

FOIA MARKER

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OA/ID Number: 19512
FolderID:

Folder Title:
Climate Change Other Pepco/GSA/Capitol Region [2]

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Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	[Personally Identifiable Information] [partial] (2 pages)	10/29/1998	b(6)

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Office of Environmental Initiatives
Roger Ballentine
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Climate Change Other Pepco/GSA/Capitol Region [2]

2017-1093-F

rs3169

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1** National Security Classified Information [(a)(1) of the PRA]
- P2** Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3** Release would violate a Federal statute [(a)(3) of the PRA]
- P4** Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5** Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6** Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1)** National security classified information [(b)(1) of the FOIA]
- b(2)** Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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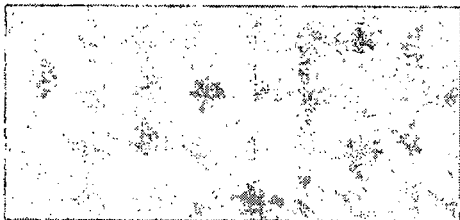
MEMORANDUM FOR BILL ANTHOLIS

FROM: BRIAN REEVES

RE: ATTENDEES AT THURSDAY'S PEPCO/TRIGEN MEETING

The following is a update on the participants for Thursday. They have your number and should get back to you with more info.

- ✓ Vince Crivella Fax 708-4655
Phone 708-5155
*Left message -- will call back with reply
→ Said would let Beth know.
- ✓ Steve Gundman Fax 703-695-6929
Phone 703-697-1771
*Able to attend -- will call back with info
- ✓ Bill White Fax 260-4852
Phone 260-3711
*Gone until Wed -- left message to call you - left a message
- ✓ Skip Laitner Fax 565-2147
Phone 564-9833
*Gone until Tue -- left message to call you - left a message
- Mark Mazur Fax 586-9626
Phone 586-7700
*Able to attend -- Info: [REDACTED] (b)(6) - that's fine
Call back to confirm room #
- Randy Steer Fax 395-1086
Phone 395-3164
*Left message on machine -- will call you w/ info



Gundman

→ 3pm
Beth Shearer

Vince Crivella

→ call when
Gundman

Policy decision met

Karen

12:00

GSA's view of viability under current contract?

Crivella: pepco proposal raised a number of issues.

- Primary concern: services don't really fall within original area-wide authority.
- Contract was modified; GSA lawyers were concerned about whether the modification was allowable within the scope of the contract.
- GSA will get back to us on whether it fits within the modification.

If not viable, what procedurally do we need to do to make a decision on RFI?

- Need to approach architect of the capitol before hand.
- NEC, CEQ, Todd, COS, DOE, EPA, raised in NEC meetings as an agenda item that we're moving ahead on. (GSA would need to brief congressional, public, labor)
- RFI: put into the Commerce Business Daily, allowing 3 weeks to a month to respond, submitting thier comments back to a GSA contracting officer.
- GSA and EPA will pull together current specs on emissions, energy use, including existing permits.
- Product: Industry will respond with feedback on what their recommendation would be best alternative for the government to reduce area wide energy production.

If there are more than one reasonably competitive demonstrations of interest.

- We would need to consider the various suggestions (particularly if this include dispensing with current assetts) and then draft an RFP (request for proposals).
- USG would then need to review any other extant issues.

A-76? Legal steps needed? Political steps needed?

- GSA needs to determine if A-76 happens in parallel or sequentially.
- GSA will outline steps for both a uncontested and contested A-76 process.
- Contested process. Once RFI proposals come in, we would then need to identify if federal employees are to be displaced. We would need to complete the comparison study to see whether the businesses could compete with federal employees. Could take a year or more.

Federal Government District Heating Project

DRAFT
RFI

The Administration has made Federal government leadership an important part of its recent initiatives to reduce greenhouse gas emissions, and to promote energy efficiency and environmental protection. As part of these efforts, it may be worth exploring whether federal government facilities in the Washington D.C. area provide for their heating needs in the most cost-effective and environmentally sensitive way possible, particularly when considered in the context of all energy produced and emissions generated by those facilities. One way to do this could be a project that promotes more efficient energy production -- through the recovery of waste heat, and reuse through district heating -- for Federal Government buildings in the District of Columbia.

Broad Outlines of a District Heating Project. The Federal government buildings in the District of Columbia consume significant amounts of energy in the form of electricity and steam used for lighting, heating, and cooling, and used to power office and industrial equipment. This energy is generated at a number of power stations, both publicly and privately owned. The redundancy of these facilities suggests that more cost-effective and energy-efficient configurations may exist for generating power across the entire system, particularly through using waste recovery mechanisms.

Currently, for instance, most of the heating needs of Federal buildings are provided by steam plants owned and operated by the federal government. The General Services Administration provides steam to civilian agencies from the Central and West Heating Plants; the Department of Defense (DoD) provides steam from the Pentagon and Navy Yard Plants; and the Architect of the Capitol provides steam to legislative buildings from the Capitol Heating Plant. This steam currently costs more per unit than steam purchased in most U.S. facilities. In addition to inefficiencies that may exist among these plants, electrical power is provided to federal buildings by separate power sources. It is likely that more effective use of currently existing sources exist.

Criteria. Assuming that a waste recovery or district heating program can be designed for federal buildings, it should seek the most attractive combination of the following attributes or goals (in priority of importance), assuming the system currently meets or exceeds current Federal standards for reliability, security, and maintenance:

- **lowest cost:** the program should seek to obtain the lowest possible overall energy bill for the federal community;
- **lowest energy production:** the program should seek to reduce overall energy production in meeting mandated goals;
- **lowest local air pollution:** the program should seek to ensure that the emissions of pollutants are as low as possible across all Federal government facility energy sources;
- **lowest carbon emissions:** the program should seek to significantly reduce carbon emissions in the provision of energy for Federal facilities.¹

¹ This goal is consistent with U.S. obligations under the United Nations Framework Convention on Climate Change, adopted at the 1992 Rio Earth Summit, and ratified by the U.S. Senate the following year.

Regulatory Issues. Since a variety of public and private power facilities currently provide energy services to the federal buildings in D.C., several regulatory issues would need to be resolved under any possible project. Leading issues include: is the provision of energy for heating a commercial service, which can be provided by the private sector? If subject to private provision, is it currently within any existing contractual authority to provide these services? If not, what range of private contractors would be capable of providing these services? Which formal or informal processes are available to us to determine which private contractor(s) should perform these services?

- **Heating as a commercial service.** The federal government conducts an annual process which reviews commercial services that currently are performed by government agencies, and determines whether they can be better provided by private contractors (i.e. the A-76 process). The determination that heating services can be privatized does have precedent within the federal government -- even for facilities responsible for national security functions -- as Congress has enacted legislation allowing the Department of Defense to contract for co-generated heating services at DoD facilities, at DoD discretion.

Among other issues to be resolved in such a process is whether federal employees that currently provide the service would want or be able to organize themselves and be competitive with the best available private contractor.

- **Current contracting authority.** The federal government within the District of Columbia currently receives much of its electrical service from Pepco's coal-fired plant on the Potomac River just north of Old Town Alexandria. In cooperation with the Trigen energy corporation, Pepco has proposed to provide steam for heating federal facilities, using the waste steam heat produced under normal power generating operations of the Alexandria electrical plant. Pepco-Trigen would deliver this steam via a new pipeline into the existing GSA pipeline distribution system. Pepco contends that this project falls under its Areawide Utility Services Agreement with GSA, "including the type of steam service contemplated here, on the basis of an expedited, non-competitive procurement." Pepco also suggests that this service could be provided under Pepco and Trigen's qualification as certified energy savings performance contractors.

In addition to determining whether this contract applies, additional contracting issues may need to be addressed. These include whether Pepco could provide steam service under this contract to the Pentagon (which receives its electricity from Virginia Power), and to Capitol Hill. Also, it needs to be determined whether Pepco could provide steam under a sole-source contract, even though steam is not a regulated service (vis. electricity, which is a regulated service.)

A number of issues which will need to be identified in the process of screening these proposals. These include whether the federal government would be privatizing *operation* of its facilities, while continuing to retain ownership of them, or would it be liquidating federal property in exchange for a long-term contract to provide needed services.

→ If there are a range of contractors, would you still want to put it out to bid?
→ ESPCs → what is the competitive process?
"one award issue"

Process for Determining Contracting Agents. If such a project cannot be completed under current contracting authority, we will need to establish a process for determining the contractor (public or private) capable of providing the services enumerated above. A full competitive bidding process is always available, particularly if a number of well suited contractors are able to put forward extensive proposals. The viability and attractiveness of these proposals would be judged against one another according to goals listed above.

Since such a process assumes that at least two contractors are well suited for these services. It may be desirable to establish a preliminary screening process to identify the range of contractors capable of performing the full array of goals listed above. This could be accomplished by publishing a Request for Information in the Federal Register as a way of screening potential candidates by assessing their full potential to meet project goals.

- **Project Scope.** While the General Services Administration currently owns and operates the largest heating complex in the District, at least two other entities currently provide for their own heating services. The Pentagon provides for its own heat through two gas fired generators, and the Architect of the Capitol operates a coal-fired plant that provides steam heat for all Congressional buildings. The most ambitious imaginable plan for district heating could incorporate those entities as well, however this would require the willingness of these entities, in addition to addressing various regulatory issues associated with those facilities.
- **Project Implementation: Budgeting and Permitting.** Cost savings are perhaps the leading attractive feature of a district heating project. However, realizing and sharing those savings may require carefully reviewing how energy costs are scored in the budgets of various government agencies, both on the receiving end

A-76 → or privatize plants
contract out the plant operation.
purchase commodity, sell the plant.
(competitively)

- two scenarios for disposal
→

Could start A-76 process with a month.
Transition due by October 31
possible new law being enacted.

MMB

→ Then OMB to make "commercial sense" determination in A76.
→ RFI → Send to Commerce Business Daily.

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local ^{air} pollutant, pipe lining

EIS - siting - 18 months, shoreline?

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In addition to determining whether this contract applies, additional contracting issues may need to be addressed. These include whether Pepco could provide steam service under this contract to the Pentagon (which receives its electricity from Virginia Power), and to Capitol Hill. Also, it needs to be determined whether Pepco could provide steam under a sole-source contract, even though steam is not a regulated service (vis. electricity, which is a regulated service.)

A number of issues which will need to be identified in the process of screening these proposals. These include whether the federal government would be privatizing *operation* of its facilities, while continuing to retain ownership of them, or would it be liquidating federal property in exchange for a long-term contract to provide needed services.

Process for Determining Contracting Agents. If such a project cannot be completed under current contracting authority, we will need to establish a process for determining the contractor (public or private) capable of providing the services enumerated above. A full competitive bidding process is always available, particularly if a number of well suited contractors are able to put forward extensive proposals. The viability and attractiveness of these proposals would be judged against one another according to goals listed above.

Since such a process assumes that at least two contractors are well suited for these services. It may be desirable to establish a preliminary screening process to identify the range of contractors capable of performing the full array of goals listed above. This could be accomplished by publishing a Request for Information in the Federal Register as a way of screening potential candidates by assessing their full potential to meet project goals.

- **Project Scope.** While the General Services Administration currently owns and operates the largest heating complex in the District, at least two other entities currently provide for their own heating services. The Pentagon provides for its own heat through two gas fired generators, and the Architect of the Capitol operates a coal-fired plant that provides steam heat for all Congressional buildings. The most ambitious imaginable plan for district heating could incorporate those entities as well, however this would require the willingness of these entities, in addition to addressing various regulatory issues associated with those facilities.
- **Project Implementation: Budgeting and Permitting.** Cost savings are perhaps the leading attractive feature of a district heating project. However, realizing and sharing those savings may require carefully reviewing how energy costs are scored in the budgets of various government agencies, both on the receiving end

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TIME:

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The National Capital Energy Project: Fulfillment of Administration Policy, Use Of PEPCO's Areawide Agreement As A Contractual Vehicle, And Related Issues¹

"... Climate change can bring us together around what America does best -- we innovate, we compete, we find solutions to problems, and we do it in a way that promotes entrepreneurship and strengthens the American economy. If we do it right, protecting the climate will yield not costs, but profits; not burdens, but benefits; not sacrifice, but a higher standard of living."

President Clinton, October 22, 1997

A. Executive Summary.

1. The proposed project would substitute surplus steam from an existing, efficiently operated PEPCO plant in Alexandria, Virginia, for steam currently being produced by two GSA-owned and operated plants. This would permit the Federal Government to reduce its energy consumption as required by law and Executive Order, and would improve regional air quality consistent with environmental policy goals.
2. PEPCO's existing Areawide Agreement and its accompanying Energy Services Agreement provide an appropriate contractual vehicle for the project.
 - The proposed project is within the scope of PEPCO's existing Areawide Agreement with GSA.
 - Use of the Areawide Agreement is consistent with the GSA's established procurement authority under the Energy Policy Act of 1992 and the Federal Property & Administrative Services Act of 1949.

¹ This document contains proprietary and business confidential information that is exempt from disclosure outside the Government.

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- Use of PEPCO's Areawide Agreement is consistent with established practice of civilian and DOD agencies of contracting with utilities for energy-conservation measures under the auspices of areawide agreements.
3. The project is not subject to a requirement for competition.
 - The Energy Policy Act authorizes GSA to negotiate directly with PEPCO.
 - PEPCO is the only entity with the capability to provide substitute steam service on an energy efficient and environmentally effective basis.
 4. The project should not be subject to the complex and time-consuming OMB Circular A-76 process.

B. Introduction and Policy Overview.

1. Project Summary.

The White House, Old Executive Office Building, and most Federal Government buildings in Washington, D.C., including all principal agency buildings, are heated (and some are cooled) by steam supplied from the General Services Administration ("GSA"). The GSA delivers the steam through pipelines in underground tunnels that extend in a network from Georgetown to the foot of Capitol Hill. The GSA makes the steam at two large boiler plants -- one in downtown Washington, the other in Georgetown -- that are owned and operated by the GSA.

The GSA plants are relatively clean, yet because of their size, location, and operational patterns, they are significant sources of air pollution and greenhouse-gas emissions in the Washington region. The GSA's plants are the largest Federal Government sources of carbon dioxide (CO₂) and other air pollutants in the area. Fired by natural gas, they consume about 3.3 billion BTUs of energy each year, a quantity equal to more than a half-million barrels of oil.

In response to President Clinton's October 1997 call to the private sector to offer ideas for reducing emissions of greenhouse gases, Trigen Energy Corporation ("Trigen") and PEPCO Services, Inc. ("Pepco Services"), a subsidiary of the Potomac Electric Power Company ("PEPCO"), have developed a project (the "National Capital Energy Project"), which would substitute surplus steam from an existing, efficiently operating PEPCO-owned power plant for steam that the GSA makes. Simply, the Trigen-Pepco Services team proposes to collect steam from PEPCO's Potomac River Electric Generating Station (in Alexandria) and deliver it via a new pipeline into the existing GSA pipeline distribution system.

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The proposed change in steam source would:

- Reduce GSA's fossil fuel consumption by approximately 1.2 billion BTUs per year.
- Reduce annual CO₂ emissions by approximately 39,000 tons.
- Generate net regional reductions in emissions of other regulated air pollutants (NO_x and SO₂).
- Reduce Federal Government energy costs without additional budget outlays.
 - All capital costs for construction of the project would be advanced by the developers. There would be no up-front cost to the Federal Government. The developers expect to be able to supply steam to the GSA at a price that would be significantly lower than the costs incurred now by the GSA (and ultimately its customer agencies and taxpayers) to make steam in-house.
- Enable the GSA to retire its Georgetown steam plant and restore that property to park land or other public use.

2. Policy Framework.

The Trigen-Pepco Services project would help the Executive Branch comply with the Energy Policy Act of 1992 ("EPACT," P.L. 102-486). The project also fits squarely within, and would advance this Administration's energy and environmental policy goals.

The EPACT requires agencies to install energy-conservation measures and to reduce energy-consumption levels by 20 percent relative to 1985 levels by the year 2000. Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities (Mar. 8, 1994) (copy attached at Tab 1), goes one step further, setting a 30 percent energy reduction goal by 2005. As noted above, this project would allow the Executive Office of the President and other GSA steam customers to show significant reductions in energy use² and could be fully implemented within the EPACT and Executive Order 12902 deadlines.

² This assumes that the GSA would agree to allocate the 1.2 billion BTU "credit" for reduced energy use to its customers on some *pro rata* basis; otherwise, the savings would accrue to the GSA alone.

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The Trigen-Pepco Services project would provide a compelling and timely example of Administration action to implement President Clinton's October 22, 1997 climate-change policy (excerpt attached at Tab 2). There, the President pledged to improve Federal energy management and procurement through a variety of initiatives, including:

- Improved Federal procurement of energy-efficient technology;
- Use of consolidated purchasing to stimulate markets and lower prices;
- Expanded use of combined heat and power generation; and,
- Expanded public awareness of energy-efficient technologies.

The Trigen-Pepco Services project would move these initiatives forward. In addition to achieving the reductions in CO₂ and other regulated pollutants noted above, the proposed project provides a showcase example of procurement of efficiently generated energy from a combined heat and power facility on a consolidated, interagency basis. The project also has the capacity to provide steam service to additional Federal and private users in the Washington area, thus creating the potential for additional reductions in costs of steam to Federal users as the fixed costs are shared among more users, as well as the potential for additional improvements in regional air quality as other existing generating sources are taken off-line.³ Finally, the project's national profile would showcase the Administration's progress toward addressing the climate-change problem and would expand the public's awareness and encourage implementation of similar opportunities elsewhere.

C. PEPCO's Areawide Agreement, and Its Accompanying Energy Services Agreement, Provide an Appropriate Contractual Vehicle for the Project.

As discussed above, the proposed project would substitute surplus steam from an existing, efficiently operated PEPCO plant in Alexandria, Virginia, for steam currently being produced by two GSA-owned and operated plants. Steam would be provided to Federal users via the existing GSA steam-distribution system, which the project developers would operate and maintain.⁴ This would permit the Government to reduce its energy use and costs and improve regional air quality.

³ The Architect of the Capitol and the Pentagon are two Federal entities which currently operate steam generation facilities and which could potentially be served by steam generated at PEPCO's Potomac River plant.

⁴ Since the project envisions that steam would be supplied directly to Federal buildings through the GSA steam system and would rely on the GSA steam plant for backup and peak period demand purposes, the developers have an interest in ensuring the proper operation and maintenance of the GSA steam system.

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1. The Proposed Project is Within the Scope of PEPCO's Areawide Agreement.

