays:**
   a. Actual or anticipated problems or delays and actions taken or planned to resolve them.

7. **Personnel Updates:**
   a. Provide a summary of project partners/participants and respective roles. Note any absence or changes of key personnel or changes in teaming arrangement during the reporting period.

8. **Product or Technology Production:**
   a. A description of any product produced or technology transfer activities accomplished during this reporting period, such as:
      i. Publications (list journal name, volume, issue); conference papers; or other public releases of results. Attach or send copies of public releases to the DOE Program Manager identified in Block 15 of the Assistance Agreement Cover Page.
      ii. Web site or other Internet sites that reflect the results of this project.
      iii. Networks or collaborations fostered.
      iv. Technologies/Techniques.

v. Inventions/Patent Applications

vi. Other products, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment.

District of Columbia
Energy Emergency Plan

December 2005

Table of Contents

I. ORGANIZATIONAL RELATIONSHIPS AND RESPONSIBILITIES 1

A. PRINCIPAL DISTRICT AND REGIONAL AGENCIES, AUTHORITIES, AND UTILITIES 4
1. District of Columbia Office of the Mayor 4
2. District of Columbia Energy Office (DCEO) 4
3. District of Columbia Emergency Management Agency (DCEMA) 5
4. District of Columbia Department of Public Works (DPW) 5
5. Public Service Commission (PSC) 6
6. District Department of Transportation (DDOT) 6
7. Office of Property Management (OPM) 6
8. Department of Consumer and Regulatory Affairs (DCRA) 7
9. Metropolitan Washington Council of Governments (MWCOG) 7
10. Potomac Electric Power Company (Pepco) 7
11. Washington Gas 7

B. FEDERAL AGENCIES 8
1. U.S. Department of Energy (DOE) 8
2. Federal Emergency Management Agency (FEMA) 8
3. U.S. Army Corps of Engineers (USACE) 8
4. Environmental Protection Agency (USEPA) 9
5. U.S. Department of Transportation (USDOT) 9

C. ENERGY SUPPLIERS 9
1. Electricity Providers 9
2. Natural Gas Suppliers 11
3. Petroleum Fuel Providers 11

D. LEGAL AUTHORITIES 12
1. Division 1, Title 2, Chapter 9, Subchapter 1 of the DC Code (Law 3-132) 12
2. Division 1, Title 7, Subtitle J, Chapter 23, Section 7-2304 of the DC Code 13
3. Natural Gas Pipeline Safety Regulations 14
4. DC Public Service Commission Authorizations 14
5. Agency, Local, and Regional Emergency Plans 14
6. Federal Laws 16

E. INTERRELATIONSHIPS OF AGENCIES AND AUTHORITIES 17

II. ENERGY EMERGENCIES 23

A. ENERGY VULNERABILITY 23

B. PHASES OF ENERGY EMERGENCIES 24
1. Readiness Phase 24
2. Verification Phase 24

3. Pre-Emergency Phase 25
4. Emergency Phase 26
5. Post-Emergency Phase 26

C. LEVELS OF ENERGY SHORTAGE, IMPACT, AND RESPONSE 26
1. Level I – Monitor and Alert 27
2. Level II – Mild Shortage 29
3. Level III – Moderate Shortage 31
4. Level IV – Severe Shortage 35
5. Beyond Severe 39
6. Fuel Shortage Indicators 40

D. ENERGY SHORTAGE IMPACTS 40
1. Level I – Monitor and Alert 41
2. Level II – Mild Shortage 41
3. Level III – Moderate Shortage 42
4. Level IV – Severe Shortage 44

E. RESTORATION PRIORITIES 46
1. Electricity 46
2. Natural Gas 46

III. AN ENERGY PROFILE OF THE DISTRICT OF COLUMBIA 48

A. ENERGY SUPPLIES AND SUPPLIERS 48
1. Electricity 48
2. Natural Gas 49
3. Petroleum 50

B. INCOME, POPULATION, AND ENERGY CONSUMPTION 51
1. Economy 51
2. Population 52
3. Overall Consumption 53
4. Usage by Sector 54
5. Usage by Source 56

IV. CONTINGENCY MEASURES 62

A. VOLUNTARY MEASURES 62
1. Electricity Shortage 62
2. Natural Gas Shortage 63
3. Petroleum Shortage 64

B. MANDATORY MEASURES 67
1. Electricity Shortage 67
2. Natural Gas Shortage 68
3. Petroleum Shortage 69

V. PUBLIC INFORMATION 72

A. FUNCTIONS 72

B. STAFFING 72

C. COORDINATION 73
D. PUBLIC INFORMATION CAMPAIGN 73
E. OPERATIONAL CONSIDERATIONS 74
VI. ESF #12 EMERGENCY ACTION CHECKLISTS 75
A. ELECTRICITY EMERGENCY CHECKLIST 75
B. NATURAL GAS EMERGENCY CHECKLIST 78
C. PETROLEUM EMERGENCY CHECKLIST 81
VII. POTENTIAL LOAD REDUCTION MEASURES 84
VIII. PROCEDURES FOR STATES TO REQUEST REGIONAL DRIVER HOURS WAIVERS FOR THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA) IN THE EVENT OF A POTENTIAL SERIOUS SHORTAGE OF DELIVERABLE FUELS 90

I. ORGANIZATIONAL RELATIONSHIPS AND RESPONSIBILITIES

When planning for an energy emergency, it is important to understand who the key players are and what responsibilities they have during such an event. This helps to provide for smooth response and recovery operations in which agencies coordinate their actions to decrease duplication of effort and increase efficiency in order to restore operating conditions to normal.

The District Response Plan (DRP), which is the District of Columbia's emergency response plan, is modeled on the National Response Plan (NRP). The NRP organizes agencies into functional groups called Emergency Support Functions (ESFs). The ESFs provide an organizational means for agencies to coordinate their resources to respond to an emergency; ESF #12 is the designated ESF for Energy. In the DRP, the District of Columbia Energy Office (DCEO) is the lead for ESF #12, and is supported by the Department of Public Works (DPW), the District Department of Transportation (DDOT), the Emergency Management Agency (DCEMA), the Public Service Commission (PSC), the Metropolitan Washington Council of Governments (MWCOG), Potomac Electric Power Company (Pepco), Washington Gas, the U.S. Department of Energy (DOE), and the U.S. Army Corps of Engineers (USACE). The responsibilities of these agencies as they support ESF #12 are discussed in greater detail in the following section.

The DRP organizes the ESFs in accordance with the Incident Command System (ICS) to comply with the National Incident Management System (NIMS). ESF #12 is part of the Operations Section (with ESF #3, Public Works and Engineering) under the ICS.

The table below summarizes the responsibilities of the various District, regional and federal agencies, authorities, and utilities during an energy emergency. More detailed information follows.

Summary of District, Regional, and Federal Agencies, Authorities, and Utilities in an Energy Emergency	
Organization	**Responsibilities**
Office of the Mayor	• Declare emergencies • Authorize response measures • Issue executive orders to require implementation of mandatory measures • Coordinate press releases and provide regular updates
DCEO	• Monitor supply and demand • Collect and analyze data • Make projections about future needs and resource availability • Coordinate with energy suppliers regarding continuation of essential service and voluntary and mandatory demand reduction • Disseminate information to the public regarding anticipated durations of outages, methods of voluntarily reducing demand, and mandatory demand reduction measures if required • Work with ESF #3 to coordinate delivery and installation of emergency generators at critical facilities
DCEMA	• Coordinate information and resources between ESF #12 and other ESFs and agencies during the response and recovery • Make emergency procurements of generators and supplies • Coordinate with ESF #12 to request security escorts for fuel trucks and portable generators • Coordinate with ESF #12 to disseminate information to the public
DPW	• Provide and install emergency generators to critical facilities • Oversee and maintain fuel supplies and fueling stations for DC government agencies • Coordinating debris-clearing operations • Distribution of water and ice
PSC	• Take emergency regulatory action as appropriate to ensure that the District's energy providers of electricity and natural gas restore service to their customers expeditiously and safely • Work with utilities and DCEO to determine the effect of rising prices
DDOT	• Facilitate restoration of the utility infrastructure located in the public rights-of-way • Promote the use of bicycles during an energy emergency as a voluntary conservation measure
OPM	• Coordinate with ESF #3 to use OPM's fuel contracts to procure additional fuel supplies • Coordinate with DPW and Pepco for the installation and disconnection of emergency generators in critical facilities
DCRA	• Enforce mandatory energy conservation measures declared to be in effect by the Mayor

Comment [X1]: Pepco cannot be involved with connection of generators. Pepco's responsibility is the restoration of the electric system.

Summary of District, Regional, and Federal Agencies, Authorities, and Utilities in an Energy Emergency	
Organization	**Responsibilities**
MWCOG	• Coordinate needs and responses through R-ESF #12 using RICCS to ensure that generation, distribution, and supply of energy are addressed in a regional context
DOE	• Forecast energy supply and demand, and estimating system damage • Advise local authorities on energy restoration, assistance, and supply priorities • Provide recovery coordination to affected parties • Provide regular incident situation reports • Serve as an information clearinghouse on recovery assistance, funding, and emergency response resources and organizations for the energy sector • Assist in the provision of temporary fuel supply • Recommend conservation actions • Review requests to the National Communications System for Telecommunications Service Priority • Serve as the lead federal agency for ESF #12 of the District Response Plan
FEMA	• Mission-assign the U.S. Army Corps of Engineers to provide technical advice, electrical generators, and other support services if a presidential disaster declaration is made for the District
USACE	• Provide technical advice, electrical generators, and other support services if mission-assigned by FEMA in a federally funded disaster
USEPA	• Coordinate with the DC Department of Health's Air Quality Division to seek temporary waivers to import fuel that does not meet local air quality requirements
USDOT	• Contact the PSC should a problem occur in an intra- and inter-state pipelines • Issue waivers regarding highway fuel transport driver hours to facilitate fuel delivery during a supply shortage
Pepco	• Ensure communications with the EOC • If necessary, provide a liaison to the EOC to ensure coordination of efforts during public emergencies and to monitor the power grid and its impact on the District • Provide operational/restoration information reports on response activities to the EOC • Provide input to help EMA prepare an impact statement outlining the effects of a long-term power outage on government operations, as well as the potential impact to the health, welfare, and safety of citizens in the affected areas

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Summary of District, Regional, and Federal Agencies, Authorities, and Utilities in an Energy Emergency	
Organization	**Responsibilities**
Washington Gas	• Ensure communications with the EOC • If necessary, provide a liaison to the EOC to ensure coordination of efforts during public emergencies • Provide information on restoration efforts, the areas affected by a gas shortage/outage, the gas distribution impacts of a long-term outage, and the threat to the health, welfare, and safety of citizens • Provide assistance to EMA in issuing statements concerning a natural gas shortage or outage situation, including safety recommendations regarding gas appliances and systems during shortage/outage periods

A. PRINCIPAL DISTRICT AND REGIONAL AGENCIES, AUTHORITIES, AND UTILITIES

1. District of Columbia Office of the Mayor

The Mayor, through the Code of the District of Columbia, has the authority to declare emergencies and authorize response measures. The Mayor's Office will work with DCEO to appeal to the commercial sector and the public to implement voluntary conservation measures, and if the situation warrants, may institute mandatory conservation measures. The Mayor can issue executive orders to require implementation of mandatory measures by the public, commercial enterprises, and affected industries and suppliers. Per Sections 7-2304 – 2308 of the DC Code, the Mayor also can issue executive orders to "control, restrict, allocate, or regulate the use, sale, production and distribution of food, fuel, clothing, and other commodities, materials, goods, services, and resources as required by the emergency operations plan…" The Mayor's Office will coordinate with DCEMA and DCEO to issue press releases and provide regular updates regarding an energy emergency.

2. District of Columbia Energy Office (DCEO)

DCEO administers energy programs in the District of Columbia, including those pertaining to electricity, natural gas, and fuels. During an energy emergency, DCEO:

- Monitors supply and demand;
- Collects and analyzes data;
- Makes projections about future needs and resource availability;
- Coordinates with energy suppliers regarding continuation of essential service and voluntary and mandatory demand reductions; and

- Disseminates information to the public regarding anticipated durations of outages, methods of voluntarily reducing demand, and mandatory demand reduction measures if required.

DCEO advises the Mayor about impending or current energy emergencies and works to develop and implement recommendations to resolve issues. DCEO also administers emergency economic programs such as the Low-Income Home Energy Assistance Program (LIHEAP) and the Utility Discount Program.

As the lead agency for ESF #12, DCEO gathers, coordinates, and analyzes information about energy emergencies and outages. It collects information about location and extent of outages, estimated time to restore service, and number and types of customers affected. It works with ESF #3 to coordinate delivery and installation of emergency generators at critical facilities when estimated outage durations exceed tolerable levels. DCEO maintains agreements with a number of fuel suppliers that may be utilized during an energy emergency. Because of its established relationships with these suppliers, DCEO can work with the suppliers to gain additional information about available supplies and determine priorities. DCEO also works with ESF #3 through DPW's fuel contracts to procure emergency fuel supplies.

3. District of Columbia Emergency Management Agency (DCEMA)

DCEMA oversees and provides overall coordination support for planning, responding to, recovering from, and mitigating emergencies. During an energy-related emergency, DCEMA:

- Coordinates information and resources between ESF #12 (Energy) and other ESFs and agencies during the response to and recovery from an event;
- Has the authority to make emergency procurements of generators and supplies to help the District meet emergency needs, and can request the Federal Emergency Management Agency (FEMA) issue a mission assignment to the U.S. Army Corps of Engineers (USACE) to assist with the provision and installation of portable generators at designated critical facilities;
- Coordinates with ESF #12 to request security escorts for fuel trucks and portable generators; and
- Coordinates with ESF #12 to disseminate information to the public during the energy emergency.

4. District of Columbia Department of Public Works (DPW)

DPW is the lead agency for ESF #3, Public Works and Engineering. Part of ESF #3's responsibilities is to provide and install emergency generators to critical facilities during extended power outages. DPW also oversees and

maintains fuel supplies and fueling stations for District of Columbia government agencies, and consequently administers contracts with five fuel suppliers. The agency is also responsible for debris-clearing operations and the distribution of water and ice during a public emergency. – Need Policy!!

5. **Public Service Commission (PSC)**

The District of Columbia Public Service Commission (PSC) was established by Congress in 1913 to regulate petroleum, electric, natural gas, and telephone service in the District. The PSC strives to serve the public interest by ensuring that financially secure energy companies can provide safe, reliable energy services at reasonable rates to government agencies and commercial and residential customers. The PSC has three goals: 1) promote economic development by regulating monopolies and introducing competition, 2) ensuring public safety by enforcing the pipeline safety regulations and conducting investigations into utility outages, exploding manhole covers, and other safety-related issues, and 3) increasing customer satisfaction by encouraging customer feedback and increasing public access to the Commission. During an energy emergency, the PSC has the authority to take emergency regulatory action as appropriate to ensure that the District's energy providers of electricity and natural gas restore service to their customers expeditiously and safely. The PSC will work with utilities and DCEO to determine the effect of rising prices on the general population, and in particular low-income households.

6. **District Department of Transportation (DDOT)**

DDOT's Office of Public Space oversees pipeline permits in the public rights-of-way. During an energy emergency, DDOT will facilitate restoration of the utility infrastructure located in the public rights-of-way. DDOT also administers a bicycle program that seeks to promote the use of bicycles as a means of transportation within the District. This program could be heavily promoted during an energy emergency as a voluntary conservation measure.

7. **Office of Property Management (OPM)**

The Office of Property Management (OPM) constructs, renovates, maintains, and obtains via rental agreements space to accommodate the operations of District government agencies. As part of their property management duties, OPM maintains contracts with fuel suppliers for heating fuels and natural gas. During an energy emergency, ESF #12 can coordinate with OPM through ESF #3 to use OPM's fuel contracts to procure additional fuel supplies as necessary, as well as coordinate with DPW and Pepco for the installation and disconnection of emergency generators in critical facilities.

Comment [X2]: Except for providing outage and restoration information Pepco cannot divert resources form the restoration of the electric system.

8. Department of Consumer and Regulatory Affairs (DCRA)

The Department of Consumer and Regulatory Affairs (DCRA) is the District's regulatory agency. As such, DCRA is responsible for ensuring the health, safety, and economic welfare of District residents through licensing, inspection, compliance, and enforcement programs. During an energy emergency, DCRA is responsible for enforcing mandatory energy conservation measures declared to be in effect by the Mayor.

9. Metropolitan Washington Council of Governments (MWCOG)

Metropolitan Washington Council of Governments (MWCOG) is a coordinating body for public agencies and private industry in the District of Columbia, Maryland, and Virginia. MWCOG has developed a Regional Emergency Coordination Plan that adopts the structures of the National Response Plan (NRP) and the District Response Plan (DRP) by organizing Regional ESFs (R-ESFs). The R-ESF #12 group includes representatives of energy offices from DC, Maryland, and Virginia, local governments, and private energy suppliers. During an energy emergency in the District, R-ESF #12 can coordinate needs and responses to the event, primarily by convening conference calls among members using the Regional Incident Communication and Coordination System (RICCS), to ensure that generation, distribution, and supply of energy are addressed in a regional context.

10. Potomac Electric Power Company (Pepco)

Pepco provides electric transmission and distribution services to the public and businesses of the District. Pepco will ensure communications with the EOC and, if necessary, provide a liaison to the EOC to ensure coordination of efforts during public emergencies. Pepco will provide operational/restoration information reports on response activities to the EOC. Additionally, Pepco will provide input for EMA to prepare an impact statement outlining the effects of a long-term power outage on government operations, as well as the potential impact to the health, welfare, and safety of citizens in the affected areas.

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11. Washington Gas

Washington Gas provides natural gas to the public and businesses of the District. Washington Gas will ensure communications with EOC and, if necessary, provide a liaison to the EOC to ensure coordination of efforts during public emergencies. Washington Gas will provide information on restoration efforts, the areas affected by a gas shortage/outage, the gas distribution impacts of a long-term outage, and the threat to the health, welfare, and safety of citizens. Also, Washington Gas will provide assistance

to EMA in issuing statements concerning a natural gas shortage or outage situation, including safety recommendations regarding gas appliances and systems during shortage/outage periods.

B. FEDERAL AGENCIES

1. U.S. Department of Energy (DOE)

The strategic energy goal of the U.S. Department of Energy (DOE) is to protect our national and economic security by promoting a diverse supply and delivery of reliable, affordable, and environmentally sound energy. DOE is the lead federal agency for ESF #12 of the NRP, and as such, is responsible for:

- Forecasting energy supply and demand, and estimating system damage;
- Advising local authorities on energy restoration, assistance, and supply priorities;
- Providing recovery coordination to affected parties;
- Providing regular incident situation reports;
- Serving as an information clearinghouse on recovery assistance, funding, and emergency response resources and organizations for the energy sector;
- Assisting in the provision of temporary fuel supply;
- Recommending conservation actions; and
- Reviewing requests to the National Communications System for Telecommunications Service Priority.

DOE also is the lead federal agency for ESF #12 of the District Response Plan and will provide direct, technical, and other support and guidance to the District through the local District counterpart, DCEO, in the event of an energy emergency.

2. Federal Emergency Management Agency (FEMA)

If a presidential disaster declaration is made for the District, FEMA can mission-assign the U.S. Army Corps of Engineers to provide technical advice, electrical generators, and other support services as requested by the District to assist with the District's efforts to alleviate an energy shortage.

3. U.S. Army Corps of Engineers (USACE)

If mission-assigned by FEMA in a federally funded disaster, the U.S. Army Corps of Engineers (USACE) will provide technical advice, electrical generators, and other support services as needed to supplement the District's efforts in the temporary restoration of electrical service.

4. Environmental Protection Agency (USEPA)

In the event of a severe fuel shortage, fuel supplies that are available may not meet current air quality standards and other environmental regulations. Should this situation arise, DCEO can coordinate with USEPA through the DC Department of Health's Air Quality Division to seek temporary waivers to import fuel that does not meet local air quality requirements.

5. U.S. Department of Transportation (USDOT)

The USDOT has several sub-agencies that may need to be contacted during an energy emergency:

- *The Office of Pipeline Safety (OPS)* oversees rules that apply to intra- and inter-state pipelines. Should a pipeline problem occur, the Public Service Commission is the first agency that should be contacted. However, if problems persist, then a response could be coordinated through OPS.

- *The Federal Motor Carrier Safety Administration (FMSCA)* generally will be contacted if the District makes or receives a request to waive highway fuel transport driver hours to facilitate fuel delivery during a supply shortage or if the restrictions will adversely affect the distribution system's ability to deliver fuel to meet demand. Information about requesting driver hour waivers is available from the National Association of State Energy Officials (NASEO) website: www.naseo.org/committees/energysecurity/documents/driver_hour_waivers.htm. The information is reproduced in Section VIII of this plan.

C. ENERGY SUPPLIERS

1. Electricity Providers

Allegheny Energy Supply – Provides electricity services to commercial customers.

Amerada Hess – Provides electricity services to commercial customers.

AOBA Alliance – Provides electricity services to commercial customers.

BGE Home – Provides electricity services to commercial customers.

BlueStar Energy Services – Provides electricity services to commercial customers.

Consolidated Edison Solutions – Provides electricity services to residential and commercial customers.

Constellation NewEnergy – Provides electricity services to commercial customers.

Cook Inlet Power – Provides electricity services to residential customers.

Direct Energy Services – Provides electricity services to commercial customers.

Dominion Retail – Provides electricity services.

EnergyWindow – Provides electricity services to commercial customers.

First Energy Services – Provides electricity services to commercial customers.

Liberty Power – Provides electricity services to commercial customers.

Mid-Atlantic Aggregation Group Independent Consortium – Provides electricity services to commercial customers.

Pepco – Provides services to residential and commercial customers. Under Standard Offer Service (SOS), Pepco purchases electricity for customers who do not choose a competitive energy supplier. Pepco's SOS customers comprise approximately 93% of the total electricity market in the District, with 94% of residential customers and 80% of non-residential customers participating.

Pepco Energy Services – Provides electricity services to residential, small commercial, and large commercial customers, and offers PowerChoice renewable energy source services to residential and small commercial customers.

Reliant Energy Solutions East – Provides electricity services to commercial customers.

Select Energy – Provides electricity services to commercial customers.

Sempra Energy Solutions – Provides electricity services to commercial customers.

SmartEnergy – Provides electricity services to residential customers.

Strategic Energy – Provides electricity services to residential and commercial customers.

SUEZ Energy Resources – Provides electricity services to commercial customers.

Tractabel Energy Services – Provides electricity services to commercial customers.

Washington Energy Consortium – Provides electricity services to commercial customers.

Washington Gas Energy Services – Provides services to residential, small commercial, and large commercial clients.

2. Natural Gas Suppliers

ECONnergy – Provides services to residential and commercial customers.

NOVEC – Provides services to residential and commercial customers.

Pepco Energy Services – Provides services to residential, small commercial, and large commercial customers.

Washington Gas Energy Services – Provides services to residential, small commercial, and large commercial customers.

Washington Gas Light Company – Provides services to residential, small commercial, and large commercial customers. Washington Gas is the largest provider of natural gas in the District, supplying approximately 89% of residential and 69% of non-residential customers of natural gas. The company has underground propane storage sites in Rockville, MD and Springfield, VA which serve as peaking facilities on the coldest winter days to supplement the normal pipeline supply. There is a storage field located in West Virginia.

3. Petroleum Fuel Providers

There are a large number of petroleum fuel providers that service private retailers in the District. However, DPW, through the US Department of Defense, has contracts with five fuel suppliers to service the District government's vehicle fuel and heating oil needs:

- Conectiv Energy, d/b/a Petron Oil
- Fannon Petroleum
- Mansfield Oil Co.
- Ohio Energy Specialties

- Petroleum Traders

In addition to the fuel suppliers listed above, the DCEO has agreements with the following petroleum fuel suppliers for heating oil and other fuel uses:

- District Line
- Griffith Energy Services
- Petro

The District also can work with the following organizations to identify potential sources of petroleum products during an energy emergency:

- *Mid-Atlantic Petroleum Distributors Association (MAPDA)* – This organization consists of independent marketers of branded and unbranded petroleum products (fuel oil, gasoline, and diesel) who can supply retail outlets that do not obtain their products directly from a refiner.

