

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. Contract Number	Page of Pages	
2. Amendment/Modification Number 0003		3. Effective Date 11/19/2007	4. Requisition/Purchase Request No. RQ361957	1	59
6. Issued By: Office of Contracting and Procurement Information Technology Group 441 4th Street NW, Suite 971 North Washington, DC 20001			7. Administered By (If other than line 6)		
8. Name and Address of Contractor (No. Street, city, country, state and ZIP Code)			(X)	9A. Amendment of Solicitation No. RQ361957	
				9B. Dated (See Item 11) 10/22/2007	
				10A. Modification of Contract/Order No.	
				10B. Dated (See Item 13)	
Code	Facility				
<b>11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS</b>					
<p>The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended. <input checked="" type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning <u>1</u> copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or fax which includes a reference to the solicitation and amendment number. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or fax, provided each letter or telegram makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.</p>					
12. Accounting and Appropriation Data (If Required)					
<b>13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/CRDER NO. AS DESCRIBED IN ITEM 14</b>					
(X)	A. This change order is issued pursuant to: (Specify Authority) The changes set forth in Item 14 are made in the contract/order no. in item 10A.				
	B. The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation date, etc.) set forth in item 14, pursuant to the authority of 27 DCMR, Chapter 36, Section 3601.2.				
	C. This supplemental agreement is entered into pursuant to authority of: <u>Clause No# 15 Entitles Changes</u>				
	D. Other (Specify type of modification and authority)				
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>1</u> copies to the issuing office.					
14. Description of amendment/modification (Organized by UCF Section headings, including solicitation/contract subject matter where feasible.)					
The purpose of this amendment is to replace the current Section J with the attached Section J.					
a. All other terms and conditions remain unchanged and in full effect.					
Except as provided herein, all terms and conditions of the document referenced in Item (9A or 10A) remain unchanged and in full force and effect					
15A. Name and Title of Signer (Type or print)			16A. Name of Contracting Officer William Sharp		
15B. Name of Contractor  (Signature of person authorized to sign)		15C. Date Signed	16B. District of Columbia		16C. Date Signed  11/13/2007 (Signature of Contracting Officer)

**Amendment 0003**  
**Solicitation RQ361957**  
**Court Case Management**

**SECTION J: LIST OF ATTACHMENTS**

- J.1 ATTACHMENT- (The following forms are attached and shall be completed and incorporated with the offer.)
  - J.1.1 Wage Determination No. 2005-2103, Revision No. 2, dated November 7, 2006
  - J.1.2 Living Wage Act of 2006 –  
<http://www.ocp.dc.gov/ocp/cwp/view a,1296,q,636786,ocpNav,|32644|.asp>
  - J.1.3 Experience Questionnaire
  - J.1.4 Past Performance Evaluation Form
  - J.1.5 E.E.O. Information and Mayor's Order 85-85
  - J.1.6 Tax Certification Affidavit
  - J.1.7 First Source Employment Agreement
  - J.1.8 Cost/Price Data Package

## OFFICE OF CONTRACTING AND PROCUREMENT

### BLANKET WAGE DETERMINATION PROGRAM

The U. S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Washington, D.C., requires that a Standard Form 98 (Notice of Intention to Make a Service Contract and Response to Notice) be completed by Office of Contracting and Procurement contracting personnel. This form should be completed every time an award, modification, or cancellation action is taken.

The amended Service Contract Act requires you to issue wage determinations applicable to employees engaged in the performance of service contracts in excess of \$2,500.00. The SF 98, Notice of Intention to Make a Service Contract, provides an orderly procedure for a contracting agency representative to request such a wage determination and for the Department of Labor to respond. Any questions as to whether a notice is required in a particular procurement situation should be resolved by reference to Title 29, part 4, Code of Federal Regulations, or by submission of the question to the Department of Labor. Under normal circumstances, the Department of Labor will respond to a notice within 30 days of receipt. If there is urgent need for more expeditious handling, this should be explained when the notice (SF 98) is submitted. In the event the necessary response is not received by the contracting agency on a timely basis, the Department of Labor should be contacted. Click here to link to the U.S Department of Labor, Wage Determinations website. [www.wdol.gov](http://www.wdol.gov)

## **“ LIVING WAGE ACT OF 2006”**

Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 *et seq.*), as amended, (“Living Wage Act of 2006”) applies to all contracts for services in the amount of \$100,000 or more in a 12-month period.

The Living Wage Act of 2006 requires a contractor to:

1. pay its employees and subcontractors who perform services under the contract no less than the current living wage published on the OCP website at [www.ocp.dc.gov](http://www.ocp.dc.gov);
2. include in any subcontract for \$15,000 or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate;
3. provide a copy of the Living Wage Act Fact Sheet to each employee and subcontractor who performs services under the contract;
4. post the Living Wage Act Notice in a conspicuous place in its place of business;
5. include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Living Wage Act Notice in a conspicuous place in its place of business;
6. maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date; and
7. require its subcontractors with subcontracts for \$15,000 or more under the contract to maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date.

## **THE CURRENT LIVING WAGE RATE IS \$11.75.**

Starting in 2008, the Department of Employment Services may adjust the living wage annually. The OCP will publish the current living wage rate on its website at [www.ocp.dc.gov](http://www.ocp.dc.gov).

The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 *et seq.*

The requirements of the Living Wage Act of 2006 **do not apply** to:

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

Act of 2006;

6. An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;

7. Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District;

8. Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));

9. Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and

(10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

The Mayor may exempt a contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Act.







<b>CERTIFICATION</b>  I certify that all of the statements made by me are complete and correct to the best of my knowledge and that any persons named as references are authorized to furnish the District with any information needed to verify my capability to perform this project.	<b>12a. CERTIFYING OFFICIAL'S NAME AND TITLE</b>	
	<b>12B. SIGNATURE</b> (Sign in ink)	<b>13. DATE</b>

## EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY STATEMENT

\_\_\_\_\_  
 SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS.

\_\_\_\_\_  
 AGREES TO AFFIRMATIVE ACTION TO ENSURE THAT APPLICANTS ARE EMPLOYED, AND THAT EMPLOYEES ARE TREATED DURING EMPLOYMENT WITHOUT REGARD TO THEIR ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. THE AFFIRMATIVE ACTION SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING: (A) EMPLOYMENT, UPGRADING, OR TRANSFER; (B) RECRUITMENT OR RECRUITMENT ADVERTISING; (C) DEMOTION, LAYOFF, OR TERMINATION; (D) RATES OF PAY, OR OTHER FORMS OR COMPENSATION; AND (E) SELECTION FOR TRAINING AND APPRENTICESHIP.

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

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

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

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

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

\_\_\_\_\_  
 AUTHORIZED OFFICIAL AND TITLE DATE

\_\_\_\_\_  
 AUTHORIZED SIGNATURE FIRM/ORGANIZATION  
 NAME

# YOUR LETTERHEAD

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ASSURANCE OF COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS MAYOR'S ORDER 85-85, EFFECTIVE JUNE 10, 1985, AND THE RULES IMPLEMENTING MAYOR'S ORDER 85-85, 33 DCR 4952, (PUBLISHED AUGUST 15, 1986), "ON COMPLIANCE WITH EQUAL OPPORTUNITY REQUIREMENTS IN DISTRICT GOVERNMENT CONTRACTS," ARE HEREBY INCLUDED

AS PART OF THIS BID/PROPOSAL. THEREFORE, EACH BIDDER/OFFEROR SHALL INDICATE BELOW THEIR WRITTEN COMMITMENT TO ASSURE COMPLIANCE WITH MAYOR'S ORDER 85-85 AND THE IMPLEMENTING RULES. FAILURE TO COMPLY WITH THE SUBJECT MAYOR'S ORDER AND THE IMPLEMENTING RULES SHALL RESULT IN REJECTION OF THE RESPECTIVE BID/PROPOSAL. I,

\_\_\_\_\_, THE AUTHORIZED REPRESENTATIVE OF  
 \_\_\_\_\_, HEREINAFTER REFERRED TO AS "THE

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

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
CONTRACT NUMBER

\_\_\_\_\_  
DATE

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**EQUAL EMPLOYMENT OPPORTUNITY  
EMPLOYER INFORMATION REPORT**

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DC Office of Contracting and Procurement

Employer Information Report (EEO)

Reply to:

Office of Contracting and Procurement

441 4th Street, NW, Suite 700 South

Washington, DC 20001

Instructions:

Two (2) copies of DAS 84-404 or Federal Form EEO-1 shall be submitted to the Office of Contracting and Procurement.