The GSA and PEPCO have an existing "areawide agreement" under which PEPCO furnishes utility services to Federal user agencies.⁵ (Copy attached at Tab 3). PEPCO's Areawide Agreement broadly defines the types of "services" that may be provided pursuant to it to include "any commodities, financial incentives, goods and/or services generally available from [PEPCO]." See Modification 1 to PEPCO's Areawide Agreement (copy attached at Tab 4). In addition, the GSA and PEPCO have also entered into an Energy Services Agreement, which is Attachment 1 to PEPCO's Areawide Agreement (copy attached at Tab 5). Modification 1 and Attachment 1 to PEPCO's Areawide Agreement permit the GSA to contract for "energy conservation measures," which are broadly defined as "any specific measure intended to provide energy savings, demand reduction and/or related cost savings in Federal facilities." Modification 1, Mod. 1. B.; see Attachment 1, § A, Definitions, at 5; *id.* § B.1.A.1, Energy Conservation Measures, at 11-12. Further, Attachment 1 specifically provides that energy conservation measures may include "an energy-related project that results in energy conservation, or demand reduction; and/or . . . in benefits to the Customer Agency other than energy conservation or demand reduction, such as operations and [m]aintenance cost savings, environmental benefits, etc." Attachment 1 § A, Definitions, at 6 (emphasis supplied).

2. Use of the Areawide Agreement is Consistent With the GSA's Established Procurement Authority.

The GSA has authority to contract with PEPCO for the project pursuant to 42 U.S.C. § 8256(c)(3) and 40 U.S.C. § 481(a)(3), which authorize the GSA to negotiate energy-conservation programs and to procure utility services.

Section 152(f) of the EPACT, 42 U.S.C. § 8256(c) (copy attached at Tab 6), specifically authorizes civilian agencies to enter into negotiations with utilities "to design cost effective demand management and [energy] conservation incentive programs."⁶ 42 U.S.C. § 8256(c)(3). A parallel statute, 10 U.S.C. § 2865(c)(3), provides similar authority to DOD agencies. Both the

⁵ An areawide agreement is an agreement between the GSA "and a utility service supplier to cover utility service needs of Federal agencies within the franchise territory of the supplier." Federal Acquisition Regulation ("FAR") 41.101. FAR 41.101, in turn, defines "franchise territory" to be a "geographical area that a utility supplier has a right to serve based upon a franchise, a certificate of public convenience and necessity or other legal means." PEPCO can provide steam and related system services under existing District of Columbia law.

⁶ See also 42 U.S.C. § 8259(4) (defining "energy conservation measures" as those that "improve energy efficiency and are lifecycle cost effective and that involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operations and maintenance efficiencies or retrofit activities").

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DOE, the lead agency with responsibility for implementation of the EPACT, and the DOD, have concluded that 42 U.S.C. § 8256(c) and 10 U.S.C. § 2865(d), respectively, authorize Federal agencies to contract with utilities for energy-conservation services under areawide agreements.⁷ Consistent with those interpretations, the Administration has recently re-emphasized the availability of agreements with utilities as a contractual vehicle for achieving energy policy goals.⁸ Indeed, the authority granted under § 8256(c)(3) and 10 U.S.C. § 2865(d) has been relied on by numerous Government agencies to procure a wide variety of energy-conservation services under areawide agreements. For example, the GSA's web site lists approximately 90 areawide agreements which authorize Federal agencies to obtain such services (see Tab 10), and an illustrative list of analogous projects that have been undertaken pursuant to areawide agreements is attached at Tab 11. Moreover, to our knowledge, the use of areawide agreements to obtain energy-conservation services has not been challenged in litigation as beyond the scope of the agencies' procurement authority or beyond the scope of the areawide agreements. Accordingly, we submit that insofar as the purpose of this project is to enable the Government to reduce its overall energy conservation and meet its energy requirements at lower cost, it is within the scope of the GSA's authority under § 8256(c)(3).

In addition to § 8256(c)(3), § 201(a)(3) of the Federal Property & Administrative Act of 1949, 40 U.S.C. § 481(a)(3), specifically authorizes the GSA to enter into contracts for "public utility services." The proposed project is clearly within the GSA's authority under 40 U.S.C. § 481(a)(3) insofar as it involves the procurement of steam, which is a traditional "utility

⁷ See Memorandum from Lawrence R. Oliver, Assistant General Counsel, Energy Efficiency, to John P. Archibald and Victor Petrolati, EE-90, Office of Federal Energy Management, Subj.: Whether Section 152 of EPACT Provides Sufficient Authority to Permit AL to Proceed with a Proposed Energy Management Services Contract With Public Service Company of New Mexico (Dec. 13, 1996) (copy attached at Tab 7); U.S. Navy Memorandum from 09CB1 to 021A, Subj.: Use of Utility Service Contracts to Obtain DSM Service (Jan. 29, 1993) ("1993 Navy Memo") (stating that "[i]f a GSA areawide contract is in place which provides for DSM services, we would generally be required to use that contract unless we could show that it did not meet our requirements in some respect") (copy attached at Tab 8); see also Defense Energy Program Policy Memorandum (DEPPM) 94-1, Subj.: Participation in Public Utility Sponsored Energy Conservation and Demand Side Management (EC/DSM) Programs, at 1-2, 4-5, 14 (recognizing that DOD agencies can enter into negotiations with utilities pursuant to 10 U.S.C. § 2865(d) to design and implement EC/DSM projects and that modifications to existing areawide agreements are one vehicle for doing so) (copy attached at Tab 9).

⁸ See Memorandum from President William J. Clinton to the Heads of Executive Departments and Agencies, Cutting Greenhouse Gases through Energy Savings Performance Contracts (July 25, 1998); Memorandum from Jacob Lew, Acting Director, Office of Management and Budget, to Heads of Executive Departments and Establishments, Federal Use of Energy Savings Performance Contracting, at 2 (July 25, 1998).

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service.”⁹ See also FAR 41.101 (including steam as an example of a “utility service”). Moreover, nothing in § 481 limits the GSA’s authority to procure utility services to the acquisition of basic commodities, such as steam or electricity, or to supplies and services that are subject to detailed regulation by a local public utilities commission or similar body. For example, in GSA Procurement of Equipment Under 40 U.S.C. § 481(a)(3), B-208422, 62 Comp. Gen. 569, 574-75 (1983) (copy attached at Tab 12), the General Accounting Office (“GAO”) held that the GSA could purchase telephone switching equipment and related installation and maintenance services from a non-regulated supplier under § 481. In reaching that result, the GAO indicated that the GSA’s authority to procure “utility service” under § 481(a)(3) should be interpreted pragmatically and flexibly and “in light of the changes in technologies and methodologies for providing the product or service.” Id. at 574-75.

In that regard, most electric utilities, including PEPCO, today offer energy-related services to their customers in addition to basic electric service. These services enable the customers to reduce their overall energy costs, but are, in a real sense, an integral part of the services offered by the utilities. Moreover, as discussed above, there is a well-established practice in both civilian and DOD agencies of contracting with public utilities for energy-related services under the auspices of areawide agreements.

This established practice also supports the view that FAR Pt. 41, which addresses the acquisition of utility services generally and areawide agreements in particular, should not be read narrowly regarding the types of services that may be acquired under the auspices of an areawide agreement. For example, several provisions in FAR Pt. 41 effectively acknowledge that rates, terms and conditions of service provided under an areawide contract may not be subject to regulation but rather separately negotiated. See FAR 41.204(b) (specifically permitting agencies to negotiate other rates and terms of service); 41.204(c)(2) (providing for separately negotiated rates or terms); see also FAR 41.201(b) (acknowledging that rates, terms or conditions of utility service may not be fixed by a regulatory body).

Finally, we note that the procurement strategy suggested here -- use of the areawide agreement to implement steps that will reduce the Government’s energy consumption and provide related benefits -- is consistent with the Administration’s energy savings and procurement reform policies. As noted above, in E.O. 12902, the President directed Federal agencies to reduce energy consumption by 30 percent by the year 2005. In achieving that goal, E.O. 12902 directed agencies to use “innovative financial and contractual mechanisms” to achieve that goal. See E.O. 12902 § 401; see also id. § 403 (directing agency heads to work with procurement officials to identify barriers to implementation of the EPACT and E.O. 12902).

⁹ Steam is a byproduct of electric generation. The GSA’s web site lists approximately 18 areawide contracts under which steam is supplied to the Government, and according to that list, in most of those cases, the utilities involved are also providing electric service. (See Tab 10.)

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Further, one of the upshots of the Vice President's procurement reform initiatives was the inclusion of a "statement of guiding principles" in the FAR. One of those guiding principles is that agency procurement personnel should exercise initiative and sound business judgment in meeting the Government's needs. See FAR 1.102(d). Moreover, FAR 1.102(d) goes on to expressly state that if a specific strategy or practice is not prohibited by law, executive order or regulation, then such a strategy or practice "is a permissible exercise of authority." As discussed above, the acquisition strategy suggested here not only is not prohibited, but is authorized and encouraged by law and executive order.

3. The Project is Not Subject to a Requirement for Competition.

a. GSA Can Negotiate With PEPCO Pursuant to 42 U.S.C. § 8256.

There is an established practice of the DOD and civilian agencies entering into contracts for energy-conservation projects with utilities under the auspices of areawide and related agreements without competition. This practice is based on the authority granted under 42 U.S.C. § 8256(c)(3), in the case of civil agencies, and 10 U.S.C. § 2865(d) for the DOD. Both the DOE and the DOD have explicitly concluded that 42 U.S.C. § 8256(c)(3) and 10 U.S.C. § 2865(d), respectively, provide a statutory exemption from the competition requirements of the Competition in Contracting Act ("CICA"), 41 U.S.C. § 253.¹⁰ In particular, those agencies have concluded that §§ 2865(d) and 8256(c)(3) are within the CICA exception that allows contracts to be awarded where another statute authorizes that a procurement be made through a specified source,¹¹ and, therefore, that agencies may enter into agreements with utilities under existing

¹⁰ Section 8256(c)(3) was based on the parallel DOD statute. The DOD had specifically sought the authority conferred by 10 U.S.C. § 2865(d) to enable it to expeditiously contract with utilities for energy-conservation services "without using time-consuming and complex competitive procurement procedures." Memorandum from Anne Troy, Office of Procurement and Financial Assistance, to Philip Winter (GSA), Statutory Exemption from Competition in Contracting Act's Full and Open Competition Requirement in Demand Side Management and Utility Contracts, July 7, 1994 ("Troy Memorandum") at 3 (copy attached at Tab 13).

¹¹ See 41 U.S.C. § 253(c)(5); FAR 6.302-5.

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areawide agreements on a sole-source basis.¹² Further, the GSA has concurred in that position on two occasions.¹³

b. The PEPCO/Trigen Team.

GSA's authority to proceed under PEPCO's Areawide Agreement is supported not only by the exemption from the competition requirements of CICA provided under 42 U.S.C. § 8256(c)(3), but also by the fact that *only PEPCO, as a practical matter, has existing, efficiently operating steam generation capability necessary to meet the requirements for the project to go forward.* In particular:

- PEPCO's Potomac River plant is the only existing regional energy facility with a supply of surplus steam of a volume that is adequate to both permit replacement of the GSA steam boilers and that is located near enough to downtown Federal users to be economic.¹⁴
- The PEPCO facility is also the only alternative that can provide substitute steam service without requiring construction of a substantial new energy-generation facility.

¹² See Department of Energy, Federal Energy Management Program, Alternative Financing Guidance Memorandum: Policy Statement #001 (copy attached at Tab 14); Hearing on Federal Agency Energy Management Provisions of the Energy Policy Act of 1992, Before the Senate Committee on Energy and Natural Resources, 105th Cong., 1st Sess. 534 (1997) (response from John B. Goodman, Deputy Undersecretary of Defense for Industrial Affairs and Installations, to Question 1 from Sen. Frank Murkowski) (copy attached at Tab 15); see also 1993 Navy Memo, supra (Tab 8).

¹³ See Memorandum from Amy J. Brown, Assistant General Counsel, Real Property Division (LRA), to Eric Dunham, Portfolio Customer Team, Office of Property Management, Subj.: Section 152 of the Energy Policy Act of 1992 (Apr. 11, 1995) (copy attached at Tab 16); Memorandum from Edward R. Broyles, Deputy Associate General Counsel, General Law Division (LG), to Ida M. Ustad, Associate Administrator for Acquisition Policy (V), Subj.: Section 152 of the Energy Policy Act of 1992 (Nov. 7, 1994) (copy attached at Tab 17); see also Troy Memorandum, supra (Tab 13).

¹⁴ There are no significant power plants in the Washington D.C. area other than those owned by PEPCO. Although the Pentagon and the Architect of the Capitol operate steam plants, those plants do not have the generation or transmission capabilities needed to serve more than their current loads. Expansion of those plants would require significant new construction, environmental permitting, and expenditure of appropriated funds, all of which would prove quite problematic.

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Moreover, even if it were economically feasible to construct a new power-generation facility that could provide steam to Federal agency customers at a cost that was competitive to that from PEPCO's facility, construction of a new power plant in the urban core area of Washington, D.C. would face formidable and, most probably, impassible hurdles given the environmental, social and other objections that would surely arise, and it is highly unlikely that such a project could be completed in a timeframe consistent with the energy-reduction goals of the EPACT and E.O. 12902.¹⁵

In that regard, we note that the GAO has upheld sole-source awards in circumstances where it concluded that the (c)(5) exception to CICA -- award to a particular source authorized by statute -- did not apply to the particular procurement at issue, but where the proposed contractor was, in fact, the only responsible source. See Information Ventures, Inc., B-246605, 92-1 C.P.D. ¶ 302 (Mar. 23, 1992) (copy attached at Tab 18); Magnavox Electronic Sys. Co., B-230397, 88-1 Comp. Gen. ¶ 618 (June 30, 1988) (copy attached at Tab 19); see also SEMCOR, Inc. et al., B-279794.2, B-279794.3, 1998 WL 482973 (C.G.) (July 23, 1998) (relying on Information Ventures and Magnavox to uphold a sole-source award because only one source could satisfy the agency's needs). Thus, even if it were determined that 42 U.S.C. § 8356(c) did not authorize a sole-source award to PEPCO under the Areawide Agreement, an award could be justified here under the "one responsible source" exception to CICA. See 41 U.S.C. § 253(c)(1); see also note 18, infra.

4. Summary Regarding Use of PEPCO's Areawide Agreement.

The discussion above demonstrates that there is a sound legal basis for proceeding with the project under PEPCO's Areawide Agreement. While the risk of a procurement protest can not be eliminated in advance, §§ 481(a)(3) and 8256(c), together with E.O. 12902 and FAR 1.102, provide substantial legal support for the GSA's authority to:

- Enter into an agreement that would enable it to reduce its energy costs and to do so through both use of a substitute source of steam and related operation and maintenance services;
- Do so on under the auspices of PEPCO's existing Areawide Agreement and its accompanying Attachment 1; and
- Do so on a sole-source basis.

¹⁵ PEPCO, on the other hand, has all of the necessary environmental permits for the Potomac River facility and anticipates that the modifications required to implement this project would be minor and would conform to all extant permitting requirements.

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Moreover, the fact that PEPCO's unique capabilities make it the only "responsible source" provides additional support for proceeding under the Areawide Agreement.¹⁶

D. Availability of Other Contractual Mechanisms.

The project could conceivably proceed under a contractual vehicle other than PEPCO's Areawide Agreement, presumably a separate contract limited to this project.¹⁷ Moreover, in our view, such a contract could properly be awarded on a sole-source basis because, as discussed above, the PEPCO/Trigen team is clearly the only entity with the capability to provide substitute steam service on an energy efficient and environmentally effective basis.¹⁸ However, we are concerned that use of a separate contract is unlikely to be as expeditious as reliance on the Areawide Agreement and that the delay could effectively preclude the project from going forward. Further, we submit that if this alternative were pursued, any steps necessary to confirm that there is only one responsible source should be undertaken as expeditiously as possible, consistent with any applicable legal and regulatory requirements. See FAR 6.303; 6.304.

E. OMB Circular A-76 Should Not be an Obstacle to Going Forward.

OMB Circular A-76 (copy attached at Tab 20) reaffirms the Government's commitment to the acquisition of supplies and services from the private sector. Where it applies, it requires agencies to conduct a "cost comparison" before contracting out functions that are currently being performed by the Government. It also contains provisions for considering the interests of incumbent Federal employees who may be affected by a decision to contract out, including the "right of first refusal" for employment under the contract for openings for which they are

¹⁶ We hope and believe that any steps that may be necessary to appropriately justify reliance on PEPCO's areawide agreement can be accomplished expeditiously. See generally FAR 6.303-1; 6.303-2.

¹⁷ We assume that such a contract would be awarded pursuant to § 481(a)(3) or other multiyear contracting authority. See also FAR 41.205 (authorizing awards of separate contracts for utility services).

¹⁸ See 41 U.S.C. § 253(c)(1); FAR 6.302-1 (providing exception to competition requirements of CICA in situations where the required supplies or services are available from only "one responsible source"); see also FAR 6.302-1(b)(1) (providing that an agency can award a contract without competition under this exception where it has "a reasonable basis to conclude that the agency's minimum needs can only be satisfied by . . . unique supplies or services available from only one source or only one supplier with unique capabilities"); id. 6.302-1(b)(3) (permitting use of this exception in connection with the acquisition of utility services (under FAR Pt. 41) under circumstances where "only one supplier can furnish the service . . . or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system").

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qualified. See OMB Circular A-76, Revised Supplemental Handbook (Mar. 1996), Pt. 1 § H.2 (excerpt attached at Tab 21); FAR 7.305(c).

Preliminarily, we note that:

- The Government traditionally procures utility services such as water, electricity and steam from the private sector. Similarly, operation and maintenance of Government heating plants or other utility systems is within the set of "commercial activities" that can be contracted out. See OMB Circular A-76, Attachment A (see Tab 20).
- Regardless of whether OMB Circular A-76 applies to this project, the project developers are committed to working with the GSA to satisfactorily address legitimate concerns of incumbent Federal employees who operate and maintain the GSA steam system, including providing those employees with a right of first refusal in accordance with the Circular and FAR 7.305(c).

We believe that the applicability of the Circular to this project should be considered further, and in that regard, we note that OMB Circular A-76 provides that "[t]his Circular and its Supplement shall not be applicable when contrary to law [or] Executive Order." OMB Circular A-76 § 7.c.(1). We submit, therefore, that the statutory requirement in the EPACT to reduce energy-consumption levels by 20 percent by the year 2000, the contribution the project will make to achieving the Administration's energy management and climate change policy objectives, the direction in E.O. 12902 to use innovative financial and contractual mechanisms and to find solutions to regulatory and procedural barriers to achievement of the Federal energy management requirements of the EPACT and the Executive Order, and the commitment to address the legitimate concerns of incumbent Federal employees, all suggest that the project should not be subject to the complex and time-consuming A-76 process.