- *Washington, Maryland, Delaware Service Station and Automotive Repair Association (WMDA)* – This trade association serves independent service stations, repair facilities, convenience stores, and others; it also represents retail outlets that purchase their fuel directly from refiners.

- *American Petroleum Institute (API)* – This organization is the primary trade association for the petroleum and natural gas industries. The Eastern Region of the API, which includes the District of Columbia, represents distributors in the Eastern United States.

D. LEGAL AUTHORITIES

1. Division 1, Title 2, Chapter 9, Subchapter 1 of the DC Code (Law 3-132)

This is the enabling legislation for the District of Columbia Office of Energy, more commonly referred to as the DC Energy Office. Section 2-901 provides for the development of an emergency energy shortage contingency plan to ensure the health, safety, and welfare of the citizens and industries of the District of Columbia during any emergency caused by an actual or impending acute shortage of energy resources.

Section 2-904, Parts (d)(1) and (d)(3), respectively, authorize DCEO to serve as the lead agency to develop and implement the District's response to energy related problems and to develop comprehensive long-range energy plans. Further, Part (g)(1) of this section, "Emergency Energy Shortage Contingency Plan," directs DCEO to prepare a recommended Emergency Energy Shortage Contingency Plan for transmittal to the Mayor.

Part (g)(5) details specific inclusions of the plan and is therefore reproduced below:

"5. The emergency shortage contingency plan may include, but not be limited to:

A. Recommendations for differentiated curtailment during an emergency energy shortage of energy consumption by energy users on the basis of ability by users and energy distributors to accommodate such curtailments;

B. A variety of strategies and staged conservation measures of increasing intensity and authority to reduce energy use during a state of emergency declared pursuant to Section 1-204.12(a) by reason of an emergency energy shortage, and guidelines and criteria for allocation of energy resources to priority users during such an emergency. The plan shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and to allow a choice of appropriate responses;

C. Evidence that the plan is consistent with requirements for emergency energy conservation and allocation laws and regulations of the federal government and the District of Columbia Public Service Commission; and with procedures for implementing the District's responsibility as mandated by any federal programs, laws, orders, rules or regulations relating to the allocation, conservation, or consumption of energy resources, and all orders, rules and regulations thereto;

D. A scheduled program of such investigations and studies by the Office as are necessary to determine if and when emergency energy shortages are likely to affect the District;

E. Recommendations for administrative and legislative action required to avert emergency energy shortages; and

F. Recommendations for procedures for fair and equitable review of complaints and requests for special exemptions from emergency conservation measures or emergency allocations."

2. Division 1, Title 7, Subtitle J, Chapter 23, Section 7-2304 of the DC Code

This section of the DC Code gives the Mayor the authority to declare a state of emergency in the District of Columbia by issuing an emergency executive order. As part of an emergency executive order, the Mayor can "issue orders or regulations to control, restrict, allocate, or regulate the use, sale, production and distribution of food, fuel, clothing, and other commodities, materials,

goods, services, and resources as required by the emergency operations plan or by any federal emergency plan." Per 7-2306, the executive order may remain in effect for up to 15 calendar days until rescinded by the Mayor, and may be extended for an additional 15 calendar days at the request of the Mayor and adoption of an emergency act by the DC Council. Section 7-2332 authorizes the Mayor to execute the District's Emergency Management Assistance Compact (EMAC) agreements with participating states.

3. Natural Gas Pipeline Safety Regulations

Some District regulations pertain to natural gas pipeline safety. These include Sections 43-1001 and 34-2710 of the DC Code, and Title 15 Chapter 23 Section 2308 of the District of Columbia Municipal Regulations.

4. DC Public Service Commission Authorizations

The District of Columbia Public Service Commission (PSC) authorizes spending for energy programs in the city. The PSC also has authority to promote competition, regulate utility rates, and approve utility rates, applied for by local utility providers. It promotes public safety by investigating utility outages and promoting pipeline safety.

Comment [X3]: Rates do not always get "hiked"

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5. Agency, Local, and Regional Emergency Plans

There are several agency, local, and regional emergency plans that also provide authority to the DC Energy Office to act as the lead or support agency during an energy emergency in the District. These plans include:

- **District Response Plan** – Identifies the DC Energy Office as the lead agency for ESF #12. ESF #12 is responsible for gathering, assessing, and sharing information on energy system damages, estimating the impacts of energy system outages/shortages in the District of Columbia, and facilitating the restoration of energy systems and fuel supplies following a public emergency.

- **National Capital Region Emergency Coordinating Plan** – R-ESF #12 facilitates coordination and communication among state and local energy agencies during public energy emergencies that impact energy infrastructure in the National Capital Region (NCR).

- **Comprehensive Regional Energy Plan** – This plan is currently being developed by the Metropolitan Washington Council of Governments' Energy Policy Advisory Committee to develop regional emergency plans for motor fuel, electricity, and natural gas shortfalls. The plan is expected to be complete in 2006.

- **Metropolitan Washington Power Emergency Alert Plan** – This plan, dated February 1988, was prepared by MWCOG in coordination with the five area electric providers at the time it was written. Three categories of emergencies are described: capacity deficiency emergency, long-term fuel supply emergency, and power outage emergency. The emergency power plan describes briefly the service area, operational profile, and basic emergency response organization of each participating electric distribution company and provides 24-hour telephone contact information. It also contains protocols for the mission, organization, and function of local governments related to public safety in the restoration of electric power. DCEMA's Operations Center is assigned the role of intermediary between the utility companies and the local governments for notification purposes. Typical emergency response steps in the three emergency categories are: reduction of voltage, requests for voluntary curtailment by large companies, appeals to the general public to shed load, requests to local government to implement conservation measures, manually activated load interruption [rolling blackouts], and power restoration efforts.

- **Metropolitan Washington Natural Gas Supply Emergency Alert Plan** – The region's January 1988 natural gas plan was developed by MWCOG in coordination with Washington Gas. Three supply deficiency emergency phases are described: long-term, short-term, and immediate. Within each of these categories, communications protocols, emergency actions (e.g., curtailment), and restoration are discussed. Steps outlined within this plan include requests for emergency gas from pipeline suppliers; purchase from other sources; requests for fuel switching from firm customers capable of switching to another power source; curtailment of interruptible customers; requests for conservation from selected commercial, industrial and institutional customers and the general public; and priority-based supply curtailment. The DC government is included in this plan as a recipient of information from Washington Gas. The various regional political jurisdictions are not assigned an active role in shortage mitigation, although the DCEMA Operations Center is to be operated on a 24-hour basis until the termination of the emergency and is responsible for notifying local governments. Area regulatory commissions are to be notified by the gas company, and DCEMA is to be kept informed of such notifications. All curtailment and restoration activities are the responsibility of the gas company, within regulations set out by the DC Public Service Commission, the Virginia State Corporation Commission, and the Maryland Public Service Commission.

- **Washington Metropolitan Area Tri-State Energy Emergency Coordination Agreement** – This agreement between the District of

Columbia, Maryland, and Virginia, dated March 21, 1979, strives to "achieve consistency throughout the Metropolitan Washington Area in energy conservation and resource management measures." Actions that may be coordinated under the agreement include, but are not limited to: 1) imposition of mandatory gasoline conservation measures through use of emergency executive powers, 2) management of gasoline set-aside programs, and 3) devising a compatible standard under which emergency powers will be invoked by the Executives of the three jurisdictions.

Related supporting documentation for ESF #12, Energy, is included in the **National Response Plan**, which makes the lead local ESF #12 agency responsible for coordinating energy utility industries to assess, repair, and restore energy infrastructure during emergencies; estimate projected restoration schedules; update percent complete of restoration; provide geographic information about the extent of outages/shortages; and provide energy forecasts in the event of an energy emergency. As the lead federal agency, the Department of Energy (DOE) is responsible for coordinating with energy industries to assist in satisfying critical fuel, lubricant, electrical power, and natural gas supply needs that are not able to be met by state, local, tribal, or other federal resources or actions.

6. Federal Laws

Federal laws give DOE the authority to work with state and local jurisdictions to assess energy conditions. The **DOE Organization Act** (42 USC §7101-7385o) and the **Federal Power Act** (16 USC §791a-828c, 10 CFR §205.350-205.353) give DOE the authority to obtain current information about the status of electric supply systems in the U.S. during emergencies. In addition, the DOE Organization Act together with the **Federal Energy Act of 1974** (15 USC §761-790h) authorizes DOE to coordinate with NASEO to develop and maintain a contact list of federal and state energy officials who are responsible for energy market assessments and energy emergency responses. These laws require states to participate by providing timely assessments of energy markets to DOE and other states in the event of an energy supply disruption or other energy emergency.

There are other federal laws that provide DOE and the President with additional authority to act under a variety of circumstances:

- The **Energy Policy and Conservation Act** (42 USC §6231-6247) authorizes DOE to create the Strategic Petroleum Reserve, and authorizes the President to draw down these reserves under emergency circumstances defined in the Act.

- The **Natural Gas Policy Act of 1978** (15 USC §3301-3432) authorizes DOE to order any interstate pipeline or local distributor served by an interstate pipeline to set aside natural gas to meet the needs of high-priority consumers during a natural gas emergency.

- The **Low-Income Home Energy Assistance Act of 1981** (42 USC §8621-8629) authorizes DOE to advise the U.S. Department of Health and Human Services (HHS) on the fuel supply situation for HHS's emergency funding of the Low-Income Home Energy Assistance Program (LIHEAP).

- The **Public Utilities Regulatory Policy Act of 1978** (P.L. 95-617) and the **Powerplant and Industrial Fuel Use Act of 1978** (P.L. 95-620, 42 USC §8301-8484) authorize the President to prohibit any major fuel-burning installation or powerplant from using natural gas or petroleum as a primary fuel during an energy emergency.

- The **Energy Policy Act of 2005** (P.L. 109-58) attempts to combat growing energy problems, provides tax incentives and loan guarantees for energy production of various types. It was intended to establish a comprehensive, long-range energy policy, provide incentives for traditional energy production as well as newer, more efficient energy technologies, and conservation.

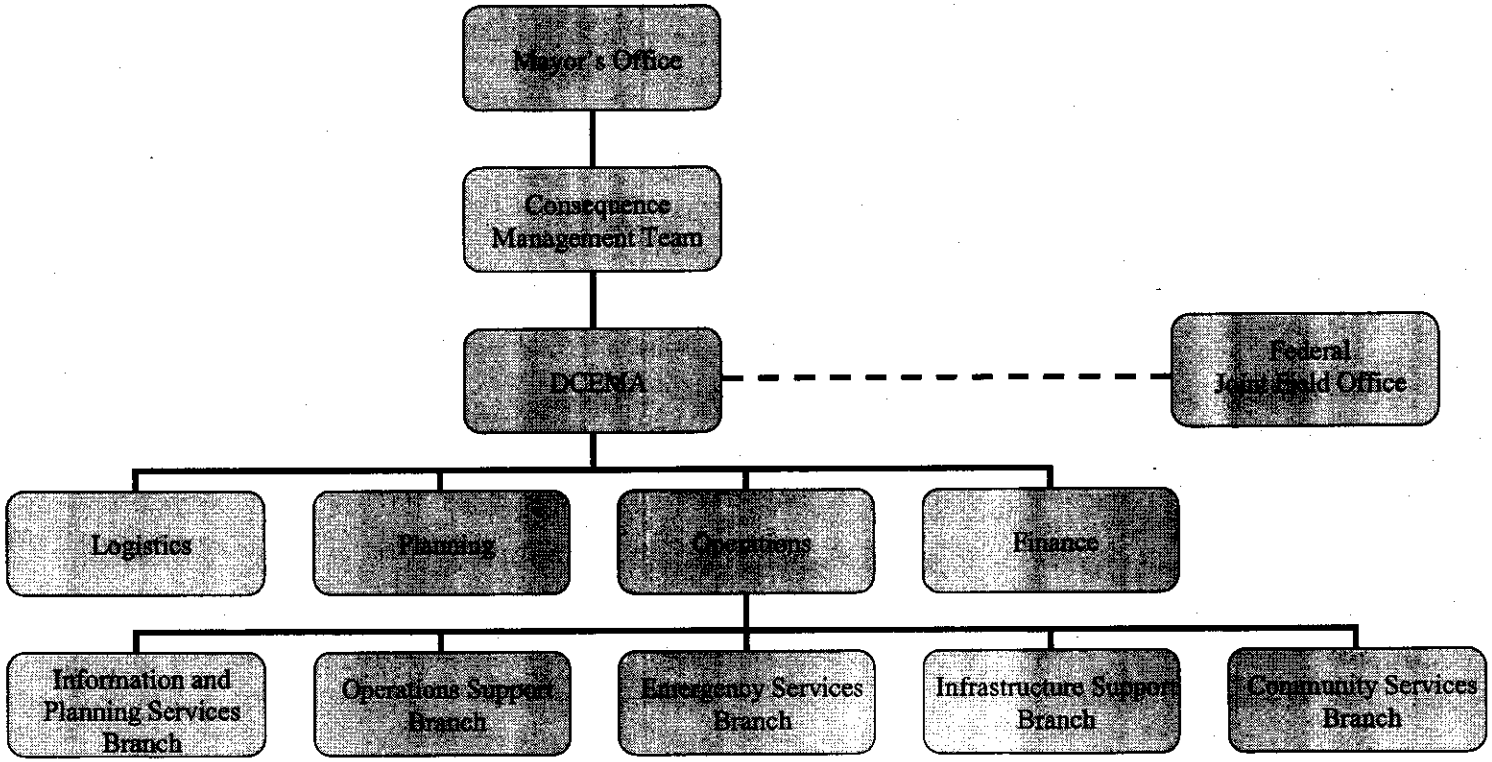
- The **Energy Emergency Preparedness Act of 1982** (P.L. 97-229) provides specific direction regarding the fill rate for the Strategic Petroleum Reserve and requires the President to develop allocation plans for emergencies and to submit periodic reports on the nation's level of preparedness.

- The **Jones Act** (P.L. 87-77), otherwise known as the Merchant Marine Act of 1920, requires that products shipped between U.S. ports must be transported in ships that were built in the United States, U.S. flagged, and manned by U.S. personnel. In an emergency, the Jones Act may be waived to allow foreign-flagged ships to temporarily transport fuel from one U.S. port to another.

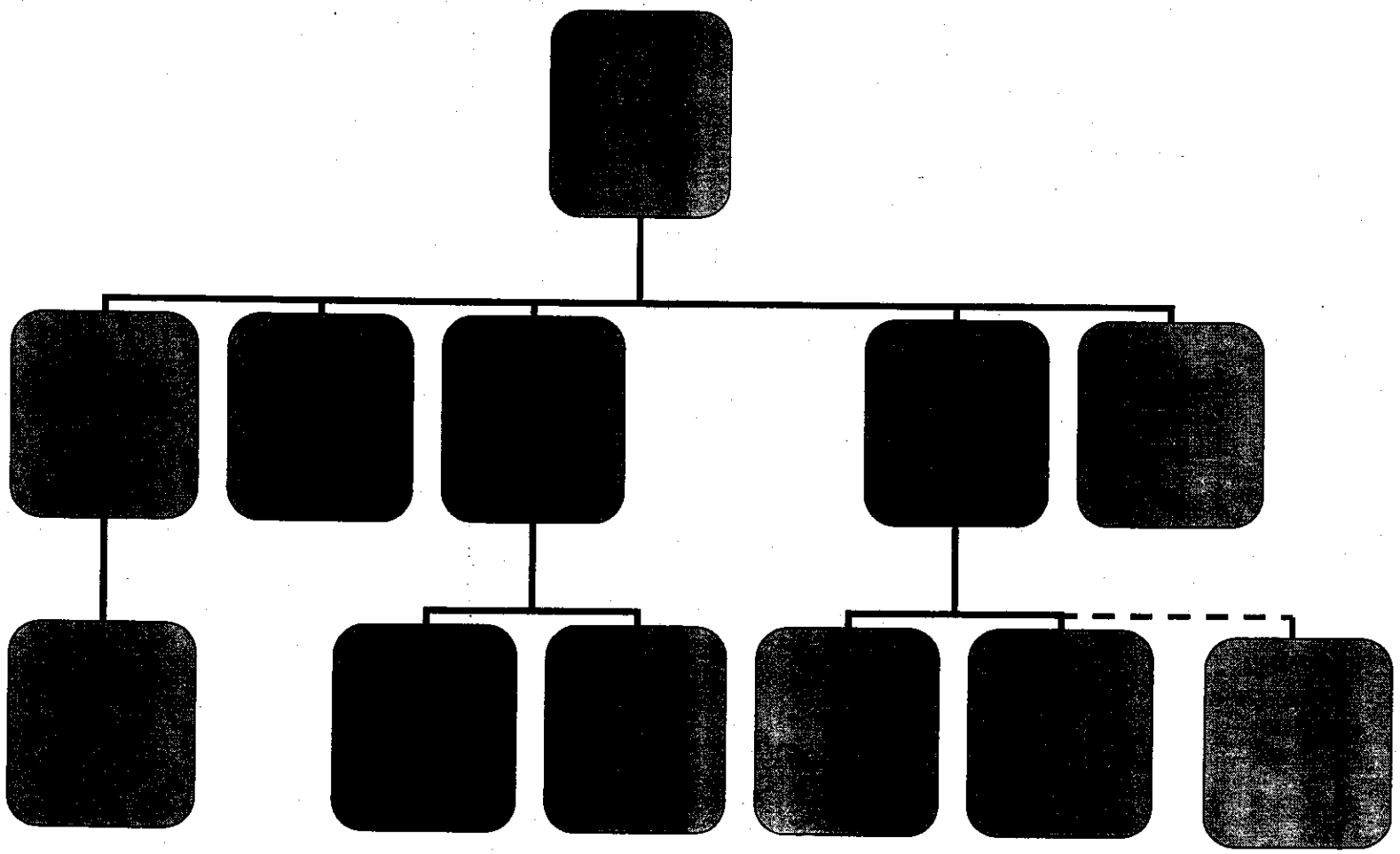
E. INTERRELATIONSHIPS OF AGENCIES AND AUTHORITIES

The following organization charts depict the interrelationships of the various District, regional, and federal agencies that could be involved in responding to and recovering from an energy emergency in the District of Columbia.

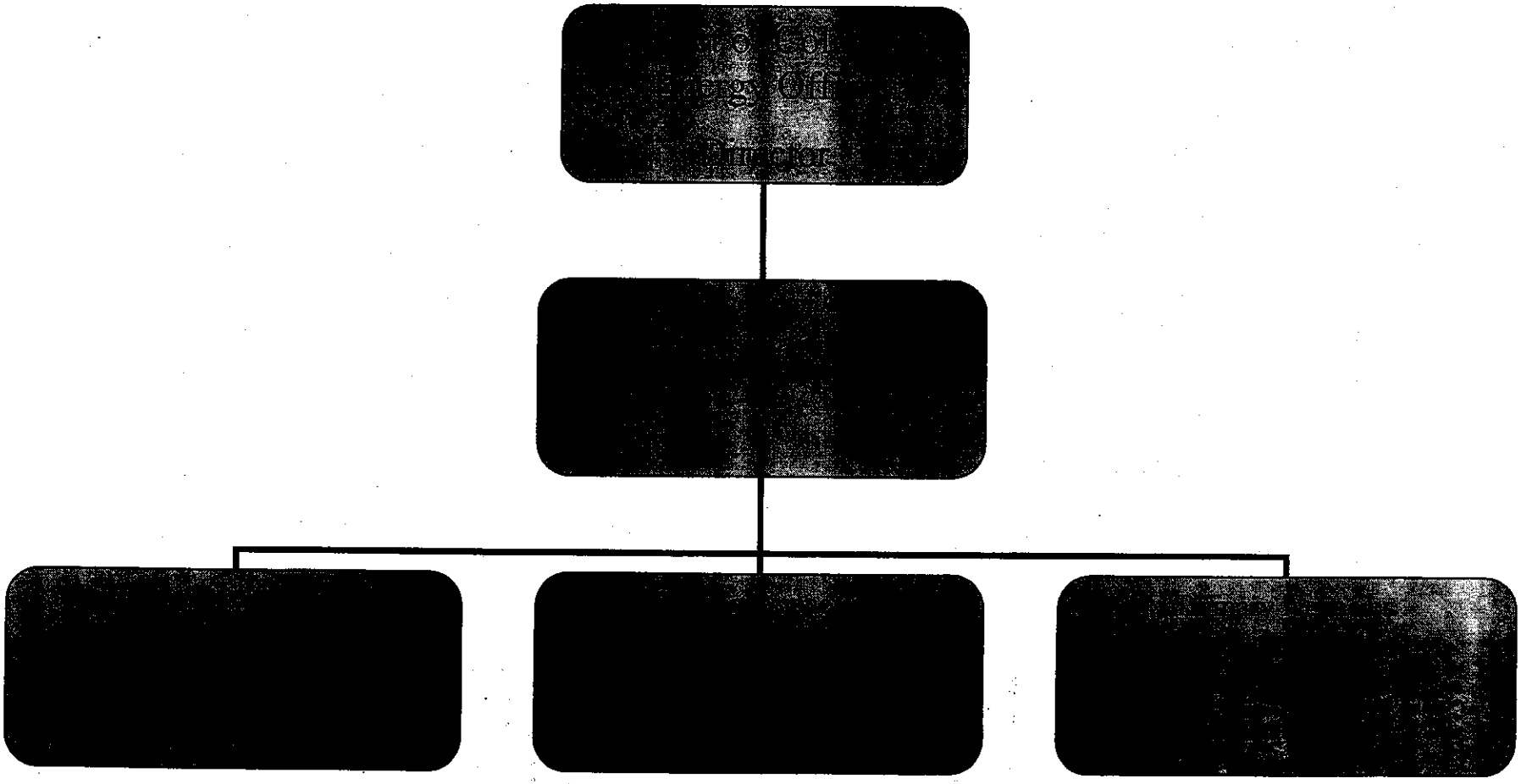
DISTRICT OF COLUMBIA
INCIDENT COMMAND ORGANIZATIONAL STRUCTURE



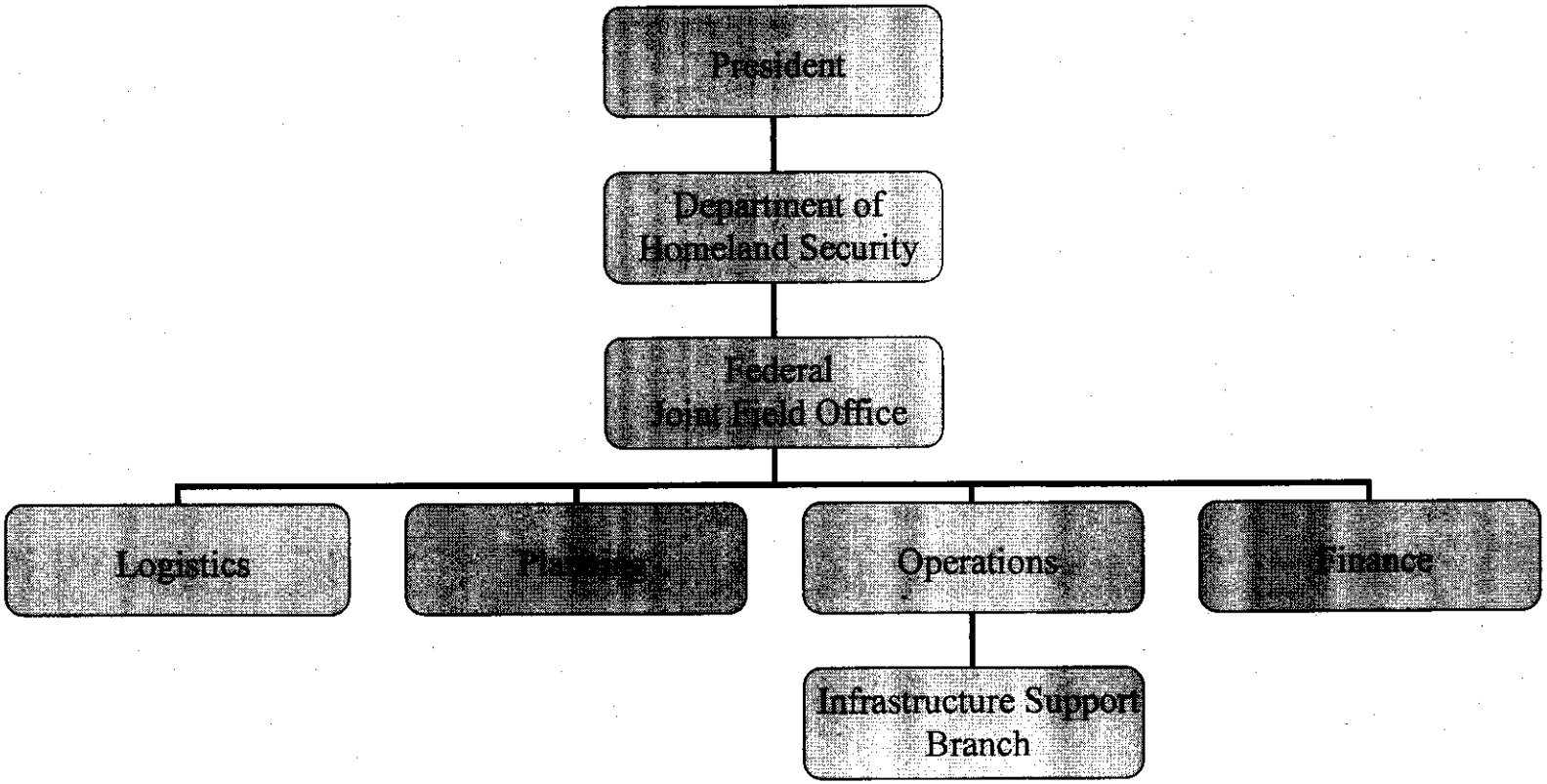
DISTRICT OF COLUMBIA EMERGENCY MANAGEMENT AGENCY
OPERATIONS SECTION ORGANIZATIONAL STRUCTURE