One copy shall be retained by the Contractor.

Section A – TYPE OF REPORT

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

Single Establishment Employer Multi-establishment Employer:

(1)  Single-establishment Employer Report (2)  Consolidated Report

(3)  Headquarters Report

(4)  Individual Establishment Report (submit one for each establishment with 25 or more employees)

(5)  Special Report

1. Total number of reports being filed by this Company. \_\_\_\_\_

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

USE

ONLY

1. Name of Company which owns or controls the establishment for which this report is filed a.

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

b. Employer

Identification No.

2. Establishment for which this report is filed.

OFFICIAL

USE

ONLY

a. Name of establishment c.  
 Address (Number and street) City or Town Country State Zip Code  
 d.

b. Employer Identification No.

3. Parent of affiliated Company

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

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

Section C - ESTABLISHMENT INFORMATION

1. Is the location of the establishment the same as that reported last year? 2. Is the major business activity at this establishment the same . Yes . No . Did not report . Report on combined as that reported last year? . Yes . No last year basis . No report last year . Reported on combined basis

OFFICIAL

USE

ONLY

2. What is the major activity of this establishment? (Be specific, i.e., manufacturing steel castings, retail grocer, wholesale plumbing supplies, title insurance, etc. Include the specific type of product or service provided, as well as the principal business or industrial activity.

e.

3. MINORITY GROUP MEMBERS: Indicate if you are a minority business enterprise (50% owned or 51% controlled by minority members).

.Yes . No

DAS 84-404 (Replaces D.C. Form 2640.9 Sept. 74 which is Obsolete) 84-2P891

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SECTION D – EMPLOYMENT DATA

Employment at this establishment – Report all permanent, temporary, or part-time employees including apprentices and on-the-job

trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns.

Blank spaces will be considered as zero. *In columns 1, 2, and 3, include ALL employees in the establishment including those in*

*minority groups*

MINORITY GROUP EMPLOYEES

TOTAL EMPLOYEES IN ESTABLISHMENT MALE FEMALE

JOB

CATEGORIES

Total

Employees

Including

Minorities

(1)

Total

Male

Including

Minorities

(2)

Total

Female

Including

Minorities

(3)

Black

(4)

Asian

(5)

American

Indian

(6)

Hispanic

(7)

Black

(8)

Asian

(9)

American

- Indian
- (10)
- Hispanic
- (11)
- Officials and
- Managers
- Professionals
- Technicians
- Sales Workers
- Office and Clerical
- Craftsman (Skilled)
- Operative (Semi-
- Skilled)
- Laborers (Unskilled)
- Service Workers
- TOTAL

Total employ reported in previous report

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

Formal

On-The-Job Trainee

White collar

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11)

Production

1. How was information as to race or ethnic group in Section D obtained? 2. Dates of payroll period used

a. . Visual Survey c. . Other Specify \_\_\_\_\_ 3. Pay period of last report submitted for this

b. . Employment Record \_\_\_\_\_ establishment. \_\_\_\_\_

Section E - REMARKS Use this Item to give any identification data appearing on last report which differs from that given above,

explain major changes in composition or reporting units, and other pertinent information.

Section F - CERTIFICATION

Check 1. . All reports are accurate and were prepared in accordance with the instructions (check on consolidated only)

One 2. . This report is accurate and was prepared in accordance with the instructions.

Name of Authorized Official Title Signature Date

Name of person contact regarding Address

This report (Type of print) (Number and street)

Title City and State Zip Code Telephone Number Extension

INFORMATION CITED HEREIN SHALL BE HELD IN CONFIDENCE.

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SOLICITATION NO: \_\_\_\_\_

PROJECTED GOALS AND TIMETABLES FOR FUTURE HIRING

MINORITY GROUP EMPLOYEES GOALS TIMETABLES

JOB MALE FEMALE

CATEGORIES AMERICAN AMERICAN

BLACK ASIAN INDIAN HISPANIC BLACK ASIAN INDIAN HISPANIC

OFFICIALS &

MANAGERS

PROFESSIONALS

TECHNICIANS  
 SALES  
 WORKERS  
 OFFICE AND  
 CLERICAL  
 CRAFTSMANS  
 (SKILLELD)  
 OPERATIVE  
 (SEMI-SKILLED)  
 LABORERS  
 (UNSKILLED)  
 SERVICE  
 WORKERS  
 TOTALS

NAME OF AUTHORIZED OFFICIAL: TITLE: SIGNATURE:

FIRM NAME: TELEPHONE NO: DATE:

INDICATE IF THE PRIME UTILIZES A "MINORITY FINANCIAL INSTITUTION"

\_\_\_\_\_ Yes \_\_\_\_\_ No

NAME:

ADDRESS:

TYPE OF ACCOUNT/S:

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**District of Columbia Register**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**ADMINISTRATIVE ISSUANCE SYSTEM**

SUBJECT: Compliance with Equal Opportunity Obligations in Contracts

ORIGINATING AGENCY: Office of the Mayor

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

1. Establishment of Policy: There is established a policy of the District of Columbia Government to:

(a) provide equal opportunity in employment for all persons with respect to any contract by and with the Government of the District of Columbia.

(b) prohibit discrimination in employment because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap;

(c) provide equal opportunity to all persons for participation in all District of Columbia Government contracts, including but not limited to lease agreements, Industrial Revenue Bond financing, and Urban Development Action grants;

(d) provide equal opportunity to minority business enterprises in the performance of District of Columbia Government contracts in accordance with Mayor's Orders, District of Columbia laws, and rules and regulations promulgated by the Minority Business Opportunity Commission; and

(e) promote the full realization of equal employment through affirmative, continuing programs by contractors and subcontractors in the performance of contracts with the District of Columbia Government.

2. Delegation of Authority: The Director of the Office of Human Rights (hereinafter "Director") is delegated the authority vested in the Mayor to implement the provisions of this order as set forth herein, and any rules, regulations, guidelines, and procedures adopted pursuant thereto.

3. Responsibilities: The Director of the Office of Human Rights shall be responsible for establishing and ensuring agency compliance with the policy set forth in this Order, any rules, regulations, and procedures that may be adopted by the Office of Human Rights pursuant to this Order, and any other equal opportunity provisions as may be added as a part of any contract.

4. Powers and Duties: The Director of the Office of Human Rights shall have the following powers and duties:

(a) to establish standards and procedures by which contractors and subcontractors who perform under District of Columbia Government contracts shall comply with the equal opportunity provisions of their contracts; to issue all orders, rules, regulations, guidelines, and procedures the Director may deem necessary and proper for carrying out and implementing the purposes of this Order;

(b) to assume equal opportunity compliance jurisdiction over any matter pending before a contracting agency where the Director considers it necessary or appropriate for the achievement of the purposes of

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

(c) to examine the employment practices of any District of Columbia Government contractor or subcontractor, or initiate the examination by the appropriate contracting agency to determine whether or not the contractual provisions specified in any rules and regulations adopted pursuant to this Order have been violated, and notify the contracting agency of any action taken or recommended;

(d) to monitor and evaluate all District of Columbia Government agencies, including those independent agencies and commissions not required to submit the Affirmative Action Programs of their contractors to the Office of Human Rights for approval, to ensure compliance with the equal opportunity obligations in contracts;

(e) to use his or her best efforts to cause any labor union engaged in work under District of Columbia Government contracts, any referral, recruiting or training agency, or any other representative of workers who are or may be engaged in work under contracts and subcontracts to cooperate in and to comply with the implementation of the purposes of this Order;

(f) to notify, when appropriate, the concerned contracting agencies, the Office of Federal Contract Compliance Programs, the U.S. Department of Justice, or other appropriate Federal, State, and District agencies, whenever the Director has reason to believe that practices of any contractor, labor organization, lending institution, insurance firm, or agency violate provisions of Federal, State, or District, laws;

(g) to enter, where the determinations are made by Federal, State, or District agencies, into reciprocal agreements with those agencies to receive the appropriate information;

(h) to hold hearings, public or private, as necessary to obtain compliance with any rules, regulations, and procedures promulgated pursuant to this Order, and to issue orders relating thereto.