The Office of Personnel Management's ("OPM") recent outsourcing of the performance of background investigations of Federal employees and applicants provides a useful model. There, the decision to outsource performance of background investigations arose out of the recommendations of the Vice President's National Performance Review to reduce the size of Government. However, it was not subject to the A-76 process; rather, the OPM used an alternative approach which demonstrated the potential cost savings from outsourcing without a formal A-76 cost comparison and under which the contractor offered positions to and hired a substantial number of the affected Federal employees. See Hearings on H.R. 3802 and H.R. 3189 Before the Subcomm. on Government Management, Information, and Technology of the House Comm. on Government Reform and Oversight, 104th Cong., 2d Sess. 104-11 (1996) (Testimony of James R. King, Director, OPM) (copy attached at Tab 22). In addition, the OPM awarded the contract to perform the background investigations on a sole-source basis pursuant to one of the exemptions to CICA, see id., a decision that was subsequently upheld in Federal court. See Varicon International v. Office of Personnel Management, 934 F. Supp. 440 (D.D.C. 1996) (copy attached at Tab 23).

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However, even assuming that the project is not otherwise exempt from the Circular, we believe that it is eligible for a waiver in accordance with the waiver provisions of the Circular. In considering a possible waiver, it is important to recall that when the Administration published the revised Supplement to the Circular in March 1996 (excerpt attached at Tab 21), one of the key features of that revision was the expansion of the authority to waive the cost-comparison requirements of the Circular in order to facilitate and encourage waivers in appropriate cases.¹⁹ In particular, the OMB stated that a waiver may be justified if an agency undertakes an independent business analysis and determines that significant cost savings or improvements in performance are likely to be achieved. See id.

The specific provisions governing waivers of the cost-comparison process are at Part 1, § E.3 of the 1996 Supplement, which authorizes waivers where:

- Conversion will result in a significant financial or service quality improvement and will not significantly reduce future competition in award or performance of the work; or
- The agency can establish that the in-house operation has no reasonable expectation of receiving award.

While further discussion of a waiver may be necessary, again we believe that there would be no adverse impact on future competition in this situation because, as a practical matter, the only way to achieve the energy-cost reductions and related environmental benefits is through the use of an existing, efficiently operating steam plant with sufficient capacity to meet the Government's steam requirements. For similar reasons, the dependence of the project on access to PEPCO's existing power plant means that the project could not realistically be performed in-house. Further, we believe that the GSA could reasonably establish the project's potential to reduce the Government's energy costs and provide related benefits relative to the current in-house operation without a formal A-76 cost comparison. Again, the recent OPM experience discussed above is instructive and, we submit, supports a waiver on the particular facts presented here.

Finally, we note that even if the cost-comparison process were waived, the provisions of the Supplement to the Circular which address the interests of affected Federal employees, including the requirement that they be given a right of first refusal, still apply, and, as noted above, the project developers are prepared to work with the GSA to address those interests, including recognition of a right of first refusal. See 1996 Supplement, Ch. 1 ¶ H, Personnel Considerations (Tab 21).

¹⁹ See 61 Fed. Reg. 14338, 14340 (copy attached at Tab 24). In its comments accompanying the 1996 revisions to the Supplement, the OMB specifically noted that waiver provisions under the former (1983) version of the Supplement were "too narrow," with "only one waiver having been issued in over 12 years." Id. at 14340.

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Moreover, the fact that PEPCO's unique capabilities make it the only "responsible source" provides additional support for proceeding under the Areawide Agreement.¹⁶

D. Availability of Other Contractual Mechanisms.

The project could conceivably proceed under a contractual vehicle other than PEPCO's Areawide Agreement, presumably a separate contract limited to this project.¹⁷ Moreover, in our view, such a contract could properly be awarded on a sole-source basis because, as discussed above, the PEPCO/Trigen team is clearly the only entity with the capability to provide substitute steam service on an energy efficient and environmentally effective basis.¹⁸ However, we are concerned that use of a separate contract is unlikely to be as expeditious as reliance on the Areawide Agreement and that the delay could effectively preclude the project from going forward. Further, we submit that if this alternative were pursued, any steps necessary to confirm that there is only one responsible source should be undertaken as expeditiously as possible, consistent with any applicable legal and regulatory requirements. See FAR 6.303; 6.304.

E. OMB Circular A-76 Should Not be an Obstacle to Going Forward.

OMB Circular A-76 (copy attached at Tab 20) reaffirms the Government's commitment to the acquisition of supplies and services from the private sector. Where it applies, it requires agencies to conduct a "cost comparison" before contracting out functions that are currently being performed by the Government. It also contains provisions for considering the interests of incumbent Federal employees who may be affected by a decision to contract out, including the "right of first refusal" for employment under the contract for openings for which they are

¹⁶ We hope and believe that any steps that may be necessary to appropriately justify reliance on PEPCO's areawide agreement can be accomplished expeditiously. See generally FAR 6.303-1; 6.303-2.

¹⁷ We assume that such a contract would be awarded pursuant to § 481(a)(3) or other multiyear contracting authority. See also FAR 41.205 (authorizing awards of separate contracts for utility services).

¹⁸ See 41 U.S.C. § 253(c)(1); FAR 6.302-1 (providing exception to competition requirements of CICA in situations where the required supplies or services are available from only "one responsible source"); see also FAR 6.302-1(b)(1) (providing that an agency can award a contract without competition under this exception where it has "a reasonable basis to conclude that the agency's minimum needs can only be satisfied by . . . unique supplies or services available from only one source or only one supplier with unique capabilities"); id. 6.302-1(b)(3) (permitting use of this exception in connection with the acquisition of utility services (under FAR Pt. 41) under circumstances where "only one supplier can furnish the service . . . or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system").

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qualified. See OMB Circular A-76, Revised Supplemental Handbook (Mar. 1996), Pt. 1 § H.2 (excerpt attached at Tab 21); FAR 7.305(c).

Preliminarily, we note that:

- The Government traditionally procures utility services such as water, electricity and steam from the private sector. Similarly, operation and maintenance of Government heating plants or other utility systems is within the set of "commercial activities" that can be contracted out. See OMB Circular A-76, Attachment A (see Tab 20).
- Regardless of whether OMB Circular A-76 applies to this project, the project developers are committed to working with the GSA to satisfactorily address legitimate concerns of incumbent Federal employees who operate and maintain the GSA steam system, including providing those employees with a right of first refusal in accordance with the Circular and FAR 7.305(c).

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Finally, we note that even if the cost-comparison process were waived, the provisions of the Supplement to the Circular which address the interests of affected Federal employees, including the requirement that they be given a right of first refusal, still apply, and, as noted above, the project developers are prepared to work with the GSA to address those interests, including recognition of a right of first refusal. See 1996 Supplement, Ch. 1 ¶ H, Personnel Considerations (Tab 21).

¹⁹ See 61 Fed. Reg. 14338, 14340 (copy attached at Tab 24). In its comments accompanying the 1996 revisions to the Supplement, the OMB specifically noted that waiver provisions under the former (1983) version of the Supplement were "too narrow," with "only one waiver having been issued in over 12 years." Id. at 14340.

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REQUEST MADE ON

DATE: **October 9, 1998**

TIME:

COMPLETION REQUIRED BY

DATE: **October 9, 1998**

TIME:

SPECIAL INSTRUCTIONS:

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The National Capital Energy Project: Fulfillment of Administration Policy, Use Of PEPCO's Areawide Agreement As A Contractual Vehicle, And Related Issues¹

"... Climate change can bring us together around what America does best -- we innovate, we compete, we find solutions to problems, and we do it in a way that promotes entrepreneurship and strengthens the American economy. If we do it right, protecting the climate will yield not costs, but profits; not burdens, but benefits; not sacrifice, but a higher standard of living."

President Clinton, October 22, 1997

A. Executive Summary.

1. The proposed project would substitute surplus steam from an existing, efficiently operated PEPCO plant in Alexandria, Virginia, for steam currently being produced by two GSA-owned and operated plants. This would permit the Federal Government to reduce its energy consumption as required by law and Executive Order, and would improve regional air quality consistent with environmental policy goals.
2. PEPCO's existing Areawide Agreement and its accompanying Energy Services Agreement provide an appropriate contractual vehicle for the project.
 - The proposed project is within the scope of PEPCO's existing Areawide Agreement with GSA.
 - Use of the Areawide Agreement is consistent with the GSA's established procurement authority under the Energy Policy Act of 1992 and the Federal Property & Administrative Services Act of 1949.

¹ This document contains proprietary and business confidential information that is exempt from disclosure outside the Government.

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- Use of PEPCO's Areawide Agreement is consistent with established practice of civilian and DOD agencies of contracting with utilities for energy-conservation measures under the auspices of areawide agreements.
3. The project is not subject to a requirement for competition.
 - The Energy Policy Act authorizes GSA to negotiate directly with PEPCO.
 - PEPCO is the only entity with the capability to provide substitute steam service on an energy efficient and environmentally effective basis.
 4. The project should not be subject to the complex and time-consuming OMB Circular A-76 process.

B. Introduction and Policy Overview.

1. Project Summary.

The White House, Old Executive Office Building, and most Federal Government buildings in Washington, D.C., including all principal agency buildings, are heated (and some are cooled) by steam supplied from the General Services Administration ("GSA"). The GSA delivers the steam through pipelines in underground tunnels that extend in a network from Georgetown to the foot of Capitol Hill. The GSA makes the steam at two large boiler plants -- one in downtown Washington, the other in Georgetown -- that are owned and operated by the GSA.

The GSA plants are relatively clean, yet because of their size, location, and operational patterns, they are significant sources of air pollution and greenhouse-gas emissions in the Washington region. The GSA's plants are the largest Federal Government sources of carbon dioxide (CO₂) and other air pollutants in the area. Fired by natural gas, they consume about 3.3 billion BTUs of energy each year, a quantity equal to more than a half-million barrels of oil.

In response to President Clinton's October 1997 call to the private sector to offer ideas for reducing emissions of greenhouse gases, Trigen Energy Corporation ("Trigen") and PEPCO Services, Inc. ("Pepco Services"), a subsidiary of the Potomac Electric Power Company ("PEPCO"), have developed a project (the "National Capital Energy Project"), which would substitute surplus steam from an existing, efficiently operating PEPCO-owned power plant for steam that the GSA makes. Simply, the Trigen-Pepco Services team proposes to collect steam from PEPCO's Potomac River Electric Generating Station (in Alexandria) and deliver it via a new pipeline into the existing GSA pipeline distribution system.

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The proposed change in steam source would:

- Reduce GSA's fossil fuel consumption by approximately 1.2 billion BTUs per year.
- Reduce annual CO₂ emissions by approximately 39,000 tons.
- Generate net regional reductions in emissions of other regulated air pollutants (NO_x and SO₂).
- Reduce Federal Government energy costs without additional budget outlays.
 - All capital costs for construction of the project would be advanced by the developers. There would be no up-front cost to the Federal Government. The developers expect to be able to supply steam to the GSA at a price that would be significantly lower than the costs incurred now by the GSA (and ultimately its customer agencies and taxpayers) to make steam in-house.
- Enable the GSA to retire its Georgetown steam plant and restore that property to park land or other public use.

2. Policy Framework.

The Trigen-Pepco Services project would help the Executive Branch comply with the Energy Policy Act of 1992 ("EPACT," P.L. 102-486). The project also fits squarely within, and would advance this Administration's energy and environmental policy goals.

The EPACT requires agencies to install energy-conservation measures and to reduce energy-consumption levels by 20 percent relative to 1985 levels by the year 2000. Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities (Mar. 8, 1994) (copy attached at Tab 1), goes one step further, setting a 30 percent energy reduction goal by 2005. As noted above, this project would allow the Executive Office of the President and other GSA steam customers to show significant reductions in energy use² and could be fully implemented within the EPACT and Executive Order 12902 deadlines.

² This assumes that the GSA would agree to allocate the 1.2 billion BTU "credit" for reduced energy use to its customers on some *pro rata* basis; otherwise, the savings would accrue to the GSA alone.

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The Trigen-Pepco Services project would provide a compelling and timely example of Administration action to implement President Clinton's October 22, 1997 climate-change policy (excerpt attached at Tab 2). There, the President pledged to improve Federal energy management and procurement through a variety of initiatives, including:

- Improved Federal procurement of energy-efficient technology;
- Use of consolidated purchasing to stimulate markets and lower prices;
- Expanded use of combined heat and power generation; and,
- Expanded public awareness of energy-efficient technologies.

The Trigen-Pepco Services project would move these initiatives forward. In addition to achieving the reductions in CO₂ and other regulated pollutants noted above, the proposed project provides a showcase example of procurement of efficiently generated energy from a combined heat and power facility on a consolidated, interagency basis. The project also has the capacity to provide steam service to additional Federal and private users in the Washington area, thus creating the potential for additional reductions in costs of steam to Federal users as the fixed costs are shared among more users, as well as the potential for additional improvements in regional air quality as other existing generating sources are taken off-line.³ Finally, the project's national profile would showcase the Administration's progress toward addressing the climate-change problem and would expand the public's awareness and encourage implementation of similar opportunities elsewhere.

C. PEPCO's Areawide Agreement, and Its Accompanying Energy Services Agreement, Provide an Appropriate Contractual Vehicle for the Project.

As discussed above, the proposed project would substitute surplus steam from an existing, efficiently operated PEPCO plant in Alexandria, Virginia, for steam currently being produced by two GSA-owned and operated plants. Steam would be provided to Federal users via the existing GSA steam-distribution system, which the project developers would operate and maintain.⁴ This would permit the Government to reduce its energy use and costs and improve regional air quality.

³ The Architect of the Capitol and the Pentagon are two Federal entities which currently operate steam generation facilities and which could potentially be served by steam generated at PEPCO's Potomac River plant.

⁴ Since the project envisions that steam would be supplied directly to Federal buildings through the GSA steam system and would rely on the GSA steam plant for backup and peak period demand purposes, the developers have an interest in ensuring the proper operation and maintenance of the GSA steam system.

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1. The Proposed Project is Within the Scope of PEPCO's Areawide Agreement.

The GSA and PEPCO have an existing "areawide agreement" under which PEPCO furnishes utility services to Federal user agencies.⁵ (Copy attached at Tab 3). PEPCO's Areawide Agreement broadly defines the types of "services" that may be provided pursuant to it to include "any commodities, financial incentives, goods and/or services generally available from [PEPCO]." See Modification 1 to PEPCO's Areawide Agreement (copy attached at Tab 4). In addition, the GSA and PEPCO have also entered into an Energy Services Agreement, which is Attachment 1 to PEPCO's Areawide Agreement (copy attached at Tab 5). Modification 1 and Attachment 1 to PEPCO's Areawide Agreement permit the GSA to contract for "energy conservation measures," which are broadly defined as "any specific measure intended to provide energy savings, demand reduction and/or related cost savings in Federal facilities." Modification 1, Mod. 1. B.; see Attachment 1, § A, Definitions, at 5; id. § B.1.A.1, Energy Conservation Measures, at 11-12. Further, Attachment 1 specifically provides that energy conservation measures may include "an energy-related project that results in energy conservation, or demand reduction; and/or . . . in benefits to the Customer Agency other than energy conservation or demand reduction, such as operations and [m]aintenance cost savings, environmental benefits, etc." Attachment 1 § A, Definitions, at 6 (emphasis supplied).

2. Use of the Areawide Agreement is Consistent With the GSA's Established Procurement Authority.

The GSA has authority to contract with PEPCO for the project pursuant to 42 U.S.C. § 8256(c)(3) and 40 U.S.C. § 481(a)(3), which authorize the GSA to negotiate energy-conservation programs and to procure utility services.

Section 152(f) of the EPACT, 42 U.S.C. § 8256(c) (copy attached at Tab 6), specifically authorizes civilian agencies to enter into negotiations with utilities "to design cost effective demand management and [energy] conservation incentive programs."⁶ 42 U.S.C. § 8256(c)(3). A parallel statute, 10 U.S.C. § 2865(c)(3), provides similar authority to DOD agencies. Both the

⁵ An areawide agreement is an agreement between the GSA "and a utility service supplier to cover utility service needs of Federal agencies within the franchise territory of the supplier." Federal Acquisition Regulation ("FAR") 41.101. FAR 41.101, in turn, defines "franchise territory" to be a "geographical area that a utility supplier has a right to serve based upon a franchise, a certificate of public convenience and necessity or other legal means." PEPCO can provide steam and related system services under existing District of Columbia law.

⁶ See also 42 U.S.C. § 8259(4) (defining "energy conservation measures" as those that "improve energy efficiency and are lifecycle cost effective and that involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operations and maintenance efficiencies or retrofit activities").

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DOE, the lead agency with responsibility for implementation of the EPACT, and the DOD, have concluded that 42 U.S.C. § 8256(c) and 10 U.S.C. § 2865(d), respectively, authorize Federal agencies to contract with utilities for energy-conservation services under areawide agreements.⁷ Consistent with those interpretations, the Administration has recently re-emphasized the availability of agreements with utilities as a contractual vehicle for achieving energy policy goals.⁸ Indeed, the authority granted under § 8256(c)(3) and 10 U.S.C. § 2865(d) has been relied on by numerous Government agencies to procure a wide variety of energy-conservation services under areawide agreements. For example, the GSA's web site lists approximately 90 areawide agreements which authorize Federal agencies to obtain such services (see Tab 10), and an illustrative list of analogous projects that have been undertaken pursuant to areawide agreements is attached at Tab 11. Moreover, to our knowledge, the use of areawide agreements to obtain energy-conservation services has not been challenged in litigation as beyond the scope of the agencies' procurement authority or beyond the scope of the areawide agreements. Accordingly, we submit that insofar as the purpose of this project is to enable the Government to reduce its overall energy conservation and meet its energy requirements at lower cost, it is within the scope of the GSA's authority under § 8256(c)(3).

In addition to § 8256(c)(3), § 201(a)(3) of the Federal Property & Administrative Act of 1949, 40 U.S.C. § 481(a)(3), specifically authorizes the GSA to enter into contracts for "public utility services." The proposed project is clearly within the GSA's authority under 40 U.S.C. § 481(a)(3) insofar as it involves the procurement of steam, which is a traditional "utility

⁷ See Memorandum from Lawrence R. Oliver, Assistant General Counsel, Energy Efficiency, to John P. Archibald and Victor Petrolati, EE-90, Office of Federal Energy Management, Subj.: Whether Section 152 of EPACT Provides Sufficient Authority to Permit AL to Proceed with a Proposed Energy Management Services Contract With Public Service Company of New Mexico (Dec. 13, 1996) (copy attached at Tab 7); U.S. Navy Memorandum from 09CB1 to 021A, Subj.: Use of Utility Service Contracts to Obtain DSM Service (Jan. 29, 1993) ("1993 Navy Memo") (stating that "[i]f a GSA areawide contract is in place which provides for DSM services, we would generally be required to use that contract unless we could show that it did not meet our requirements in some respect") (copy attached at Tab 8); see also Defense Energy Program Policy Memorandum (DEPPM) 94-1, Subj.: Participation in Public Utility Sponsored Energy Conservation and Demand Side Management (EC/DSM) Programs, at 1-2, 4-5, 14 (recognizing that DOD agencies can enter into negotiations with utilities pursuant to 10 U.S.C. § 2865(d) to design and implement EC/DSM projects and that modifications to existing areawide agreements are one vehicle for doing so) (copy attached at Tab 9).