DISTRICT OF COLUMBIA EMERGENCY SUPPORT FUNCTION #12 ORGANIZATIONAL STRUCTURE

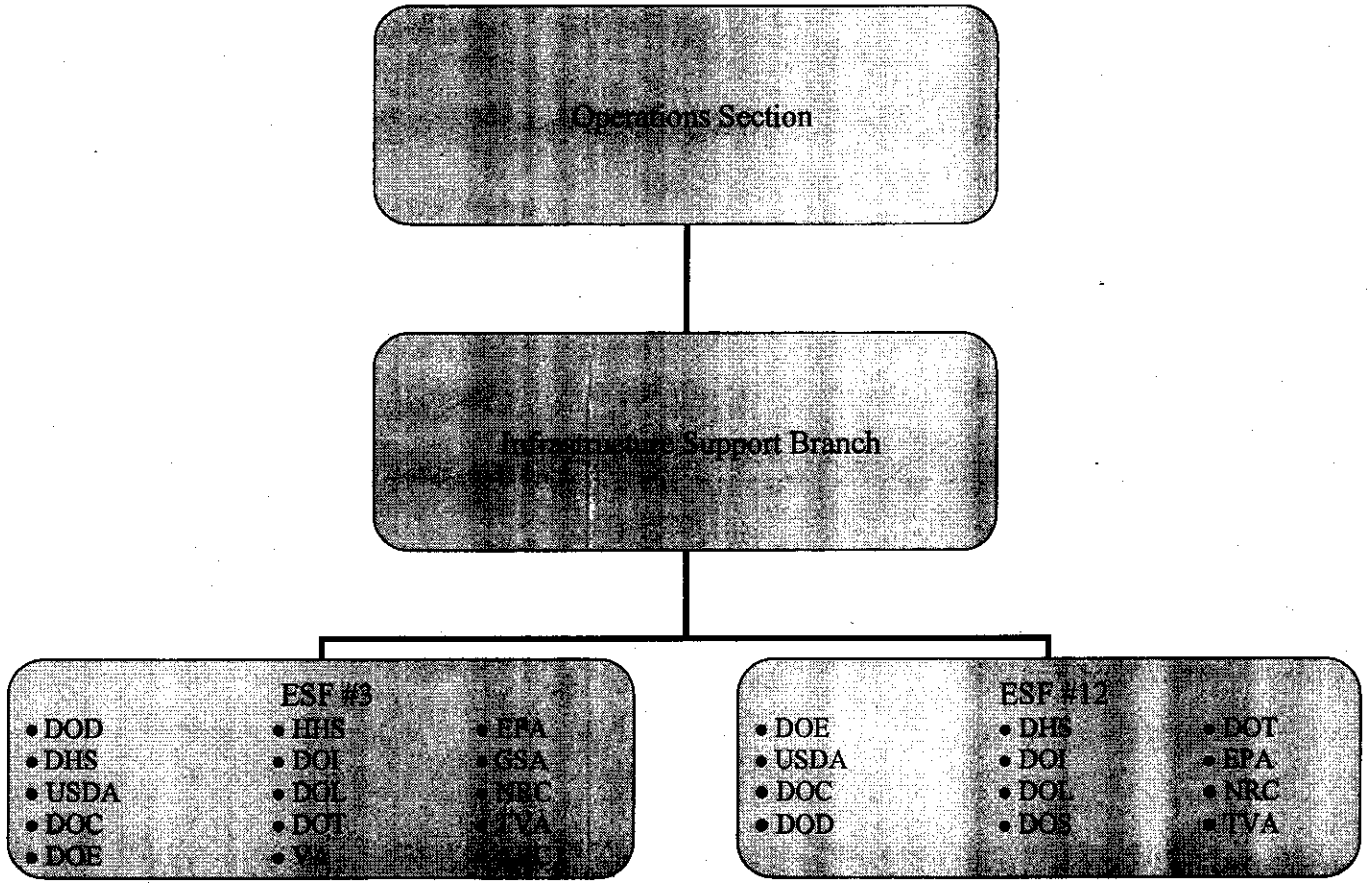


FEDERAL GOVERNMENT
INCIDENT COMMAND ORGANIZATIONAL STRUCTURE



Note: The Joint Field Office (JFO) consists of FEMA and the primary federal agencies under the National Response Plan.

FEDERAL JOINT FIELD OFFICE (JFO)
OPERATIONS SECTION ORGANIZATIONAL STRUCTURE



II. ENERGY EMERGENCIES

A. ENERGY VULNERABILITY

Energy users in the District of Columbia are vulnerable to a variety of energy shortages, which occur when there are insufficient resources to meet the demand. Shortages can be localized and affect only one community, or shortages can affect the Washington metropolitan area or the entire nation. Usually, increased resource conservation will reduce the hardship; however, severe shortages may require rationing or curtailment of services.

Electrical system problems may be caused by a number of reasons, including a capacity reduction that usually occurs during extremely hot or cold weather when demand is high, a deficiency of fuel supplying electric generating plants servicing the area, and an equipment failure or some other abnormal occurrence causing reduction in generating capacity and disruptions of transmission capability. The ice storm of January 1999 underscored that vulnerability with significant damage to electric distribution infrastructure, leaving over 19,000 customers without power in the District alone. The storm demonstrated that energy supplies can be disrupted quickly, causing serious personal and economic hardship. And in September 2003, approximately two-thirds of Pepco's customers in the areas – about 570,000 – were without power immediately after Isabel swept through the area.

A natural gas emergency might include the reduction or interruption of natural gas supplies from the pipelines in quantities that would prevent the provision of service to all customers, the peak day supply of natural gas proves to be insufficient; or the distribution company experiences a system failure. Because many commercial customers have alternatives, residential gas customers on firm supply contracts are likely to be the hardest hit by a natural gas supply shortage. The rupture of a gas pipeline in the District of Columbia and adjacent Maryland suburbs in 1991, resulted in the displacement of people from their homes, the closure of commercial business and the closure of several federal government offices.

Other forms of vulnerability are less obvious. For example, in the 1970s, Middle Eastern nationalism, combined with the nationalization and appropriation of international oil company assets, as well as the formation of an international oil cartel (the Organization of Petroleum Exporting Countries, OPEC), resulted in oil embargoes. Also, the United States continued consuming more total petroleum while domestic sources provided a decreasing percentage. The1970s reduced supply of petroleum in American markets appeared to happen suddenly but, in fact, followed years of increasing vulnerability. That vulnerability was partially obscured by U.S. petroleum price controls. At the beginning of the 21st century, renewed political and military issues in the Middle East again increased

vulnerability. However, American price controls are gone. Future supply shortages will be accompanied, and probably resolved, by higher petroleum prices. If price does not contain demand, curtailment and other mandatory controls may be needed.

B. PHASES OF ENERGY EMERGENCIES

This Energy Emergency Plan is structured in five levels, or phases, of increasing activity. The five phases are:

1. Readiness
2. Verification
3. Pre-Emergency
4. Emergency
5. Post-Emergency

During an energy shortage, the activities prescribed in each phase intensify depending on the severity of the shortage. The point of transition from one phase to the next is not an absolute. To a large degree, it is qualitative; the implementation of each phase is a DCEO policy decision, recognizing public perception of the seriousness of the energy emergency.

1. Readiness Phase

The Readiness Phase involves ongoing monitoring of energy sources and activities that can affect energy supply. This phase of emergency response occurs under normal operating conditions in which there are no discernable energy-related activities taking place. DCEO employees perform their normal, day-to-day functions. During the Readiness Phase, four important activities occur that assist the agency in preparing for incidents and maintaining readiness:

1. Monitoring local, regional, national, and international events that may affect the District's energy supply;
2. Updating the emergency energy plan regularly (at least annually) to reflect changes in organization and emergency response strategies;
3. Training and exercising personnel to prepare them to implement the emergency energy plan; and
4. Maintaining and updating contact list of public and private sector contacts.

2. Verification Phase

The Verification Phase is essentially an early warning phase in which additional monitoring occurs and formal communications begin with other agencies. Any number of events could trigger this phase, and the duration of this phase will depend on the nature of the potential energy emergency.

The Verification Phase is used to determine the nature, extent, and duration of an anticipated energy emergency. The energy emergency may be a potential shortage of electricity, natural gas, or petroleum. DCEO staff assesses the impact of the potential emergency on supply and prices, and prepare for continuous supply and demand monitoring. Data is collected about existing supplies within the District and neighboring states of Maryland and Virginia, and historic and recent supply and demand. Based on the data collected, DCEO personnel may recommend further action to the Mayor and the DC Emergency Management Agency. DCEO also begins to review existing approved curtailment programs and prepares to implement public information programs and campaigns that are necessary during an actual, verified energy emergency.

During the Verification Phase, DCEO staff will communicate and coordinate with a number of other government agencies, such as the U.S. Department of Energy (the District is in Petroleum Administration for Defense District 1B), neighboring states of Maryland and Virginia, other states in the Mid-Atlantic region, other District of Columbia government agencies, utilities, Metropolitan Washington Council of Governments, private industry, and the Washington Metropolitan Area Transit Authority.

3. Pre-Emergency Phase

During the Pre-Emergency Phase, the disruption worsens and supply shortages may exist, but essential services are not affected. Rather, shortages generally are handled by price fluctuations in the open market.

In this phase, DCEO personnel will continue to monitor and analyze supply and demand and other data analysis initiated during the Verification Phase. The data collected during this phase and the Verification Phase may be presented to the Mayor with a recommendation that voluntary conservation measures be implemented. The Mayor will appeal to the public and to private industry to implement a variety of voluntary measures. DCEO staff will monitor usage to assess if the voluntary measures are effective in alleviating the shortage. If the measures are regarded as being effective, then no additional action is required unless such action is mandated by the federal government. If the measures do not appear to be sufficient to address the disruption, and mandatory measures may be required, DCEO officials may advise the Mayor to proceed to the Emergency Phase and declare an energy emergency.

DCEMA may decide to open the Emergency Operations Center (EOC). If this occurs, DCEO Emergency Liaison Officers (ELOs) will report for duty in the EOC as scheduled. Other ELOs not assigned to work in the EOC may be scheduled to answer telephone calls in the DC Energy Hotline.

4. Emergency Phase

During the Emergency Phase, all activities performed during the previous phases will continue. Upon receiving recommendations from the DCEO, the Mayor will ask the public to implement additional voluntary conservation measures. The Mayor also may proclaim a State of Emergency due to an energy emergency in order to require private enterprise and the public to practice mandatory conservation measures.

If the Mayor declares a State of Emergency, DCEO staff will monitor and analyze the effects of the voluntary and mandatory curtailment measures to assess their impacts on demand compared to the available supply. DCEO also will continue to coordinate with local utilities and DCEMA to determine if the curtailment measures are sufficient. If the utilities are planning to take additional measures, DCEO will coordinate with DCEMA to get this information out to the public.

DCEMA may decide to open the EOC, if it has not been opened yet. In the event the EOC opens, DCEO ELOs will report for duty in the EOC as scheduled. ELOs not scheduled to work in the EOC may be scheduled to answer telephone calls on the DCEO Hotline.

5. Post-Emergency Phase

When the Mayor determines the emergency is over based on recommendations from DCEO and DCEMA, he will recall his emergency declaration and all voluntary and mandatory conservation measures will be rescinded. DCEO will work with DCEMA to return the District's businesses and residents to their normal activities. If the EOC was opened during the emergency, DCEMA will stand down the EOC, and ELOs will return to their usual work duties.

DCEO will work with DCEMA, utilities, and other affected agencies to conduct a post-emergency evaluation of the emergency actions that were implemented. DCEO will develop an evaluation report that summarizes the actions that were taken and their effects. Based on the results of the evaluation, DCEO staff may revise portions of this plan.

C. LEVELS OF ENERGY SHORTAGE, IMPACT, AND RESPONSE

Emergency procedures for dealing with an energy shortage have been developed by the regional utility companies and local governments through MWCOG. These procedures define how the local utility companies and the local governments will operate during emergencies. The emergency actions to be carried out by the utility companies and the local governments will depend on the type and level of the

emergency. A determination of the level of the emergency will be made jointly by DCEO and DCEMA.

1. Level I – Monitor and Alert

During this level, there are no discernable energy shortages or emergencies in the District, although shortages may exist elsewhere in the region or the United States.

Shortage Level I – Monitor and Alert	
Conditions (one or more may apply)	**Probable Impacts Observed**
Severe cold weather affecting the District may cause local supply problems.	Gasoline, heating oil and propane prices may increase (natural gas prices may also rise but not necessarily in parallel with petroleum products).
Reports of shortages in other parts of the United States, or reports of natural or political difficulties in oil producing countries, may affect petroleum and petroleum product prices on the New York Mercantile Exchange (NYMEX).	Jobbers (regional fuel companies) may report temporary supply difficulties.
Local prices may move up rapidly in response to spot market prices.	Some gasoline stations, if queried (especially during the summer driving season), will report greater than normal buying as motorists attempt to secure the current lowest price.

Electricity

Electricity suppliers monitor supply and demand on their systems on a regular basis. They develop short- and long-term (five years) forecasts for usage and develop plans to meet these demands. In addition, they are required to report any incidents to DCEO that could adversely impact supply to their customers.

DCEO's ongoing monitoring efforts include, but are not limited to, the following:

1. Daily:
   a. Checking Pepco's website (www.pepco.com) for general information on the status of the electric service in the region.
   b. Checking the PJM website (www.pjm.com) daily for price and usage information.
2. Monthly:
   a. Tracking energy savings based on overall costs of residential and commercial electricity per kilowatt hour. Average costs of residential and commercial electricity are tracked separately, and pricing information is obtained from the Revenue Analysis

department at Pepco (202-872-3068). Pricing information includes taxes and delivery charges.

b. Checking with the Energy Management Division of the DC Office of Property Management, which tracks price and usage data, estimates trends, and develops projections of future demand.

DCEO will receive an alert from Pepco or PJM through RICCS or DCEMA if a capacity deficiency emergency is anticipated.

Natural Gas

Monitoring natural gas supplies in the United States is becoming increasing complex, as many large consumers are purchasing directly from wellhead producers, which has resulted in a decrease of available data. Despite this, DCEO's monitoring efforts for the industry include, but are not limited to, the following:

1. Monthly:
   DCEO will obtain residential and commercial price information from the Washington Gas website (www.washgas.com). Prices are in dollars per therm, and exclude taxes and delivery. The price per therm is charted monthly over the previous year to identify price fluctuations and trends.
2. Other:
   DCEO will check Washington Gas' Interruptible Customer Center website (www.interruptible.washgas.com). Curtailment notices for interruptible customers are an early indicator that a supply shortage may exist, generally as a result of weather or market conditions.

DCEO will receive an alert from Washington Gas or other natural gas providers through DCEMA if a supply deficiency is anticipated.

Petroleum Products

DCEO tracks supply and demand for petroleum products to identify significant changes. In the event changes are detected that may affect petroleum supply and demand in the District, monitoring efforts will be augmented.

If there is a determination by DCEO that a petroleum supply disruption is imminent and may require the involvement of the District government, monitoring efforts will be moved into the verification phase.

DCEO's ongoing supply monitoring efforts include, but are not limited to:

1. Weekly:

Under the State Heating Oil and Propane Program (SHOPP), from October through March, DCEO calls the suppliers with which the agency has agreements for No. 2 heating oil to obtain pricing information. The prices reported by the suppliers exclude taxes and discounts. This price information is relayed to DOE's Energy Information Administration (EIA) by DCEO.

2. Monthly:
   DCEO checks the Automobile Association of America (AAA) website (www.aaamidatlantic.com) to obtain price information about unleaded gasoline in the District and nationwide.
3. Annually:
   DCEO tracks petroleum consumption estimates for the residential sector by obtaining this information from the EIA's Annual Data Series, which is available on the EIA website (www.eia.doe.gov).

2. Level II – Mild Shortage

A mild shortage as a 5% to 10% reduction in petroleum supply for one week or more, a 5% to 10% reduction in natural gas nominations on interstate pipelines or pipelines on allocation or up to two weeks, or a localized storm damage or capacity constraint causes a short-term electric transmission/distribution loss.

Shortage Level II – Mild Shortage		
Conditions (in addition to previous phase; one or more may apply)	**Probable Impacts Observed**	**Media/Public Reaction**
The Department of Energy (DOE), American Petroleum Institute (API) or other sources report a decrease in the availability of product (e.g., from Middle East, South America, and domestic refineries).	Some jobbers report supply and delivery problems or related issues (such as long queues at fuel loading racks). Deliveries extend into evenings and weekends to keep up with demand.	National news reflects events indicating that particular energy supplies will be delivered short of expected amounts. Petroleum retailers speak in terms of "being put on allocation" lower than (or equal to because under normal circumstances they draw above 100%) their contract amount. Stories about energy may be featured in the media.
Spot prices increase rapidly. National and regional oil companies (prime suppliers) put more dealers on "allocation."	Dealers are uncertain about product availability and question information received from prime suppliers.	Media may features reports about high prices. If spot shortages occur, media will inquire.

Shortage Level II – Mild Shortage		
Conditions (in addition to previous phase; one or more may apply)	**Probable Impacts Observed**	**Media/Public Reaction**
Natural gas supplies available to local distribution companies (LDCs) are lower than normal.	Gas distribution companies may temporarily curtail interruptible contract customers according to curtailment rules approved by the PSC.	No media reaction is likely.
Severe demand outside the District may be seen as challenging electric supply for DC customers. A local generating plant has to be shut down temporarily. Electric lines may be out of service.	Electric utilities consider load management steps.	Some news reports likely.
Regional prices rise due to temporary imbalances between supply and demand. Causes may include refinery outages, transportation problems or sudden increases to tertiary (consumer level) storage and higher spot market prices.	Government assistance in removing retail driver hour limitations may be sought.	Some news reports, mainly feature stories, likely.
Heating oil and propane dealers, if queried, will report concern about continuity of supply.	Dealers complain to associations.	Some news reports possible. Dealers may complain to DCEO or other agencies.
Dealers report increased pressure on their ability to deliver fuel.	Some customers call dealers to top off home storage tanks.	Some news reports, mainly feature stories, possible. Public inquiries received by agencies.

During Level II, DCEO will continue to monitor the supply situation and coordinate with local energy suppliers.

Electricity

During a Level II electricity shortage, the following actions will be taken:

1. PJM may request customer use energy wisely and may warn of implementation by Pepco of a 5% voltage reduction in the District.
2. DCEO will work with the Mayor's Office to start a public information campaign to educate the public about ways they can reduce their demand for electricity.
3. The Mayor will ask the public to implement voluntary conservation measures to reduce the District's demand for electricity and thus comply with PJM's request for a voluntary 5% load reduction.

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4. DCEO will work with PJM to monitor the effectiveness of voluntary conservation measures.

Natural Gas

Local natural gas companies will warn DCEO of potential supply problems as early as possible. Upon notification of a mild shortage, DCEO will:

1. Notify the Mayor's Office and DCEMA, and will work with them to develop a public information campaign to educate consumers about conservation measures and energy efficiency.
2. Work with the local natural gas companies and customers with fuel switching capabilities to encourage these customers to voluntarily utilize these capabilities.

Petroleum Products

Level II monitoring will be implemented along with monitoring activities associated with Level I. DCEO has flexibility in determining the appropriate monitoring level and frequency. The following actions may be taken:

1. Prime Suppliers – As a supplement to the EIA-782C, the prime suppliers may be contacted to get advance notice of such things as distribution shifts, prices, and supply.
2. Retail Service Stations – DCEO will contact the Washington, Maryland, Delaware Service Station and Automobile Repair Association (WMDA) to request information on matters including, but not limited to, the following:
    a. Price;
    b. Estimate of gasoline lines;
    c. Storage levels;
    d. Supply relative to "normal;" and
    e. Any extraordinary situations.

3. Level III – Moderate Shortage

A moderate shortage is defined as a 10% to 15% reduction in petroleum supply for three weeks or more, a 10% to 15% reduction in natural gas nominations on interstate pipelines plus inside City Gate (the point at which the gas moves from the distribution pipeline to local distribution lines), curtailments by local gas distributors for a period of two weeks or more, or severe storm damage to electric transmission/distribution infrastructure.

Shortage Level III – Moderate Shortage		
Conditions (in addition to previous phase; one or more may apply)	**Probable Impacts Observed**	**Media/Public Reaction**
Petroleum product imports to the District drop 5% from the previous year or other base period. Allocations for a growing number of petroleum retailers are reduced.	Jobbers report difficulty in obtaining or delivering enough supply to satisfy customers. Queuing at wholesale loading racks keeps drivers in line for several hours or more.	News reports about shortage appear on regional and national broadcasts. Federal and District officials are interviewed.
Local weather or storms in other regions result in problems that lead to temporary curtailment in the District.	Some transportation companies add a "fuel charge" to their usual price.	U.S. DOE, or other federal agencies, and energy companies may publicly confirm shortage.
Product prices are rising steadily. Prices for key fuels rise at a rate of 10% or more per week.	Some retail dealers have difficulty meeting contract obligations.	Energy shortage in affected area is highlighted on national news.
Natural gas supplies fall below demand for firm customers. LDCs project inadequate storage.	In winter, many industrial and commercial interruptible gas customers are curtailed but this does not mean a natural gas shortage. However, demand increases for heating oil and propane.	News media begin to air or publish shortage stories regularly. Public asks for temperature controls for business and industry.
Demand from other countries draws product away from the U.S.	Supplies diminish as demand for heating oil increases. Prices increase significantly.	News media begin to use the words "energy crisis."
Interstate generation capacity or transmission is severely strained by wide area severe weather (cold or heat)	Utilities curtail load leading to request for conservation, voltage reductions, rolling blackouts and blackouts	Media coverage likely. Public tolerates mild inconvenience. Economic impact felt. Officials ask for explanations.
Growing numbers of low-income customers have difficulty paying for fuel. Natural gas interruptions increase, thereby putting additional pressure on the heating oil and propane supply. News media begin to cover energy problems several times a week. Low-income advocates demand help. Volunteer programs accelerate.	Requests for federal Low-Income Home Energy Assistance Program (LIHEAP) Increase. District agencies receive calls from individual households for help.	News media begin to cover energy problems several times a week. Low-income advocates demand help. Volunteer programs accelerate.

Deleted: brownouts and threat of blackouts.