No order to terminate or cancel a contract, or to withhold from any contractor further District of Columbia Government contractors shall be issued without affording the contractor an opportunity for a hearing. Any order to terminate or cancel a contract or to withhold from any contractor further District of Columbia Government contracts shall be issued in accordance with rules, and regulations pursuant to the Administrative Procedure Act, as amended and;

(i) to grant waivers from the minimum standards for the employment of minorities and women in Affirmative Action Programs in exceptional cases, as circumstances may warrant.

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

(a) the initial responsibility for ensuring that contractors and subcontractors are in compliance with any rules, regulations, and procedures promulgated pursuant to this Order;

(b) to examine the employment practices of contractors and subcontractors in accordance with procedures established by the Office of Human Rights, and report any compliance action to the Director of the Office of Human Rights;

(c) to comply with the terms of this Order and of the orders, rules, regulations, guidelines, and procedures of the Office of Human Rights issued pursuant thereto in discharging their responsibility for securing contract compliance; and

(d) to secure compliance with any rules, regulations, and procedures promulgated pursuant to this Order before or after the execution of a contract by methods, of conference, conciliation and persuasion. No enforcement proceedings shall be initiated, nor shall a contract be cancelled or terminated in whole or in part, unless such methods have first been attempted.

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

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

7. Severability: If any section, subsection, sentence, clause, phrase, or portion of the provisions in

this Order is for any reason declared by any court of competent jurisdiction to be invalid or unconstitutional, such section, subsection, sentence, clause, phrase, or portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining provisions of this order.

8. Effective Date: This Order shall become effective immediately.

Signed by Marion Barry, Jr.

Mayor

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

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## **OFFICE OF HUMAN RIGHTS**

### **NOTICE OF FINAL RULEMAKING**

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

### **CHAPTER 11 EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS IN CONTRACTS**

#### **1100. PURPOSE**

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

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

#### **1101 SCOPE**

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

#### **1102 COVERAGE**

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

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

(b) Achievement of affirmative action obligations under District of Columbia contracts.

#### **1103 CONTRACT PROVISIONS**

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

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

1 1

1103.3 The contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but

not be limited to the following:

- (a) Employment, upgrading, or transfer;
- (b) Recruitment or recruitment advertising;
- (c) Demotion, layoff, or termination;
- (d) Rates of pay, or other forms of compensation; and
- (e) Selection for training and apprenticeship.

1103.4 The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections 1103.2 and 1103.3 concerning non-discrimination and affirmative action.

1103.5 The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in subsection 1103.2

1103.6 The contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Contracting Agency, advising each labor union or workers' representative of the contractor's commitments under this chapter, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

1103.7 The contractor agrees to permit access to all books, records, and accounts, pertaining to its employment practices, by the Director and the Contracting Agency for purposes of investigation to ascertain compliance with this chapter, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors, books, records, and accounts for such purposes.

1103.8 The contractor agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director, or any authorized official.

1103.9 The prime contractor shall include in every subcontract the equal opportunity clauses, subsections 1103.2 through 1103.10 of this section, so that such provisions shall be binding upon each subcontractor or vendor.

1103.10 The prime contractor shall take such action with respect to any subcontractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the prime contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the prime contractor may request the District to enter into such litigation to protect the interest of the District.

#### 1104 AFFIRMATIVE ACTION PROGRAM

1104.1 Each apparent low bidder for a construction contract shall complete and submit to the Contracting Agency, prior to the execution of any contract in the amount of twenty-five thousand dollars (\$25,000) or more, and each contractor covered under subsection 1105.1, an Affirmative Action Program to ensure equal opportunity which shall include specific standards for the utilization of minorities and women in the trades, crafts and skills to be used by the contractor in the performance of the contract.

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1104.2 Each apparent low bidder or offeror for a non-construction contract shall complete and submit to the Contracting Agency, prior to the execution of any contract in the amount of ten thousand dollars (\$10,000) or more, and each contractor covered under subsection 1105.2, an Affirmative Action Program to ensure equal opportunity which shall include specific standards for the utilization of minorities in the job categories specified in subsection 1108.4.

1104.3 To ensure equal opportunity each Affirmative Action Program shall include the following commitments:

- (a) With respect to construction contracts, each contractor shall certify that it will comply with the provisions of this chapter, and submit a personnel utilization schedule for all the trades the contractor is to utilize, indicating the actual numbers of minority and female workers that are expected to be a part of the workforce performing under the contract; and
- (b) With respect to non-construction contracts, each contractor shall certify that it will comply with the provisions of this chapter, and shall submit a personnel utilization

schedule indicating by craft and skill, the minority composition of the workforce related to the performance of the work under the contract. The schedule shall include all workers located in the facility from which the goods and services are produced and shall include the same information for other facilities which have a significant relationship to the performance of work under the contract.

1104.4 If the experience of the contractor with any local union from which it will secure employees indicates that the union will not refer sufficient minorities or women to meet minority or female employment commitments, the contractor shall, not less than ten (10) days prior to the employment of any person on the project subject to the jurisdiction of that local union, do the following:

(a) Notify the District of Columbia Department of Employment Services and at least two (2) minority and two (2) female referral organizations of the contractor's personnel needs, and request referral of minority and female workers; and

(b) Notify any minority and female workers who have been listed with the contractors as awaiting vacancies.

1104.5 If, within five (5) working days prior to commencement of work, the contractor determines that the Department of Employment Services or the minority or female referral organizations are unable to refer sufficient minorities or women to meet its commitments, the contractor may take steps to hire, by referral or otherwise, from the local union membership to fill the remaining job openings, provided that it notifies the local union of its personnel needs and of its employment commitments. Evidence of the notification shall be provided to the Contracting Agency.

1104.6 The contractor shall have standing requests for additional referrals of minority and female workers with the local union, the Department of Employment Services, and the other referral sources, until such time as the contractor has met its minority and female employment commitments.

1104.7 If the contractor desires to lay off some of its employees in a given trade on a construction site, it shall ensure that the required number of minority and female employees remain on the site to meet the minority and female commitments.

1104.8 No contractor shall refuse employment to any individual who has minimal facility to speak English except where the contractor can demonstrate that the facility to speak English is necessary for the performance of the job.

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1104.9 No union with which the contractor has a collective bargaining agreement shall refuse to refer minority and female employees to such contractor.

1104.10 To the extent that contractors have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their equal opportunity obligations, those contractors shall not be considered to be in compliance with this chapter.

1104.11 The obligations of the contractor shall not be reduced, modified, or subject to any provision in any collective bargaining agreement with labor organization which provides that the labor organizations shall have the exclusive or primary opportunity to refer employees.

1104.12 When any contractor employs a minority person or woman in order to comply with this chapter, those persons shall be advised of their right to seek union membership, the contractor shall provide whatever assistance may be appropriate to enable that person to obtain membership, and the contractor shall notify the appropriate union of that person's employment.

1104.13 The contractor shall not discharge, refuse to employ, or otherwise adversely affect any minority person or woman because of any provision in any collective bargaining agreement, or any understanding, written or oral that the contractor may have with any labor organization.

1104.14 If at any time, because of lack of cooperation or overt conduct, a labor organization impedes or interferes with the contractor's Affirmative Action Program, the contractor shall notify the Contracting Agency and the Director immediately, setting forth the relevant circumstances.