⁸ See Memorandum from President William J. Clinton to the Heads of Executive Departments and Agencies, Cutting Greenhouse Gases through Energy Savings Performance Contracts (July 25, 1998); Memorandum from Jacob Lew, Acting Director, Office of Management and Budget, to Heads of Executive Departments and Establishments, Federal Use of Energy Savings Performance Contracting, at 2 (July 25, 1998).

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service.”⁹ See also FAR 41.101 (including steam as an example of a “utility service”). Moreover, nothing in § 481 limits the GSA’s authority to procure utility services to the acquisition of basic commodities, such as steam or electricity, or to supplies and services that are subject to detailed regulation by a local public utilities commission or similar body. For example, in GSA Procurement of Equipment Under 40 U.S.C. § 481(a)(3), B-208422, 62 Comp. Gen. 569, 574-75 (1983) (copy attached at Tab 12), the General Accounting Office (“GAO”) held that the GSA could purchase telephone switching equipment and related installation and maintenance services from a non-regulated supplier under § 481. In reaching that result, the GAO indicated that the GSA’s authority to procure “utility service” under § 481(a)(3) should be interpreted pragmatically and flexibly and “in light of the changes in technologies and methodologies for providing the product or service.” Id. at 574-75.

In that regard, most electric utilities, including PEPCO, today offer energy-related services to their customers in addition to basic electric service. These services enable the customers to reduce their overall energy costs, but are, in a real sense, an integral part of the services offered by the utilities. Moreover, as discussed above, there is a well-established practice in both civilian and DOD agencies of contracting with public utilities for energy-related services under the auspices of areawide agreements.

This established practice also supports the view that FAR Pt. 41, which addresses the acquisition of utility services generally and areawide agreements in particular, should not be read narrowly regarding the types of services that may be acquired under the auspices of an areawide agreement. For example, several provisions in FAR Pt. 41 effectively acknowledge that rates, terms and conditions of service provided under an areawide contract may not be subject to regulation but rather separately negotiated. See FAR 41.204(b) (specifically permitting agencies to negotiate other rates and terms of service); 41.204(c)(2) (providing for separately negotiated rates or terms); see also FAR 41.201(b) (acknowledging that rates, terms or conditions of utility service may not be fixed by a regulatory body).

Finally, we note that the procurement strategy suggested here -- use of the areawide agreement to implement steps that will reduce the Government’s energy consumption and provide related benefits -- is consistent with the Administration’s energy savings and procurement reform policies. As noted above, in E.O. 12902, the President directed Federal agencies to reduce energy consumption by 30 percent by the year 2005. In achieving that goal, E.O. 12902 directed agencies to use “innovative financial and contractual mechanisms” to achieve that goal. See E.O. 12902 § 401; see also id. § 403 (directing agency heads to work with procurement officials to identify barriers to implementation of the EPACT and E.O. 12902).

⁹ Steam is a byproduct of electric generation. The GSA’s web site lists approximately 18 areawide contracts under which steam is supplied to the Government, and according to that list in many of those contracts the utilities involved are:

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Further, one of the upshots of the Vice President's procurement reform initiatives was the inclusion of a "statement of guiding principles" in the FAR. One of those guiding principles is that agency procurement personnel should exercise initiative and sound business judgment in meeting the Government's needs. See FAR 1.102(d). Moreover, FAR 1.102(d) goes on to expressly state that if a specific strategy or practice is not prohibited by law, executive order or regulation, then such a strategy or practice "is a permissible exercise of authority." As discussed above, the acquisition strategy suggested here not only is not prohibited, but is authorized and encouraged by law and executive order.

3. The Project is Not Subject to a Requirement for Competition.

a. GSA Can Negotiate With PEPCO Pursuant to 42 U.S.C. § 8256.

There is an established practice of the DOD and civilian agencies entering into contracts for energy-conservation projects with utilities under the auspices of areawide and related agreements without competition. This practice is based on the authority granted under 42 U.S.C. § 8256(c)(3), in the case of civil agencies, and 10 U.S.C. § 2865(d) for the DOD. Both the DOE and the DOD have explicitly concluded that 42 U.S.C. § 8256(c)(3) and 10 U.S.C. § 2865(d), respectively, provide a statutory exemption from the competition requirements of the Competition in Contracting Act ("CICA"), 41 U.S.C. § 253.¹⁰ In particular, those agencies have concluded that §§ 2865(d) and 8256(c)(3) are within the CICA exception that allows contracts to be awarded where another statute authorizes that a procurement be made through a specified source,¹¹ and, therefore, that agencies may enter into agreements with utilities under existing

¹⁰ Section 8256(c)(3) was based on the parallel DOD statute. The DOD had specifically sought the authority conferred by 10 U.S.C. § 2865(d) to enable it to expeditiously contract with utilities for energy-conservation services "without using time-consuming and complex competitive procurement procedures." Memorandum from Anne Troy, Office of Procurement and Financial Assistance, to Philip Winter (GSA), Statutory Exemption from Competition in Contracting Act's Full and Open Competition Requirement in Demand Side Management and Utility Contracts, July 7, 1994 ("Troy Memorandum") at 3 (copy attached at Tab 13).

¹¹ See 41 U.S.C. § 253(c)(5); FAR 6.302-5.

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areawide agreements on a sole-source basis.¹² Further, the GSA has concurred in that position on two occasions.¹³

b. The PEPCO/Trigen Team.

GSA's authority to proceed under PEPCO's Areawide Agreement is supported not only by the exemption from the competition requirements of CICA provided under 42 U.S.C. § 8256(c)(3), but also by the fact that *only PEPCO, as a practical matter, has existing, efficiently operating steam generation capability necessary to meet the requirements for the project to go forward.* In particular:

- PEPCO's Potomac River plant is the only existing regional energy facility with a supply of surplus steam of a volume that is adequate to both permit replacement of the GSA steam boilers and that is located near enough to downtown Federal users to be economic.¹⁴
- The PEPCO facility is also the only alternative that can provide substitute steam service without requiring construction of a substantial new energy-generation facility.

¹² See Department of Energy, Federal Energy Management Program, Alternative Financing Guidance Memorandum: Policy Statement #001 (copy attached at Tab 14); Hearing on Federal Agency Energy Management Provisions of the Energy Policy Act of 1992, Before the Senate Committee on Energy and Natural Resources, 105th Cong., 1st Sess. 534 (1997) (response from John B. Goodman, Deputy Undersecretary of Defense for Industrial Affairs and Installations, to Question 1 from Sen. Frank Murkowski) (copy attached at Tab 15); see also 1993 Navy Memo, supra (Tab 8).

¹³ See Memorandum from Amy J. Brown, Assistant General Counsel, Real Property Division (LRA), to Eric Dunham, Portfolio Customer Team, Office of Property Management, Subj.: Section 152 of the Energy Policy Act of 1992 (Apr. 11, 1995) (copy attached at Tab 16); Memorandum from Edward R. Broyles, Deputy Associate General Counsel, General Law Division (LG), to Ida M. Ustad, Associate Administrator for Acquisition Policy (V), Subj.: Section 152 of the Energy Policy Act of 1992 (Nov. 7, 1994) (copy attached at Tab 17); see also Troy Memorandum, supra (Tab 13).

¹⁴ There are no significant power plants in the Washington D.C. area other than those owned by PEPCO. Although the Pentagon and the Architect of the Capitol operate steam plants, those plants do not have the generation or transmission capabilities needed to serve more than their current loads. Expansion of those plants would require significant new construction, environmental permitting, and expenditure of appropriated funds, all of which would prove quite problematic.

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Moreover, even if it were economically feasible to construct a new power-generation facility that could provide steam to Federal agency customers at a cost that was competitive to that from PEPCO's facility, construction of a new power plant in the urban core area of Washington, D.C. would face formidable and, most probably, impassible hurdles given the environmental, social and other objections that would surely arise, and it is highly unlikely that such a project could be completed in a timeframe consistent with the energy-reduction goals of the EPACT and E.O. 12902.¹⁵

In that regard, we note that the GAO has upheld sole-source awards in circumstances where it concluded that the (c)(5) exception to CICA -- award to a particular source authorized by statute -- did not apply to the particular procurement at issue, but where the proposed contractor was, in fact, the only responsible source. See Information Ventures, Inc., B-246605, 92-1 C.P.D. ¶ 302 (Mar. 23, 1992) (copy attached at Tab 18); Magnavox Electronic Sys. Co., B-230397, 88-1 Comp. Gen. ¶ 618 (June 30, 1988) (copy attached at Tab 19); see also SEMCOR, Inc. et al., B-279794.2, B-279794.3, 1998 WL 482973 (C.G.) (July 23, 1998) (relying on Information Ventures and Magnavox to uphold a sole-source award because only one source could satisfy the agency's needs). Thus, even if it were determined that 42 U.S.C. § 8356(c) did not authorize a sole-source award to PEPCO under the Areawide Agreement, an award could be justified here under the "one responsible source" exception to CICA. See 41 U.S.C. § 253(c)(1); see also note 18, *infra*.

4. Summary Regarding Use of PEPCO's Areawide Agreement.

The discussion above demonstrates that there is a sound legal basis for proceeding with the project under PEPCO's Areawide Agreement. While the risk of a procurement protest can not be eliminated in advance, §§ 481(a)(3) and 8256(c), together with E.O. 12902 and FAR 1.102, provide substantial legal support for the GSA's authority to:

- Enter into an agreement that would enable it to reduce its energy costs and to do so through both use of a substitute source of steam and related operation and maintenance services;
- Do so on under the auspices of PEPCO's existing Areawide Agreement and its accompanying Attachment 1; and
- Do so on a sole-source basis.

¹⁵ PEPCO, on the other hand, has all of the necessary environmental permits for the Potomac River facility and anticipates that the modifications required to implement this project would be minor and would conform to all extant permitting requirements.

GSA's view of viability under current contract?

Crivella: pepco proposal raised a number of issues.

- Primary concern: services don't really fall within original area-wide authority.
- Contract was modified; GSA lawyers were concerned about whether the modification was allowable within the scope of the contract.
- GSA will get back to us on whether it fits within the modification.

If not viable, what procedurally do we need to do to make a decision on RFI?

- Need to approach architect of the capitol before hand.
- NEC, CEQ, Todd, COS, DOE, EPA, raised in NEC meetings as an agenda item that we're moving ahead on. (GSA would need to brief congressional, public, labor)
- RFI: put into the Commerce Business Daily, allowing 3 weeks to a month to respond, submitting thier comments back to a GSA contracting officer.
- GSA and EPA will pull together current specs on emissions, energy use, including existing permits.
- Product: Industry will respond with feedback on what their recommendation would be best alternative for the government to reduce area wide energy production.

If there are more than one reasonably competitive demonstrations of interest.

- We would need to consider the various suggestions (particularly if this include dispensing with current assetts) and then draft an RFP (request for proposals).
- USG would then need to review any other extant issues.

A-76? Legal steps needed? Political steps needed?

- GSA needs to determine if A-76 happens in parallel or sequentially.
- GSA will outline steps for both a uncontested and contested A-76 process.
- Contested process. Once RFI proposals come in, we would then need to identify if federal employees are to be displaced. We would need to complete the comparison study to see whether the businesses could compete with federal employees. Could take a year or more.

FAX**Date** 9/15/98**Number of pages including cover sheet** 2**TO:** Bill Antholis, 202-456-9280
Vince Crivella, 708-4655**Phone**
Fax Phone**FROM:** Sheurer, Beth
National Energy Center
1500 E. Bannister Rd. (6P)
Kansas City, MO 64131**Phone** (816) 926-7231
Fax Phone (816) 926-5139**CC:****REMARKS:** ☐ Urgent ☐ For your review ☐ Reply ASAP ☐ Please Comment

Attached is a draft RFI as we discussed. It is very drafty and before we would send it out, we'd have to specify point of contact and contracting officer. You may want me to add more detail (like the Central Plant has a capacity of a million pounds of steam) and I can do so.

FYI: The folks at the steam plant are getting ready to do a detailed feasibility study on converting one of their boilers to be cogenerating. It looks like it would save lots of \$ and pay back fully in 7 years (less if it was a funded, not alternatively financed project).

Call tomorrow

REQUEST FOR INFORMATION (RFI)

The General Services Administration requests information from industry regarding cost-efficient and environmentally-sound options for providing heat and power to Federal buildings in the Washington metropolitan Area.

The Federal government buildings in the District of Columbia region consume significant amounts of energy in the form of electricity, natural gas, and steam for lighting, heating, cooling, and powering of office and industrial equipment. Currently, electricity and natural gas requirements are provided by the private sector, and steam is provided by steam plants owned and operated by the Federal government. With this RFI, GSA requests industry to propose cost-efficient and environmentally-sound alternatives to GSA's current steam operations.

The General Services Administration (GSA) provides steam to 100 buildings in the District of Columbia (D.C.). The steam is generated at the Central Heating Plant in the downtown area with backup provided by the West Heating Plant in the Georgetown area. The Central Plant includes 6 boilers, with 2 boilers providing most of the capacity; the West Plant has 5 boilers. Both plants use natural gas as the primary fuel for the boilers with oil as the backup fuel. Both plants are owned and operated by GSA with a staff of approximately 100 and have recently received extensive renovations (\$20 million in the Central Plant and \$18 million in the West Plant) to increase energy efficiency and environmental compliance.

Considering emerging distributive generation technology, co-generation, and the coming electric industry restructuring, GSA is seeking information from industry regarding cost-effective and environmentally-sound methods and alternatives for meeting the heating and power needs of Federal buildings in DC currently served by the steam plants.

GSA requests information regarding the following alternatives (and other possibilities) as a means to provide heat (and power) to Federal buildings in DC:

- Maintaining current operations
- Contractor operation of the steam plants
- Privatizing the steam plants
- Purchasing heat and power from utility providers and not using the steam plants
- Distributive generation

Industry is encouraged to offer additional options to those detailed herein. Responses will be used for information and planning purposes and will not constitute offer which may accepted by the Government to form a binding contract(s).

exactly?

// Are we asking for proposals, or for companies to suggest ideas? (to the letter unfrankly small?)

GSA will consider industry responses to the heating requirements of federal buildings in DC based upon the following criteria (listed in descending order of importance). GSA will assume the proposed systems meet or exceed current Federal standards for reliability, security, and maintenance unless otherwise noted.

- **Lowest cost:** The goal is to obtain the lowest energy bill for the Federal community.
- **Lowest energy consumption:** The goal is to reduce overall energy consumption in Federal facilities in meeting mandated goals.
- **Lowest local air pollution:** The goal is to ensure that the emissions of pollutants are as low as possible across all Federal government facility energy sources.
- **Lowest carbon emissions:** The goal is to significantly reduce carbon emissions in the provision of energy for Federal facilities.
- **Innovation:** The goal is to promote innovative technologies, such as co-generation, and to help make these technologies commercially viable.

For information, please contact

Please submit your suggestions to by .

..

Return-Path: <bladt>

Received: from dcn4.scg.hac.com by sdds0.edsg.hac.com (4.1/SMI-4.1)

id AA28009; Thu, 22 Oct 92 10:53:37 PDT

Date: Thu, 22 Oct 92 10:53:37 PDT

From: bladt (Jeff Bladt)

Message-Id: <9210221753.AA28009@sdds0.edsg.hac.com>

To: bender

Subject: bad news

Status: R

Issue_Date[10-22-92]

< National Aeronautics and Space Administration/Goddard Space Flight Center, Code 284.6, Greenbelt, Maryland 20771

< 99 -- TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS) SPACECRAFT FLIGHT 8 (F-8) SOL RFP5-60275/486 POC ROSA E. ACEVEDO, CONTRACTING OFFICER, Code 284.6, 301-286-5730. TRACKING and DATA RELAY SATELLITE SYSTEM (TDRSS) SPACECRAFT FLIGHT 8 (F-8). NASA/GSFC intends to procure a TDRSS F-8 spacecraft on a sole source basis from TRW Federal Systems Division of Redondo Beach, California pursuant to 10 U.S.C. 2304(c)(1), ONLY ONE RESPONSIBLE SOURCE. This action reinstitutes the requirement for an eighth TDRSS, previously provided for under an option which expired without being exercised, within NAS5-30192. This procurement action will result in a Firm Fixed Price contract and will include a clause requiring substantial payback from the contractor in case of poor spacecraft performance. The TDRSS communications services are essential for the day-to-day control of and data acquisition for other U.S. space assets, with a projected value in excess of \$70B by the end of the decade. This action is required in order to maintain continuity of service until follow-on spacecraft become available. TRW will provide personnel, materials, equipment, and facilities necessary to fabricate and deliver a TDRS F-8 spacecraft identical in function, design, and construction (both components and processes), to the F-7 spacecraft presently under fabrication. This approach is required to maintain established performance and reliability along with minimum cost impacts to the Agency. The TDRSS F-8 program funding is severely constrained only permitting the design and build of a spacecraft identical to F-7. Funding is not available for the development of a new but functionally equivalent spacecraft. Based on these constraints, TRW is the only known Contractor possessing the capability to economically build a TDRS F-8 spacecraft identical to F-7. This capability includes the possession of detailed design drawings, ground handling equipment and test equipment, previously acquired parts, and experience in building seven other TDRSS Spacecraft. The capability is especially critical since program funding will start no earlier than FY 1994, with launch readiness required no later than early FY 1998. Any other firms desiring consideration are requested to fully identify their interest and capabilities in writing within 15 days of the date of publication of this synopsis to the NASA/GSFC office and contact listed above. See Note(s): 12, 22. (0294)

The Commerce Business Daily

02/07/96

NASA/GSFC/Code 214.2 Greenbelt, MD 20771

99 -- IMAGER AND SOUNDER INSTRUMENTS FOR GEOSTATIONARY OPERATIONAL ENVIRONMENTAL SATELLITES (GOES) POC Clelia Walker, Contracting Officer, Code 214.2, (301) 286-1351. NASA/GSFC intends to contract, on a sole source basis, with ITT Aerospace/Communications of Fort Wayne, IN, for two Imager and Sounder instruments, plus options for two additional Sounders and Imagers, which will fly on the GOES follow-on spacecraft (GOES-N/O/P/Q). The GOES N-Q spacecraft will be the subject of a separate, competitive procurement to take place later this year. The GOES satellite is based on a three-axis, body-stabilized design that enables the instruments to continuously view the continental United States and neighboring environs and provide data for weather forecasting. This procurement is a follow-on to existing contract NAS5-29500. The Imager is a multispectral, earth-scanning instrument capable of sweeping simultaneously one visible and four infrared channels to monitor surface temperature, low-level moisture and convective intensity and other temperature and moisture profiles. The Sounder instrument has additional spectral channels that enable production of vertical temperature profiles, vertical moisture profiles and other temperature and moisture profiles. The National Oceanic and Atmospheric Administration (NOAA) has established the requirement for two sets of Imager and Sounder instruments to be delivered by April 2000 and April 2001, respectively. The instruments are to be built to the specifications for GOES-M instruments, which are being built by ITT under a subcontract to the current NASA prime contract for GOES with Space Systems/Loral. The optional sets of instruments would be delivered in May 2002 and November 2003. NOAA's intent is to provide a bridge from the current series of GOES satellites (GOES-I/J/K/L/M) to a new generation of satellites, of which the first (GOES-R) will be launched in 2008. A full and open competition is anticipated for this new generation of satellites in late 1999. Because of the short lead-time required for delivery of the GOES-N/O/P/Q instruments and because of ITT's immediate experience with the current GOES-I-M instruments, ITT is uniquely qualified to build the instruments within the required time frame and at the lowest possible cost. The statutory authority for Other Than Full and Open Competition is 10 U.S.C 2304(c)(1), Only One Responsible Source. Any other firms desiring consideration are requested to fully identify their interest and capabilities within 15 days of the date of publication of this synopsis to the GSFC Contracting Officer listed above. See Numbered Note(s): 22. (0036)

CBD Notes

Note: 22

The proposed contract action is for supplies or services for which the Government intends to solicit and negotiate with only one source under authority of FAR 6.302. Interested persons may identify their interest and capability to respond to the requirement or submit proposals. This notice of intent is not a request for competitive proposals. However, all proposals received within forty-five days (thirty days if award is issued under an existing basic ordering agreement) after date of publication of this synopsis will be considered by the government. A determination by the Government not to compete this proposed contract based upon responses to this notice is solely within the discretion of the government. Information received will normally be considered solely for the purpose of determining whether to conduct a competitive procurement.