Under these circumstances, Level III monitoring and action will be implemented along with Level II should energy supply shortages persist. During Level III, DCEO will conduct the following activities:

1. Fully activate the Energy Emergency Information Center (EEIC).
2. Require energy distributors and major energy consumers to file appropriate reports, data, and forecasts with DCEO.
3. Inform the appropriate District government agencies and the media of the procedures to be followed during a supply disruption and of the voluntary conservation measures to be implemented.
4. Request the Mayor implement the Tri-State Agreement and the Mid-Atlantic Agreement.
5. Alert DCEMA and coordinate with them to alert other District government agencies of the situation.
6. Coordinate with MWCOG.
7. Submit regular situation reports to the Mayor.
8. Prepare for a District-wide public information campaign.
9. Act as a central repository and clearinghouse for the collection and public inspection of energy-related data and information.

The Mayor's Office will take the following actions during Level III:

1. Review and assess the current situation.
2. Direct District agencies to begin pre-implementation actions.

All District agencies will execute the following actions:

1. Commence pre-implementation actions.
2. Designate energy shortage contingency liaisons.
3. Assist and maintain close contact with DCEO and DCEMA.
4. Identify and define special needs that may arise.
5. Develop contingency measures that address special needs.
6. Prepare special information campaigns as appropriate.
7. DCEMA may decide to implement a limited activation of the EOC.

Major businesses (100 or more employees) in the District will do the following:

1. Designate an energy shortage contingency liaison contact to provide information to DCEO.
2. Prepare for implementation of contingency measures.
3. Assess the impact of the supply shortage on company operations.
4. Alert customers and suppliers, as appropriate.

Electricity

During a Level III shortage, PJM may require load reductions by Pepco including voltage reductions or rolling blackouts, during which time customers with interruptible service will be asked to switch to using their alternate energy source. Rolling blackouts usually affect large blocks of

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customers first. DCEO will work with the Mayor's Office to continue to request voluntary load curtailment by governments and other large, non-interruptible customers, and also will appeal to the public to reduce consumption of electric power by instituting additional conservation measures. DCEO will make recommendations to the Mayor about whether any mandatory measures should be implemented at this point.

Natural Gas

A Level III shortage corresponds to a Short-Term Supply Deficiency for the natural gas industry. These short-term deficiencies are likely to result from a curtailment of supply from pipeline suppliers, a line failure or other delivery infrastructure impairment, loss of pressure control, or loss of the peak shaving plant. For a Level III emergency, local natural gas companies may do the following:

1. Request emergency gas from unaffected pipeline suppliers.
2. Pursue spot market purchases.
3. Curtail service to interruptible customers.
4. Augment supplies with production gas.
5. Notify customers that have fuel switching capabilities to use their alternate fuel source.
6. Request conservation by selected customers.
7. Request conservation by the general public.
8. Curtail gas service to firm gas customers according to the Uniform Emergency Curtailment Plan.
9. Adjust gas pressures as needed.
10. Shut off sections, remaining as sensitive as possible to the needs of critical facilities.
11. Maximize production from other plants.

DCEO will work with the Mayor's Office to educate the public and promote conservation programs among the commercial, industrial, and residential sectors. DCEO and the Mayor's Office will institute a public information campaign to implement voluntary conservation measures. DCEO will work with interruptible customers and customers with switching capabilities to ensure that they have sufficient supplies of alternate fuels to meet their needs. If these customers require assistance to procure additional supplies of alternate fuels, DCEO will assist them to find other sources of fuel supplies. If the local natural gas companies request curtailment, DCEO will work with the Mayor's Office to recommend mandatory thermostat settings for government facilities and suspension of other governmental natural gas consuming activities.

Petroleum Products

During a Level III petroleum shortage, DCEO will work with the Mayor's Office and DCEMA to encourage implementation of voluntary fuel conservation measures by the commercial, industrial, and residential sectors. A public information campaign will be used to educate the general public about fuel conservation measures. DCEO, DCEMA, and the Mayor's Office also will evaluate the need to begin to implement mandatory fuel conservation measures. DCEO will work with DPW and OPM to determine if additional petroleum supplies can be obtained from their suppliers through those agencies' contracts. DCEO will ensure that the District's fuel suppliers have a copy of the District's Critical Users List and will work with these suppliers to determine prioritized deliveries to critical users first if available supplies are not sufficient to meet demand.

4. Level IV – Severe Shortage

A severe shortage is defined as a reduction of 15% or more in petroleum products and/or natural gas supply for more than two weeks; natural gas nominations fall severely due to weather, interstate pipeline failure or production problems; or electricity outages extend for several weeks.

Shortage Level IV – Severe Shortage		
Conditions (in addition to previous phase; one or more may apply)	**Probable Impacts Observed**	**Media/Public Reaction**
Regional and local fuel dislocation is brought on by hurricane-scale storms; extended, widespread, winter cold; embargo or terrorist acts.	In peak driving seasons, gasoline stations curtail operating hours and motorists form lines to purchase available fuel regardless of price.	Government may be criticized for not acting quickly enough.
Prices do not level off but continue to rise.	During winter months, noncontract customers have serious difficulty locating heating oil even if they can afford it.	Fuel issues are reported regularly by the media; rumors are abundant.
Local product storage is extremely low or exhausted.	Petroleum fuel hoarding is observed.	Regulated energy company officials are called upon to explain the shortage.
Dealers are on less than 75% allocation and have difficulty maintaining contract delivery.	Suppliers sharply reduce allocations to dealers and dealers cannot manage customer inquiries.	Some consumption is reduced as users turn to alternatives or go without.

Shortage Level IV – Severe Shortage		
Conditions (in addition to previous phase; one or more may apply)	**Probable Impacts Observed**	**Media/Public Reaction**
Shortages are regional and possibly broader.	Government agencies are called upon to provide relief.	The public is willing to tolerate intervention such as odd/even gasoline purchase days and will respond to calls for voluntary conservation such as car-pooling or reliance on mass transit.
Firm gas contract supplies fall below 80% of normal.	Industrial customers face ongoing higher fuel cost. Commercial customers are asked to curtail hours. Some residential customers are displaced from homes in cold weather.	Economic impact noted. Media attention likely. Public will demand mandatory temperature control measures for commercial and government facilities. Energy company officials questioned by public authorities.
Long term power problems due to fuel prices or lack of fuel, weather or infrastructure failure.	Voltage reducitons and rolling blackouts occur.	Media attention constant. Economic impact noted.
Low-income families require significant assistance to obtain fuel.	Economic dislocation occurs.	The danger to vulnerable citizens is featured in the media.

Deleted: Brownouts

During a Level IV shortage, DCEO will:

1. Submit proposed executive actions to the Mayor.
2. Receive material from the Mayor's Office for distribution to District agencies, businesses, and others.
3. Assist in the dissemination and implementation of Mayoral actions.
4. Notify DCEMA of the severity of the emergency and provide regular status updates.
5. Notify other District government agencies of the shortage.
6. Coordinate activities with MWCOG.
7. Expand the DCEO Hotline and the EEIC to provide responses to inquiries regarding the crisis.

The Mayor's Office will:

1. Based on situation reports from DCEMA/DCEO, issue an Emergency Executive Order.
2. Direct DCEO to activate a District-wide public information campaign.
3. Direct District agencies to submit proposed executive action to DCEO.
4. Monitor the situation and take other actions as necessary.

District agencies will:

1. Activate contingency measures.

2. Maintain close contact with DCEO.
3. Assist with the District-wide public information campaign.
4. Assist with implementation of mandated actions.
5. DCEMA may decide to activate the EOC.

Major businesses (100 or more employees) will:

1. Activate contingency measures.
2. Maintain close contact with DCEO.
3. Submit information and reports to DCEO.
4. Assist with the District-wide public information campaign.

Electricity

During a Level IV shortage, which corresponds to Stage A-V for a capacity deficiency in the Metropolitan Washington Power Emergency Alert Plan, PJM may direct Pepco to interrupt loads on a rotating basis ("rolling blackout"), with all possible consideration of hospitals, water supply, sewage treatment, transportation, and 911 Center Operations. This interruption is likely to happen without warning and will affect all customers in a given blackout area.

Deleted: municipal and other critical services

Natural Gas

A Level IV shortage corresponds to a long-term supply deficiency emergency for the natural gas industry. The likely cause of such a supply disruption is the curtailment of contracted seasonal natural gas volumes by pipeline suppliers (Metropolitan Washington Natural Gas Supply Emergency Alert Plan). Such an emergency is most probable during the winter months when heating demand increases, and the shortage would be preceded by weeks or possibly months of advance notice. Under these circumstances, local natural gas companies would:

1. Request natural gas supplies from unaffected pipeline dealers.
2. Pursue spot market gas purchases.
3. Curtail service to interruptible customers.
4. Augment supplies with production gas.
5. Request customers that have fuel switching capabilities use them.
6. Request conservation by select customers.
7. Request conservation by the general public.
8. Curtail gas service to firm gas customers on a priority basis.

DCEO will work with the Mayor's Office to educate the public and promote conservation programs among the commercial, industrial, and residential sectors. DCEO and the Mayor's Office will institute a public information campaign to implement voluntary conservation measures. DCEO will work with interruptible customers and customers with switching capability to ensure that they have sufficient supplies of alternate fuels to meet their needs. If these customers require assistance to procure additional supplies of alternate fuels, DCEO will assist them to find other sources of fuel supplies. If the local natural gas companies request curtailment, DCEO will work with the Mayor's Office to

recommend mandatory thermostat settings for government facilities and suspension of other governmental natural gas consuming activities. DCEO also will evaluate the need for implementation of other mandatory conservation measures by commercial, industrial, and/or residential consumers and recommend these measures to the Mayor. If curtailment will affect residential customers during the winter months, DCEO will coordinate with DCEMA and the DC Department of Human Services to determine the need for warming shelters and other health and safety considerations.

Petroleum Products

During a Level IV shortage, DCEO will coordinate actions with their fuel suppliers to arrange fuel delivery to critical users first when informed by prime suppliers that projected inventories will not meet normal demand. DCEO will work with DPW and OPM, which also have fuel supply contracts, to determine if additional fuel supplies are available through the District's existing suppliers. Additional information will be provided to the public regarding voluntary conservation measures. DCEO, in coordination with DCEMA and the Mayor's Office, will determine if mandatory conservation measures are warranted, and if so, which ones should be implemented first, and then will communicate this information to the public. DCEO may also use financial means such as options contracts to purchase additional fuel. If fuel is available but does not meet current air quality standards, DCEO, the DC Department of Health, and the Mayor's Office may apply to USEPA for a temporary waiver of air quality requirements so that fuel needs can be met.

5. Beyond Severe

Conditions may deteriorate to what might be called "beyond severe." The probable causes include war, concerted petroleum embargo, widespread natural disasters or other calamities that can initiate a long-term reduction in fuel availability. At this crisis level, retail sectors suffer noticeable decline in revenue and initial volatile public reaction, such as hoarding and complaints to energy company and public officials, become almost routine as consumers adjust, however unwillingly, to fuel deprivation. Health and safety issues are especially evident for vulnerable populations extending from the low-income to the middle class. Price and/or consumption reductions do not readily influence supply. Severe economic dislocation occurs. Strong government intervention is needed to protect the most vulnerable members of the society. This sort of intervention goes well beyond allocation and other measures and may require further legislative action. The public is likely to tolerate severe government intervention to ration supplies and provide alternatives. From a media perspective, major

coverage is likely to diminish as the crisis becomes "old news." Feature stories dominate media reports rather than headline news.

6. Fuel Shortage Indicators

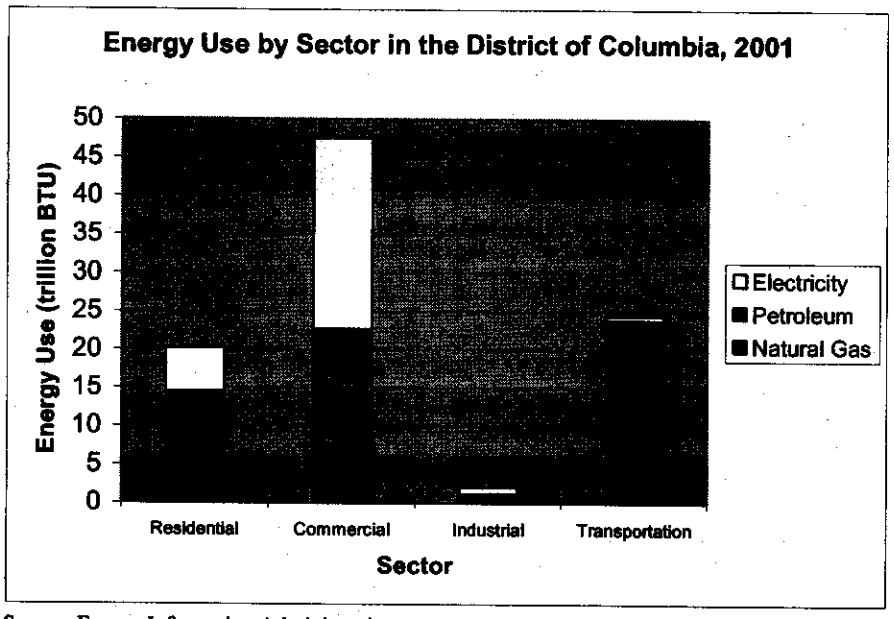
The following table presents primary and secondary indicators that can be used to evaluate the possibility of supply shortages of various fuels in the District of Columbia.

Fuel Shortage Indicators			
	Electricity	**Natural Gas**	**Petroleum**
Primary Indicators	• Decreased electricity production • Use of reserve generation capacity • Decrease in level of generating fuel stocks • Planned curtailment activity	• Major interstate deliveries • Intrastate deliveries and curtailment • Investigate alternate fuel availability	• World, regional, and local crude oil prices • Retail sales and prices of gasoline, diesel, fuel oil, propane • Supply balances at distribution centers, terminal, and pipelines • Petroleum product inventories and estimated days of supply
Secondary Indicators	• Power system outages • Forecast of inventory of fuel generating stocks • Decreased availability of power pool reserves	• Inter-tie exchanges • Increase in spot market price for natural gas • Curtailment activities	• World prices for refined petroleum products • U.S. crude oil production and supply • World crude oil production • Petroleum industry labor statistics

Derived from the Delaware Energy Emergency Contingency Plan

D. ENERGY SHORTAGE IMPACTS

From the table below, it can be seen that in the event of an energy shortage, the commercial sector, as the largest user of energy in the District, would be most affected, particularly during an electrical power outage, while the residential sector would be the second most affected. However, a natural gas shortage would have the largest impact on the residential sector, with the commercial sector coming in second. A petroleum shortage would most influence the transportation sector, and secondly, the commercial sector. The industrial sector is not a significant energy usage factor in the District.



Source: Energy Information Administration

1. **Level I – Monitor and Alert**

During the Monitor and Alert stage, no noticeable impacts are observed in the District. The news media may report about shortages elsewhere in the country if they exist.

2. **Level II – Mild Shortage**

In the District, the primary use of petroleum products is for motor gasoline, which constitutes approximately 60% of total petroleum product use (as measured in Btus). Only 5% of total petroleum product use is for home heating oil. Segments of the market that are most likely to experience adverse impacts as a result of the shortage would be low-income households and customers with interruptible service.

Electricity

A mild electricity shortage is not likely to have discernible effects on the District of Columbia. Pepco is a member of the PJM Interconnection, which is a power pool membership of utilities. The PJM Control Center monitors and controls the electric system and is able to divert a regional reserve of electricity to areas where there is increased demand.

Natural Gas

Natural gas is the principal heating fuel used in the District of Columbia. The District is supplied by three major interstate pipelines, which decreases its vulnerability to a mild, short-term supply shortage. The industry also fills storage tanks full prior to the winter heating season to ensure that additional supplies will be available to meet short-term increases in demand due to cold snaps. Therefore, it is unlikely that natural gas customers will feel the effects of a mild, short-term shortage.

The exception to this case might occur if the level of demand increases in other regions served by the same interstate pipelines and storage facilities. In this scenario, natural gas suppliers might increase sales of the available supply nominations to the geographic areas that bid higher prices for the commodity. Changes in nominations are not likely to affect customers with firm price contracts, however, customers with interruptible supply contracts at lower prices may see the allocation of their nominations reduced based on the price bid by and the nominations allocated to the affected geographic area (Maryland Energy Administration Energy Emergency Plan). These customers with interruptible supply contracts will need to curtail use of natural gas and/or seek other fuel sources to supplement their fuel supply needs.

Petroleum Products

Petroleum markets are very sensitive to fluctuations in supply and demand. The sensitivity is often reflected in price changes for these commodities. A number of factors can affect the petroleum market, including, but not limited to: increased demand, disruptions in the distribution system, inadequate production, embargo, and insufficient storage capacity. During cold weather, customers with interruptible natural gas contracts can further complicate matters; if the gas company requests the customer to use an alternate fuel, many of these customers seek petroleum products as their source of alternate fuel. If the weather is so cold that the gas company is interrupting service to these customers, it is likely that there is already an increased demand for heating oil from regular customers. The result is that prices rise. How much they rise depends on the available supplies, including those in storage.

3. Level III – Moderate Shortage

Electricity

During a moderate shortage, if PJM is unable to divert sufficient regional stores of electricity to the District due to an increase in demand region-

wide or a failure within the distribution system, Pepco may request the District's assistance in calling for voluntary conservation measures, and possibly some mandatory conservation measures. Customers with interruptible service will likely be asked to switch to an alternate fuel source. If necessary load relief is not achieved a voltage reduction and / or rolling blackouts may be necessary.

Deleted: so that Pepco can institute

Deleted: brownouts

Residential, commercial, industrial, and government sectors might be affected by mandatory conservation measures if they are implemented by the Mayor, and voluntary conservation measures if these customers comply with the request. Customers with interruptible service are likely to experience rolling brownouts.

Natural Gas

Natural gas companies typically fill their storage reserves before the winter heating months to be able to meet short-term increases in demand. However, if the increase in demand is sustained over a long period of time and/or if an increase in demand in other areas of the country result in suppliers diverting their storage supplies away from the DC market, it is likely that local gas companies will institute a curtailment. Generally this means that interruptible customers such as large commercial and industrial clients who are supposed to have an alternate fuel supply on-hand will have their natural gas service disrupted until other demand can be met.

If a pipeline loss occurs (through pipeline rupture or other means), the local natural gas company will shut off the gas lines to the affected area(s) until the proper repairs can be completed. After the repairs are complete, the gas company must relight the pilot light for each customer. This process can be very time-consuming. Under this scenario, residential natural gas customers could be affected for a period of up to several weeks, depending on the extent of the outage and the number of pilot lights that must be re-lit.

Petroleum Products

The problems experienced during a mild shortage are likely to continue during a moderate shortage. Problems may be compounded if the moderate shortage is due to an increase in demand by other areas of the country and/or international markets. Some relief may be offered during the winter months if DOE decides to tap into the Northeast Home Heating Oil Reserve, or at any time of year if the federal government decides to release stores from the Strategic Petroleum Reserve (SPR). If the SPR is tapped, relief may not be immediate, as the product in storage is crude oil, which would need to be refined before it is distributed. Distribution disruptions are more likely to occur as additional deliveries are required to

meet the increase in demand. Delivery trucks may have to wait in line to get their products for distribution. Because of the laws that limit drivers' hours, deliveries could be curtailed unless the District government seeks a waiver of driver hours.

The segments of the population that are most likely to experience economic hardship as a result of a moderate petroleum shortage are low-income households, households that use petroleum products as their primary source of heat, and interruptible customers who have difficulty finding and purchasing petroleum products as their alternate source of fuel. Some large corporate and industrial users of petroleum products might also experience hardship during a moderate shortage. Automobile users may have to wait in lines to purchase fuel if the shortage extends beyond the heating oil market into the automobile gasoline market.

4. Level IV – Severe Shortage

Electricity

During a severe shortage, if PJM is unable to divert sufficient regional stores of electricity to the District due to an increase in demand region-wide or a failure within the distribution system, Pepco may request the District's assistance in calling for additional voluntary conservation measures as well as some mandatory conservation measures. It is likely that Pepco will institute rolling blackouts as they shed some of their load. Rolling blackouts are likely to occur without warning, and will affect the entire population of the District. Rolling blackouts, if instituted, are likely to last for up to two hours in each geographic area where they occur.

Health care and other public health institutions should be prepared to switch to standby generators during rolling blackout periods. Individuals using electric powered medical devices at their homes should make sure that they have battery backups or other alternate sources of power for these devices. DCEMA, the DC Department of Human Services, and the DC Office on Aging should be prepared to receive requests for assistance from residents who need additional batteries and fuel for home generators.

Residential, commercial, industrial, and government sectors might be affected by voluntary and mandatory conservation measures implemented by the Mayor. All electricity customers may be asked to limit indoor air temperatures and reduce hot water temperatures. Depending on the expected duration, DC government may decide to reduce operating hours and/or suspend some operations until supplies are restored. Commercial and industrial businesses might also decide to limit operating hours. A decrease in operating hours for any enterprise could result in difficulties meeting schedules and deadlines, which in turn could result in decreased

revenues. These enterprises might be required to restrict their use of electric lighting for advertising, which could result in a decrease in business from passersby who are less likely to notice the business when the advertising lighting is turned off.

Natural Gas

The effects felt during a moderate shortage will continue during a severe shortage. The shortage may be localized or widespread, depending on the cause. If the shortage is due to a pipeline disruption, consumers will lose service until the appropriate repairs can be made and the gas company can re-light each customer's pilot light. If the disruption occurs during the winter heating months, the DC government may need to open heating shelters and take other measures to protect public health, welfare, and safety. In the event of a long-term supply disruption, residential and non-interruptible commercial, industrial, and government customers will be asked by the gas company to institute conservation measures such as thermostat temperature controls. During either a short- or long-term supply disruption, interruptible customers may be able to switch to their alternate fuel source until the supply situation returns to normal. However, these customers may have difficulty finding supplies of alternate fuels and may have to pay high prices for them if a long-term disruption occurs during the winter heating months.

Petroleum Products

The problems experienced during a moderate shortage will continue during a severe shortage. If the shortage occurs during the cold winter months, homeowners and others who use petroleum products as their source of heat are likely to have difficulty finding and procuring additional supplies. This supply problem will likely be compounded by the addition of interruptible natural gas customers to the market, who likely will have had their service disrupted and will be attempting to purchase heating oil as their alternate source of fuel.

If the petroleum shortage includes automobile gasoline, automobile drivers may experience long lines at gasoline pumps, and limited fuel supplies may result in restricted hours at retail service stations. Mandatory measures are likely to be put into effect by the local government, such as even/odd purchase rules. Drivers may decide to implement conservation measures by carpooling/ridesharing and/or using mass transit. Carpooling may result in altered work schedules as drivers adjust their hours to meet one another's schedules. Increased use of mass transit may require Metro to operate longer hours and more trains.

More segments of the population will start to feel the economic effects of the severe shortage. For a heating oil shortage, consumers of heating oil products likely will pay more for their supplies if they request a topoff, or if they are interruptible customers seeking an alternate fuel source. Commercial and government enterprises may need to curtail use, reducing operating hours and allowing employees to work from home. If the shortage affects the automobile gasoline market, automobile drivers can expect to pay high prices at the pump stations. Taxi and mass transit fares may increase to cover the rising fuel costs. The rising cost of fuel may increase the cost of food and many goods, as trucking companies charge more to producers for distribution, and the producers pass this additional cost on to consumers. If the petroleum shortage affects the region or the nation, tourism is likely to decrease, as potential tourists who would drive from out of state to the District might decide to postpone their trips until the shortage is relieved. All segments of the population are likely to feel the effects of a severe petroleum shortage to varying degrees, with low-income households experiencing the greatest economic hardship.

E. RESTORATION PRIORITIES

1. Electricity

In the event that Pepco's electrical transmission and/or distribution system is damaged, the company repairs equipment that will restore the largest numbers of customers first. Generally, the sequence is as follows:

1. Downed live wires or potentially life-threatening situations and critical public health and safety facilities without power.
2. Transmission lines supporting the electric system and serving substations affecting thousands of customers.
3. Substation equipment.
4. Main distribution lines serving large numbers of customers.
5. Secondary lines serving neighborhoods.
6. Service lines to individual homes and businesses.

2. Natural Gas

When it becomes necessary for Washington Gas to curtail gas service to its customers during an emergency, the following priorities apply, beginning with the highest number and proceeding in reverse order to Priority 1:

Priority 1 – Customer requirements for residential service, and requirements for human needs without alternate fuel capability (AFC).