1104.15 In any proceeding involving a disagreement between a labor organization and the contractor over the implementation of the contractor's Affirmative Action Program, the Contracting Agency and the Office of Human Rights may become a party to the proceeding.

1104.16 In determining whether or not a contractor is utilizing minorities and females pursuant to Section 1108, consideration shall be given to the following factors:

(a) The proportion of minorities and women employed in the trades and as laborers in the

construction industry within the District of Columbia;

(b) The proportion of minorities and women employed in the crafts or as operatives in nonconstruction industries within the District of Columbia;

(c) The number and ratio of unemployed minorities and women to total unemployment in the District of Columbia;

(d) The availability of qualified and qualifiable minorities and women for employment in any comparable line of work, including where they are now working and how they may be brought into the contractor's workforce;

(e) The effectiveness of existing training programs in the area, including the number who complete training, the length and extent of training, employer experience with trainees, and the need for additional or expanded training programs; and

(f) The number of additional workers that could be absorbed into each trade or line of work without displacing present employees, including consideration of present employee shortages, projected growth of the trade or line of work, and projected employee turnover.

1104.17 The contractor's commitment to specific standards for the utilization of minorities and females as required under this chapter shall include a commitment to make every good faith effort to meet

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

(a) The contractor shall notify the community organizations that the contractor has employment opportunities available and shall maintain records of the organizations' responses;

(b) The contractor shall maintain a file of the names and addresses of each minority and female worker referred to it and what action was taken with respect to each referred worker. If that worker was not sent to the union hiring hall for referral or if the worker was not employed by the contractor, the contractor's file shall be documented and the reasons therefore;

(c) The contractor shall notify the Contracting Agency and the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority or female worker originally sent to the union by the contractor for union registration, or the contractor has other information that the union referral process has impeded the contractor's efforts to meet its goals;

(d) The contractor shall participate in training programs related to its personnel needs;

(e) The contractor shall disseminate its EEO policy internally by doing the following:

(1) Including it in any organizational manual;

(2) Publicizing it in company newspapers, annual report, etc.;

(3) Conducting staff, employee, and union representative meetings to explain and discuss the policy;

(4) Posting; and

(5) Reviewing the policy with minority and female employees.

(f) The contractor shall disseminate its EEO policy externally by doing the following:

(1) Informing and discussing it with all recruitment sources;

(2) Advertising in news media, specifically including news media directed to minorities and women;

(3) Notifying and discussing it with all known minority and women's organizations; and

(4) Notifying and discussing it with all subcontractors and suppliers.

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

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

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

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1104.21 The contractor shall make good faith efforts to provide after school, summer and vacation employment to minority youths and young women.

1104.22 The contractor shall develop on-the-job training opportunities, and participate and assist in any association or employer group training programs relevant to the contractor's employee needs.

1104.23 The contractor shall continually inventory and evaluate all minority and female personnel for promotion opportunities.

1104.24 The contractor shall make sure that seniority practices, job classifications, qualifications, etc. do not have a discriminatory effect on minorities and women.

1104.25 The contractor shall make certain that all facilities and company activities are nonsegregated.

1104.26 The contractor shall continually monitor all personnel activities to ensure that its EEO policy is being carried out.

1104.27 The contractor may utilize minority banking facilities as depositories for funds which may be involved, directly or indirectly, in the performance of the contract.

1104.28 The contractor shall employ minority and female workers without respect to union membership in sufficient numbers to meet the minority and female employment standards, if the experience of the contractor with any labor union from which it will secure employees does not indicate that it will refer sufficient minorities and females to meet its minority and female employment standards.

1104.29 The contractor shall ensure that all of its employees as well as those of its subcontractors are made knowledgeable about the contractor's equal opportunity policy.

1104.30 [Reserved]

1104.31 Each contractor shall include in all bid invitations or other pre-bid communications, written or otherwise, with respect to prospective subcontractors, the standards, as applicable, which are required under this chapter.

1104.32 Whenever a contractor subcontracts a portion of the work in any trade, craft or skill it shall include in the subcontract, its commitment made under this chapter, as applicable, which shall be adopted by its subcontractors who shall be bound thereby and by the regulations of this chapter to the full extent as if it were the prime contractor.

1104.33 The prime contractor shall give notice to the Director and the Contracting Agency of any refusal or failure of any subcontractor to fulfill its obligations under this chapter.

1104.34 Failure of compliance by any subcontractor shall be treated in the same manner as a failure by the prime contractor.

#### 1105 EXEMPTIONS

1105.1 Prospective construction contractors shall be exempt from submitting Affirmative Action Programs for contracts amounting to less than twenty-five thousand dollars (\$25,000); provided, that when a construction contractor accumulates contracts amounting to twenty-five thousand dollars (\$25,000) or more within a period of twelve (12) months that contractor shall be required to submit an Affirmative Action Program for each contract executed thereafter.

1105.2 Prospective non-construction contractors shall be exempt from submitting Affirmative Action Programs for contracts amounting to less than ten thousand dollars (\$10,000); provided, that when

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

#### 1106 NONRESPONSIBLE CONTRACTORS

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

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

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

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

### 1107 NOTICE OF COMPLIANCE

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

### 1108 MINIMUM STANDARDS FOR MINORITY AND FEMALE EMPLOYMENT

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

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

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

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

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

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

### 1109 WAIVERS

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

### 1110 SOLICITATION OF CONTRACT

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

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

### 1111 PRIOR TO EXECUTION OF CONTRACT

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

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

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

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

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

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

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

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

#### 1112 AFTER EXECUTION OF CONTRACT

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

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

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

#### 1113 MONITORING AND EVALUATION

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

#### 1114 AFFIRMATIVE ACTION TRAINING PROGRAM

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

(a) To be consistent with its personnel requirements, the contractor shall make full use of the applicable training programs, including apprenticeship, on-the-job training, and skill refinement training for journeymen. Recruitment for the program shall be designed to provide for appropriate participation by minority group members and women;

(b) The contractor may utilize a company-operated skill refinement training program. This program shall be formal and shall be responsive to the work to be performed under the contract;

(c) The contractor may utilize formal private training institutions that have as their objective training and skill refinement appropriate to the classification of the workers employed.

When training is provided by a private organization the following information shall be supplied:

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(1) The name of the organization;

(2) The name, address, social security number, and classification of the initial employees and any subsequent employees chosen during the course of the contract; and

(3) The identity of the trades, and crafts or skills involved in the training.

1114.2 If the contractor relies, in whole or in part, upon unions as a source of its workforce, the contractor

shall use its best efforts, in cooperation with unions, to develop joint training programs aimed toward qualifying more minorities and females for membership in the union, and increasing the skills of minority and female employees so that they may qualify for higher paying employment.

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

#### 1115 COMPLIANCE REVIEW

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

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

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

#### 1116 ENFORCEMENT

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

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

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

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#### 1117 COMPLAINTS

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

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

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

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

#### 1118 HEARINGS

1118.1 In the event that a dispute arises between a bidder, offeror or prospective contractor and the Director or the Contracting Officer as to whether the proposed program of affirmative action for providing equal employment opportunity submitted by such bidder, offeror or prospective

contractor complies with the requirements of this chapter and cannot be resolved by the methods of conference, conciliation, mediation, or persuasion, the bidder, offeror or prospective contractor in question shall be afforded the opportunity for a hearing before the Director.

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

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

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

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

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

#### 1119 SANCTIONS

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1119.1 The Director, upon finding that a contractor has failed to comply with the non-discrimination provisions of the contract required under section 1103, or has failed to make a good faith effort to achieve the utilization standards under an approved Affirmative Action Program, may impose sanctions contained in this section in addition to any sanction or remedies as may be imposed or invoked under the Human Rights Act of 1977.