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PRIVILEGED AND CONFIDENTIAL
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DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: M DATE: 3/4/14
2017-1093-f

The National Capital Energy Project: Fulfillment of Administration Policy, Use Of PEPCO's Areawide Agreement As A Contractual Vehicle, And Related Issues¹

"... Climate change can bring us together around what America does best -- we innovate, we compete, we find solutions to problems, and we do it in a way that promotes entrepreneurship and strengthens the American economy. If we do it right, protecting the climate will yield not costs, but profits; not burdens, but benefits; not sacrifice, but a higher standard of living."

President Clinton, October 22, 1997

A. Introduction and Policy Overview.

1. Project Summary.

The White House, Old Executive Office Building, and most Federal Government buildings in Washington, D.C., including all principal agency buildings, are heated (and some are cooled) by steam supplied from the General Services Administration ("GSA"). The GSA delivers the steam through pipelines in underground tunnels that extend in a network from Georgetown to the foot of Capitol Hill. The GSA makes the steam at two large boiler plants -- one in downtown Washington, the other in Georgetown -- that are owned and operated by the GSA.

The GSA plants are relatively clean, yet because of their size, location, and operational patterns, they are significant sources of air pollution and greenhouse-gas emissions in the Washington region. The GSA's plants are the largest Federal Government sources of carbon dioxide (CO₂) and other air pollutants in the area. Fired by natural gas, they consume about 3.3 billion BTUs of energy each year, a quantity equal to more than a half-million barrels of oil.

¹ This document contains proprietary and business confidential information that is exempt from disclosure outside the Government.

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In response to President Clinton's October, 1997 call to the private sector to offer ideas for reducing emissions of greenhouse gases, Trigen Energy Corporation ("Trigen") and PEPCO Services, Inc. ("Pepco Services"), a subsidiary of the Potomac Electric Power Company ("PEPCO"), have developed a project (the "National Capital Energy Project"), which would substitute surplus steam from an existing, efficiently operating PEPCO-owned power plant for steam that the GSA makes. Simply, the Trigen-Pepco Services team proposes to collect steam from PEPCO's Potomac River Electric Generating Station (in Alexandria) and deliver it via a new pipeline into the existing GSA pipeline distribution system.

The proposed change in steam source would:

- Reduce GSA's fossil fuel consumption by approximately 1.2 billion BTUs per year.
- Reduce annual CO₂ emissions by approximately 39,000 tons.
- Generate net regional reductions in emissions of other regulated air pollutants (NO_x and SO₂).
- Reduce Federal Government energy costs without additional budget outlays.
 - ◆ All capital costs for construction of the project would be advanced by the developers. There would be no up-front cost to the Federal Government. The developers expect to be able to supply steam to the GSA at a price that would be significantly lower than the costs incurred now by the GSA (and ultimately its customer agencies and taxpayers) to make steam in-house.
- Enable the GSA to retire its Georgetown steam plant and restore that property to park land or other public use.

2. Policy Framework.

The Trigen-Pepco Services project would help the Executive Branch comply with the Energy Policy Act of 1992 ("EPACT," P.L. 102-486). The project also fits squarely within, and would advance this Administration's energy and environmental policy goals.

The EPACT requires agencies to install energy-conservation measures and to reduce energy-consumption levels by 20 percent relative to 1985 levels by the year 2000. Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities (**copy attached at Tab ____**), goes one step further, setting a 30 percent energy reduction goal by 2005. As noted above, this project would allow the Executive Office of the President and other GSA steam

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customers to show significant reductions in energy use² and could be fully implemented within the EPACT and Executive Order 12902 deadlines.

The Trigen-Pepco Services project would provide a compelling and timely example of Administration action to implement President Clinton's October 22, 1997 climate-change policy (**excerpt attached at Tab ____**). There, the President pledged to improve Federal energy management and procurement through a variety of initiatives, including:

- Improved Federal procurement of energy-efficient technology;
- Use of consolidated purchasing to stimulate markets and lower prices;
- Expanded use of combined heat and power generation; and,
- Expanded public awareness of energy-efficient technologies.

The Trigen-Pepco Services project would move these initiatives forward. In addition to achieving the reductions in CO₂ and other regulated pollutants noted above, the proposed project provides a showcase example of procurement of efficiently generated energy from a combined heat and power facility on a consolidated, interagency basis. The project also has the capacity to provide steam service to additional Federal and private users in the Washington area, thus creating the potential for additional reductions in costs of steam to Federal users as the fixed costs are shared among more users, as well as the potential for additional improvements in regional air quality as other existing generating sources are taken off-line.³ Finally, the project's national profile would showcase the Administration's progress toward addressing the climate-change problem and would expand the public's awareness and encourage implementation of similar opportunities elsewhere.

B. PEPCO's Areawide Agreement, and Its Accompanying Energy Services Agreement, Provide an Appropriate Contractual Vehicle for the Project.

As discussed above, the proposed project would substitute surplus steam from an existing, efficiently operated PEPCO plant in Alexandria, Virginia, for steam currently being produced by two GSA-owned and operated plants. Steam would be provided to Federal users via the existing GSA steam-distribution system, which the project developers would operate and

² This assumes that the GSA would agree to allocate the 1.2 billion BTU "credit" for reduced energy use to its customers on some *pro rata* basis; otherwise, the savings would accrue to the GSA alone.

³ The Architect of the Capitol and the Pentagon are two Federal entities which currently operate steam generation facilities and which could potentially be served by steam generated at PEPCO's Potomac River plant.

maintain.⁴ This would permit the Government to both reduce its energy costs and to improve regional air quality.

1. The Proposed Project is Within the Scope of PEPCO's Areawide Agreement.

The GSA and PEPCO have an existing "areawide agreement" under which PEPCO furnishes utility services to Federal user agencies.⁵ (Copy attached at Tab ____). PEPCO's Areawide Agreement broadly defines the types of "services" that may be provided pursuant to it to include "any commodities, financial incentives, goods and/or services generally available from [PEPCO]." See Modification 1 to PEPCO's Areawide Agreement (copy attached at Tab ____). In addition, the GSA and PEPCO have also entered into an Energy Services Agreement, which is Attachment 1 to PEPCO's Areawide Agreement. (Copy attached at Tab ____). Modification 1 and Attachment 1 to PEPCO's Areawide Agreement permit the GSA to contract for "energy conservation measures," which are broadly defined as "any specific measure intended to provide energy savings, demand reduction and/or related cost savings in Federal facilities." Modification 1, Mod. 1. B.; see Attachment 1, § A, Definitions, at 5; *id.* §B.1.A.1, Energy Conservation Measures, at 11-12. Further, Attachment 1 specifically provides that energy conservation measures may include "an energy-related project that results in energy conservation, or demand reduction; and/or . . . in benefits to the Customer Agency other than energy conservation or demand reduction, such as operations and [m]aintenance cost savings, environmental benefits, etc." Attachment 1, §A, Definitions, at 6 (emphasis supplied).

2. Use of the Areawide Agreement is Consistent With the GSA's Established Procurement Authority.

The GSA has authority to contract with PEPCO for the project pursuant to 42 U.S.C. § 8256(c)(3) and 40 U.S.C. § 481(a)(3), which authorize the GSA to negotiate energy-conservation programs and to procure utility services.

⁴ Since the project envisions that steam would be supplied directly to Federal buildings through the GSA steam system and would rely on the GSA steam plant for backup and peak period demand purposes, the developers have an interest in ensuring the proper operation and maintenance of the GSA steam system.

⁵ An areawide agreement is an agreement between the GSA "and a utility service supplier to cover utility service needs of Federal agencies within the franchise territory of the supplier." Federal Acquisition Regulation ("FAR") 41.101. FAR 41.101, in turn, defines "franchise territory" to be a "geographical area that a utility supplier has a right to serve based upon a franchise, a certificate of public convenience and necessity or other legal means." PEPCO can provide steam and related system services under existing District of Columbia law.

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Section 152(f) of the EPACT, 42 U.S.C. § 8256(c) (**copy attached at Tab ____**), specifically authorizes civilian agencies to enter into negotiations with utilities “to design cost effective demand management and [energy] conservation incentive programs.”⁶ 42 U.S.C. § 8256(c)(3). The authority granted under § 8256(c)(3) (and the parallel DOD statute at 10 U.S.C. § 2865(d)) has been relied on by numerous Government agencies to procure a wide variety of energy-related services (“ERS”) under areawide agreements. An illustrative list of projects that have been undertaken pursuant to areawide agreements is attached at **Tab ____**. Furthermore, both the DOE, the lead agency with responsibility for implementation of the EPACT, and the DOD, have concluded that 42 U.S.C. § 8256(c) and 10 U.S.C. § 2865(d), respectively, authorize Federal agencies to contract with utilities for ERS under areawide agreements.⁷ Indeed, the Administration has recently re-emphasized the availability of areawide agreements as a contractual vehicle for achieving energy policy goals.⁸ Moreover, to our knowledge, such agreements have not been challenged in litigation as beyond the scope of the agencies’ procurement authority or beyond the scope of areawide agreements such as PEPCO’s. Accordingly, we submit that insofar as the purpose of this project is to enable the Government to reduce its overall energy costs, it is within the scope of the GSA’s authority under § 8256(c)(3).

⁶ See also 42 U.S.C. § 8259(4) (defining “energy conservation measures” as those that “improve energy efficiency and are lifecycle cost effective and that involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operations and maintenance efficiencies or retrofit activities”).

⁷ See Memorandum from Lawrence R. Oliver, Assistant General Counsel, Energy Efficiency, to John P. Archibald and Victor Petrolati, EE-90, Office of Federal Energy Management, Subj.: Whether Section 152 of EPACT Provides Sufficient Authority to Permit AL to Proceed with a Proposed Energy Management Services Contract With Public Service Company of New Mexico (Dec. 13, 1996) (**copy attached at Tab ____**); U.S. Navy Memorandum from 09CB1 to 021A, Subj.: Use of Utility Service Contracts to Obtain DSM Service (Jan. 29, 1993) (“1993 Navy Memo”) (stating that “[i]f a GSA areawide contract is in place which provides for DSM services, we would generally be required to use that contract unless we could show that it did not meet our requirements in some respect.”) (**copy attached at Tab ____**); see also Defense Energy Program Policy Memorandum (DEPPM) 94-1, Subj.: Participation in Public Utility Sponsored Energy Conservation and Demand Side Management (EC/DSM) Programs, at 1-2, 4-5, 14 (recognizing that DOD agencies can enter into negotiations with utilities pursuant to 10 U.S.C. § 2865(d) to design and implement EC/DSM projects and that modifications to existing areawide agreements are one vehicle for doing so) (**copy attached at Tab ____**).

⁸ See Memorandum from President William J. Clinton to the Heads of Executive Departments and Agencies, Cutting Greenhouse Gases through Energy Savings Performance Contracts (July 25, 1998); Memorandum from Jacob Lew, Acting Director, Office of Management and Budget, to Heads of Executive Departments and Establishments, Federal Use of Energy Savings Performance Contracting, at 2 (July 25, 1998).

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In addition to § 8256(c)(3), § 481(a)(3) of 40 U.S.C. specifically authorizes the GSA to enter into contracts for “public utility services.” The proposed project is clearly within the GSA’s authority under 40 U.S.C. § 481(a)(3) insofar as it involves the procurement of steam, which is a traditional “utility service.”⁹ See also FAR 41.101 (including steam as an example of a “utility service”). Moreover, nothing in § 481 limits the GSA’s authority to procure utility services to the acquisition of basic commodities, such as steam or electricity, or to supplies and services that are subject to detailed regulation by a local public utilities commission or similar body. For example, in GSA Procurement of Equipment Under 40 U.S.C. § 481(a)(3), B-208422, 62 Comp. Gen. 569, 574-75 (1983) (**copy attached at Tab**), the General Accounting Office (“GAO”) held that the GSA could purchase telephone switching equipment and related installation and maintenance services from a non-regulated supplier under § 481. In reaching that result, the GAO indicated that the GSA’s authority to procure “utility service” under § 481(a)(3) should be interpreted pragmatically and flexibly and “in light of the changes in technologies and methodologies for providing the product or service.” Id. at 574-75.

In that regard, most electric utilities, including PEPCO, today offer ERS to their customers in addition to basic electric service. These services enable the customers to reduce their overall energy costs, but are, in a real sense, an integral part of the services offered by the utilities. Moreover, as discussed further below, there is a well-established practice in both civilian and DOD agencies of contracting with public utilities for ERS under the auspices of areawide agreements.

This established practice also supports the view that FAR Pt. 41, which addresses the acquisition of utility services generally and areawide agreements in particular, should not be read narrowly regarding the types of services that may be acquired under the auspices of an areawide agreement. For example, several provisions in FAR Pt. 41 effectively acknowledge that rates, terms and conditions of service provided under an areawide contract may not be subject to regulation but rather separately negotiated. See FAR 41.204(b) (specifically permitting agencies to negotiate other rates and terms of service); 41.204(c)(2) (providing for separately negotiated rates or terms); see also FAR 41.201(b) (acknowledging that rates, terms or conditions of utility service may not be fixed by a regulatory body).

Finally, we note that the procurement strategy suggested here -- use of the areawide agreement to implement steps that will reduce the Government’s energy consumption and provide related benefits -- is consistent with the Administration’s energy savings and procurement reform policies. As noted above, in E.O. 12902, the President directed Federal agencies to reduce energy consumption by 30 percent by the year 2005. In achieving that goal, E.O. 12902 directed agencies to use “innovative financial and contractual mechanisms” to

⁹ Steam is a byproduct of electric generation. GSA’s web site lists approximately 18 areawide contracts under for the supply of steam to the Government, and, according to that list, in most of those cases, the utilities involved are also providing electric service. (See Tab ____).

achieve that goal. See E.O. 12902 § 401; see also id. § 403 (directing agency heads to work with procurement officials to identify barriers to implementation of the EPACT and E.O. 12902).

Further, one of the upshots of the Vice President's procurement reform initiatives was the inclusion of a "statement of guiding principles" in the FAR. One of those guiding principles is that agency procurement personnel should exercise initiative and sound business judgment in meeting the Government's needs. See FAR 1.102(d). Moreover, FAR 1.102(d) goes on to expressly state that if a specific strategy or practice is not prohibited by law, executive order or regulation, then such a strategy or practice "is a permissible exercise of authority." As discussed above, the acquisition strategy suggested here not only is not prohibited, but is authorized and encouraged by law and executive order.

3. The Project is Not Subject to a Requirement for Competition.

There is an established practice of the DOD and civilian agencies entering into contracts for ERS projects with utilities under the auspices of areawide and related ERS agreements without competition. This practice is based on the authority granted under 42 U.S.C. § 8256(c)(3), in the case of civil agencies, and 10 U.S.C. § 2865(d) for the DOD. Both the DOE and the DOD have explicitly concluded that 42 U.S.C. § 8256(c)(3) and 10 U.S.C. § 2865(d), respectively, provide a statutory exemption from the competition requirements of the Competition in Contracting Act ("CICA"), 41 U.S.C. § 253.¹⁰ In particular, those agencies have concluded that §§ 2865(d) and 8256(c)(3) are within the CICA exception that allows contracts to be awarded where another statute authorizes that a procurement be made through a specified source,¹¹ and therefore that agencies may enter into agreements with utilities under existing

¹⁰ Section 8256(c)(3) was based on the parallel DOD statute. The DOD had specifically sought the authority conferred by 10 U.S.C. § 2865(d) to enable it to expeditiously contract with utilities for ERS "without using time-consuming and complex competitive procurement procedures." Memorandum from Anne Troy, Office of Procurement and Financial Assistance, to Philip Winter (GSA), Statutory Exemption from Competition in Contracting Act's Full and Open Competition Requirement in Demand Side Management and Utility Contracts, July 7, 1994 ("Troy Memorandum") at 3 (**copy attached at Tab ____**).

¹¹ See 41 U.S.C. § 253(c)(5); FAR 6.302-5.

areawide agreements on a sole-source basis.¹² Further, the GSA has concurred in that position on two occasions.¹³

4. Summary Regarding Use of PEPCO's Areawide Agreement

The discussion above demonstrates that there is a sound legal basis for proceeding with the project under PEPCO's Areawide Agreement. While the risk of a procurement protest can not be eliminated in advance, §§ 481 and 8256, together with E.O. 12902 and FAR 1.102, provide substantial legal support for the GSA's authority to:

- Enter into an agreement that would enable it to reduce its energy costs and to do so through both use of a substitute source of steam and related operation and maintenance services;
- Do so on under the auspices of PEPCO's existing Areawide Agreement and its accompanying Attachment 1; and
- Do so on a sole-source basis.

Moreover, in considering the GSA's authority to proceed under PEPCO's Areawide Agreement and without competition, it is important to recognize that not only is this project within the GSA's existing statutory procurement authority and subject to a statutory exemption

¹² See Department of Energy, Federal Energy Management Program, Alternative Financing Guidance Memorandum: Policy Statement #001 (copy attached at Tab ____); Hearing on Federal Energy Management Provisions of the Energy Policy Act of 1992, Before the Senate Committee on Energy and Natural Resources, 105th Cong., 1st Sess. 534 (1997) (response from John B. Goodman, Deputy Undersecretary of Defense for Industrial Affairs and Installations, to Question 1 from Sen. Frank Murkowski) (copy attached at Tab ____); see also 1993 Navy Memo, supra, (Tab ____).