Priority 2 – Customer requirements under 1500 Mcf per peak month without AFC.

Priority 3 – Customer requirements over 1500 Mcf per peak month without AFC.

Priority 4 – Non-utility electric generation requirements for essential electric human needs that do not have available supplies of alternate fuels or alternate sources of electricity.
Priority 5 – Customer requirements for human needs with AFC.
Priority 6 – Requirements of customers with AFC that do not come under any other priority.
Priority 7 – Requirements for boiler fuel.
Priority 8 – Delivery service balancing.

III. AN ENERGY PROFILE OF THE DISTRICT OF COLUMBIA

This section provides an energy profile of the District of Columbia for the period beginning in 1980 and ending in 2004. It includes data on income, population, employment, and construction activity. Information on overall energy consumption and a breakdown of consumption by energy source is also provided in order to give the historical context necessary for the reader to better understand how energy is used in the District of Columbia and the potential socio-economic impacts of an energy emergency.

A. ENERGY SUPPLIES AND SUPPLIERS

1. Electricity

Pepco, which is the primary provider of electricity services in the District of Columbia, finalized the sale of its production plants in January 2001. However, two oil-fired generating plants in the District now owned by Potomac Power Resources are still in existence and operational, and have remained part of PJM since the acquisition of these plants from Pepco was completed. The plants at Buzzard Point (16 units, 256 MW generating capacity) and Benning Road (2 units, 550 MW generating capacity) are peaking plants that contain must-run units based on PJM analysis. Nevertheless, dependence on the generating stations in DC has dwindled significantly, with most of the electricity supplied to customers in the District of Columbia being produced by coal-fueled power plants located in Maryland. Pepco is an active member of PJM Interconnection, the regional power pool, which oversees the operation of the largest wholesale electricity market in the United States. The PJM structure helps ensure an adequate supply of electricity within the region and the economically optimal use of available generating and transmission facilities. The electricity distribution network in the District includes 28 transmission lines, 13 transformers, six reactors, and a variety of other substation equipment at eight locations. Most of the power lines in the District are above-ground (rather than buried), and therefore are vulnerable to heavy winds, fallen trees, and other natural and man-made hazards.

Since the 1980s, over 90% of the District's annual electricity needs have been met by importing electricity from outside the city. Some of this power has been supplied by two utilities in Ohio through a long-term firm capacity and energy contract. When this contract expires, it could impact future market prices that the District pays for electricity.

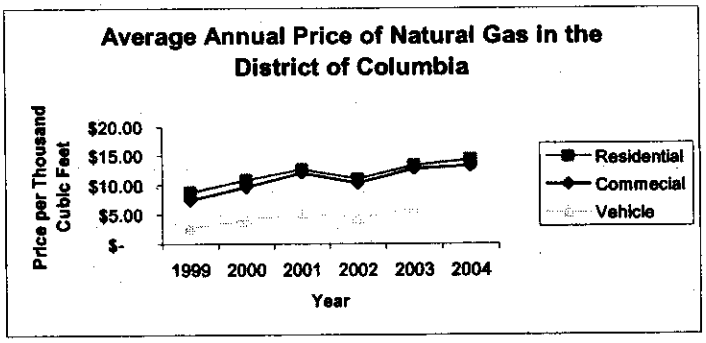
In the event of a potential energy emergency in the District, additional supplies can be purchased through PJM by submitting an Emergency Energy Bid Form. The form, which indicates when additional electricity will be needed, how much will be needed, and the proposed bid price, is faxed to PJM, who calls the bidder to verify their request and then evaluates the bid based on price, minimum run time, and notification time.

2. Natural Gas

The District of Columbia does not have natural gas reserves and therefore does not produce, process, or store natural gas or supplemental supplies. The District does not have any points of entry or exit into or out of the U.S. for natural gas. Natural gas supplies come into the District primarily from Virginia pipelines, but a small amount also comes from Maryland pipelines. The District's use of natural gas accounts for 0.3% of nationwide residential use, 0.5% of commercial deliveries nationwide, and 0.5% of natural gas used as vehicle fuel nationwide. Between 1999 and 2003, residential use has remained relatively flat compared with the rest of the county, while relative commercial and vehicle uses have declined slightly.

Washington Gas, which is supplied by three pipeline systems (Williams Transco, Columbia, and Dominion) that pass through the area to the south, is the primary supplier of natural gas in the District, furnishing approximately 89% of residential and 69% of commercial natural gas use. Other suppliers in the District include Pepco Energy Services, Washington Gas Energy Services, ECONnergy, and NOVEC.

The price of natural gas for residential, commercial and vehicle use has increased between 1999 and 2004, with a slight decline in 2002 before increasing again in 2003. The prices are depicted in the graph below.



Source: Energy Information Administration

Prices for natural gas are projected to increase as a strong economy and skyrocketing international petroleum prices drive additional consumer demand in the natural gas market.

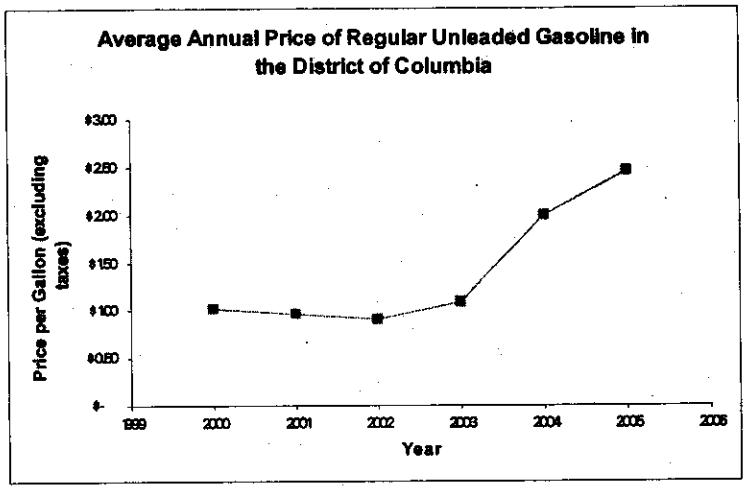
3. Petroleum

The petroleum infrastructure in the District of Columbia is relatively simple compared with many other states in the nation. According to the EIA, the District does not produce or refine petroleum products, nor are there any major distribution pipelines. There are approximately 100 retail outlets that provide motor gasoline for vehicles. Gasoline sold in the District of Columbia must be reformulated so as to result in reductions in vehicle emissions of ozone-forming and toxic air pollutants. In 2001, the District was ranked 51st out of 51 states and territories in terms of petroleum product use with a rate of 0.7 million gallons per day. The usage rate of various petroleum products in the District in 2001 was as follows:

District of Columbia Petroleum Product Use, 2001	
Petroleum Product	**Use (million gallons/day)**
Gasoline	0.45
Distillate	0.2
Liquefied Petroleum Gas	0.001
Jet Fuel	0.0
Asphalt and Road Oil	0.002
Kerosene	0.02
Lubricants	0.007
Residual Fuel	0.03

Several DC agencies, including DCEO, the Office of Property Management, and the Department of Public Works, have fuel purchase agreements with jobbers (wholesale distributors) and other petroleum suppliers.

The average retail price per gallon has increased substantially since 2000. The following graph shows the increase of regular unleaded gasoline in retail price per gallon through April 2005. Prices are projected to increase as supply markets remain tight and demand remains constant or continues to increase.



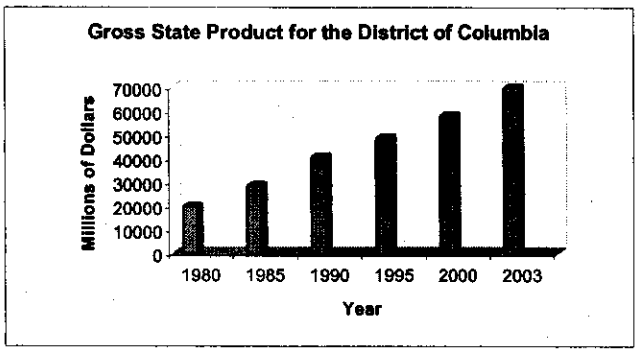
Sources: AAA, Energy Information Administration

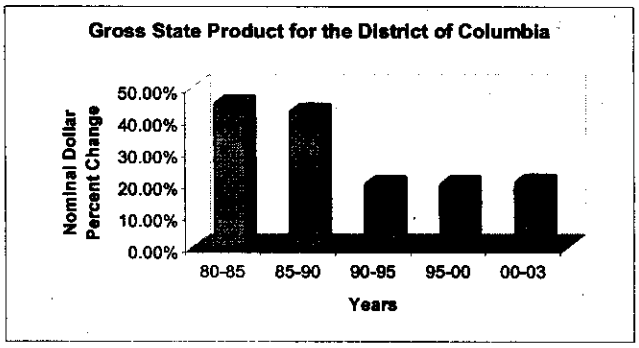
B. INCOME, POPULATION, AND ENERGY CONSUMPTION

In general, the 24-year period from 1980-2004 typifies one of great economic prosperity. The District saw stable growth in the local economy, homeownership rates, per capita income levels, and expanded office construction. However, over the same period, the District saw the population decrease and a decline in the number of housing units, while District-wide energy consumption remained steady.

1. Economy

Gross state product (GSP) for the District – the market value of goods and services produced in the District – rose steadily from 1980-2003. The growth was substantial in the 1980s, continued steadily at a somewhat slower rate throughout the 1990s, and began to grow more quickly again starting in the year 2000. During the 1980s, total nominal growth in GSP for the District was approximately 95%, an average of 7.7% per year. For the period 1990-1999, GSP increased 37%, an average of approximately 4% per year. Between 2000 and 2003, the GSP increased 20.3%, an average of approximately 4.7% each year. The figures below present this data.



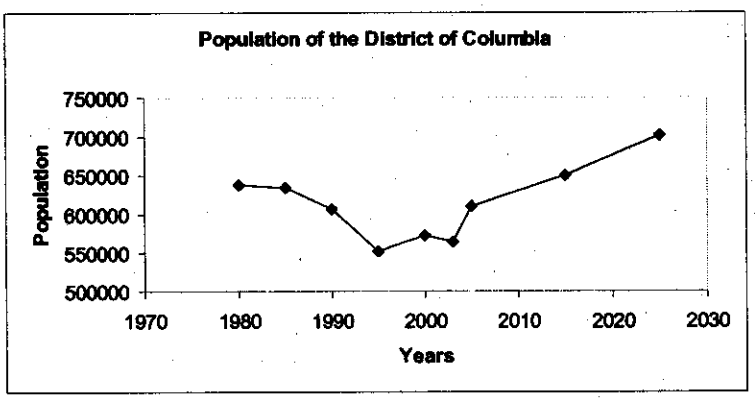


Based on Census data, the District of Columbia in 2003 had an annual median family income of $45,044 (in 2003 dollars), while the national median was $43,318. However, recent data shows that the District, in 2002-2003, had a two-year average poverty rate of 16.9%, which was down 0.7% from the 2001-2002 two-year average, but still above the national average of 12.5%. Although middle- and upper-income households constitute the largest components of the Residential Sector, the District has a relatively large number of low-income households, which are vulnerable to rising energy prices.

2. Population

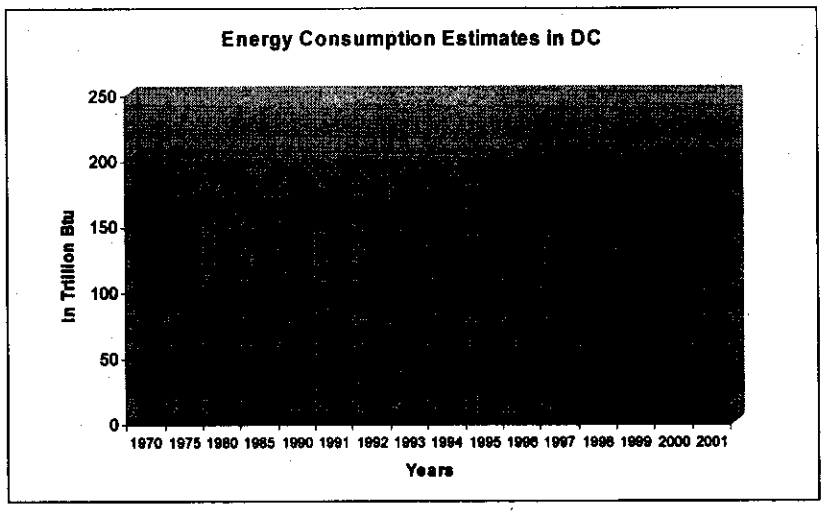
The population in the District declined significantly in the last 20 years. In 1980, the population was 638,432. By 1985, the District's population had decreased by about 0.7% to 634,549 residents, decreased again by another 4.4% to 606,900 residents in 1990, and decreased yet again in 1995 by an additional 9.2% to 551,273 residents. The population dropped as low as 519,000 in 1999 but rebounded to 572,059 in 2000. By 2003, the District's population dipped slightly to 563,384 residents. The population is projected

to increase to 611,000 by the year 2005, to 650,000 by the year 2015 and to 702,000 by the year 2025. The figure below shows the trend.



3. Overall Consumption

Total energy consumption in the District has remained rather constant during the 1980s and 1990s, notwithstanding a slight increase. Consumption grew 10.9% between 1980 and 2001, rising from 152.6 trillion Btu to 168.2 trillion Btu. The figure below illustrates total energy consumption in the District for this period. The District's residential, commercial, industrial, and transportation sectors consumed Btu directly through the use of coal, natural gas and petroleum products. The electric utility used coal, oil and natural gas to generate electricity.



Historically, energy prices in the District have been relatively high. In 2001, the District of Columbia paid the highest price per million Btu of any state in the country for energy. The District paid $15.57 per million Btu while the national average was $10.72 per million Btu. However, more telling is the sixth-place ranking in per capita expenditures – the District spent $2,583 per person on energy, while the national average was $2,433 per person. The District was ranked 31st in 1999 and in 2001 was ranked 39th in per capita consumption (the same ranking the District had in 1983), indicating that the District has reduced its energy consumption.

4. Usage by Sector

Residential energy consumption accounts for approximately 20% of total energy use in the District, and has remained relatively flat since 1990. However, the usage per household has increased slightly from approximately 56.7 million Btu/household in 1990 to roughly 59.8 million Btu/household in 2001.

There are several key factors that will drive residential energy demand in the District in the near future:

1. Continued increases in residential electricity and natural gas consumption in both single-family and multi-family dwellings in the District of Columbia;
2. Public Service Commission orders in Formal Case No. 945, effective January 1, 2001, giving all residential and commercial retail electric customers in the District of Columbia the option of selecting an alternative generation and transmission supplier, while Pepco continued to be the sole distribution company;
3. The authorization by the Public Service Commission, through gas tariff GT 96-3, allowing all District residential customers to choose their commodity natural gas supplier since January 1, 1999, while Washington Gas remains the sole distribution company;
4. Projected increases in the residential population of the District of Columbia resulting from and causing new single- and multi-family housing to be built and thereby increasing energy demand, particularly for natural gas and electricity; and
5. Projected increases in the number and diversity of low-income households in the District of Columbia requesting energy-related financial and service assistance from utilities and the District of Columbia Government.

In the commercial/industrial sector, there has been an unprecedented increase in commercial office space, with almost 42 million square feet added from 1980-2000, and approximately 2.5 million square feet added annually through the first quarter of 2005. The total commercial office space available in DC surpassed 110 million square feet for the first time in 2005, with a vacancy

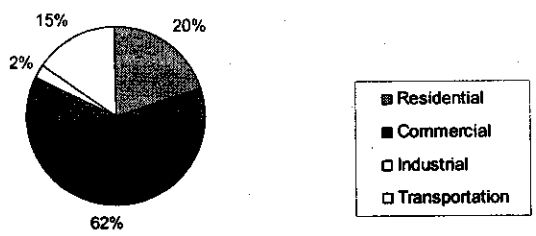
rate of less than 8%. Commercial energy use, at approximately 104.0 trillion Btu in 2001, accounts for approximately 62% of all energy use in the District.

Energy consumption in the transportation sector accounts for 25.8 trillion Btu, or 15% of the total 168.2 trillion Btu of energy used annually in the District. This breaks down into approximately 146.1 million gallons of reformulated motor gasoline; 73 million gallons of distillate (diesel fuel for trucks and buses primarily); 3 million gallons of lubricant; and approximately 120,000 gasoline gallon equivalent (GGE) of natural gas. Annual energy consumption in the transportation sector has remained virtually unchanged since 1980. Distillate consumption for transportation also remained relatively steady. While fuel sales to, and transit ridership by, residents of the District diminished, traffic and transit associated with suburban commuters increased.

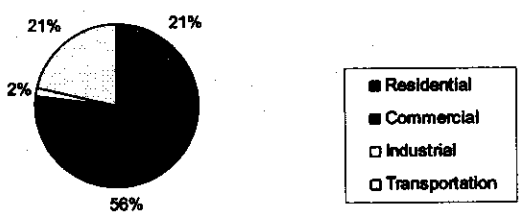
Although the industrial sector only accounts for approximately 2% of total energy use in the District (4.2 trillion Btu), the energy consumption in that sector is expected to rise as production equipment ages.

The figures below show the 2001 energy consumption and energy expenditures in the District of Columbia by sector based on data from the EIA.

Energy Use by Sector for the District of Columbia, 2001



Energy Expenditures by Sector for the District of Columbia, 2001



Prices have increased in all sectors between 1980 and 2001, as shown in the table below. Overall, total energy prices have increased from $8.72 per million Btu in 1980 to $13.23 per million Btu in 1999 to $15.57 per million Btu in 2001 in terms of nominal dollars. The national average in 2001 was $10.72 dollars per million Btu.

Energy Price Estimates for the District of Columbia for Four Sectors, 1980–1999 (in Nominal Dollars per Million Btu)

Year	Residential	Commercial	Industrial	Transportation
1980	7.04	8.61	10.2	9.44
1985	9.59	12.91	17.1	9.93
1990	9.39	11.73	14.68	10.24
1995	11.12	13.89	11.02	10.51
1999	12.18	15.35	8.96	10.23
2001	15.00	17.17	12.38	13.14

The period-to-period analysis of energy prices (in nominal dollars) indicates the rate of increase has risen sharply from 1999-2001. The table below shows the period-to-period percentage change in energy prices for the District.

Energy Prices in the District of Columbia for Four Sectors 1980-1999 Period-to-Period Percentage Change

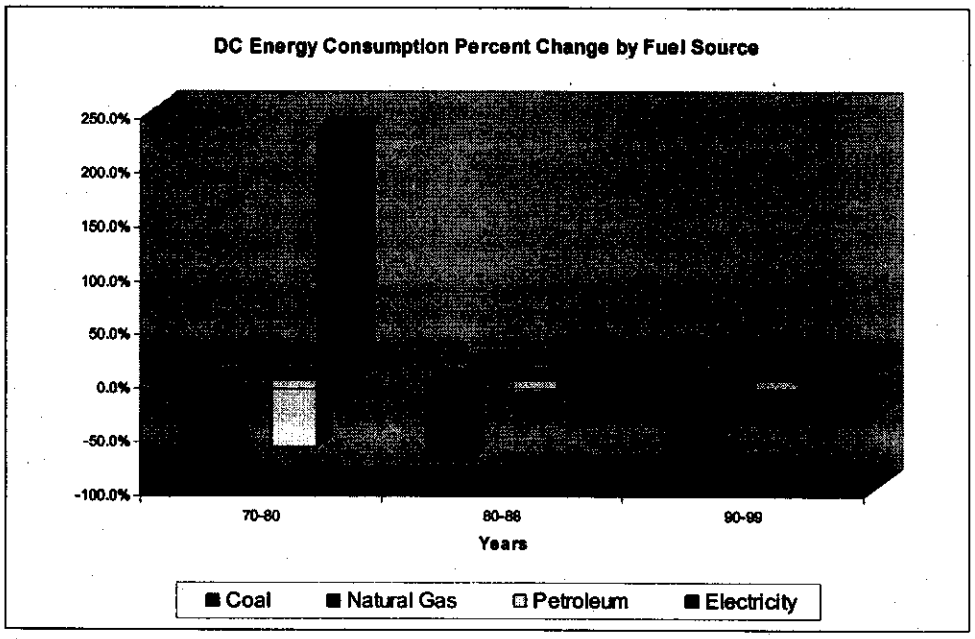
Year	Residential	Commercial	Industrial	Transportation
1980-1985	36%	50%	68%	5%
1985-1990	-2%	-9%	-14%	3%
1990-1995	18%	18%	-25%	3%
1995-1999	10%	11%	-19%	-3%
1999-2001	23%	12%	38%	28%

5. Usage by Source

Economic trends in the District of Columbia influence energy demands which, in turn, affect consumption patterns, prices and expenditures. The figure below shows the trends in energy consumption by fuel type from 1970-1999. The changes in the amounts and types of fuels used in the District result from a number of factors, including governmental air quality provisions, innovations in green technology, the politics of oil, and the prices of commodities.

Beginning with the Clean Air Act of 1963 (PL 83-206), federal law and regulations were approved and amended requiring areas of the country with unacceptable levels of air pollution – especially ozone, nitrous oxides (NO_x), sulfur oxides and volatile organic compounds – to plan and take significant steps to reduce air pollution. Among these requirements was the use of

reformulated motor gasoline designed to lower harmful emissions. The District of Columbia requires reformulated gasoline in accordance with the same requirements as the neighboring states of Virginia and Maryland.

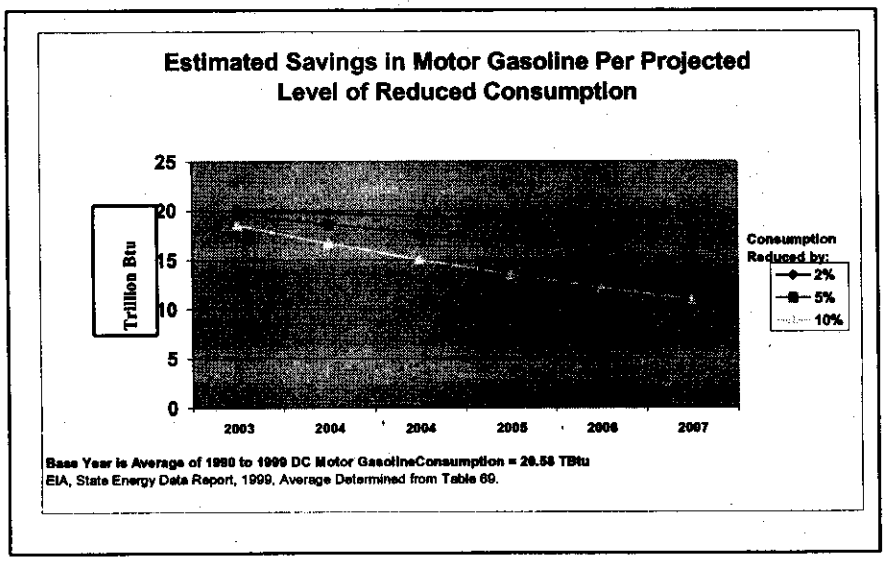


Petroleum consumption dropped 14.1 trillion Btu over the period from 1980-1999. The share of total energy consumption relying upon petroleum fell from 31.5% in 1980 to 20.0% in 1999.

The decrease in motor gasoline use may be the result of a number of factors. One is the apparent trend toward greater Metro ridership from locations outside the District. Another is the turnover in the vehicle fleet. Although Congress failed to raise federal Corporate Average Fuel Economy (CAFE) goals in 2002, replacement of older vehicles with newer, more efficient models appears to have helped reduce consumption. The recent rapid rise in gasoline prices has prompted some consumers to condense errands and cut out unnecessary trips. Also, gasoline availability is slightly less convenient, as the number of service stations in the District has decreased from 141 in 1987 to 109 in 2000. However, if planned construction and housing initiatives draw new residents into DC, motor fuel consumption may be expected to stabilize, if not rise slightly.

Prices that District consumers pay for petroleum products are the highest in the country, at $11.39 per million Btu in 2001 compared to the national average of $9.33 per million Btu. District consumers pay the second highest prices in the country for motor gasoline; in 2001 the price per million Btu in

the District was $13.57, while the national average was $11.35. However, efficient use of motor fuel is suggested by the District's ranking of #50 in 2001 in terms of expenditures per person, with residents spending an average of $480 per person versus the national average of $652 per person. The figure below illustrates the estimated savings in motor gasoline for three different projected levels of reduced consumption.