1119.2 Sanctions imposed by the Director may include the following:

- (a) Order that the contractor be declared ineligible from consideration for award of District of Columbia Government contracts or subcontracts until such time as the Director may be satisfied that the contractor has established and will maintain equal opportunity policies in compliance with this chapter; and
- (b) Direct each Contracting Officer administering any existing contract to cancel, terminate, or suspend the contract or any portion thereof, and to deny any extension, modification, or change, unless the contractor provides a program of future compliance satisfactory to the Director.

1119.3 Any sanction imposed under this chapter may be rescinded or modified upon reconsideration by the Director.

1119.4 An appeal of any sanction imposed by order of the Director under this chapter may be taken pursuant to applicable clauses of the affected contract or provisions of law and regulations governing District of Columbia Government contracts.

#### 1120 NOTIFICATIONS

1120.1 The Director shall forward in writing notice of his or her findings of any violations of this chapter to the Contracting Officer for appropriate action under the contract.

1120.2 Whenever it appears that the holder of or an applicant for a permit, license or franchise issued by any agency or authority of the Government of the District of Columbia is a person determined to be in violation of this chapter the Director may, at any time he or she deems that action the Director may take or may have taken under the authority of this chapter, refer to the proper licensing agency or authority the facts and identities of all persons involved in the violation for such action as the agency or authority, in its judgement, considers appropriate based upon the facts thus disclosed to it.

1120.3 The Director may publish, or cause to be published, the names of contractors or unions which have been determined to have complied or have failed to comply with the provisions of the rules in this chapter.

#### 1121 DISTRICT ASSISTED PROGRAMS

1121.1 Each agency which administers a program involving leasing of District of Columbia Government

owned or controlled real property, or the financing of construction under industrial revenue bonds or urban development action grants, shall require as a condition for the approval of any agreement for leasing, bond issuance, or development action grant, that the applicant undertake and agree to incorporate, or cause to be incorporated into all construction contracts relating to or assisted by such agreements, the contract provisions prescribed for District of Columbia Government contracts by section 1103, preserving in substance the contractor's obligation under those provision.

#### 1199 DEFINITIONS

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1199.1 The following words and phrases set forth in this section, when used in this chapter, shall have the following meanings ascribed:

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

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

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

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

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

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

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

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

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

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



**TAX CERTIFICATION AFFIDAVIT**

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

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

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

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

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

**Principal Officer:**

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

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

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

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

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

I hereby certify that:

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

	Current	Not Current	Not Applicable
District: Sales and Use	( )	( )	( )
Employer Withholding	( )	( )	( )
Ball Park Fee	( )	( )	( )

Corporation Franchise	( )	( )	( )
Unincorporated Franchise	( )	( )	( )
Personal Property	( )	( )	( )
Real Property	( )	( )	( )
Individual Income	( )	( )	( )

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

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

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

\_\_\_\_\_  
Title

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

Notary: DISTRICT OF COLUMBIA, ss:

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

Notary

Public:

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

Commission

## FIRST SOURCE EMPLOYMENT AGREEMENT

Contract Number: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Address: \_\_\_\_\_ Ward: \_\_\_\_\_

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

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

### I. GENERAL TERMS

- A. The EMPLOYER will use DOES as its first source for the recruitment, referral and placement of employees.
- B. The EMPLOYER shall require all contractors and subcontractors, with contracts totaling \$100,000 or more, to enter into a First Source Employment Agreement with DOES.
- C. DOES will provide recruitment, referral and placement services to the EMPLOYER subject to the limitations set out in this Agreement.

- D. DOES participation in this Agreement will be carried out by the Office of the Director, with the Office of Employer Services, which is responsible for referral and placement of employees, or such other offices or divisions designated by DOES.

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

## II. RECRUITMENT

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

### III. REFERRAL

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

### IV. PLACEMENT

- A. DOES will notify the EMPLOYER, prior to the anticipated hiring dates, of the number of applicants DOES will refer. DOES will make every reasonable effort to refer at least two qualified applicants for each job opening.
- B. The EMPLOYER will make all decisions on hiring new employees but will in good faith use reasonable efforts to select its new hires or employees from among the qualified persons referred by DOES.

- C. In the event DOES is unable to refer the qualified personnel requested, within five (5) business days (Monday - Friday) from the date of notification, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. Notwithstanding, the EMPLOYER will still be required to hire 51% District residents for the new jobs created by the project.
- D. After the EMPLOYER has selected its employees, DOES will not be responsible for the employees' actions and the EMPLOYER hereby releases DOES, and the Government of the District of Columbia, the District of Columbia Municipal Corporation, and the officers and employees of the District of Columbia from any liability for employees' actions.

## V. TRAINING

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

## VI. CONTROLLING REGULATIONS AND LAWS

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

## VII. EXEMPTIONS

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

#### VIII. AGREEMENT MODIFICATIONS, RENEWAL, MONITORING, AND PENALTIES

- A. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise, the EMPLOYER as a condition of transfer shall:
  - 1. Notify the party taking possession of the existence of the EMPLOYER'S Agreement.
  - 2. Notify the party taking possession that full compliance with this Agreement is required in order to avoid termination of the project.
  - 3. EMPLOYER shall, additionally, advise DOES within seven (7) business/calendar days of the transfer. This advice will include the name of the party taking possession and the name and telephone of that party's representative.
- B. DOES shall monitor EMPLOYER'S performance under this Agreement. The EMPLOYER will cooperate in DOES' monitoring effort and will submit a Contract Compliance Form to DOES monthly.

- C. To assist DOES in the conduct of the monitoring review, the EMPLOYER will make available payroll and employment records for the review period indicated.
- D. If additional information is needed during the review, the EMPLOYER will provide the requested information to DOES.
- E. With the submission of the final request for payment from the District, the EMPLOYER shall:
1. Document in a report to the Contracting Officer its compliance with the requirement that 51% of the new employees hired by the project be District residents; or
  2. Submit a request to the Contracting Officer for a waiver of compliance with the requirement that 51% of the new employees hired by the project be District residents and include the following documentations:
    - a. Material supporting a good faith effort to comply;
    - b. Referrals provided by DOES and other referral sources; and
    - c. Advertisement of job openings listed with DOES and other referral sources.
- F. The Contracting Officer may waive the requirement that 51% of the new employees hired by the project be District residents, if the Contracting Officer finds that:
1. A good faith effort to comply is demonstrated by the contractor;
  2. The EMPLOYER is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area;

The Washington Standard Metropolitan Statistical Area includes the District of Columbia, the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg; the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.
  3. The EMPLOYER enters into a special workforce development training or placement arrangement with DOES; or

4. DOES certifies that insufficient numbers of District residents in the labor market possess the skills required by the positions created as a result of the contract.

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

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

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

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

IX. Is your firm a certified Local, Small, Disadvantaged Business Enterprise (LSDBE)? YES  NO

If yes, certification number: \_\_\_\_\_

X. Do you have a registered Apprenticeship program with the D.C. Apprenticeship Council?  YES  NO

If yes, D.C. Apprenticeship Council Registration Number: \_\_\_\_\_

XI. Indicate whether your firm is a subcontractor on this project:  YES  NO

If yes, name of prime contractor: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
Signature Dept. of Employment Services

\_\_\_\_\_  
Signature of Employer

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
E-mail

**EMPLOYMENT PLAN**

NAME OF FIRM \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_ FEDERAL IDENTIFICATION NO. \_\_\_\_\_

CONTACT PERSON \_\_\_\_\_ TITLE \_\_\_\_\_

E-mail: \_\_\_\_\_ TYPE OF BUSINESS: \_\_\_\_\_

\_\_\_\_\_  
ORIGINATING DISTRICT AGENCY \_\_\_\_\_

CONTRACTING OFFICER: \_\_\_\_\_ TELEPHONE NUMBER: \_\_\_\_\_

TYPE OF PROJECT \_\_\_\_\_ FUNDING AMOUNT \_\_\_\_\_

PROJECTED START DATE \_\_\_\_\_ PROJECT DURATION \_\_\_\_\_

\_\_\_\_\_

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

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




First Source Employment Agreement – DCOCP-V20705

## 1. FIXED-PRICE CONTRACTS (Greatest Risk on Contractor)

### A. Firm Fixed-Price (FFP)

#### Application and Essential Elements:

- ✓ Reasonably definite design or performance specifications available
- ✓ Fair and reasonable price can be established at the outset
- ✓ Existence of adequate competition
- ✓ Prior purchase experience of the same, or similar, supplies or services under competitive conditions
- ✓ Valid cost or pricing data
- ✓ Realistic estimates of proposed cost
- ✓ Possible uncertainties in performance can be identified and costed out.
- ✓ Contractor willing to accept all financial risks
- ✓ Any other reasonable basis for pricing can be used to establish fair and reasonable price