¹³ See Memorandum from Amy J. Brown, Assistant General Counsel, Real Property Division (LRA), to Eric Dunham, Portfolio Customer Team, Office of Property Management, Subj.: Section 152 of the Energy Policy Act of 1992 (Apr. 11, 1995) (copy attached at Tab ____); Memorandum from Edward R. Broyles, Deputy Associate General Counsel, General Law Division (LG), to Ida M. Ustad, Associate Administrator for Acquisition Policy (V), Subj.: Section 152 of the Energy Policy Act of 1992 (Nov. 7, 1994) (copy attached at Tab ____); see also Troy Memorandum, supra, (Tab ____).

from the competition requirements of CICA, *but only PEPCO, as a practical matter, has existing, efficiently operating steam generation capability necessary to meet the requirements for the project to go forward.* In particular:

- PEPCO's Potomac River plant is the only existing regional energy facility with a supply of surplus steam of a volume that is adequate to both permit replacement of the GSA steam boilers and that is located near enough to downtown Federal users to be economic.¹⁴
- The PEPCO facility is also the only alternative that can provide substitute steam service without requiring construction of a substantial new energy-generation facility.

Moreover, even if it were economically feasible to construct a new power-generation facility that could provide steam to Federal agency customers at a cost that was competitive to that from PEPCO's facility, construction of a new power plant in the urban core area of Washington, D.C. would face formidable and, most probably, impassible hurdles given the environmental, social and other objections that would surely arise, and it is highly unlikely that such a project could be completed in a timeframe consistent with the energy-reduction goals of the EPACT and E.O. 12902.¹⁵

In that regard, we note that the GAO has upheld sole-source awards in circumstances where it concluded that a procuring agency had not properly invoked the (c)(5) exception to CICA -- award to a particular source authorized by statute, but where the proposed contractor was, in fact, the only responsible source. See Information Ventures, Inc., B-246605, 92-1 C.P.D. ¶ 302 (Mar. 23, 1992) (**copy attached at Tab ____**); Magnavox Electronic Sys. Co., B-230397, 88-1 Comp. Gen. ¶ 618 (June 30, 1988) (**copy attached at Tab ____**); see also SEMCOR, Inc. et al., B-279794.2, B-279794.3, 1998 WL 482973 (C.G.) (July 23, 1988) (relying on Information Ventures and Magnavox to uphold a sole-source award in an analogous case). Thus, even if it were determined that 42 U.S.C. § 8356(c) did not authorize a sole-source award to PEPCO under

¹⁴ There are no significant power plants in the Washington D.C. area other than those owned by PEPCO. Although the Pentagon and the Architect of the Capitol operate steam plants, those plants do not have the generation or transmission capabilities needed to serve more than their current loads. Expansion of those plants would require significant new construction, environmental permitting and expenditure of appropriated funds, all of which would prove quite problematic.

¹⁵ PEPCO, on the other hand, has all of the necessary environmental permits for the Potomac River facility and anticipates that the modifications required to implement this project would be minor and would conform to all extant permitting requirements.

the Areawide Agreement, an award could be justified here under the “one responsible source” exception to CICA. See 41 U.S.C. § 253(c)(1); see also note 18, infra.¹⁶

C. Availability of Other Contractual Mechanisms.

The project could conceivably proceed under a contractual vehicle other than PEPCO’s Areawide Agreement, presumably a separate contract limited to this project.¹⁷ Moreover, in our view, such a contract could properly be awarded on a sole-source basis because, as discussed above, PEPCO is clearly the only entity with the capability to provide substitute steam service on an energy efficient and environmentally effective basis.¹⁸ However, we are concerned that use of separate contract is unlikely to be as expeditious as reliance on the Areawide Agreement and that the delay could effectively preclude the project from going forward. Further, we submit that if this alternative were pursued, any steps necessary to confirm that there is the only responsible source should be undertaken as expeditiously as possible, consistent with any applicable legal and regulatory requirements. See FAR 6.303; 6.304.

D. OMB Circular A-76 Should Not be an Obstacle to Going Forward.

OMB Circular A-76 (**copy attached at Tab ____**) reaffirms the Government’s commitment to the acquisition of supplies and services from the private sector. Where it applies, it requires agencies to conduct a “cost comparison” before contracting out functions that are currently being performed by the Government. It also contains provisions for considering the interests of incumbent Federal employees who may be affected by a decision to contract out,

¹⁶ We hope and believe that any steps that may be necessary to appropriately justify reliance on PEPCO’s areawide agreement can be accomplished expeditiously. See generally FAR 6.303-1; 6.303-2.

¹⁷ We assume that such a contract would be awarded pursuant to § 481(a)(3) or other multiyear contracting authority. See also FAR 41.205 (authorizing awards of separate contracts for utility services).

¹⁸ See 41 U.S.C. § 253(c)(1); FAR 6.302-1 (providing exception to competition requirements of CICA in situations where the required supplies or services are available from only “one responsible source”); see also FAR 6.302-1(b)(1) (providing that an agency can award a contract without competition under this exception where it has “a reasonable basis to conclude that the agency’s minimum needs can only be satisfied by . . . unique supplies or services available from only one source or only one supplier with unique capabilities”); id. 6.302-1(b)(3) (permitting use of this exception in connection with the acquisition of utility services (under FAR Pt. 41) under circumstances where “only one supplier can furnish the service . . . or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system”).

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including “right of first refusal” for employment under the contract for openings for which they are qualified.

Preliminarily, we note that:

- The Government traditionally procures basic utility services such as water, electricity and steam from the private sector. Similarly, operation and maintenance of Government heating plants or other utility systems is within the set of “commercial activities” that can be contracted out. See OMB Circular A-76, Attachment A (see Tab ____).
- Regardless of whether OMB Circular A-76 applies to this project, the project developers are committed to working with the GSA to satisfactorily address legitimate concerns of incumbent Federal employees who operate and maintain the GSA steam system, including providing those employees with a right of first refusal in accordance with the Circular and FAR 7.305(c).

We believe that the applicability of the Circular to this project should be considered further, and in that regard, we note that OMB Circular A-76 provides that “[t]his Circular and its Supplement shall not be applicable when contrary to law [or] Executive Order.” OMB Circular A-76 § 7.c.(1). We submit, therefore, that the statutory requirement in the EPACT to reduce energy consumption levels by 20 percent by the year 2000, the contribution the project will make to achieving the Administration's energy management and climate change policy objectives, the direction in E.O. 12902 to use innovative financial and contractual mechanisms and to find solutions to regulatory and procedural barriers to achievement of the Federal energy management requirements of the EPACT and the Executive Order, and the commitment to address the legitimate concerns of incumbent Federal employees, all suggest that the project should not be subject to the complex and time-consuming A-76 process.

The Office of Personnel Management’s (“OPM”) recent outsourcing of the conduct of background investigations of Federal employees and applicants provides a useful model. There, the decision to outsource performance of background investigations arose out of the recommendations of Vice President’s National Performance Review to reduce the size of Government. However, it was not subject to the A-76 process; rather, the OPM used an alternative approach which demonstrated the potential cost savings from outsourcing without a formal A-76 cost comparison and under which the contractor offered positions to and hired a substantial number of the affected Federal employees. See Hearings on H.R. 3802 and H.R. 3189 Before the Subcomm. on Government Management, Information, and Technology of the House Comm. on Government Reform and Oversight, 104th Cong., 2d Sess. 104-11 (1996) (Testimony of James R. King, Director, OPM) (copy attached at Tab ____). In addition, the OPM awarded the contract to perform the background investigations on a sole-source basis pursuant to one of the exemptions to CICA, see id., a decision that was subsequently upheld in Federal court. See Varicon International v. Office of Personnel Management, 934 F. Supp. 440 (D.D.C. 1996) (copy attached at Tab ____).

However, even assuming that the project is not otherwise exempt from the Circular, we believe that it is eligible for a waiver in accordance with the waiver provisions of the Circular. In considering a possible waiver, it is important to recall that in March of 1996, the Administration published a revised Supplement to the Circular (**excerpt attached at Tab ____**). One of the key features of that revision was the expansion of the authority to waive the cost-comparison requirements of the Circular in order to facilitate and encourage waivers in appropriate cases.¹⁹ In particular, the OMB stated that a waiver may be justified if an agency undertakes an independent business analysis and determines that significant cost savings or improvements in performance are likely to be achieved. See id.

The specific provisions governing waivers of the cost-comparison process are at Part 1, § E.3 of the 1996 Supplement, which authorizes waivers where:

- Conversion will result in a significant financial or service quality improvement and will not significantly reduce future competition in award or performance of the work; or
- The agency can establish that the in-house operation has no reasonable expectation of receiving award.

While further discussion of a waiver may be necessary, again we believe that there would be no adverse impact on future competition in this situation because, as a practical matter, the only way to achieve the energy-cost reductions and related environmental benefits is through the use of an existing, efficiently operating steam plant with sufficient capacity to meet the Government's steam requirements. For similar reasons, the dependence of the project on access to PEPCO's existing power plant means that the project could not realistically be performed in-house. Further, we believe that the GSA could reasonably establish the project's potential to reduce the Government's energy costs and provide related benefits relative to the current in-house operation without a formal A-76 cost comparison. Again, the recent OPM experience discussed above is instructive and, we submit, supports a waiver on the particular facts presented here.

Finally, we note that even if the cost-comparison process were waived, the provisions of the Supplement to the Circular which address the interests of affected Federal employees, including the requirement that they be given a right of first refusal, still apply, and, as noted above, the project developers are prepared to work with the GSA to address those interests, including recognition of a right of first refusal. See 1996 Supplement, Ch. 1 ¶ H, Personnel Considerations.

¹⁹ See 61 Fed. Reg. 14338, 14340 (**copy attached at Tab ____**). In its comments accompanying the 1996 revisions to the Supplement, OMB specifically noted that waiver provisions under the former (1983) version of the Supplement were "too narrow," with "only one waiver having been issued in over 12 years." See id. at 14340.

NEGOTIATED AREA WIDE CONTRACT
No. GS-00P-90-BSD-0027
BETWEEN THE
UNITED STATES OF AMERICA
AND
POTOMAC ELECTRIC POWER COMPANY

MODIFICATION 1

Effective as of April 1, 1996, (Page 1 of this Modification), the Areawide Contract Number GS-OOP-90-BSD-0027, by and between the UNITED STATES OF AMERICA, acting through the Administrator of General Services and the POTOMAC ELECTRIC POWER COMPANY, is hereby modified.

MODIFICATION 1.A Article 1(d) of the existing contract is replaced, in its entirety, as follows:

(d) The term "service" means any commodities, financial incentives, goods and/or services generally available from the Contractor pursuant to its tariffs, rates, rules, regulations, riders, practices, or terms and conditions of service as may be amended, modified or supplemented by the Contractor and approved from time to time by the Commission, and the rules and regulations adopted by the Commission;

MODIFICATION 1.B Article 1 of the existing contract is modified by the addition of the following clause after Article 1(e)

(f) the term "energy management service" means any service intended to provide energy savings, demand reduction and/or financial incentives in Federal facilities [Reference Articles 16(f) and 16(g)].

(g) the term "energy conservation measure" means any specific measure intended to provide energy savings, demand reduction, and/or other related cost savings in Federal facilities.

(h) the term "Contractor" shall mean the Potomac Electric Power Company and/or any corporate successors thereto.

CONTRACT GS-OOP-90-BSD-0027
MODIFICATION 1: Page 3 of 5

MODIFICATION 1.C Article 2(a) of the existing contract is modified as follows:

the final sentence is modified to read after annexed hereto to read: as EXHIBIT "A" Authorization for Electric Service and/or EXHIBIT "B" Authorization for Energy Management Services which, by this reference, are incorporated into this areawide contract.

MODIFICATION 1.D Article 13(b) of the existing contract is replaced, in its entirety, as follows:

(b) Unless otherwise authorized by Public Law or Federal Regulation, nothing contained herein shall be construed as binding the Government to expend, in any one fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year in furtherance of the subject matter of the contract or to involve the Government in an obligation for the future expenditure of monies before an appropriation is made [Anti-Deficiency Act, 31 U.S.C. 1341(a)(1)].

MODIFICATION 1.E Article 15 of the existing contract is modified by the addition of the following clauses after Article 15(c):

(d) Energy Conservation Measures will not be normally considered unless a net overall energy usage or cost reduction can be demonstrated. Life-cycle cost analysis may be tested against the current Building-Life-Cycle Cost (BLCC) software program of the National Institute of Standards and Technology for validation.

(e) Unless otherwise mutually agreed to, the Contractor shall pass through to the Agency all warranties on equipment installed or provided by it or its subcontractors with the following representation:

POTOMAC ELECTRIC POWER COMPANY ACKNOWLEDGES THAT THE UNITED STATES OF AMERICA WILL OWN OR LEASE THE EQUIPMENT AND/OR MATERIALS BEING INSTALLED OR SUPPLIED HEREUNDER, AND, ACCORDINGLY, AGREES THAT ALL WARRANTIES SET FORTH HEREIN, OR OTHERWISE PROVIDED BY LAW IN FAVOR OF COMPANY SHALL INURE ALSO TO THE BENEFIT OF THE UNITED STATES AND THAT ALL CLAIMS ARISING FROM ANY BREACH OF SUCH WARRANTIES OR AS A RESULT OF DEFECTS IN OR REPAIRS TO SUCH EQUIPMENT OR SUPPLIES MAY BE ASSERTED AGAINST POTOMAC ELECTRIC POWER COMPANY OR MANUFACTURER DIRECTLY BY THE UNITED STATES.

ATTACHMENT 1
TO
GSA AREAWIDE UTILITIES CONTRACT GS-00P-90-BSD-0027
BETWEEN
GENERAL SERVICES ADMINISTRATION
AND
POTOMAC ELECTRIC POWER COMPANY

GENERAL SERVICES ADMINISTRATION
ENERGY SERVICES AGREEMENT;
WITH
POTOMAC ELECTRIC POWER COMPANY

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GENERAL SERVICES ADMINISTRATION

ENERGY SERVICES AGREEMENT

WITH

POTOMAC ELECTRIC POWER COMPANY (PEPCO)

THIS ENERGY SERVICES AGREEMENT ("Agreement") is entered into by the United States of America, hereinafter called the "Government", acting by and through the authorized representative of the Administrator of General Services, and the Potomac Electric Power Company (PEPCO) (the "Company") (each a "Party" and collectively the "Parties"). The effective date of this Agreement is the date of execution by the Government as shown below.

RECITALS

WHEREAS, the Company is in the business of providing energy services for electric customers:

WHEREAS, the Government requires assistance with energy conservation and demand side management (DSM) at various facilities located within the Company's service area to comply with the Federal Government's Energy Policy Act (EPACT) and Executive Order 12902:

WHEREAS, the purpose of this Agreement is to facilitate the implementation of Energy Conservation Projects ("ECPs") at such facilities by allowing Customer Agencies to enter into Contracts with the Company for the implementation of ECPs;

WHEREAS, this Agreement sets forth the terms and conditions under which such ECP Contracts shall be entered into between the Customer Agencies and the Company.

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, the Parties, intending to be legally bound, hereby agree as follows:

Section A - General Conditions.A.1.

DEFINITIONS - Capitalized terms in this Agreement shall have the following definitions:

Acceptance - The point at which the Work under an ECP Contract Schedule is accepted as complete by the authorized representative of the Customer Agency as designated in an ECP Contract, or, if no such representative is designated, a warranted Contracting Officer for the ECP Contract.

Agreement - This Attachment 1 to GSA Areawide Utilities Contract or otherwise referred to from time to time as the Energy Services Agreement.

Areawide Utilities Contract - Contract No. GS-00P-90-BSD-0027 as amended between United States of America and the Company, dated April 20, 1990.

Certificate of Acceptance - The written acceptance of completed Work or services performed in connection with an ECP by the authorized representative of the Customer Agency as designated in an ECP Contract, or, if no such representative is designated, a warranted Contracting Officer for the ECP Contract.

Company - Potomac Electric Power Company (PEPCO), and its successors.

Contracting Officer ("C.O.") - Customer Agency official authorized to enter into, administer, and/or terminate contracts on behalf of the Customer Agency, and make related determinations associated therewith.

Contracting Officer's Representative ("COR") or Contracting Officer's Technical Representative ("COTR") - A local or project site official delegated limited authority as set forth in a formal delegation letter signed by the Contracting Officer for a given ECP Contract.

Customer Agency - Any Federal Executive Agency or any establishment in the legislative or judicial branches of the Federal Government, or any mixed ownership corporation (as defined in the Government Corporation Control Act) authorized to enter into an ECP Contract under this Agreement.

ECP Contract - A contract, in the form of Schedules issued hereunder, entered into by and between the Company and a Customer Agency. Such contracts are for the study, design, performance and implementation of an ECP and are subject to the terms and conditions contained in this Agreement.

Energy Conservation Measure ("ECM") - A specific measure intended and designed to provide energy savings, demand reduction, and/or other related cost savings or benefits in facilities.

Energy Conservation Project ("ECP") - A project to implement one or more ECMs, including all Work and services performed in connection with the detailed feasibility study, engineering and design, and construction and installation of ECMs at a particular facility or facilities and any other energy related services as specified in an ECP Contract. An ECP may include an energy-related project that results in energy conservation or demand reduction; and/or may include an energy related project that results in benefits to the Customer Agency other than energy conservation or demand reduction, such as operations and Maintenance cost savings, environmental benefits, etc.

Excluded Activity - The containment, detection, disposal, discharge, handling, removal, storage, transportation, treatment or use of Hazardous Materials except for those items specifically agreed to by the Company pursuant to Section E of this Agreement.

Facility Manager - Manager responsible for the operation of a Customer Agency facility or building.

GSA - General Services Administration.

Hazardous Materials - Any chemical, material or other substance defined or included in the definition of "hazardous materials," "hazardous substances," "hazardous wastes," or "toxic substances" under any Federal and local laws or regulations and shall also include asbestos in any form, urea formaldehyde foam insulation, equipment or fixtures containing polychlorinated biphenyl, petroleum hydrocarbons, ozone depleting refrigerants, fluorescent tubes, fluorescent magnetic core and coil ballasts and lead based paint.

Negotiated Price - The agreed price for performing a Schedule of an ECP Contract including any fees and amounts that may be agreed to by the Company and the Customer Agency which shall be specified in the ECP Contract.

Occupied Period - Hours during which a facility or building is occupied and used in the normal course of business.

Phase - One of four parts of the ECP: (1) Detailed Feasibility Study, (2) Engineering and Design, (3) Construction and Installation, or (4) Operations and Maintenance Training and Emergency Response Services. Each Phase will be implemented via the issuance of an ECP Contract Schedule executed between the Customer Agency and Company.