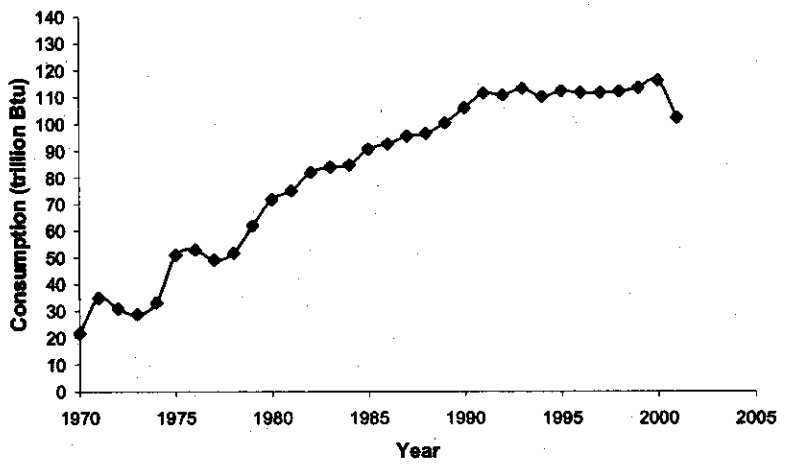
Between 1980 and 2004, natural gas consumption increased modestly due to the growth in the commercial sector. Overall consumption increased between 1980 and 1990, and has remained relatively flat since then. Increases in use by the commercial sector have been offset by decreases in use by the residential sector. Natural gas accounted for 19.5% of total energy consumption in DC in 1999 – relatively the same as in 1980 when it was an 18.5% share.

In 1980, coal consumption was 3.3 trillion Btu. Since then the District has seen a rapid decline in the use of this fuel. By 1990, consumption had decreased to 1.7 trillion Btu and to 0.1 trillion Btu in 1995 and 1999. Coal usage has slightly increased in 2000 and 2001 with a consumption of 0.2 and 0.7 trillion Btu respectively. Coal has historically been used in the District to generate steam.

Electricity as a share of total energy consumed in the District has increased significantly since the 1970s. Large increases in electricity consumption occurred during the mid- and late-1970s as consumers shifted demand from petroleum products to electricity. Electricity consumption as a share of the

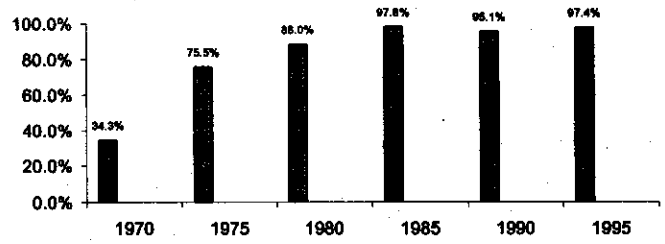
total energy market in the District continued to increase during the 1980s, but at a slower rate than the 1970s. Since 1990, electricity consumption relative to total energy use in the District has remained relatively flat. Electricity consumption in the District is graphed below.

Electricity Consumption in the District of Columbia, 1970-2001



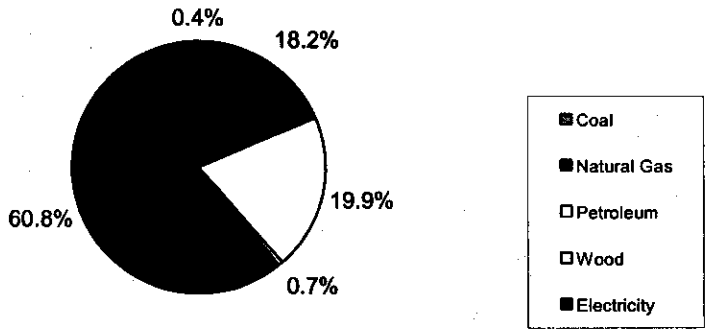
However, as electricity consumption as a share of the total energy market has increased, electricity production in the District has decreased. Since the 1970s, the District has increasingly relied on electricity imports to meet its electricity needs. The figure below shows the increase in net imports from 1970 to 2001.

Percent of Electricity Imported Into the District of Columbia

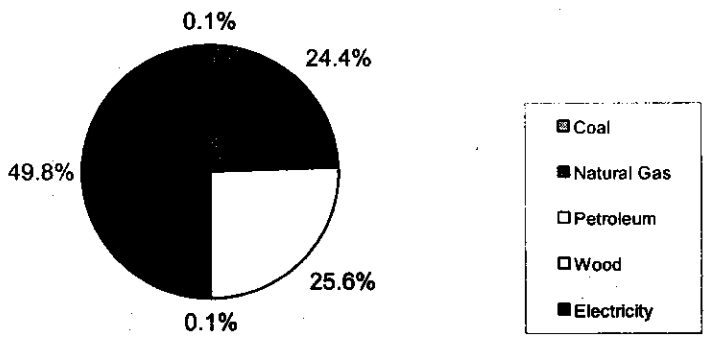


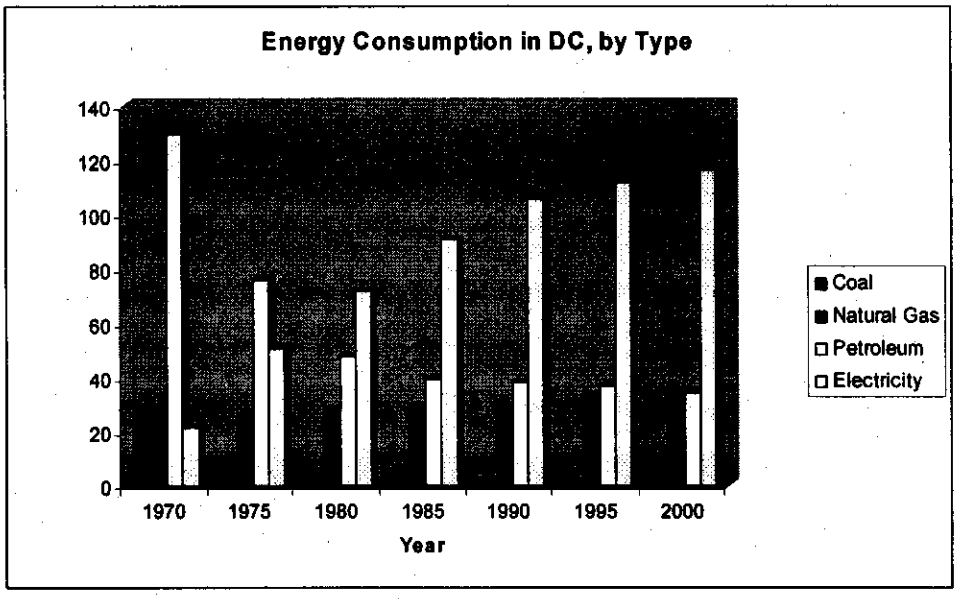
Other figures that complete the energy picture of the District of Columbia are shown below.

Energy Use by Source for the District of Columbia, 2001



Energy Expenditures by Source for the District of Columbia, 2001





A measure of energy efficiency used by the Department of Energy's Energy Efficiency and Renewable Energy office is energy intensity, which is the ratio of energy input per unit of economic output. Between 1980 and 2003, the District's energy intensity has decreased significantly from nearly 8,000 Btu/dollar to approximately 3,000 Btu/dollar.

IV. CONTINGENCY MEASURES

In the event of an energy supply shortage or disruption, the Government of the District of Columbia has two broad categories of demand reduction measures that it may choose to implement. First, the DC government may appeal to the public to implement voluntary demand reduction measures. If these measures are ineffective and/or the severity of the supply shortage worsens, then the Mayor may declare a state of emergency so that the District can institute mandatory demand reduction measures. The voluntary and mandatory measures that may be implemented are discussed in greater detail in the following sections.

A. VOLUNTARY MEASURES

1. Electricity Shortage

a. Adjust Indoor Regulated Space Temperature

Encourage commercial and residential customers who use electricity for heating and/or cooling to adjust their building temperatures to a maximum of 65°F during winter and minimum of 78°F during summer (or other temperatures as recommended by electricity suppliers and DCEO). Some exemptions would be granted for hospitals, nursing homes, and other buildings as determined by DCEO.

b. Reduce Hot Water Temperature

Encourage commercial and residential users to lower the temperature of the hot water in their buildings to 105°F. Exemptions would be granted for hospitals and other public/private health care facilities, restaurants, laundries, and other buildings that require high temperature hot water for health or industrial purposes. The public should also be encouraged to install low-flow shower heads and other energy-saving measures. DCEO will provide information to the public about how to implement these measures.

c. Additional Consumer Conservation Measures

Consumers can voluntarily implement a number of other conservation measures to save electricity:

i. Turn off lights, electronic equipment (such as computers and televisions), and appliances when not in use;
ii. Reduce wattage of light bulbs and replace traditional light bulbs with fluorescent bulbs;

iii. Clean the lint screen on washers and dryers after each load of laundry;
iv. Use electricity-intensive appliances during off-peak times only; and
v. Reduce outdoor illumination to essential lighting only (such as for security purposes).

2. Natural Gas Shortage

a. Reduce Indoor Heated Space Temperature

Encourage commercial and residential customers who use natural gas for heating to reduce their building temperatures to a maximum of 65°F, or other temperature as recommended by natural gas suppliers and DCEO. Some exemptions would be granted for hospitals, nursing homes, and other buildings as determined by DCEO.

b. Reduce Hot Water Temperature

Encourage commercial and residential users to lower the temperature of the hot water in their buildings to 105°F. Exemptions would be granted for hospitals and other public/private health care facilities, restaurants, laundries, and other buildings that require high temperature hot water for health or industrial purposes. The public should also be encouraged to install low-flow shower heads and other energy-saving measures. DCEO will provide information to the public about how to implement these measures.

c. Reduced Operating Hours

Large employers (100 or more employees at one location) with offices that use natural gas as the heat source will be encouraged to reduce operating hours and allow employees to work from home by telecommuting.

d. Additional Consumer Conservation Measures

Natural gas consumers can take additional measures to conserve natural gas usage, including:

i. Cleaning/replacing air filters monthly;
ii. Closing off unused rooms and closing vents in these rooms;
iii. Reducing heat level when not using space; and
iv. Cover holes, gaps and broken windows.

3. Petroleum Shortage

a. Use Public Transportation

During a petroleum shortage, DCEO and the Mayor's Office will work with their counterparts in Virginia and Maryland to encourage greater use of mass transportation facilities. Government officials will coordinate with the Washington Metropolitan Area Transit Authority (WMATA) and local transit agencies to promote ridership by increasing operating hours, providing additional capacity, and increasing staffing for transit information call centers. Government officials and transit providers will work with large employers (companies with more than 100 employees at one location) to offer financial incentives to employees to use mass transportation facilities.

b. Priority Gasoline for Vanpools

Vanpooling is one of the most energy efficient means of commuting on a Btu/passenger-mile basis. As a coping measure, there may be a benefit in assuring the availability of fuel for vanpools and in demonstrating to the public-at-large that their formation and support is in the public interest.

Fuel will be assured to vanpools by exempting officially recognized vanpools from odd-even sales restrictions. Such vanpools would be recognized by exemption certificates issued by DCEO through an affidavit procedure.

c. Staggered Retail Service Station Operating Hours

This measure seeks to reduce public inconvenience during periods of gasoline shortfall by encouraging service station operators to establish afternoon and evening hours on a staggered basis. This can be accomplished by making staggered hours a condition of receiving redirected gasoline by retailers.

d. Work Schedule Alteration

The purposes of altering work hours are to encourage the formation of carpools, even out peak transit use, and allow the working public to better cope with irregular and possibly inconvenient service station hours.

Implemented as a voluntary measure, large employers (over 100 employees) would be requested to install some form of flexible work hours program (if this is not part of their usual workplace policy) for the duration of the emergency. A list of such employers can be obtained from

MWCOG's employment file. As a voluntary measure, it would be announced as an appeal by the Mayor and the MWCOG Board of Directors to Washington area employers.

e. *Ridesharing*

Several ridesharing programs could be implemented voluntarily by citizens of the metropolitan Washington area to decrease overall use of gasoline by decreasing the number of trips made each day. Ridesharing alternatives include:

i. Expansion of the Computerized Ridesharing Program – MWCOG has an in-house computerized ride matching service that offers the general public a coping mechanism for maintaining the journey to work during periods of gasoline shortfall, and to conserve fuel.

An expanded ridesharing program would include stepped-up outreach campaigns to the private and public sectors, increased public relations campaigns, and increased processing capability.

ii. Lead Employer Ridesharing Recruiting – The purpose of this voluntary measure is to share expertise and experience in employer-sponsored ridesharing programs. By bringing together firms with known successful experience in ridesharing and firms desiring technical assistance, additional ridesharing sponsoring firms can be recruited.

The Washington Board of Trade could take the lead in brokering contacts between lead employers and firms needing assistance. This would be accompanied by a high visibility publicity campaign in which DCEO, MWCOG, DPW and/or DDOT would supply information packets for distribution.

A one-day seminar led by private sector ridesharing specialists would provide the primary vehicle for this type of information exchange.

iii. Slugging – This is a unique form of carpooling used by metro area commuters. It is also referred to as "Instant Carpooling." A vehicle needing extra passengers to meet the HOV occupancy requirements pulls up to designated slugging lines, usually in commuter parking lots. The vehicle driver either displays a sign in the window indicating the destination or lowers the window and calls out the destination. The slugs first in line for that destination get in the car, and the vehicle departs for that destination, now able to use the HOV lane. The driver then drops the slugs off at the

intended destination. No money exchanges hands because the system is mutually beneficial.

An information campaign promoting slugging would be instituted using radio and newspaper advertising, and flyers would be sent to large employers in the District and the metro area as well as community associations. Commuters would be directed to the slugging website, www.slug-lines.com, for additional information and to learn the location of the slug lines nearest them.

iv. Trip Consolidation – This measure seeks to reduce discretionary, non-work related automobile use by encouraging citizens to rideshare for shopping, church-going, and other trips. In addition, students would be encouraged not to drive when other means of transportation are available, unless physical disability necessitates driving. This measure would be implemented through a public information campaign that includes putting information inserts in utility bills, press releases, and radio and television interviews with a representative of DCEO. In addition, ridesharing information would be sent to the 800 neighborhood civic associations in the region from MWCOG's mailing list.

f. Bicycle Use

Metro area residents would be encouraged to use bicycles as an alternate means of transportation during a fuel shortfall by providing information about, and improving, the bicycle commuting environment. Examples of activities that could be undertaken include:

i. Establishing bicycle clinics to provide instruction in commuting techniques, safety, route selection, and parking;
ii. Making available information on area bicycle rentals and sales;
iii. Setting up a bicycle hotline;
iv. Distributing information through public media outlets;
v. Establishing neighborhood commuting coordinators;
vi. Creating additional bicycle parking facilities;
vii. Establishing bicycle parking in office buildings;
viii. Organizing pedal pools and caravans;
ix. Promotion of commuting through the public media; and
x. Obtaining endorsements by public individuals.

g. Telecommuting/Teleconferencing/Videoconferencing

People who are able to do so would be encouraged to perform their work duties from home and transmit their work to their office via email or other electronic means. Individuals are encouraged to participate in local area

meetings via teleconference or videoconference rather than by driving to the meeting site.

h. Vehicle Maintenance

Vehicles operate more efficiently and use less gasoline when they are properly maintained. Encourage vehicle owners to keep their vehicles properly maintained.

B. MANDATORY MEASURES

1. Electricity Shortage

a. Adjust Indoor Regulated Space Temperature

Upon recommendation by DCEO, the Mayor will issue an executive order that commercial, industrial, and government customers who use electricity for heating and/or cooling will be required to adjust their building temperatures to a maximum of 65°F in winter and a minimum of 78°F in summer. The measure will be enforced by inspections conducted by DCRA building officials. Some exemptions would be granted for hospitals, nursing homes, and other buildings as determined by DCEO.

b. Reduce Hot Water Temperature

The Mayor will issue an executive order that commercial, industrial, and government users must lower the temperature of the hot water in their buildings to 105°F. The measure would be enforced by DCRA inspectors, who would take water temperature readings at faucet heads on the first floor of the building. Exemptions would be granted for hospitals and other public/private health care facilities, restaurants, laundries, and other buildings that require high temperature hot water for health or industrial purposes.

c. Government Facility Hours Reduction/Closures

By issuance of an emergency executive order, the Mayor will require that the operating hours at local government facilities that use electricity for heating or cooling be reduced. Depending on the circumstances, the Mayor may determine that some government facilities should be closed temporarily.

d. Advertising Lighting

By emergency executive order, the Mayor will restrict use of advertising signs and window displays. Commercial, retail, and other service

establishments may only keep signs lit during business hours, and may only light signs that are essential to direct customers to the business or identify the business.

2. Natural Gas Shortage

a. Reduce Indoor Heated Space Temperature

Upon recommendation by DCEO, the Mayor will issue an executive order that commercial, industrial, and government customers who use natural gas for heating will be required to reduce their building temperatures to a maximum of 65°F. The measure will be enforced by inspections conducted by DCRA building officials. Some exemptions would be granted for hospitals, nursing homes, and other buildings as determined by DCEO.

b. Reduce Hot Water Temperature

The Mayor will issue an executive order that commercial, industrial, and government users must lower the temperature of the hot water in their buildings to 105°F. The measure would be enforced by DCRA inspectors, who would take water temperature readings at faucet heads on the first floor of the building. Exemptions would be granted for hospitals and other public/private health care facilities, restaurants, laundries, and other buildings that require high temperature hot water for health or industrial purposes.

c. Notify Interruptible Natural Gas Customers

Natural gas companies with customers who have interruptible natural gas contracts will notify these customers that their service will be temporarily curtailed.

d. Government Facility Hours Reduction/Closures

By issuance of an emergency executive order, the Mayor will require that the operating hours at local government facilities that use natural gas as the heat source be reduced. Depending on the circumstances, the Mayor may determine that some government facilities should be closed temporarily.

3. Petroleum Shortage

a. Minimum Fuel Purchase

The purpose of implementing a minimum fuel purchase plan is to discourage the phenomenon of "tank topping" that normally occurs during periods of fuel shortage, especially in the early stages.

Typically, a two-tiered minimum purchase plan is implemented, one for vehicles with six cylinders and above, and another for vehicles smaller than six cylinders. Sales to moped and motorcycle riders and container sales are usually exempted. Historically in the District of Columbia, vehicles used for commercial purposes and so identified have been exempted, along with certain other classes of vehicle users.

A minimum purchase plan will be combined with an odd-even sales program or will be implemented by itself through executive order. Such a plan can be expected to be largely self-enforcing, but there could be penalties assessed against violators (service station operators and motorists) according to applicable law.

In the past, public acceptance of the minimum purchase in the Washington metropolitan area has been good; it is a very visible example of the use of governmental authority in managing what can easily become a panic situation. If implemented again, it should be done through the Tri-State or Mid-Atlantic Energy Emergency Agreements so as to avoid rushes across state lines to purchase fuel in states where a minimum fuel purchase has not been put into effect.

b. Odd-Even Gasoline Purchase

The purpose of implementing an odd-even fuel purchase plan is to reduce the length of service station queues during periods of fuel shortfall. Under the plan, the day of allowable fuel purchase is determined by the last numerical digit of the vehicle license plate, with provisions for vanity and other special types of plates.

Typically, exemptions to the odd-even purchase rule are spelled out in the implementing executive order and may be 1) "as of right", e.g., a vehicle clearly used for commercial purposes, or 2) through an affidavit procedure, e.g., for doctors and nurses.

An odd-even purchase plan can be expected largely to be self-enforcing and past experience has shown it to be a useful tool in managing shortages, with broad support coming from the public-at-large, the District

government, and the retail service station industry. This plan, if implemented, should be coordinated in the National Capital Region through the Tri-State or Mid-Atlantic Agreements to prevent consumers from crossing state lines to purchase fuel.

c. *Mandatory Employer Ridesharing*

By executive order or emergency legislation, mandatory ridesharing programs would be required of employers having over 100 employees at a given site. The kinds of ridesharing programs that will be instituted include:

i. In-house carpooling programs;
ii. Prepaid transit;
iii. Employee vanpool programs;
iv. Parking management strategies;
v. Participation in third-party carpooling or vanpool program; and
vi. Company-sponsored auxiliary transportation services.

Employers of various sizes will be provided the option of selecting one or more of these approaches and compliance would be measured according to a pre-set goal.

It is assumed that this measure would be accompanied by expansion of MWCOG's computerized ridesharing program and implementation of lead employer ridesharing recruiting discussed in the "Voluntary Measures" section of this plan.

d. *Reduce Public Vehicle Use*

By administrative order, the Mayor would direct department heads to reduce fleet vehicle usage by placing weekly or monthly mileage or gallon limits on each vehicle. This would be enforced at the pumps and by review of mileage logs. Other restrictions and incentives might be tried as well (e.g., encouraging ridesharing and trip combining while on official business). Several governments in the National Capital Region have prepared such contingency plans, which may be useful as guides for other jurisdictions to follow.

e. *Emergency Building Temperature Restrictions (EBTR)*

This measure would reduce petroleum-based energy consumption in the commercial and industrial sectors. The Mayor would issue an executive order mandating a 78°F summer minimum and a 65°F winter maximum in space conditioned areas. In addition, a lavatory sink hot water maximum temperature of 105°F would be imposed. Hospitals and public/private health care institutions would be exempt, along with certain other classes

of building uses. Enforcement would be accomplished by DCRA inspectors.

f. Compressed Work Week

Employees of the District government and employers of over 100 persons per site would be given the option of fulfilling weekly or bi-weekly hourly work requirements in ways that would result in four or three-day work weeks. This would be a mandatory measure implemented by executive order or emergency legislation, and would, of necessity, involve a certain number of exemptions. This measure could be linked with the one- or two-day vehicle sticker plan, described below.

g. Mandatory One- or Two-Day Vehicle Sticker Plan

This measure seeks to reduce automobile vehicle miles traveled by eliminating private vehicle use one or two days each week. Households owning more than one vehicle must choose the same day of restricted driving for all vehicles; day(s) of restricted use would be self-selected by the vehicle owner. Exemptions could include:

i. Commercial vehicles or vehicles used primarily for business use;
ii. Essential personnel;
iii. Bona fide emergency use; and
iv. Vehicles that use alternative fuels and hybrid vehicles.

A substantial financial penalty would be assessed for violations. The program would be administered by the Department of Public Works, which would issue windshield stickers. The program would be implemented only if a long-term shortfall was projected and as a last resort step to forestall rationing.

h. Reduced Retail Hours

This measure seeks to reduce the number of trips made to retail outlets and increase carpooling to shopping venues by reducing the number of hours that retail outlets are open to the public. Careful consideration should be given to balancing potential adverse economic impacts against the benefits of fuel conservation before this measure is implemented.

V. PUBLIC INFORMATION

A. FUNCTIONS

During an energy shortage, it is vital that the public be provided with accurate and timely information on the extent and expected duration of the shortage; what is being done by local government, business, and industry; and what individual actions should be taken by the populace to help reduce their energy consumption. Coordinated messages and the timely dissemination of information will tend to dispel rumors and hearsay, minimize confusion, and boost public support and confidence, thus becoming an effective tool in reducing panic stockpiling of consumable energy resources (e.g., gasoline and heating oil).

Information should be exchanged among District and federal government agencies, the Public Service Commission, utilities, citizens' groups, and industry groups. To facilitate the flow of information among the key players during an energy emergency, the DCEO Energy Emergency Information Center (EEIC) will act as the clearinghouse for data and information gathering. District agencies, major employers, utility companies, news media, and the petroleum industry will be requested to designate their own liaison contacts and will be directed to provide updated information and data to the DCEO EEIC for dissemination to other stakeholders involved in the emergency.

The DCEO EEIC will act as the information and data clearinghouse and will:

1. Receive and develop information on the energy shortage for evaluation and release at the appropriate times;
2. Monitor data received from all appropriate sources and resolve questions of accuracy or consistency;
3. Coordinate information flow with the DCEMA, Public Service Commission, utilities, industry, commercial interests, citizens' groups, and other appropriate agencies;
4. Utilize the DCEO Hotline to provide information to the general public; and
5. Cooperate with local and regional governments in developing a consistent theme and goal.