#### Limitations:

- ✓ Price not subject to adjustment regardless of contractor performance costs
- ✓ Places 100% of financial risk on contractor
- ✓ Places least amount of administrative burden on contracting officer
- ✓ Preferred over all other contract types
- ✓ Used with advertised or negotiated procurement

#### *Suitability:*

- ✓ Commercial and commercial type products
- ✓ Goods and services for which reasonable prices can be established

## **B. Fixed-Price With Economic Price Adjustment (FPEPA)**

### **Application and Essential Elements:**

- ✓ Unstable market or labor conditions during the performance period and contingencies which would otherwise be included in the contract price can be identified and made the subject of a separate price adjustment clause
- ✓ Contingencies must be specifically defined in contract
- ✓ Provides for upward adjustment (with ceiling) in contract price
- ✓ May provide for downward adjustment based on contractor's efficiency and productivity savings during the out-years or when out-year pricing has potential of falling below the limits established in the contract, due to market conditions
- ✓ Four general types of EPA:
  - Adjustment based on established prices
  - Adjustments based on actual costs of labor or material
  - Adjustments based on cost indexes of labor or material
  - Adjustment based on efficiency or productivity gains (multi-year contracts)

### **Limitations:**

- ✓ Price can be adjusted up or down upon action of an industry wide contingency which is beyond contractor's control
- ✓ Reduces the contractor's fixed price risk
- ✓ Used with negotiated procurements and in limited applications
- ✓ If contingency manifests, the contract administration burden will increase
- ✓ Fixed-price with EPA is preferred over any cost reimbursement type contract

## **E. Fixed-Price With Incentive (FPI)**

### **Application and Essential Elements:**

- ✓ Cost uncertainties exist but there is potential for cost reduction and/or performance improvement by giving contractor a degree of cost responsibility and a positive profit incentive.
- ✓ Profit is earned or lost based upon the contract's final negotiated cost as it relates to total target cost.
- ✓ Contract must contain target cost, target profit, ceiling price, and profit sharing formula
- ✓ There are two forms of this type: Firm Target (FPIF), and Successive Targets (FPIS)
  - Firm Target: in this situation firm target cost, target profit, and profit sharing formula are negotiated into basic contract, profit is adjusted upon contract completion
  - Successive Targets: In this type, the initial cost and profit targets are negotiated into contract but final cost target (firm) cannot be negotiated until sometime during performance. Contains production point(s) at which either a firm target and final profit formula, or a firm fixed-price contract, can be negotiated.
- ✓ Elements which are subject to incentive are costs, performance, delivery, and quality.

### **Limitations:**

- ✓ Requires adequate contractor accounting system
- ✓ Contracting officer must determine that contract type is least costly and award of any other type would be impractical
- ✓ Government and contractor administrative effort is more extensive than under other fixed price contract types
- ✓ Used only with negotiated procurements
- ✓ Billing prices must be established for interim payment
- ✓ D & F is required

### **Suitability:**

- ✓ Development and production

#### **D. Fixed-Price With Re-determination (FPR)**

##### **Application and Essential Elements:**

- ✓ There are two forms of this type: Prospective and Retroactive
- ✓ **Prospective (FPR-P)** is used when it is possible to negotiate a fair and reasonable price for an initial period of performance but not for entire contract period
- ✓ Contract is firm fixed-price at the start but at a specific times (s) during performance the contract price is re-determined either up or down
- ✓ A price ceiling. If appropriate, should be negotiated into the original contract
- ✓ **Retroactive (FPR-R)** is used when realistic fixed-price cannot be negotiated initially, or when contract amount is so small, or time so short, that any other contract type would be impractical

##### **Limitations:**

- ✓ For both type: The contracting officer must determine that a firm fixed price contract will not satisfy requirements
- ✓ Contractor's accounting system must be adequate
- ✓ Prospective period must be made to conform to contractor's accounting period
- ✓ Price must be re-determined promptly at times(s) specified

- ✓ Re-determination must be done promptly upon contract completion
- ✓ Must establish ceiling price in the original contract that represents the contractor's assumption of reasonable degree of risk
- ✓ Requires approval, in writing, from the head of a contracting activity
- ✓ Used only in negotiated procurements

**Suitability:**

- ✓ Prospective: Quantity production or services
- ✓ Retroactive: Research and development of \$100,000 or less

**E. Firm-fixed Price, Level-of-Effort Term (FFP, LOE)**

**Application and Essential Elements:**

- ✓ This type of pricing is usually used for investigation of study in a specific research and development area
- ✓ Contract product is usually a report showing the results(s) achieved by application of the required level of effort
- ✓ Payment based on effort expended and not on results achieved

**Limitations:**

- ✓ Work required cannot otherwise be clearly defined
- ✓ Required level of effort is identified and agreed upon in advance
- ✓ Reasonable assurance that the intended result cannot be achieved by expending less than the stipulated effort
- ✓ Contract price is less than \$100,000, unless approved by Chief Procurement Officer

**Suitability:**

- ✓ Research and development work that can be started only in general terms
- ✓ Requires that contractor expend a specified level of effort over a stated period of time
- ✓ The government pays the contractor a fixed dollar amount for performing this required level of effort.

## 2. COST CONTRACTS (Greatest Risk to Government)

### A. Cost Reimbursement (CR)

#### **Application and Essential Elements:**

- ✓ Appropriate to research and development work, particularly with non-profit educational institutions or other non-profit organizations, and for facilities contracts.
- ✓ Allowable costs of contract performance are reimbursed, but no fee is paid.

#### **Limitations:**

- ✓ Application limited due to no fee and by the fact that the government is not willing to fully reimburse contractors if there is a commercial benefit to the contractor. Only non-profit institutions and organizations are willing (usually) to perform research for which there is no fee (or other tangible benefit).
- ✓ D&F Required

#### **Suitability:**

- ✓ Research and Development
- ✓ Facilities

**B. Cost Sharing (CS)****Application and Essential Elements:**

- ✓ Used when Government and the contractor agree to share costs in a research or development project having potential mutual benefits.
- ✓ Because of commercial benefits accruing to the contractor, no fee is paid.
- ✓ Contractor reimbursed for Government's pre-determined portion of allowable costs of contract performance.
- ✓ Contractor agrees to absorb a portion of the costs of performance in expectation of compensating benefits to the firm or organization. Such benefits might include an enhancement of the contractor's capability and expertise or an improvement of his competitive position in the commercial marketplace.

**Limitations:**

- ✓ Care must be taken in negotiating cost-share rate so that the cost ratio is proportional to the potential benefit (i.e. the party receiving the greatest potential benefit bears the greatest share of the costs).

**Suitability:**

- ✓ Research and development that has potential benefits to the Government and the contractor.

### **C. Cost Plus Incentive Fee (CPIF)**

#### **Application and Essential Elements:**

- ✓ Development has a high probability that it is feasible and positive profit incentives for contractor management need to be negotiated.
- ✓ Performance incentives must be clearly spelled out and be objectively measurable.
- ✓ Fee range should be negotiated to give the contractor an incentive over various ranges of cost performance.
- ✓ Fee is adjusted by a formula negotiated into the contract in accordance with the relationship that total allowable cost bears to target cost.
- ✓ Total fee may be subject to certain statutory limits, depending on the type of purchase.
- ✓ Contract must contain: target cost, target fee, minimum and maximum fees, and fee adjustment formula.