Project Cost - The sum of the Negotiated Prices for each Phase of an ECP performed by the Company. The Negotiated Price for each Phase of the ECP will be set forth in the Schedule executed prior to the performance of the Phase. Such prices may be modified during the course of performance of the Phase pursuant to the Changes clause and other clauses providing for adjustments in the Negotiated Price.

Schedule - The ECP Contract shall be implemented via Schedules which specify in a statement of work the specific Work and services to be performed by the Company and the Negotiated Price for that ECP Contract Schedule.

Subcontractor - Any corporation, partnership or individual hired directly by the Company, or acting as a subcontractor, to perform Work or service or provide a product under this Agreement and ECP Contracts hereunder.

Termination Amount - Any time prior to Acceptance, the amount to be paid by the Customer Agency to the Company for all costs incurred or to be incurred by the Company including finance costs, and any other fees and amounts that may be agreed to by the Company and the Customer Agency as set forth in the ECP Contract. A description of these costs shall be identified in an exhibit to each executed ECP Contract Schedule and stipulated as allowable.

Termination Schedule Amount - The amount to be established for each ECP Contract specifying the lump sum payment necessary, at any time during the contract period following Acceptance, for the complete repayment of the Project Cost including finance costs. A description of this amount shall be identified in a Termination Schedule attached to the ECP Contract Schedule C and stipulated as allowable.

Work - All labor, materials, tools, equipment, products, services, transportation and other items required for the completion of the ECP.

A.2. Scope of Agreement

A.2.A. General Requirements - This Agreement shall govern the terms and conditions under which the Company may provide services to Customer Agencies to identify and implement ECPs. ECP Contracts entered into under this Agreement shall be subject to the terms set forth herein. This Agreement does not obligate Customer Agencies to procure any such services from the Company to meet energy conservation requirements, nor does it obligate the Company to enter into ECP Contracts with Customer Agencies to provide any such services.

A.2.B. Agencies Covered by Agreement - All Federal Government Agencies and departments in the Company's service area are authorized to enter into ECP Contracts under this Agreement.

A.2.C. Scope of Services Offered by the Company - The Company offers the services necessary to identify and implement ECPs. Such services include, but are not be limited to: preliminary surveys; detailed feasibility studies; engineering and design; construction and installation; operations and maintenance training and emergency response services. The Company may also offer operations and maintenance training and emergency response services for energy related equipment, systems, and/or facilities which are not associated with ECPs implemented by the Company. All services shall be performed in accordance with this Agreement and the ECP Contracts executed hereunder.

A.4.G. Release of Information - The Customer Agency shall notify the Company in a timely manner whenever the Customer Agency receives a request for information under the Freedom of Information Act regarding this Agreement or any associated ECP Contract.

Section B - ECP Contracting Process

B.1. Preliminary Survey

A Customer Agency may initiate the ECP contracting process by submitting a letter (in the form set forth at Appendix I hereto) to the Company requesting the Company to perform a Preliminary Survey of a specified facility or system. Following the receipt of the Preliminary Survey Request, the Company will conduct an on-site building investigation and evaluation of the facility to determine if any significant energy conservation opportunities exist and whether further detailed feasibility study is warranted. The amount of payment to the Company for the Preliminary Survey and ECM identification services will be defined on a specific project basis for those services that are beyond the services the Company typically provides free of charge to other customers.

The Preliminary Survey shall consist of an overview of a facility, or an energy-consuming system or component within a facility, conducted by a qualified representative of the Company. The Preliminary Survey will typically consist of a review of Customer Agency documentation, fuel use records, energy bills, operator interviews, and a field inspection. The Company will utilize the information gathered to identify energy conservation measures (ECMs) for the facility, system, or component.

Based upon the Preliminary Survey, the Company shall submit to the Customer Agency a Preliminary Survey Report. The Preliminary Survey Report will typically consist of an executive summary, a table of contents, and a narrative describing the facility, system or component within the facility, its operation, current energy use and cost, and possible modifications to the facility, system, or component which may result in a reduction of energy consumption, demand, and/or other related costs, or may result in other benefits to the Customer Agency.

B.1.A. ECP Contract Proposal - The Company shall submit with the Preliminary Survey Report, an ECP Contract Proposal setting forth a prioritized list of recommended ECMs and a preliminary estimate of total cost for implementing the ECP, including estimated detailed feasibility study, engineering and design, and construction and installation costs, and the estimated energy savings, provided in units of energy and energy cost.

B.1.A.1 Energy Conservation Measures (ECMs) - The Company may propose to the Customer Agency one or more ECMs to reduce the Customer Agency's energy consumption, demand, and/or other related costs; or to result in other benefits to the Customer Agency. An ECM may include the replacement, removal, modification, enhancement, upgrade, or new

installation of equipment. A measure which substitutes one energy source for another (e.g., natural gas in lieu of electricity), shall not be regarded as an ECM unless a net overall energy and/or cost reduction can be demonstrated, based upon current market energy prices. Examples of work which may be proposed as part of an ECM include, but are not limited to, the following:

- A. Interior and Exterior Lighting Replacement
- B. Lighting Control Improvements
- C. Motor Replacement with High Efficiency Motors
- D. Boiler Control Improvements
- E. Packaged Air Conditioning Unit in Replacement
- F. Cooling Tower Retrofits
- G. Economizer Installation
- H. Facility Management System Replacement/Alteration
- I. Occupancy Sensors
- J. LED Exit Sign Installation
- K. Fans and Pump Replacement or Impeller Trimming
- L. Chiller Retrofit/Replacement
- M. Upgrade of Natural Gas-Fired Boilers with New Controls (low NOx Burners)
- N. Steam Trap Maintenance and Replacement
- O. Insulation Installation
- P. Variable Speed Drive Utilization
- Q. Window Replacement
- R. Window Coverings and Awnings
- S. Reflective Solar Window Tinting
- T. Daylighting Controls
- U. Replacement and/or Conversion of Air Conditioning & Heating Units
- V. Addition of Liquid Refrigerant Pumps to Reciprocating Air-Conditioning Units
- W. Refrigeration Equipment Replacement with High Efficiency Units
- X. Transformer Replacement
- Y. Construction of New Cogeneration Facilities
- Z. Solar Domestic Hot Water Systems
- AA. Solar Air Preheating Systems
- BB. Weatherization
- CC. Fuel Cell Installation
- DD. Faucet Replacement (Infrared Sensors)
- EE. Water Conservation Device Installation
- FF. Any other ECMs which reduce the Customer Agency's energy consumption, demand and/or other related costs, or result in other benefits to the Customer Agency.

B.2. ECP Contracts

For any scope of Work (for any Phase) that the Customer Agency elects to pursue under this Agreement, the parties may enter into an ECP Contract by executing a Schedule which shall be mutually agreed upon prior to commencing the Work. The Company may assist the Customer Agency by providing financing on favorable terms considering the market, the nature of security

ATTACHMENT 1
TO
GSA AREAWIDE UTILITIES CONTRACT GS-00P-90-BSD-0027
BETWEEN
GENERAL SERVICES ADMINISTRATION
AND
POTOMAC ELECTRIC POWER COMPANY

GENERAL SERVICES ADMINISTRATION
ENERGY SERVICES AGREEMENT,
WITH
POTOMAC ELECTRIC POWER COMPANY

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GENERAL SERVICES ADMINISTRATION

ENERGY SERVICES AGREEMENT

WITH

POTOMAC ELECTRIC POWER COMPANY (PEPCO)

THIS ENERGY SERVICES AGREEMENT ("Agreement") is entered into by the United States of America, hereinafter called the "Government", acting by and through the authorized representative of the Administrator of General Services, and the Potomac Electric Power Company (PEPCO) (the "Company") (each a "Party" and collectively the "Parties"). The effective date of this Agreement is the date of execution by the Government as shown below.

RECITALS

WHEREAS, the Company is in the business of providing energy services for electric customers:

WHEREAS, the Government requires assistance with energy conservation and demand side management (DSM) at various facilities located within the Company's service area to comply with the Federal Government's Energy Policy Act (EPACT) and Executive Order 12902:

WHEREAS, the purpose of this Agreement is to facilitate the implementation of Energy Conservation Projects ("ECPs") at such facilities by allowing Customer Agencies to enter into Contracts with the Company for the implementation of ECPs:

WHEREAS, this Agreement sets forth the terms and conditions under which such ECP Contracts shall be entered into between the Customer Agencies and the Company:

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, the Parties, intending to be legally bound, hereby agree as follows:

Section A - General Conditions.A.1.

DEFINITIONS - Capitalized terms in this Agreement shall have the following definitions:

Acceptance - The point at which the Work under an ECP Contract Schedule is accepted as complete by the authorized representative of the Customer Agency as designated in an ECP Contract, or, if no such representative is designated, a warranted Contracting Officer for the ECP Contract.

Agreement - This Attachment 1 to GSA Areawide Utilities Contract or otherwise referred to from time to time as the Energy Services Agreement.

Areawide Utilities Contract - Contract No. GS-00P-90-BSD-0027 as amended between United States of America and the Company, dated April 20, 1990.

Certificate of Acceptance - The written acceptance of completed Work or services performed in connection with an ECP by the authorized representative of the Customer Agency as designated in an ECP Contract, or, if no such representative is designated, a warranted Contracting Officer for the ECP Contract.

Company - Potomac Electric Power Company (PEPCO), and its successors.

Contracting Officer ("C.O.") - Customer Agency official authorized to enter into, administer, and/or terminate contracts on behalf of the Customer Agency, and make related determinations associated therewith.

Contracting Officer's Representative ("COR") or Contracting Officer's Technical Representative ("COTR") - A local or project site official delegated limited authority as set forth in a formal delegation letter signed by the Contracting Officer for a given ECP Contract.

Customer Agency - Any Federal Executive Agency or any establishment in the legislative or judicial branches of the Federal Government, or any mixed ownership corporation (as defined in the Government Corporation Control Act) authorized to enter into an ECP Contract under this Agreement.

ECP Contract - A contract, in the form of Schedules issued hereunder, entered into by and between the Company and a Customer Agency. Such contracts are for the study, design, performance and implementation of an ECP and are subject to the terms and conditions contained in this Agreement.

Energy Conservation Measure ("ECM") - A specific measure intended and designed to provide energy savings, demand reduction, and/or other related cost savings or benefits in facilities.

Energy Conservation Project ("ECP") - A project to implement one or more ECMs, including all Work and services performed in connection with the detailed feasibility study, engineering and design, and construction and installation of ECMs at a particular facility or facilities and any other energy related services as specified in an ECP Contract. An ECP may include an energy-related project that results in energy conservation or demand reduction; and/or may include an energy related project that results in benefits to the Customer Agency other than energy conservation or demand reduction, such as operations and Maintenance cost savings, environmental benefits, etc.

Excluded Activity - The containment, detection, disposal, discharge, handling, removal, storage, transportation, treatment or use of Hazardous Materials except for those items specifically agreed to by the Company pursuant to Section E of this Agreement.

Facility Manager - Manager responsible for the operation of a Customer Agency facility or building.

GSA - General Services Administration.

Hazardous Materials - Any chemical, material or other substance defined or included in the definition of "hazardous materials," "hazardous substances," "hazardous wastes," or "toxic substances" under any Federal and local laws or regulations and shall also include asbestos in any form, urea formaldehyde foam insulation, equipment or fixtures containing polychlorinated biphenyl, petroleum hydrocarbons, ozone depleting refrigerants, fluorescent tubes, fluorescent magnetic core and coil ballasts and lead based paint.

Negotiated Price - The agreed price for performing a Schedule of an ECP Contract including any fees and amounts that may be agreed to by the Company and the Customer Agency which shall be specified in the ECP Contract.

Occupied Period - Hours during which a facility or building is occupied and used in the normal course of business.

Phase - One of four parts of the ECP: (1) Detailed Feasibility Study, (2) Engineering and Design, (3) Construction and Installation, or (4) Operations and Maintenance Training and Emergency Response Services. Each Phase will be implemented via the issuance of an ECP Contract Schedule executed between the Customer Agency and Company.

Project Cost - The sum of the Negotiated Prices for each Phase of an ECP performed by the Company. The Negotiated Price for each Phase of the ECP will be set forth in the Schedule executed prior to the performance of the Phase. Such prices may be modified during the course of performance of the Phase pursuant to the Changes clause and other clauses providing for adjustments in the Negotiated Price.

Schedule - The ECP Contract shall be implemented via Schedules which specify in a statement of work the specific Work and services to be performed by the Company and the Negotiated Price for that ECP Contract Schedule.

Subcontractor - Any corporation, partnership or individual hired directly by the Company, or acting as a subcontractor, to perform Work or service or provide a product under this Agreement and ECP Contracts hereunder.

Termination Amount - Any time prior to Acceptance, the amount to be paid by the Customer Agency to the Company for all costs incurred or to be incurred by the Company including finance costs, and any other fees and amounts that may be agreed to by the Company and the Customer Agency as set forth in the ECP Contract. A description of these costs shall be identified in an exhibit to each executed ECP Contract Schedule and stipulated as allowable.

Termination Schedule Amount - The amount to be established for each ECP Contract specifying the lump sum payment necessary, at any time during the contract period following Acceptance, for the complete repayment of the Project Cost including finance costs. A description of this amount shall be identified in a Termination Schedule attached to the ECP Contract Schedule C and stipulated as allowable.

Work - All labor, materials, tools, equipment, products, services, transportation and other items required for the completion of the ECP.

A.2. Scope of Agreement

A.2.A. General Requirements - This Agreement shall govern the terms and conditions under which the Company may provide services to Customer Agencies to identify and implement ECPs. ECP Contracts entered into under this Agreement shall be subject to the terms set forth herein. This Agreement does not obligate Customer Agencies to procure any such services from the Company to meet energy conservation requirements, nor does it obligate the Company to enter into ECP Contracts with Customer Agencies to provide any such services.

A.2.B. Agencies Covered by Agreement - All Federal Government Agencies and departments in the Company's service area are authorized to enter into ECP Contracts under this Agreement.

A.2.C. Scope of Services Offered by the Company - The Company offers the services necessary to identify and implement ECPs. Such services include, but are not be limited to: preliminary surveys; detailed feasibility studies; engineering and design; construction and installation; operations and maintenance training and emergency response services. The Company may also offer operations and maintenance training and emergency response services for energy related equipment, systems, and/or facilities which are not associated with ECPs implemented by the Company. All services shall be performed in accordance with this Agreement and the ECP Contracts executed hereunder.

A.4.G. Release of Information - The Customer Agency shall notify the Company in a timely manner whenever the Customer Agency receives a request for information under the Freedom of Information Act. regarding this Agreement or any associated ECP Contract.

Section B - ECP Contracting Process

B.1. Preliminary Survey

A Customer Agency may initiate the ECP contracting process by submitting a letter (in the form set forth at Appendix I hereto) to the Company requesting the Company to perform a Preliminary Survey of a specified facility or system. Following the receipt of the Preliminary Survey Request, the Company will conduct an on-site building investigation and evaluation of the facility to determine if any significant energy conservation opportunities exist and whether further detailed feasibility study is warranted. The amount of payment to the Company for the Preliminary Survey and ECM identification services will be defined on a specific project basis for those services that are beyond the services the Company typically provides free of charge to other customers.

The Preliminary Survey shall consist of an overview of a facility, or an energy-consuming system or component within a facility, conducted by a qualified representative of the Company. The Preliminary Survey will typically consist of a review of Customer Agency documentation, fuel use records, energy bills, operator interviews, and a field inspection. The Company will utilize the information gathered to identify energy conservation measures (ECMs) for the facility, system, or component.

Based upon the Preliminary Survey, the Company shall submit to the Customer Agency a Preliminary Survey Report. The Preliminary Survey Report will typically consist of an executive summary, a table of contents, and a narrative describing the facility, system or component within the facility, its operation, current energy use and cost, and possible modifications to the facility, system, or component which may result in a reduction of energy consumption, demand, and/or other related costs, or may result in other benefits to the Customer Agency.

B.1.A. ECP Contract Proposal - The Company shall submit with the Preliminary Survey Report, an ECP Contract Proposal setting forth a prioritized list of recommended ECMs and a preliminary estimate of total cost for implementing the ECP, including estimated detailed feasibility study, engineering and design, and construction and installation costs, and the estimated energy savings, provided in units of energy and energy cost.

B.1.A.1 Energy Conservation Measures (ECMs) - The Company may propose to the Customer Agency one or more ECMs to reduce the Customer Agency's energy consumption, demand, and/or other related costs; or to result in other benefits to the Customer Agency. An ECM may include the replacement, removal, modification, enhancement, upgrade, or new

installation of equipment. A measure which substitutes one energy source for another (e.g., natural gas in lieu of electricity), shall not be regarded as an ECM unless a net overall energy and/or cost reduction can be demonstrated, based upon current market energy prices. Examples of work which may be proposed as part of an ECM include, but are not limited to, the following:

- A. Interior and Exterior Lighting Replacement
- B. Lighting Control Improvements
- C. Motor Replacement with High Efficiency Motors
- D. Boiler Control Improvements
- E. Packaged Air Conditioning Unit in Replacement
- F. Cooling Tower Retrofits
- G. Economizer Installation
- H. Facility Management System Replacement/Alteration
- I. Occupancy Sensors
- J. LED Exit Sign Installation
- K. Fans and Pump Replacement or Impeller Trimming
- L. Chiller Retrofit/Replacement
- M. Upgrade of Natural Gas-Fired Boilers with New Controls (low NOx Burners)
- N. Steam Trap Maintenance and Replacement
- O. Insulation Installation
- P. Variable Speed Drive Utilization
- Q. Window Replacement
- R. Window Coverings and Awnings
- S. Reflective Solar Window Tinting
- T. Daylighting Controls
- U. Replacement and/or Conversion of Air Conditioning & Heating Units
- V. Addition of Liquid Refrigerant Pumps to Reciprocating Air-Conditioning Units
- W. Refrigeration Equipment Replacement with High Efficiency Units
- X. Transformer Replacement
- Y. Construction of New Cogeneration Facilities
- Z. Solar Domestic Hot Water Systems
- AA. Solar Air Preheating Systems
- BB. Weatherization
- CC. Fuel Cell Installation
- DD. Faucet Replacement (Infrared Sensors)
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- FF. Any other ECMs which reduce the Customer Agency's energy consumption, demand and/or other related costs, or result in other benefits to the Customer Agency.

B.2. ECP Contracts

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~~CONFIDENTIAL~~

DETERMINED TO BE AN ADMINISTRATIVE

Troutman Sanders LLP

MARKING INITIALS: M

DATE: 3/4/16

ATTORNEYS AT LAW

A Limited Liability Partnership

1300 "I" Street, N.W., Suite 500 East

Washington, DC 20005-3314

FACSIMILE TRANSMITTAL

SENDER'S DIRECT DIAL NO.