B. STAFFING

The EEIC will be staffed by the DCEO Public Information Officer (PIO) and Emergency Liaison Officers (ELOs) that have attended the training required by DCEMA to become an ELO. The ELOs will work in 4 to 8-hour shifts to answer the DCEO hotline, coordinate information flow between the utilities, the District government, other energy agencies, and the general public.

C. COORDINATION

Delivering a coordinated, consistent message to other government agencies, commercial and industrial interests, and the public who are affected by the shortage is essential. Providing these entities with conflicting information from a number of different sources leads to confusion, discontentment, and in some cases backlash against the institutions and agencies delivering the messages. The EEIC will coordinate with the information liaisons/PIOs for DCEMA, Pepco, Washington Gas, the American Petroleum Institute, the Mid-Atlantic Petroleum Distributors Association, EIA, and other energy organizations to gather data and develop a uniform message to be delivered to the public. The message will include information such as the cause of the shortage, its severity, the geographical area impacted, the expected duration of the shortage, and government and utility actions being taken to address the situation.

D. PUBLIC INFORMATION CAMPAIGN

Public information campaigns seek to inform the public about the nature of the energy shortage, thus reducing the tendency for panic. In addition, they may also be used to encourage appropriate responses to the shortage, such as implementing conservation measures. In support of other implementation activities during an energy shortage, the DCEO will coordinate and monitor a District-wide public information campaign through the EEIC. Such a campaign is intended to facilitate public participation and cooperation to maintain mobility and to minimize inconveniences caused by limited energy supplies and severely escalating energy prices.

As part of the public information campaign, the EEIC will utilize the information that has been coordinated with the utilities and other agencies to develop press releases. These press releases will be provided to the Mayor's PIO to allow the Mayor to deliver frequent updates about the energy shortage situation. The updates will be clear and concise, and will provide current information about the expected duration of the shortage and the measures being undertaken to alleviate the situation. If necessary and available, DCEO will work with the Office of the Chief Technology Officer (OCTO) to develop GIS maps to display geographic impacts and provide other technical support for the updates.

The public information campaign also will seek to educate the public about what it can do during the shortage to decrease energy usage. Some subjects that may be included in the educational information program include:

1. Increasing fuel efficiency of automobiles;
2. Alternatives to single-occupant automobile travel, including public transit, ride sharing, and individual options;
3. Home heating conservation tips;
4. Tips on general energy conservation at home and in the work place; and
5. Energy supply availability and pricing.

This public information campaign will be accomplished through the use of press releases, meetings with community groups, news conferences, public service announcements,

advertisements, posters, brochures, leaflets, the DCEO website, and other appropriate means.

E. OPERATIONAL CONSIDERATIONS

Contacts – DCEO maintains an up-to-date contact list for DCEO employees and emergency contacts with the major utility providers to the District. In addition, the MWCOG ESF #12 committee maintains updated contact lists for energy officials in the National Capital Region.

Accuracy – Regularly scheduled meetings will be held to update DCEO, DCEMA, the utilities, and other key energy players about the status of the shortage. These meetings will be held prior to issuing press releases, and will be used to develop a coordinated message to be provided to the public. These meetings will be held via conference call convened by DCEO or DCEMA using the District's telephone conferencing system or MWCOG's RICCS system.

Press Kits – DCEO's EEIC will work with DCEMA and the Mayor's PIO to develop press kits. These kits will include handouts for press conferences, written statements for broadcasts, and background and statistical data. Disseminating information in written as well as verbal form provides additional documentation to help avoid confusion by providing a written record of what was said.

Drawing Conclusions – It is extremely important NOT to rush to conclusions, particularly when the media is present. The energy market is extremely complex, and many factors can contribute to the onset of an energy emergency. However, the media is under pressure to quickly obtain information and simplify it to get it out to the public. Oversimplification of a complex situation may adversely impact public opinion and establish unrealistic public expectations. Therefore, conclusions provided to the media should be carefully analyzed and worded to ensure accuracy.

Experts – Use experts from other agencies as appropriate to support information gathering and to provide information to the public through the media. Other key policy makers may also contribute by answering substantive questions from the media. Private associations for each major energy source may be able to speak on behalf of their industry and may have additional tips for conserving energy.

Informing the Public – Provide frequent, concise, accurate, and informative updates to the public. Providing accurate, consistent information on a regular basis will help garner public support of energy industry officials and providers during the shortage.

VI. ESF #12 EMERGENCY ACTION CHECKLISTS

A. ELECTRICITY EMERGENCY CHECKLIST

Level I:

- ☐ Monitor PJM website daily for alert messages, price information, and other data.
- ☐ Obtain current pricing information and update price tracking.
- ☐ If a voltage reduction alert is received from PJM or Pepco through the RICCS, DCEMA, or other source, notify ELOs and Mayor's PIO.

Level II:

- ☐ If Pepco requests a voluntary reduction in demand from the District, notify DCEMA.
- ☐ If Pepco requests a voluntary reduction in demand from the District, review demand reduction options:
  - o Adjust indoor regulated air space temperature (maximum of 65°F in winter and minimum of 78°F in summer).
  - o Reduce hot water temperature to 105°F.
  - o Public information campaign about electricity conservation.
  - o Reduced operating hours for government facilities.
  - o Reduced operating hours for commercial facilities (voluntary).
  - o Shift demand to off-peak hours.
- ☐ Determine recommended course of action. Provide recommendations to Mayor's Office.
- ☐ If determined appropriate, institute public information campaign about ways to reduce electricity consumption, including:
  - o Turn off lights, appliances, and electronic equipment when not in use.
  - o Clean lint traps on washers and dryers after each use.
  - o Reduce wattage of light bulbs in lighting fixtures. Replace traditional light bulbs with long-lasting energy efficient light bulbs.
  - o Use electricity-intensive appliances during off-peak times only.
  - o Limit use of outdoor lighting to security purposes only.
  - o Awareness of availability of low-income assistance.

Level III:

- ☐ Obtain information from Pepco regarding possibility of voltage reductions or rolling blackouts or other intended load reduction measures. Request forecast information from Pepco.
- ☐ Notify DCEMA about intended load reductions and forecasts.
- ☐ Notify Mayor's Office. Continue to recommend voluntary load reduction measures.
- ☐ Review mandatory conservation measure options:

Deleted: brownouts

- Adjust indoor regulated air space temperature (maximum of 65°F in winter and minimum of 78°F in summer).
- Reduce hot water temperature to 105°F.
- Reduce government facility operating hours/close some government facilities.
- Restrict use of advertising lighting.
- Interruption of service to interruptible customers.

☐ Determine if implementation of mandatory conservation measures is appropriate.
☐ If use of mandatory measures is appropriate, contact Mayor's Office and make recommendations. Implementation of mandatory measures requires the Mayor to declare a State of Emergency.
☐ Continue to educate public about conservation measures through public information campaign. Include information about mandatory conservation measures if implemented.
☐ Notify other District government agencies if mandatory measures are implemented so they can take the appropriate actions with their facilities and employees.
☐ Notify DCRA if mandatory conservation measures are implemented so they can enforce them.
☐ Continue to provide public information about available low-income assistance programs.
☐ Fully activate the Energy Emergency Information Center (EEIC). Supplement volunteer staff with ELOs as needed.
☐ Coordinate with MWCOG regarding conservation measures already implemented and other needs/requests by using the RICCS.
☐ Dispatch ESF #12 ELO to EOC, if requested.

Level IV:

☐ Obtain information from Pepco about the potential for rolling blackouts. If planned or occurring, obtain duration information.

Deleted: planned sequence and

☐ Notify DCEMA about planned rolling blackouts.
☐ Notify Mayor's Office about rolling blackouts (planned or occurring).
☐ Determine if (additional) mandatory conservation measures should be implemented:
- Adjust indoor regulated air space temperature (maximum of 65°F in winter and minimum of 78°F in summer).
- Reduce hot water temperature to 105°F.
- Reduce government facility operating hours/close some government facilities.
- Restrict use of advertising lighting.
- Interruption of service to interruptible customers.

☐ If (additional) mandatory measures are appropriate, notify Mayor's Office of recommendations. Mayor must declare a State of Emergency to implement mandatory conservation measures.
☐ Implement public information campaign to inform public about mandatory measures.
☐ Notify DCRA of mandatory conservation measures that have been implemented so they can enforce them.
☐ Continue to provide information to the public about low-income assistance programs.

- ☐ Coordinate implementation of conservation measures with MWCOG using the RICCS.
- ☐ Assess effectiveness of mandatory conservation measures (coordinate with Pepco to obtain information). If the measures are not effective enough, consider recommending that the Mayor seek federal assistance.
- ☐ Dispatch ESF #12 ELO to EOC, if requested.

Comment [X4]: How would th Federal Government assist?

Post-Emergency:

- ☐ Obtain information from Pepco about return to normal operations.
- ☐ Notify DCEMA of return to normal operations.
- ☐ Notify Mayor's Office. Mayor should declare an end to the emergency and suspend any mandatory conservation measures that were in place.
- ☐ Using the RICCS, notify MWCOG of the return to normal operations.
- ☐ Inform the public of the end of the emergency. Encourage continued voluntary conservation measures.
- ☐ Conduct an after-action review of the emergency and issue an after-action report.

B. NATURAL GAS EMERGENCY CHECKLIST

Level I:

- ☐ Monitor natural gas prices monthly to identify fluctuations and trends.
- ☐ Monitor curtailment notices.
- ☐ Receive notice from Washington Gas about potential supply shortage.

Level II:

- ☐ Receive notice from Washington Gas about supply shortage (anticipated severity and duration).
- ☐ Notify DCEMA of potential natural gas supply shortage.
- ☐ Review voluntary conservation measure options and determine recommendations:
    - Reduce indoor heated space air temperature to a maximum of 65°F.
    - Reduce hot water temperature to 105°F.
    - Install low-flow shower heads.
    - Clean/replace air filters monthly.
    - Close off unused rooms and close vents to these rooms.
    - Reduce heat level when not using space. Consider installing programmable thermostats.
    - Cover holes and gaps in buildings, and replace broken window panes.
- ☐ Contact Mayor's Office to recommend public information campaign for voluntary conservation measures.
- ☐ Implement public information campaign about conservation measures that can be implemented to reduce natural gas consumption. Include information about available low-income assistance programs.
- ☐ Coordinate with MWCOG through the RICCS regarding actions being taken and identified unmet needs.

Level III:

- ☐ Fully activate the Energy Emergency Information Center (EEIC). Supplement volunteer staff with ELOs as needed.
- ☐ Obtain information from Washington Gas about severity and anticipated duration of disruption as well as planned responses.
- ☐ Notify DCEMA regarding anticipated severity, duration of disruption and planned responses by natural gas utility.
- ☐ Notify Mayor's Office regarding anticipated severity, duration of disruption and planned utility response. Continue to recommend implementation of voluntary conservation measures.
- ☐ Review mandatory conservation measures for considered implementation:
    - Reduce indoor heated space air temperature to a maximum of 65°F.
    - Reduce hot water temperature to 105°F.
    - Notify interruptible gas customers to switch to another fuel source.
    - Limit operating hours of government facilities.

- ☐ If mandatory measures are deemed appropriate, recommend measures for implementation to Mayor. Mayor must declare State of Emergency to implement mandatory conservation measures.
- ☐ Notify other District government agencies about mandatory measures implemented.
- ☐ Notify DCRA about mandatory conservation measures being implemented so that they can enforce them.
- ☐ Implement public information campaign to notify the public about mandatory conservation measures being implemented. Also include information about low-income assistance programs.
- ☐ Coordinate with MWCOG regarding mandatory conservation measures being implemented, requests for assistance from regional partners.
- ☐ Dispatch ESF #12 ELO to EOC if requested.

Level IV:

- ☐ Expand the Energy Emergency Information Center (EEIC). Supplement volunteer staff with ELOs as needed.
- ☐ Obtain information from Washington Gas about severity and anticipated duration of disruption, as well as planned responses.
- ☐ Notify DCEMA regarding anticipated severity, duration of disruption and planned responses by natural gas utility. Provide regular status updates.
- ☐ Notify Mayor's Office regarding anticipated severity, duration of disruption and planned utility response. Continue to recommend implementation of voluntary conservation measures.
- ☐ Review mandatory conservation measures for considered implementation:
    - Reduce indoor heated space air temperature to a maximum of 65°F.
    - Reduce hot water temperature to 105°F.
    - Notify interruptible gas customers to switch to another fuel source.
    - Limit operating hours of government facilities.
- ☐ Recommend mandatory conservation measures for implementation to Mayor. Mayor must declare State of Emergency/issue Emergency Executive Orders to be able to implement mandatory conservation measures.
- ☐ Notify other District government agencies about mandatory measures implemented.
- ☐ Notify DCRA about mandatory conservation measures being implemented so that they can enforce them.
- ☐ Implement public information campaign to notify the public about mandatory conservation measures being implemented. Also include information about low-income assistance programs.
- ☐ Coordinate with MWCOG regarding mandatory conservation measures being implemented and requests for assistance from regional partners.
- ☐ Send ESF #12 ELO to EOC, if requested.
- ☐ Assess effectiveness of voluntary, mandatory conservation measures. If these are not sufficient, consider recommendation to Mayor to request federal assistance.

Post-Emergency:

- ☐ Obtain information from Washington Gas, other natural gas utilities about return to normal operations.
- ☐ Notify DCEMA of return to normal operations.
- ☐ Notify Mayor's Office. Mayor should declare an end to the emergency and suspend any mandatory conservation measures that were in place.
- ☐ Using the RICCS, notify MWCOG of the return to normal operations.
- ☐ Inform the public of the end of the emergency. Encourage continued voluntary conservation measures.
- ☐ Conduct an after-action review of the emergency and issue an after-action report.

C. PETROLEUM EMERGENCY CHECKLIST

Level I:

- ☐ Monitor price information with DCEO's heating oil fuel providers (during winter months only). Determine if trends are apparent.
- ☐ Monitor motor gasoline prices on the AAA website. Determine price trends, if apparent.
- ☐ Track petroleum supply and demand estimates on the Energy Information Administration (EIA) website. Identify trends that might signal an impending supply shortage.

Level II:

- ☐ Continue monitoring actions for Level I shortage.
- ☐ Obtain and review copies of the EIA-782C forms submitted to EIA by DCEO's petroleum suppliers to determine available supplies and trends.
- ☐ Contact prime suppliers to get additional information about distribution shifts, price trends and available supplies.
- ☐ Contact Mid-Atlantic Petroleum Distributors Association (MAPDA) to determine:
    - o Current prices.
    - o Existence/extent of lines at pumps.
    - o Storage levels.
    - o Available supply relative to "normal."
- ☐ Notify DCEMA about petroleum supply and price information
- ☐ Consider appropriateness of recommending voluntary conservation measures:
    - o Encourage use of public transportation.
    - o Work with employers to offer financial incentives to encourage employees to use public transportation.
    - o Bicycle use.
    - o Proper vehicle maintenance.
    - o Encourage ride sharing, including trip consolidation and slugging.
    - o Altered work schedules/telecommuting.
    - o Priority gasoline for vanpools.
    - o Staggered operating hours for retail stations.
    - o Reduce regulated indoor air temperature to a maximum of 65°F.
    - o Reduce driving speed to a maximum of 55 mph.
    - o Accelerate slowly from a stop.
- ☐ Notify Mayor's Office about petroleum supply, price information. Recommend implementation of voluntary conservation measures.
- ☐ Notify District government agencies about voluntary conservation measures.
- ☐ Implement public information campaign about voluntary conservation measures.
- ☐ Coordinate actions with MWCOG through use of the RICCS.

Level III:

- ☐ Continue Level II monitoring efforts.
- ☐ Fully activate Energy Emergency Information Center (EEIC). Supplement volunteer staff with ELOs as needed.
- ☐ Notify DCEMA of intent to recommend activation of the Tri-State Agreement and/or the Mid-Atlantic Agreement to the Mayor.
- ☐ Recommend that the Mayor activate the Tri-State Agreement and the Mid-Atlantic Agreement.
- ☐ Contact the DC Department of Public Works and the Office of Property Management to determine current fuel supplies. Determine if additional supplies can be procured through their existing contracts, if necessary.
- ☐ Confirm that the District's fuel suppliers have copies of the District's Critical Facilities List. If not, provide a copy of the list to them. Work with suppliers to request priority delivery of fuel to critical facilities on list.
- ☐ Consider recommending implementation of mandatory conservation measures:
    - Minimum fuel purchase.
    - Odd-even gasoline purchase days.
    - Mandatory employer ridesharing programs.
    - Reduce District agency public vehicle use.
    - Emergency building temperature restrictions (65°F max. in winter, 78°F min. in summer).
    - One- or two-day vehicle sticker plan.
    - Reduced retail service station hours.
- ☐ If deemed appropriate, recommend mandatory conservation measures to Mayor. Mayor must declare State of Emergency and issue Emergency Executive Orders to implement mandatory measures.
- ☐ Notify DCEMA of recommended mandatory conservation measures.
- ☐ Notify other District agencies about the severity of the shortage and voluntary and mandatory conservation measures.
- ☐ If temperature restrictions are made mandatory, notify DCRA so they can enforce the measures.
- ☐ Implement public information campaign about voluntary and mandatory conservation measures.
- ☐ Coordinate actions with MWCOG by using the RICCS.

Level IV:

- ☐ Continue monitoring efforts from Levels II and III.
- ☐ Notify DCEMA of severity of shortage.
- ☐ Work with the District's petroleum suppliers to prioritize deliveries to critical facilities.
- ☐ Work with DPW and OPM to determine if their contract petroleum suppliers have additional supplies that can be purchased.

- ☐ Review mandatory conservation measure options and consider recommending to Mayor for implementation:
  - o Minimum fuel purchase.
  - o Odd-even gasoline purchase days.
  - o Mandatory employer ridesharing programs.
  - o Reduce District agency public vehicle use.
  - o Emergency building temperature restrictions (65°F max. in winter, 78°F min. in summer).
  - o One- or two-day vehicle sticker plan.
  - o Reduced retail service station hours.
- ☐ Recommend implementation of mandatory conservation measures to Mayor. To implement these, the Mayor must declare a State of Emergency and issue Emergency Executive Orders.
- ☐ Notify DCEMA of any recommendations to implement mandatory conservation measures.
- ☐ Notify other District agencies of mandatory conservation measures being implemented.
- ☐ Consider pursuing use of options contracts to purchase additional petroleum supplies.
- ☐ If appropriate, apply for delivery drivers' hours waiver from USDOT.
- ☐ If appropriate, apply for air quality standards waiver from USEPA through the DC Department of Health.
- ☐ Continue public information and education campaign.
- ☐ Coordinate actions with MWCOG by using the RICCS.
- ☐ Assess effectiveness of conservation measures. If measures appear to be insufficient to address the emergency, consider recommending that the Mayor request federal assistance.

Post-Emergency

- ☐ Obtain supply and demand information from MAPDA, WMDA, EIA, API and others.
- ☐ Notify DCEMA of return to normal operations.
- ☐ Notify Mayor's Office. Mayor should declare an end to the emergency and suspend any mandatory conservation measures that were in place.
- ☐ Using the RICCS, notify MWCOG of the return to normal operations.
- ☐ Inform the public of the end of the emergency. Encourage continued voluntary conservation measures.
- ☐ Conduct an after-action review of the emergency and issue an after-action report.

VII. POTENTIAL LOAD REDUCTION MEASURES

A specific list of pertinent voluntary and mandatory load reduction measures for energy emergency mitigation will be recommended by the DC Energy Office in response to seasonal and specific types of energy shortages.

RESIDENTIAL

Residential and General Public Heating

- Set heating thermostat at 65°F during the day and at 60°F during the night. If using a heat pump, keep the setting at 65°F continuously.
- Turn the thermostat back to 50°F when on vacation. However, do not turn the heat completely off to avoid the freezing of pipes.
- Layer clothing.
- Use more quilts, blankets, and comforters during the night.
- Clean or replace heating system filters at least once a month.
- Open draperies to let the sun in on warm days but close the heat in at night.
- When space heating, close off rooms not in use. However, remain aware of air circulation needs for safe operation of combustion equipment and fireplaces.
- Weatherstrip any openings to the attic and around external doors.
- Cover single pane windows with plastic.

Electrical

- Use energy-intensive equipment and appliances (dryers, washers, ranges, dishwashers, etc.) during off peak periods appropriate for season.
- Turn off lights, electric equipment, and appliances when not in use.
- Consider doing without labor-saving but electricity-using devices (toothbrushes, can openers, hair blowers, etc.).
- Turn on outdoor lights for essential use only.
- Use the low setting of a three-way bulb when possible.
- Use compact fluorescent lights in suitable areas – on the desk, in the kitchen, bath, closets and hard-to- reach places; they are more efficient than incandescent bulbs and require less frequent replacement.
- Turn off radios, televisions and other energy users when not in use.

Dishwashers

- Air-dry dishes by turning the dishwasher off before it reaches the dry cycle and opening the door.

- Run the dishwasher only when it is full, but do not overload.

Refrigerator and Freezer

- Place the refrigerator and freezer in a level, cool, and well-ventilated location to increase its efficiency. Clean the condenser coils twice annually, or monthly if in an unconditioned space.
- Turn the temperature setting of refrigerators to the warmest possible setting without spoiling food, usually around 40°F.
- Minimize opening and closing of refrigerator and freezer doors.

Laundry Machines

- Wash and dry full loads.
- Remove clothes from the dryer as soon as possible. Over-drying not only wastes energy but wrinkles clothes as well.
- Separate light- and heavy-weight items into different loads.
- Dry clothes in consecutive loads so that remaining heat from the previous cycle can be utilized.
- Clean lint screens on washers and dryers after every load.

Ranges and Stoves (Seasonal)

- Use the lowest possible cooking temperature.
- Match the burner on the stovetop to the pan. A small pan on a large burner wastes energy.
- When cooking foods on surface units, reduce heat to the lowest temperature as soon as the food begins to cook.
- Cook with little water and a tight fitting lid when using surface units.
- Check the gaskets on the oven door. These may be leaking heat and can be replaced by a service technician.
- Since the oven is insulated and has a controlled temperature setting, less heat escapes into the kitchen air.
- Select a mean temperature and cook several dishes in the oven at the same time.
- Use microwave rather than oven to reduce energy use and heating up the kitchen.
- Avoid using your self-cleaning oven during an energy emergency.

Water Heaters

- Set thermostats on water heaters at 105°F. However, for dishwashers, water temperature should be set for 140°F unless the dishwasher has a booster heater.
- Increase insulation of water heaters by using wrap kits.

- Turn off water heater when away for extended periods.
- Minimize the use of hot water by installing low-flow showerheads.
- Repair leaky faucets.
- Insulate hot water lines.

INDUSTRIAL AND COMMERCIAL

Buildings and Grounds

- Reduce ventilation air to minimum acceptable standards.
- Reduce building exhausts and make-up air.
- Reduce temperature of service hot water.
- NOTE: The preceding three measures should be applied consistent with the appropriate building sanitation and safety codes.
- Shut off air conditioning in winter heating season when consistent with the practical operation of HVAC system. Use outside air or economizer system if available.
- Utilize programmable controls to switch off HVAC systems during unoccupied periods.
- Eliminate unused roof openings or abandoned stacks.
- Reduce heating level when building is not in use.
- Install timers on light switches in little-used areas and during weekend or unoccupied hours.
- Cover holes and openings in buildings such as broken windows, cracks around doors and windows.
- Repair faulty louvers.
- Disconnect water coolers and vending machines when not in use. Disconnect vending machine lights completely.
- Reduce or eliminate general lighting where natural light provides sufficient illumination. Limit higher lighting levels to task areas only.
- Ensure outdoor lighting is off during the day. Control with photocells and/or timers.
- Use compact fluorescent to replace incandescent lighting.
- De-lamp fixtures, removing two lamps and ballast from a four-lamp fixture, where low lighting level can be tolerated (storage rooms, hallways) without compromising safety.
- Replace T-12 lamps and electromagnetic ballast with T-8s and electronic ballast.

Electrical Power

- Use power during off-peak periods when possible.
- Optimize plant power factors.
- De-energize excess transformer capacity.
- Provide proper maintenance and lubrication of motor-driven equipment.