#### **Limitations:**

- ✓ Difficult to negotiate range between the maximum and minimum fee so as to provide an incentive over the entire range.
- ✓ Performance must be objectively measurable.
- ✓ Costly to administer. Contractor must have an adequate accounting system.
- ✓ Used only with negotiated procurements.

- ✓ Appropriate government Application limited due to no fee and by the fact that the government is not willing to fully reimburse contractors if there is a commercial benefit to the contractor. Only non-profit institutions and organizations are willing (usually) to perform research for which there is no fee (or other tangible benefit).
- ✓ D&F Required

**Suitability:**

- ✓ Major systems development and other development programs where it has been determined that this contract type is desirable and administratively practical.

**D. Cost Plus Award Fee (CPAF)**

**Application and Essential Elements:**

- ✓ Contract completion is feasible, incentives are desired, and performance not susceptible to finite measurement.
- ✓ Provides for SUBJECTIVE evaluation of contractor performance. Contractor is evaluated at stated time(s) during performance period.
- ✓ Contract must contain clear and unambiguous evaluation criteria to determine award fee.
- ✓ Award fee is earned for excellence in performance, quality, timeliness, ingenuity and cost-effectiveness and can be earned in whole or in part.
- ✓ Two separate fee pools can be established in contract: a base fee not to exceed X%

- of the contractors estimated cost and an award fee.
- ✓ The total award fee plus base may be limited to certain statutory limits, depending on the type of purchase.
- ✓ Award fee earned by contractor is determined by the contracting officer and often based on recommendations of an award fee evaluation board.

**Limitations:**

- ✓ Weighted guidelines will NOT be used to determine either base or award fee.
- ✓ Government's determination of amount of award fee earned by the contractor is NOT subject to the Disputes Clause.
- ✓ CPAF contract cannot be used to avoid either CPIF or CPFF types if either is feasible.
- ✓ Should not be used if the amount of money, periods of performance, or expected benefits are insufficient to warrant additional administrative effort.
- ✓ Very costly to administer. Contractor must have an adequate accounting system.
- ✓ Used only with negotiated procurements.
- ✓ D&F required.

**Suitability:**

- ✓ Level of effort services that can only be subjectively measured, and contracts for which work would have been accomplished under another contract type if performance objectives could have been expressed in definite milestones, targets, and goals susceptible to being actually measured.

**E. Cost Plus Fixed Fee (CPFF)**

**Application and Essential Elements:**

- ✓ Level of effort is unknown and contractor's performance cannot be subjectively evaluated.
- ✓ Provides for payment of a fixed fee. Contractor receives the fixed fee regardless of the actual costs he incurs during performance.
- ✓ Can be constructed in two ways:  
COMPLETION FORM: clearly defined task with a definite goal and specific end product.

Government can order more work without an increase in fee providing the contract estimated cost is increased.

TERM FORM: scope of work defined in general terms.

Contractor obligated only for a specific level of effort for stated period of time.

- ✓ Fee is expressed as percentage of estimated cost at time contract is awarded.
- ✓ There may be maximum statutory fee limits for certain types of

**Limitations:**

- ✓ Contractor has minimum incentive to control costs.
- ✓ Normally not used for development of major systems once initial exploration contract has determined project feasibility.
- ✓ Costly to administer.
- ✓ Contractor must have an adequate accounting system.
- ✓ Less preferred type because contractor assumes no financial risk.
- ✓ Used only with negotiated procurements.

**Suitability:**

- ✓ Advanced development stage of R&D contracts. Requires contractor to complete and deliver the specific end product for payment of the entire fixed fee.
- ✓ Used when the level of effort required is unknown and there is an inability to measure risk.

### 3. OTHER CONTRACTUAL DEVICES

#### A. Indefinite Delivery

##### Application and Essential Elements:

- ✓ The exact time of delivery is unknown at time of award and a known performance period. There are three types of indefinite delivery contracts:

DEFINITE QUANTITY - Definite quantity of specified supplies or services for a fixed period of time. Delivery of performance at designated locations, upon order. Supplies regularly available or after short lead-time.

REQUIREMENTS - Fills all actual Government requirements of specified supplies or services, of designated activities during specified contract period. Contract contains estimated total quantity, maximum limit of contractor's liability, and a limit to the Government's ordering obligation. Funds are obligated by each order and NOT by the contract.

INDEFINITE QUANTITY - Contractor provides within stated limits, specified supplies or services, during specified contract period. Contract contains a minimum Government obligation and a stated maximum order quantity. Funds are obligated for the minimum quantity and thereafter by each order. Used when it is impossible to determine precise need and Government does not wish to commit itself for more than the minimum quantity.

##### Limitations:

- ✓ (Requirements): Flexibility in quantity and delivery schedule. Orders placed only after need materializes.
- ✓ (Indefinite Quantity): Flexible quantity and delivery schedule. Orders placed only after need materializes. Limited Government obligation. Minimum stock levels maintained. Direct shipment to users.
- ✓ Catalog or market prices are used.
- ✓ Used only with fixed-price type contracts.

##### Suitability:

- ✓ Commercial or modified commercial supplies or services when the need is recurring.

## Time and Materials

### Application and Essential Elements

- ✓ Not possible at time of placing contract to estimate extent or duration of the work, or anticipated cost, with any degree of confidence.
- ✓ Calls for provision of direct labor hours at specified hourly rates and materials at cost (or some other basis specified in the contract). The hourly rates include wages, overhead, general and administrative expenses and profit. Material cost can include, if appropriate, material handling costs.
- ✓ Ceiling price established at time of award.
- ✓ LABOR HOUR CONTRACT – A variant of the Time and Materials contract differing only in that materials are not furnished by the contractor. Labor Hour contracts are often used in conjunction with other contracts.

### **Limitations:**

- ✓ Used only after determination that no other contract type will serve purpose.
- ✓ Does not encourage effective cost control.
- ✓ Requires almost constant surveillance by Government to insure effective contractor management.
- ✓ Used only with negotiated procurements.
- ✓ Ceiling price required in contract.
- ✓ D&F required.

### **Suitability:**

- ✓ Engineering and design services in conjunction with the production of supplies, engineering design and manufacture of dies, jigs, fixtures, gauges and special machine tools; repair, maintenance, and overhaul work to be performed in emergencies.

## **Letter Contract**

### **Application and Essential Elements:**

- ✓ Interests of government demands that the contractor be given binding commitment so that work can commence immediately because its is not possible to negotiate definitive contract in sufficient time.
- ✓ Contract includes date by which parties expect definitized contract to be negotiated. Schedule states that definitization will take place within 120 days of signing of letter contract or prior to expiration of 50% of production of supplies or performance of work, whichever comes first (in extreme cases additional time may be authorized).
- ✓ Government's liability is no more than 50% of the total estimated cost of the procurement.
- ✓ Contract price contains ceiling price.
- ✓ Requires competition prior to award when such competition is practical

### **Limitations:**

- ✓ Gets contractor going quickly.
- ✓ Must have written determination (D&F) that no other contract type is suitable.
- ✓ Must be superceded by definitized contract at earliest possible date.
- ✓ Maximum government liability until definitization.
- ✓ Used only with negotiated procurements.

### **Suitability:**

- ✓ Manufacture of supplies and performance of services to include pre-production planning and procurement of necessary materials.

Updated 2/12/03



Office of Contracting & Procurement

Government of the District of Columbia

SUMMARY EVALUATION OF CONTRACTOR/PROVIDER PAST PERFORMANCE

(Please Read The Attached instructions Prior To Completing This Form.)

Form sections 1-10: 1. CONTRACT NUMBER; 2. Name of Contractor; 3. Contract Administrator/COTR; 4. CLASSIFICATION; 5. DATE OF AWARD; 6. CONTRACTOR TAX IDENTIFICATION NUMBER; 7. Contract Monitor; 8. COST ON DATE OF AWARD; 9. CAPTION / DESCRIPTION; 10. FINAL CONTRACT COST.

Form sections 11-12: 11. CONTRACT PERIOD: (Specify Month, Day, Year); 12. PERIOD OF PERFORMANCE EVALUATION REVIEW: (Specify Month, Day, Year)

Table with 7 columns (0-5) and 13 rows (13-25) for performance evaluation. Rows include: 13. Evaluate the Contractor's adherence to the specific contract requirements or scope of Work; 14. Evaluate the quality of the Contractor's delivered item or final work product, or service; 15. Evaluate the timeliness and adherence to interim and final delivery requirements and milestones; 16. Evaluate the reliability of the Contractor; 17. Evaluate the effectiveness of the Contractor's service delivery and interaction; 18. Evaluate the accuracy, timeliness, and completeness of contractor's documentation; 19. Evaluate contractor's technical performance and approach to the contract; 20. Evaluate the ability of contractor to deliver or perform at the original price or budget; 21. Evaluate the effectiveness of Project Management; 22. Evaluate the Contractor's compliance with Safety Standards; 23. Evaluate the Contractor's compliance with Labor Standards; 24. Evaluate Contractor's facility(ies); 25. Provide an OVERALL PERFORMANCE EVALUATION RATING and add any additional comments.

Form sections 26-27: 26. Evaluator (Name, Signature, Date, Comments); 27. Contracting Officer Review (Name, Signature, Date, Comments)

DISTRIBUTION [FOR OCP USE ONLY]: a. Procurement File; b. Agency Chief Contracting Officer; c. Chief Procurement Officer (CPO); d. OCP Headquarters (Quality Assurance); e. Contract Administrator/COTR; f. Contract Monitor; g. Agency Director; h. Agency Program; i. Agency Chief Financial Officer; j. D.C. Office of Inspector General; k. D.C. Office of Local Business Development; l. OTHER:

INSTRUCTIONS

**GENERAL INSTRUCTIONS:**

1. This form shall be generated to rate the performance of any contractor, provider, or supplier of goods and services to the District of Columbia.
2. The performance shall be summarized in the comments blocks included on the front of this form by checking the appropriate rating block, and adding any additional comments.
3. If there is not enough space to provide additional comments, please provide the comments on a separate sheet and attach that sheet to the form.
4. Please complete and transmit the attached form to your Agency Chief Contracting Officer in the Office of Contracting and Procurement (OCP), no less than three (3) weeks from the date that a contract ends; or the final delivery and receipt of goods and services pursuant to a contract; or upon the specific request of a representative of the Office of Contracting and Procurement.
5. Please evaluate the performance of the contractor in each area requested checking the appropriate block on the performance evaluation form in accordance with the Rating Schedule listed below:

**RATING SCHEDULE**

- |     |                       |   |
|-----|-----------------------|---|
| (0) | <b>UNSATISFACTORY</b> | The performance was substandard, and does not meet most contractual requirements. The contractual performance contained serious compliance problems for which the contractor's corrective actions appear or were ineffective.   |
| (1) | <b>POOR</b>           | The performance was simply marginal, and just barely met the contractual requirements. There are, or were, deficiencies in the overall performance that the contractor needs to address. Generally, there were several concerns with the contractor's performance, quality and service.   |
| (2) | <b>SATISFACTORY</b>   | The performance acceptably meets or met the contractual requirements. The performance was timely, in compliance with the contractual requirements. Generally, there were a few minor difficulties or problems for which corrective action were undertaken by the contractor and were successful.  |
| (3) | <b>GOOD</b>           | The performance on this contract was more than satisfactory and exceeded some of the contractual requirements. The performance was more than timely and the quality of service above compliance with the requirement. Generally, there was good satisfaction and happiness with the contractor performance, quality, and service.   |
| (4) | <b>VERY GOOD</b>      | The performance met and exceeded most of the contractual requirements, to the benefit of the government, resulting in a high standard of quality, timeliness, and overall customer satisfaction. There were minimal difficulties with this contract for which all corrective actions undertaken by the contractor were met and fully implemented by the contractor.   |
| (5) | <b>OUTSTANDING</b>    | The performance of the contractor <i>ALWAYS</i> exceeds the contractual requirements, and was reflected by a continued pattern of an exceptional quality goods (or service, or work product); a continued pattern of advance delivery of goods or completion of services; a continued pattern of always performing at or below budget costs; and an unusual pattern of responsiveness to customer concerns; and an exceptionally high standard of demonstrated technical excellence. There were no contractor difficulties with this contract for which corrective action was required. |

6. A written, detailed narrative **SHALL** be provided to support and sustain all ratings of **UNSATISFACTORY** or **OUTSTANDING**. Please attach additional sheets, if needed.

**SPECIFIC INSTRUCTIONS:** (All items **MUST** be completed):

- |           |   |
|-----------|---|
| Block 1.  | Insert the assigned, official contract number of the contract.  |
| Block 2.  | Enter the name, address, telephone and facsimile numbers, and the name of the point of contact of the contractor.   |
| Block 3.  | Enter the name, address, and telephone, facsimile and e-mail numbers of the Contract Administrator (CA) / Contracting Officer Technical Representative (COTR).  |
| Block 4.  | Enter the appropriate classification information on the contract, or purchase order. Check all that apply.  |
| Block 5.  | Enter the contract date of award.   |
| Block 6.  | Enter the contractor's federal tax identification number that is listed in or on the contract document.   |
| Block 7.  | Enter a brief statement proving a caption or description of the nature of the contract.   |
| Block 8.  | Enter the name, address, and telephone and fax numbers of the Contract Monitor, or person completing this evaluation, if other than the CA/COTR.  |
| Block 9.  | Enter the initial, or agreed upon, price of the contract as listed in the contract or purchase order, <u>exclusive</u> of all modifications.  |
| Block 10. | Enter the final cost of the contract, or what has been, or will be paid to the contractor, <u>inclusive</u> of all approved cost modifications.   |
| Block 11. | Enter the actual stated contract period of the contract that is listed on the front of the contract document.   |
| Block 12. | Enter the specific period for which the performance evaluation is being completed if the specific period is less than the total period of the contract.   |
| Block 13. | This item is intended to determine whether the contractor met, or is meeting, the specific requirements outlined in the scope of work that is listed in the contract.   |
| Block 14. | This item is intended to determine the quality of the contractor goods, service, or work performance.   |
| Block 15. | This item is intended to obtain an indication of the timeliness of performance. Ask the question: Did the contractor deliver or perform on time?  |
| Block 16. | This item is intended to assess whether the customer believes the contractor is reliable enough to be used again by the District.   |
| Block 17. | This item is intended to evaluate how well the contractor interacted with the District. Was the contractor responsive, flexible, cooperative, and professional.   |
| Block 18. | This item is intended to assess the contractor's consistency in submitting the complete documents for payment, and other administrative documents including compliance on obtaining adequate liability insurance coverage where that requirement is applicable.   |
| Block 19. | This item is intended to ascertain whether the vendor demonstrated originality and resourcefulness in handling issues addressed in a more traditional manner.   |
| Block 20. | This item is intended to evaluate the contractor complied with the stated, or negotiated, contract cost.  |
| Block 21. | This item addresses the extent, effectiveness, and overall management capability of the contractor. (Primarily in service, consulting and construction contracts.)  |
| Block 22. | This item addresses the extent to which the contractor met compliance requirements for a safe work site. (Primarily applicable in construction contracts.)  |
| Block 23. | This item addresses the extent to which the contractor met compliance requirements for labor standards and laws.  |
| Block 24. | This item is intended to evaluate whether the facilities that are provided by the contractor to the District met requirements, including whether the facilities were clean, and safe; and met all District housing and building code requirements, or had a Certificate of Occupancy, where applicable. |
| Block 25. | Provide an OVERALL PERFORMANCE RATING assessing on the contractor's performance. The rating must be consistent with the prior ratings.  |
| Block 26. | The Evaluator completing this performance evaluation shall sign and enter the date of signature.  |
| Block 27. | The Contracting Officer shall review, and shall sign and enter the date of signature.   |