- Schedule use to minimize electrical peak demand.
- When replacing motors or adding new motors, buy high-efficiency models.

Steam

- Turn off steam tracing during mild weather.
- Maintain steam jets used for vacuum system.
- Repair leaks in lines, valves, and traps.
- Repair insulation on condensate lines.
- Repair faulty insulation on steam lines.
- Eliminate leaks in high-pressure reducing stations.
- Cover condensate storage tanks.
- Operate distillation columns at minimum quality requirements.
- Flash condensate to produce lower pressure steam.
- Eliminate reheat coils unless necessary.

Other Utilities

- Eliminate leaks in combustible gas lines.
- Eliminate leaks in inert gas and compressed air lines and valves.
- Shut off cooling water when not required.
- Clean or replace air filters regularly.
- Eliminate leaks in water lines and valves.
- Do not use compressed air for personal cooling.
- Shut off mechanical cooling if cold outside air will cool processes.
- Reduce the pressure of compressed air to the minimum required.
- Reduce water pressure.

Heat Confinement

- Repair faulty insulation in furnaces, boilers, etc.
- Repair furnace and oven doors so that they seal efficiently.
- Install loading door seals.

Combustion

- Calculate and plot boiler efficiency daily.
- Adjust burners for efficient operation.
- Heat oil to proper temperature for good atomization.
- Reduce combustion air flow to optimum.
- Limit and control secondary combustion air in furnace operations to the amount required for proper furnace operation.

Scheduling

- Shut down process heating equipment when not in use, if feasible.
- Locate causes of electrical power demand charges and reschedule plant operations to avoid peaks.
- Consider three or four day around-the-clock operations rather than one or two shifts per day.
- Minimize operation of equipment required to be maintained in standby condition.
- Reduce operating time of equipment to that actually required.

Materials Handling

- Turn off conveyor belts, lift trucks, etc., when not in use.
- Recharge batteries on materials handling equipment during off-peak demand periods.
- Adjust and maintain forklift trucks for most efficient operation.
- Shut down diesel construction equipment when not needed.

Shipping, Distribution and Transportation

- Shut down truck engines while loading, unloading, or waiting.
- Reduce delivery schedules and consolidate deliveries.

Commercial Practices

- Set thermostats for heating in all buildings to 65°F during business hours and reduce them to 55°F during non-business hours when consistent with the practical operation of the HVAC system. Conversely, cooling temperature in summer should be increased to 78°F when building is not in use.
- Reduce transportation energy consumption by using telephone and electronic methods when feasible.
- Reduce interior lighting to minimum necessary level.
- Reduce hot water temperature in washrooms to 105°F.
- Utilize daylight whenever possible in lieu of artificial light.
- Overlap the work hours of custodial services with normal day hours.
- Turn on display merchandise, such as radios, TV sets, etc., for demonstration only when requested by customer.
- Consolidate freight shipments and/or deliveries.
- Reduce exterior buildings and grounds illumination to minimum safe level.
- Eliminate or reduce lighting of outdoor displays and signs.

Transportation

- Encourage strict adherence to speed limits.
- Ask motorists not to drive at least one day per week.
- Ask motorists to combine several errands into one trip. Encourage carpooling, vanpooling, and utilization of mass transit system.
- Encourage individual and corporate automobile and truck conservation in everyday driving through tune ups, properly inflated tires, avoiding excessive braking and less use of car or truck air conditioning.
- Check air filters and PCV valves, spark plugs, ignition points, condenser, etc.
- Encourage motorists not to idle and race engines.
- Encourage use of public transportation (bus and rail) for trips out of town.
- Encourage bus companies to provide additional pickup points for passengers.
- Ask for limiting unnecessary student driving to school.

VOLUNTARY GASOLINE/DIESEL CONSERVATION MEASURES

- Encourage service stations, convenience stores, and other retail outlets to limit hours for the sale of gasoline.
- Encourage closing of service stations, convenience stores, and other retail gasoline outlets at least one day a week.
- Stores in the same general area should be encouraged to stagger the days they will close. This would not apply to retailers in isolated areas.
- Encourage gasoline purchases be made on odd-even day of month as determined by the last digit of the license plate number. (Odd number on odd number calendar day; even number on even number calendar day. Personalized license plates will follow ending letters of A-M on odd days and N-Z on even days. Personalized license plates ending in numbers will follow the schedule for license plate numbers).
- Encourage businesses to investigate and develop plans for staggering work hours so employees can use mass transit systems more effectively. (WMATA officials should be consulted.)
- Encourage volume or dollar limitations at the discretion of the dealer. However, it is suggested that where inventory permits, fill ups be made to reduce concern and wasted fuel in going from station to station. This should not include reserve tanks and supplementary storage containers.
- Encourage adoption of a flag system to indicate availability of various services at service stations. Green flag indicates sale of gas to all customers. Red indicated gas sales closed. Yellow flag indicates store open for other services only.

VIII. PROCEDURES FOR STATES TO REQUEST REGIONAL DRIVER HOURS WAIVERS FOR THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA) IN THE EVENT OF A POTENTIAL SERIOUS SHORTAGE OF DELIVERABLE FUELS

Prepared by: The Energy Data and Security Committee, National Association of State Energy Officials (NASEO) September 6, 2002

Situations have occurred in winter months when the transportation of deliverable fuels for residential space heating (#2 fuel oil and propane) has been unable to keep up with demand. Such problems have typically been widespread, affecting a number of states and caused by factors that exceed the reasonable bounds of the industries ability to respond. Under such circumstances, and to the extent they can be independently verified, states in the affected region may wish to make a coordinated request to the FMCSA for the temporary waivers of driver hours requirements.

This procedure is not intended to be used in the event of a major emergency where the Governor has made a disaster declaration and for which he they have clear authority. These procedures are to be used under less than disastrous situations, but where there is a clear and serious threat to the ability to assure regionally that residential customers are supplied with heating fuels during the winter.

The Federal Motor Carrier Safety Regulations (FMCSRs) (390.23) provides relief from compliance with most safety regulations when an emergency is declared. According to 49 CFR 390.5, an "Emergency means any... storm (e.g., thunderstorm, snowstorm, ice storm...) earthquake... explosion, blackout, or other occurrence, natural or man made, that interrupts the delivery of essential services... or supplies (such as food and fuel) or otherwise immediately threatens human life or public welfare...." Under such situations, the FMCA Field Administrator may declare emergencies if there is a regional crises which justifies such regulator relief.

Procedure

1. A state learns that a supply problem may be developing. This information may come from numerous sources, including requests from suppliers for driver hours waivers; information from the State Heating Oil and Propane Prices survey conducted by many states; the occurrence of very cold weather for a protracted period; major winter storms that may impede highway travel, ice conditions that effect barge traffic on rivers supplying key terminals, etc.

2. A state will contact other states in the region that it believes may be also affected to determine if they are experiencing similar problems. Such contacts would be typically through the Energy Emergency Information Coordinators, which have been named in each state. Contacts can use email or phone call, or regional conference calls can be scheduled if it is believed the problem is a wide scale regional problem.
3. If it is determined by a group of states that a request for a regional waiver is warranted, each state will prepare information that provides a foundation supporting the waiver.
    a. If individual suppliers have requested waivers they should be asked to provide detailed information in support of their request.
    b. State industry association representatives should be consulted to confirm that the problem is more widespread in nature.
    c. The state should prepare an analysis of the supply situation drawing from independent sources of information such as the Energy Information Administration, National Weather Service, etc.
    d. Determine the amount of time for which the waiver is to be requested, e.g., 5 days 10 days. This time should be specific by date and should be not longer than absolutely needed for the supply problems to be resolved.
4. States should agree to request a regional waiver and provided specific information supporting the request within a specific period of time, e.g., 24/48 hours, and to send this request and information by fax or e-mail to the appropriate FMCSA Field Administrator. A copy of the request should also be sent to the State Director of FMCSA.

Request to the FMCSA Field Administrator should come from appropriate state officials. While this request might come directly from the Governor, this may not be practical due to time or other constraints. In this case, other state officials which have authority for energy, emergency and/or motor carrier matters, such as the head of the state's motor carrier enforcement agency, the director of the State Energy Office, the chair of the public utility commission, the secretary of the Department of Transportation, or the head of the state's emergency management agency, might submit a letter or letters over one or more of the signatures of such agencies. In all cases, states are strongly encourage to assure that all appropriate states agencies are involved and consulted as part of the process.

Please note that following this procedure is no guarantee that waivers will be granted. That decision remains that of the FMCSA Field Administrator. However, to the extent several states provide detailed information and analysis of the supply and other factors affecting the ability of drivers to maintain the supply to residential customers, there is a greater likelihood that a waiver will be granted.

Factors which States Should Consider in Assessing the Need to Make a Request for Regional Driver Hours Waivers:

Weather

1. Is snow or ice sufficiently severe that full recovery of highways and primary roads will take more than two days? (The state department of transportation and or county road commissions may be able to provide this information.)
2. Is snow or ice sufficiently severe that full recovery of secondary and rural roads will take two to four days? (Check with the county road commission or county emergency management coordinators.)
3. Is cold sufficiently severe that fuel use by significant numbers of households will outstrip the ability of local retailers (operating under normal hours of service limitations) to replenish critically-low home fuel tanks?
4. Is cold sufficiently severe that fuel transporters (operated by jobbers or retailers under normal hours of service limitations) are unable to replenish the supplies of retail outlets in the face of increased consumer demand?
5. Have the Heating Degree Days substantially exceeded normal for a prolonged period?
6. Which counties have been declared under a state of emergency of any sort?

Weather points to emphasize:

A. Regional emergencies should not be requested solely because of severe weather; the severe weather must be shown to have a significant and prolonged effect on the supply system that threatens human life or public welfare.
B. The simple fact that one or two retailers are in trouble should not alone be grounds for requesting a regional emergency. Retailers that mismanage supplies or that make no extraordinary efforts to obtain extra supplies or contract with additional drivers of jobbers should not be seen as grounds for granting a waiver.
C. The simple fact that some "will-call" customers are on the verge of running out of fuel because of their own mismanagement of their supply (e.g., calling one day before they are likely to run out) should not be grounds for a regional emergency. The inability of retailers to supply "keep full" customers is a better barometer of inability to meet demand.

Supply Shortage and Infrastructure Damage

1. Are terminal lines or product shortages the result of product allocations by a single supplier within the region?
2. What is the state and regional inventory picture? How does it compare to last year, the recent average for the month, or the high and lows for the month?
3. Has a pipeline, refinery, or terminal been damaged?
4. Is a damaged pipeline, refinery, or terminal dispensing reduced quantities of product? Has distribution actually stopped?

5. How long is a damaged pipeline, refinery, or terminal expected to be at reduced capacity or shut down?
6. What is the geographic range of product distribution from the pipeline, refinery, or terminal?
7. Are terminals within the region out of a given product, and if so, for how long?
8. Are terminal outages limited to one or two terminals within the region?
9. Are alternative suppliers available within the region?
10. Can transporters reach alternative suppliers within normal hours of service limitations?
11. Are there others mitigating factors that will lessen the threat to the public (e.g., mild weather, alternative product availability)?

Supply Shortage and Infrastructure Damage points to emphasize:

A. A regional emergency should not be declared solely because of outages or lines at one or a few terminals, unless obtaining fuel from alternative suppliers is impossible within normal hours of service limitations.
B. A regional emergency should not be declared if consumer demand for a given product is low at the time of the supply shortage (e.g., warm weather during a propane shortage), unless the shortage becomes sufficiently long that retailers are unable to replenish their own supplies.
C. A regional emergency should not be declared if alternative products are readily available (e.g., low sulfur on-highway diesel fuel in place of high sulfur No.2 home heating oil).
D. Weather factors can exacerbate supply problems or infrastructure damage; the combined effects of different factors that by themselves would not result in emergencies should be considered.

Transportation

1. Have jobbers and/or retailers pressed all qualified drivers into service?
2. Have or will all qualified drivers exhaust their hours of availability under normal hours of service limitations?
3. Have all available trucks been placed into service?
4. Have third-party carriers been contacted and found to be not available?
5. Are there lines at fuel terminals?
6. Are there lines at fuel terminals during all hours, including nighttime?
7. Are trucks lined up at fuel terminals with waits longer than four hours to load supplies? If so, during what hours of the day and/or night have lines been observed?
8. Are lines at terminals isolated to one or two specific terminals within the region?
9. What other actions has the industry taken to avoid the need to grant driver hours waivers?

Transportation points to emphasize:

A. The fact that fuel truck drivers require special training and certification is a limitation on the ability to employ extra drivers during emergencies.

However, retailers and jobbers should make efforts to hire all available drivers and to place into service all available trucks during emergencies or shortages.

B. Long waits at terminals during the day do not demonstrate a shortage of product or a need for driver hours waivers if those lines disappear at night.

C. Lines at one terminal and the absence of lines at another may signify price shopping rather then product shortages or transportation disruptions. Waivers should not be granted where terminal lines are the result of economic decisions.

Regional Effect

1. Which states have been directly affected by severe weather (cold, ice, or snow)?
2. How many states are served by terminals that are out of product or at which there are long lines?
3. How many states are served by pipelines that are out of service or that have restricted supplies?
4. How do affected states obtain fuel supplies? Is travel outside the state vital to obtaining product?
5. Has severe weather affected a state that significant numbers of transporters from another state need to travel in to obtain supplies?

Regional Effect points to emphasize:

A. Uniformity in hours of service requirements among affected states is desirable. If several states are similarly affected, they should receive (or be denied) the same relief.

B. Consideration should be given to the fact that states with cold-related emergencies (heightened demand) may draw supplies from a state that is less affected by the same problem; drivers serving an emergency in one state will still need to cross state lines to obtain product.

C. Consideration should be given to where drivers will need to go to obtain alternative supplies in the event of severe shortage or extreme demand.

The preceding information is intended to serve as a general guideline. It is not expected that information answering all of these questions will be available. However, to the extent that states can provide a good detailed assessment of the problem, the potential for the appropriate granting of waivers is more likely.

SPECIAL TERMS AND CONDITIONS FOR USE IN MOST GRANTS AND COOPERATIVE AGREEMENTS ... 2
RESOLUTION OF CONFLICTING CONDITIONS ... 2
AWARD AGREEMENT TERMS AND CONDITIONS ... 2
LIMITATION OF FUNDING ... 2
PAYMENT PROCEDURES - ADVANCES THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM ... 2
REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS ... 3
STATEMENT OF FEDERAL STEWARDSHIP ... 3
SITE VISITS ... 3
REPORTING REQUIREMENTS ... 3
PUBLICATIONS ... 3
FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS ... 4
INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION ... 4
LOBBYING RESTRICTIONS ... 4
NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS ... 4
DECONTAMINATION AND/OR DECOMMISSIONING (D &D) COSTS ... 4
SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 ... 4
REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT ... 8
RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS ... 8

SPECIAL TERMS AND CONDITIONS FOR USE IN MOST GRANTS AND COOPERATIVE AGREEMENTS

RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

AWARD AGREEMENT TERMS AND CONDITIONS

This award/agreement consists of the Grant and Cooperative Agreement cover page, plus the following:

a. Special terms and conditions.

b. Attachments:

Attachment No.	Title
1	Intellectual Property Provisions
2	Statement of Project Objectives
3	Federal Assistance Reporting Checklist

c. Applicable program regulations [*Specify*][*Date*] .

d. DOE Assistance Regulations, 10 CFR Part 600 at http://ecfr.gpoaccess.gov and if the award is for research and to a university or non-profit, the Research Terms & Conditions and the DOE Agency Specific Requirements at http://www.nsf.gov/bfa/dias/policy/rtc/index.jsp.

e. Application/proposal as approved by DOE.

f. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at http://management.energy.gov/business_doe/1374.htm.

LIMITATION OF FUNDING

The Recipient is not authorized to expend more than 20% of the obligated funds until the DOE Project Officer approves the Recipient's Project Management Plan (PMP) and Workforce Development Plan (WDP). DOE reserves the right to place a hold on the Recipient's ASAP account if the PMP and WDP are not submitted by the due date set forth in the Deliverables Section of the Statement Project Objectives.

PAYMENT PROCEDURES - ADVANCES THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM

a. Method of Payment. Payment will be made by advances through the Department of Treasury's ASAP system.

b. Requesting Advances. Requests for advances must be made through the ASAP system. You may submit requests as frequently as required to meet your needs to disburse funds for the Federal share of project costs. If feasible, you should time each request so that you receive payment on the same day that you disburse funds for direct project costs and the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close as is administratively feasible to actual disbursements.

c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE/NNSA.

d. Payments. All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS

a. If actual allowable indirect costs are less than those budgeted and funded under the award, you may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, you must refund the difference.

b. Recipients are expected to manage their indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates. DOE recognizes that the inability to obtain full reimbursement for indirect costs means the recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the organization's required cost sharing.

STATEMENT OF FEDERAL STEWARDSHIP

DOE/NNSA will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

SITE VISITS

DOE/NNSA's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

REPORTING REQUIREMENTS

a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

b. Dissemination of scientific/technical reports. Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data, or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database (www.osti.gov/energycitations).

c. Restrictions. Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

PUBLICATIONS

a. You are encouraged to publish or otherwise make publicly available the results of the work

conducted under the award.

b. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: " This material is based upon work supported by the Department of Energy under Award Number(s) DE-OE0000073."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

a. The intellectual property provisions applicable to this award are provided as an attachment to this award or are referenced on the Agreement Face Page. A list of all intellectual property provisions may be found at http://www.gc.doe.gov/financial_assistance_awards.htm.

b. Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf

LOBBYING RESTRICTIONS

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

DECONTAMINATION AND/OR DECOMMISSIONING (D &D) COSTS

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the recipient's facilities, or (ii) any costs which may be incurred by the recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY

AND REINVESTMENT ACT OF 2009

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds – the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized –

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions relation to, the subcontract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct, a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceablity of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. Request for Reimbursement RESERVED

H. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict or interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in supporting of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup

documentation at the request of the Contracting Officer or designee.

J. Availability of Funds

Funds appropriated under the Recovery Act and obligated to this award are available for reimbursement of costs until September 30, 2015.

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor -- Not later than April 3, 2009, for funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution – After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

L. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (http://www.ccr.gov) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (http://www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at http://www.FederalReporting.gov and ensure that any information that is pre-filled is corrected or updated as needed.

RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A--102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A--102 is available at http://www.whitehouse.gov/omb/circulars/a102/a102.html.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A--133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF--SAC) required by OMB Circular A--133. OMB Circular A--133 is available at http://www.whitehouse.gov/omb/circulars/a133/a133.html. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF--SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF--SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS

(August 2008)

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

I. Nondiscrimination Policies

You must comply with applicable provisions of the following national policies prohibiting discrimination:

1 On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as implemented by DOE regulations at 10 CFR part 1040;

2 On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042;

3 On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C.6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE regulations at 10 CFR part 1040;

4 On the basis of disability, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041;

5 On the basis of race, color, national origin, religion, disability, familial status, and sex under Title VIII of the Civil Rights Act (42 U.S.C. 3601 et seq.) as implemented by the Department of Housing and Urban Development at 24 CFR part 100; and

6 On the basis of disability in the Architectural Barriers Act of 1968(42 U.S.C. 4151 et seq.) for the design, construction, and alteration of buildings and facilities financed with Federal funds.

II. Environmental Policies

You must:

1 Comply with applicable provisions of the Clean Air Act (42 U.S.C.7401, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency rules at 40 CFR part 32, Subpart J.

2 Immediately identify to us, as the awarding agency, any potential impact that you find this award may have on:

a. The quality of the human environment, including wetlands, and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et. seq.) and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until we provide written notification of Federal compliance with NEPA, as implemented by DOE at 10 CFR part 1021.

b. Flood-prone areas, and provide any help we may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.

c. Use of land and water resources of coastal zones, and provide any help we may need to comply with the Coastal Zone Management Act of 1972(16 U.S.C. 1451, et. seq.).

d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide help we may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et. seq.), concerning preservation of barrier resources.

e. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act(42 U.S.C. 300h-3).

3 Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance.

4 Comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962), and implementing regulations of the Environmental Protection Agency, 40 CFR Part 247, which require the purchase of recycled products by States or political subdivision of States.

III. Live Organisms

1 **Human research subjects**. You must protect the rights and welfare of individuals that participate as human subjects in research under this award in accordance with the Common Federal Policy for the Protection of Human Subjects (45 CFR part 46), as implemented by DOE at 10 CFR part 745.

2 Animals and plants.

a. You must comply with applicable provisions of Department of Agriculture rules at 9 CFR parts 1-4 that implement the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156) and provide for humane transportation, handling, care, and treatment of animals used in research, experimentation, or testing under this award.

b. You must follow the guidelines in the National Academy of Sciences(NAS) Publication "Guide for the Care and Use of Laboratory Animals"(1996, which may be found currently at http://www.nap.edu/readingroom/books/labrats/) and comply with the Public Health Service Policy and Government principles Regarding the Care and use of animals (included as Appendix D to the NAS Guide).

c. You must immediately identify to us, as the awarding agency, any potential impact that you find this award may have on endangered species, as defined by the Endangered Species Act of 1973, as amended ("the Act," 16 U.S.C. 1531-1543), and implementing regulations of the Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). You also must provide any help we may need to comply with 16 U.S.C. 1536(a)(2). This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

IV. Other National Policies

1 **Debarment and suspension**. You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901.

2 **Drug-free workplace**. You must comply with drug-free workplace requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

3 Lobbying.

a. You must comply with the restrictions on lobbying in 31 U.S.C.1352, as implemented by DOE at 10 CFR part 601, and submit all disclosures required by that statute and regulation.

b. If you are a nonprofit organization described in section 501(c)(4)of title 26, United States Code (the Internal Revenue Code of 1968),you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., Chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions. By submitting an application and accepting funds under this agreement, you assure that you are not an organization described in section 501(c)(4) that has engaged in any lobbying activities described in the Lobbying Disclosure Act of 1995 (2 U.S.C. 1611).

c. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

4. **Officials not to benefit**. You must comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41U.S.C. 22.

5 **Hatch Act**. If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7326), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

6 **Native American graves protection and repatriation**. If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native

American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

7 **Fly America Act**. You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the "Fly America Act," and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.

8. **Use of United States-flag vessels.**

a. Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.

b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 9.a of this section shall be furnished to both our award administrator (through you in the case of your contractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

9 **Research misconduct**. You must comply with the government-wide policy on research misconduct issued by the Office of Science and Technology Policy (available in the Federal Register at 65 FR 76260, December 6,2000, or on the Internet at www.ostp.gov), as implemented by DOE at 10 CFR part 733 and 10 CFR 600.31.

10 **Requirements for an Institution of Higher Education Concerning Military recruiters and Reserve Officers Training Corps (ROTC).**

a. As a condition for receiving funds under an award by the National Nuclear Security Administration of the Department of Energy, you agree that you are not an institution of higher education that has a policy or practice placing any of the restrictions specified in 10 U.S.C. 983. as implemented by 32 CFR part 216, on:

i. Maintenance, establishment, or operation of Senior ROTC units, or student participation in those units; or

ii. Military recruiters' access to campuses, students on campuses, or information about students.

b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, we:

i. Will cease all payments to you of funds under this award and all other awards subject to the requirements in 32 CFR part 216; and

ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

11. **Historic preservation**. You must identify to us any:

a. Any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, "Identification and Protection of Historic Properties," [3 CFR, 1971-1975 Comp., p. 559].

b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C.469a-1, et seq.).

12 **Relocation and real property acquisition**. You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970(42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

13 **Confidentiality of patient records**. You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.

14 **Constitution Day**. You must comply with Public Law 108-447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17thduring that year for the students served by the educational institution.

15 **Trafficking in Persons**

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

   i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

   ii. Procure a commercial sex act during the period of time that the award is in effect; or

   iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –

i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

A. Associated with performance under this award; or

B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, ``OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 901.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

i. Associated with performance under this award; or

ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, ``OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 901.

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b. of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. “Employee” means either:

   i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

   ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity”:

   i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

   ii. Includes:

      A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

      B. A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

V. **National Policy Requirements for Subawards**.

Recipient responsibility. You must include in any subaward you make under this award the requirements of the national policy requirements in Sections I through IV of this document that apply, based on the type of subawardee organization and situation.