(202) 274-2945

FACSIMILE NO

(202) 274-2994

Date: Fri 09/25/98 02:23PM

To: Bill Antholus

Firm: The White House

Fax #: 456 9280

From: Thomas Jensen

Number of pages including this cover sheet = 02
If all pages are not received, please call (202) 274-2945

*** COMMENTS ***

The information which follows and is transmitted herewith is attorney/ client privileged, trade secret and/or confidential information intended only for the viewing and use of the individual recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that any review, use, communication, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal service or overnight delivery service at our expense. Thank you.

TROUTMAN SANDERS LLP

MEMORANDUM

TO: Bill Antholus
FROM: Tom Jensen
RE: Clearance Information
DATE: September 25, 1998

Here is clearance information for our meeting at 10:00 on the 30th. Please let me know what room the meeting will be in.

Robert P. Williams, II

DOB: (b)(6)

Social Security No.:

William Shapiro

DOB:

Social Security No.:

Thomas Philip Barletta

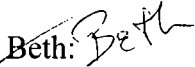
DOB:

Social Security No.:

Thomas C. Jensen

Mark C. Hall

September 21, 1998

Beth: 

Thanks for sending around your draft description of a request for information for proposals to provide district heating for Federal Government facilities. I look forward to discussing next week here in Washington next week.

Having had the weekend to think about it, I'd like to suggest drafting the introduction and project description differently. I'm concerned that by too closely focusing on heating in these introductions, we're losing the comprehensive nature of the project we're considering.

I would like to insert, at the beginning of the paper, the following graph:

"The federal government buildings in the District of Columbia region consume significant amounts of energy in the form of electricity and steam used for lighting, heating, and cooling, and used to power office and industrial equipment. This energy is generated at a number of power stations, both publicly and privately owned. The overlap of these facilities suggests that more cost-effective and energy-efficient configurations may exist for generating and using power across the entire system, particularly through using cogeneration or other efficiency or waste recovery mechanisms."

Then, please insert the underlined to your first paragraph.

Currently, for instance, most of the heating needs of Federal buildings are provided by steam plants owned and operated by the federal government. The General Services ... provides steam to legislative buildings from the Capitol Heating Plant. This steam currently costs more per unit than steam purchased in most U.S. facilities. In addition to the inefficiencies that may exist among these plants, electrical power is provided to these buildings by separate power sources. More effective use of currently existing sources may exist.

Finally, please change the "purpose" sentence to read as follows:

To ensure that federal government facilities in the Washington D.C. area provide for their heating needs in the most cost-effective and environmentally sensitive way possible, particularly when considered in the context of all energy used and emissions generated by those facilities.

Let me know if you have any problems with this redraft.

Thanks  Bill

DRAFT

Bill,

Here are the best estimates of global reductions of fuel, CO₂, NO_x and SO₂. Keep in mind that these are estimates based on data available in the public record without input from anyone who operates any of these facilities. Likewise, the reductions assume a fixed demand for steam and electricity and do not account for increased emissions that could occur if demand increases in the future. You might also note that additional reductions are realized as additional customers are added to the system.

Systems Served:	<u>GSA</u>	<u>GSA&Cap.</u>	<u>GSA&Pent.</u>	<u>GSA,Pent.&Cap.</u>
Fuel Saved (billion btu/year)	1,200	1,700	1,500	2,000
CO ₂ reduced (tons per year)	39,000	102,000	48,000	112,000
NO _x reduced (tons per year)	400	1,000	400	1,000
SO ₂ reduced (tons per year)	1,000	1,800	1,000	1,800

Please call me if you wish to discuss these numbers.



Mark Hall
Trigen Energy Corporation

DRAFT

Bill,

Here are the best estimates of global reductions of fuel, CO₂, NO_x and SO₂. Keep in mind that these are estimates based on data available in the public record without input from anyone who operates any of these facilities. Likewise, the reductions assume a fixed demand for steam and electricity and do not account for increased emissions that could occur if demand increases in the future. You might also note that additional reductions are realized as additional customers are added to the system.

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SO ₂ reduced (tons per year)	1,000	1,800	1,000	1,800

Please call me if you wish to discuss these numbers.



Mark Hall
Trigen Energy Corporation

**Mark C. Hall, Director
Government Affairs**

**Trigen Energy Corp.
One Water Street
White Plains, NY 10601
(914) 286-6600 ext 621
(914) 948-9157 FAX**



FAX Transmittal

TO: Bill Antholus

FAX: (202) 456-9280

DATE: September 1, 1998

PAGES: 2

Re: Trigen-Pepco Services National Capital Energy Project
Emissions Information

vgraham@ionvillage.com

ATTACHMENT 1
TO
GSA AREAWIDE UTILITIES CONTRACT GS-00P-90-BSD-0027
BETWEEN
GENERAL SERVICES ADMINISTRATION
AND
POTOMAC ELECTRIC POWER COMPANY

GENERAL SERVICES ADMINISTRATION
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GENERAL SERVICES ADMINISTRATION

ENERGY SERVICES AGREEMENT

WITH

POTOMAC ELECTRIC POWER COMPANY (PEPCO)

THIS ENERGY SERVICES AGREEMENT ("Agreement") is entered into by the United States of America, hereinafter called the "Government", acting by and through the authorized representative of the Administrator of General Services, and the Potomac Electric Power Company (PEPCO) (the "Company") (each a "Party" and collectively the "Parties"). The effective date of this Agreement is the date of execution by the Government as shown below.

RECITALS

WHEREAS, the Company is in the business of providing energy services for electric customers:

WHEREAS, the Government requires assistance with energy conservation and demand side management (DSM) at various facilities located within the Company's service area to comply with the Federal Government's Energy Policy Act (EPACT) and Executive Order 12902:

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NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, the Parties, intending to be legally bound, hereby agree as follows:

Section A - General Conditions.A.1.

DEFINITIONS - Capitalized terms in this Agreement shall have the following definitions:

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Energy Conservation Project ("ECP") - A project to implement one or more ECMs, including all Work and services performed in connection with the detailed feasibility study, engineering and design, and construction and installation of ECMs at a particular facility or facilities and any other energy related services as specified in an ECP Contract. An ECP may include an energy-related project that results in energy conservation or demand reduction; and/or may include an energy related project that results in benefits to the Customer Agency other than energy conservation or demand reduction, such as operations and Maintenance cost savings, environmental benefits, etc.

Excluded Activity - The containment, detection, disposal, discharge, handling, removal, storage, transportation, treatment or use of Hazardous Materials except for those items specifically agreed to by the Company pursuant to Section E of this Agreement.

Facility Manager - Manager responsible for the operation of a Customer Agency facility or building.

GSA - General Services Administration.

Hazardous Materials - Any chemical, material or other substance defined or included in the definition of "hazardous materials," "hazardous substances," "hazardous wastes," or "toxic substances" under any Federal and local laws or regulations and shall also include asbestos in any form, urea formaldehyde foam insulation, equipment or fixtures containing polychlorinated biphenyl, petroleum hydrocarbons, ozone depleting refrigerants, fluorescent tubes, fluorescent magnetic core and coil ballasts and lead based paint.

Negotiated Price - The agreed price for performing a Schedule of an ECP Contract including any fees and amounts that may be agreed to by the Company and the Customer Agency which shall be specified in the ECP Contract.

Occupied Period - Hours during which a facility or building is occupied and used in the normal course of business.

Phase - One of four parts of the ECP: (1) Detailed Feasibility Study, (2) Engineering and Design, (3) Construction and Installation, or (4) Operations and Maintenance Training and Emergency Response Services. Each Phase will be implemented via the issuance of an ECP Contract Schedule executed between the Customer Agency and Company.

Project Cost - The sum of the Negotiated Prices for each Phase of an ECP performed by the Company. The Negotiated Price for each Phase of the ECP will be set forth in the Schedule executed prior to the performance of the Phase. Such prices may be modified during the course of performance of the Phase pursuant to the Changes clause and other clauses providing for adjustments in the Negotiated Price.

Schedule - The ECP Contract shall be implemented via Schedules which specify in a statement of work the specific Work and services to be performed by the Company and the Negotiated Price for that ECP Contract Schedule.

Subcontractor - Any corporation, partnership or individual hired directly by the Company, or acting as a subcontractor, to perform Work or service or provide a product under this Agreement and ECP Contracts hereunder.

Termination Amount - Any time prior to Acceptance, the amount to be paid by the Customer Agency to the Company for all costs incurred or to be incurred by the Company including finance costs, and any other fees and amounts that may be agreed to by the Company and the Customer Agency as set forth in the ECP Contract. A description of these costs shall be identified in an exhibit to each executed ECP Contract Schedule and stipulated as allowable.

Termination Schedule Amount - The amount to be established for each ECP Contract specifying the lump sum payment necessary, at any time during the contract period following Acceptance, for the complete repayment of the Project Cost including finance costs. A description of this amount shall be identified in a Termination Schedule attached to the ECP Contract Schedule C and stipulated as allowable.

Work - All labor, materials, tools, equipment, products, services, transportation and other items required for the completion of the ECP.

A.2. Scope of Agreement

A.2.A. General Requirements - This Agreement shall govern the terms and conditions under which the Company may provide services to Customer Agencies to identify and implement ECPs. ECP Contracts entered into under this Agreement shall be subject to the terms set forth herein. This Agreement does not obligate Customer Agencies to procure any such services from the Company to meet energy conservation requirements, nor does it obligate the Company to enter into ECP Contracts with Customer Agencies to provide any such services.

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A.4.G. Release of Information - The Customer Agency shall notify the Company in a timely manner whenever the Customer Agency receives a request for information under the Freedom of Information Act regarding this Agreement or any associated ECP Contract.

Section B - ECP Contracting Process

B.1. Preliminary Survey

A Customer Agency may initiate the ECP contracting process by submitting a letter (in the form set forth at Appendix I hereto) to the Company requesting the Company to perform a Preliminary Survey of a specified facility or system. Following the receipt of the Preliminary Survey Request, the Company will conduct an on-site building investigation and evaluation of the facility to determine if any significant energy conservation opportunities exist and whether further detailed feasibility study is warranted. The amount of payment to the Company for the Preliminary Survey and ECM identification services will be defined on a specific project basis for those services that are beyond the services the Company typically provides free of charge to other customers.

The Preliminary Survey shall consist of an overview of a facility, or an energy-consuming system or component within a facility, conducted by a qualified representative of the Company. The Preliminary Survey will typically consist of a review of Customer Agency documentation, fuel use records, energy bills, operator interviews, and a field inspection. The Company will utilize the information gathered to identify energy conservation measures (ECMs) for the facility, system, or component.

Based upon the Preliminary Survey, the Company shall submit to the Customer Agency a Preliminary Survey Report. The Preliminary Survey Report will typically consist of an executive summary, a table of contents, and a narrative describing the facility, system or component within the facility, its operation, current energy use and cost, and possible modifications to the facility, system, or component which may result in a reduction of energy consumption, demand, and/or other related costs, or may result in other benefits to the Customer Agency.

B.1.A. ECP Contract Proposal - The Company shall submit with the Preliminary Survey Report, an ECP Contract Proposal setting forth a prioritized list of recommended ECMs and a preliminary estimate of total cost for implementing the ECP, including estimated detailed feasibility study, engineering and design, and construction and installation costs, and the estimated energy savings, provided in units of energy and energy cost.

B.1.A.1 Energy Conservation Measures (ECMs) - The Company may propose to the Customer Agency one or more ECMs to reduce the Customer Agency's energy consumption, demand, and/or other related costs; or to result in other benefits to the Customer Agency. An ECM may include the replacement, removal, modification, enhancement, upgrade, or new

installation of equipment. A measure which substitutes one energy source for another (e.g., natural gas in lieu of electricity), shall not be regarded as an ECM unless a net overall energy and/or cost reduction can be demonstrated, based upon current market energy prices. Examples of work which may be proposed as part of an ECM include, but are not limited to, the following:

- A. Interior and Exterior Lighting Replacement
- B. Lighting Control Improvements
- C. Motor Replacement with High Efficiency Motors
- D. Boiler Control Improvements
- E. Packaged Air Conditioning Unit in Replacement
- F. Cooling Tower Retrofits
- G. Economizer Installation
- H. Facility Management System Replacement/Alteration
- I. Occupancy Sensors
- J. LED Exit Sign Installation
- K. Fans and Pump Replacement or Impeller Trimming
- L. Chiller Retrofit/Replacement
- M. Upgrade of Natural Gas-Fired Boilers with New Controls (low NOx Burners)
- N. Steam Trap Maintenance and Replacement
- O. Insulation Installation
- P. Variable Speed Drive Utilization
- Q. Window Replacement
- R. Window Coverings and Awnings
- S. Reflective Solar Window Tinting
- T. Daylighting Controls
- U. Replacement and/or Conversion of Air Conditioning & Heating Units
- V. Addition of Liquid Refrigerant Pumps to Reciprocating Air-Conditioning Units
- W. Refrigeration Equipment Replacement with High Efficiency Units
- X. Transformer Replacement
- Y. Construction of New Cogeneration Facilities
- Z. Solar Domestic Hot Water Systems
- AA. Solar Air Preheating Systems
- BB. Weatherization
- CC. Fuel Cell Installation
- DD. Faucet Replacement (Infrared Sensors)
- EE. Water Conservation Device Installation
- FF. Any other ECMs which reduce the Customer Agency's energy consumption, demand and/or other related costs, or result in other benefits to the Customer Agency.

B.2. ECP Contracts

For any scope of Work (for any Phase) that the Customer Agency elects to pursue under this Agreement, the parties may enter into an ECP Contract by executing a Schedule which shall be mutually agreed upon prior to commencing the Work. The Company may assist the Customer Agency by providing financing on favorable terms considering the market, the nature of security

NEGOTIATED AREA WIDE CONTRACT
No. GS-OOP-90-BSD-0027
BETWEEN THE
UNITED STATES OF AMERICA
AND
POTOMAC ELECTRIC POWER COMPANY

MODIFICATION 1

Effective as of April 1, 1996, (Page 1 of this Modification), the Areawide Contract Number GS-OOP-90-BSD-0027, by and between the UNITED STATES OF AMERICA, acting through the Administrator of General Services and the POTOMAC ELECTRIC POWER COMPANY, is hereby modified.

MODIFICATION 1.A Article 1(d) of the existing contract is replaced, in its entirety, as follows:

(d) The term "service" means any commodities, financial incentives, goods and/or services generally available from the Contractor pursuant to its tariffs, rates, rules, regulations, riders, practices, or terms and conditions of service as may be amended, modified or supplemented by the Contractor and approved from time to time by the Commission, and the rules and regulations adopted by the Commission;

MODIFICATION 1.B Article 1 of the existing contract is modified by the addition of the following clause after Article 1(e)

(f) the term "energy management service" means any service intended to provide energy savings, demand reduction and/or financial incentives in Federal facilities [Reference Articles 16(f) and 16(g)].

(g) the term "energy conservation measure" means any specific measure intended to provide energy savings, demand reduction, and/or other related cost savings in Federal facilities.

(h) the term "Contractor" shall mean the Potomac Electric Power Company and/or any corporate successors thereto.

CONTRACT GS-OOP-90-BSD-0027
MODIFICATION 1: Page 3 of 5

MODIFICATION 1.C Article 2(a) of the existing contract is modified as follows:

the final sentence is modified to read after annexed hereto to read: as EXHIBIT "A" Authorization for Electric Service and/or EXHIBIT "B" Authorization for Energy Management Services which, by this reference, are incorporated into this areawide contract.

MODIFICATION 1.D Article 13(b) of the existing contract is replaced, in its entirety, as follows:

(b) Unless otherwise authorized by Public Law or Federal Regulation, nothing contained herein shall be construed as binding the Government to expend, in any one fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year in furtherance of the subject matter of the contract or to involve the Government in an obligation for the future expenditure of monies before an appropriation is made [Anti-Deficiency Act, 31 U.S.C. 1341(a)(1)].

MODIFICATION 1.E Article 15 of the existing contract is modified by the addition of the following clauses after Article 15(c):

(d) Energy Conservation Measures will not be normally considered unless a net overall energy usage or cost reduction can be demonstrated. Life-cycle cost analysis may be tested against the current Building-Life-Cycle Cost (BLCC) software program of the National Institute of Standards and Technology for validation.

(e) Unless otherwise mutually agreed to, the Contractor shall pass through to the Agency all warranties on equipment installed or provided by it or its subcontractors with the following representation:

POTOMAC ELECTRIC POWER COMPANY ACKNOWLEDGES THAT THE UNITED STATES OF AMERICA WILL OWN OR LEASE THE EQUIPMENT AND/OR MATERIALS BEING INSTALLED OR SUPPLIED HEREUNDER, AND, ACCORDINGLY, AGREES THAT ALL WARRANTIES SET FORTH HEREIN, OR OTHERWISE PROVIDED BY LAW IN FAVOR OF COMPANY SHALL INURE ALSO TO THE BENEFIT OF THE UNITED STATES AND THAT ALL CLAIMS ARISING FROM ANY BREACH OF SUCH WARRANTIES OR AS A RESULT OF DEFECTS IN OR REPAIRS TO SUCH EQUIPMENT OR SUPPLIES MAY BE ASSERTED AGAINST POTOMAC ELECTRIC POWER COMPANY OR MANUFACTURER DIRECTLY BY THE UNITED STATES.

2. AMENDMENT/MODIFICATION NO. MODIFICATION 1		3. EFFECTIVE DATE April 1, 1996	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY General Services Administration Public Utilities Division (PMU) Washington, DC.20405		7. ADMINISTERED BY (If other than Item 6)	CODE	

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Potomac Electric Power Company 1900 Pennsylvania Avenue NW Washington DC.20068		9A. AMENDMENT OF SOLICITATION NO.
		9B. DATED (SEE ITEM 11)
		10A. MODIFICATION OF CONTRACT/ORDER NO. GS-OOP-90-BSD-0027
		10B. DATED (SEE ITEM 13)
CODE	FACILITY CODE	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ 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 _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT 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 telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

☒	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 FAR 43.103(b).
☒	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Contract Administration - 40.U.S.C. 481(a)
☐	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 2 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Areawide contract for electric services in service areas of District of Columbia and adjoining areas of Maryland is modified to reflect energy management services as provided for under the rules and conditions of the respective regulatory commissions.

Modification consists of changes and/or additions to Articles 1(d,f,g,h), 2(a), 13(b), 15(d,e) and reformatted Exhibits A and B.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) William T. Torgerson - Sr. Vice President		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) V. W. OSTRANDER Director of Public Utilities, GSA	
15B. CONTRACTOR/OFFEROR Hellen Torgerson (Signature of person authorized to sign)	15C. DATE SIGNED 3/26/96	16B. UNITED STATES OF AMERICA BY [Signature] (Signature of Contracting Officer)	16C. DATE SIGNED 3/21/96

NEGOTIATED AREA WIDE CONTRACT
No. GS-00P-90-BSD-0027
BETWEEN THE
UNITED STATES OF AMERICA
AND
POTOMAC ELECTRIC POWER COMPANY

MODIFICATION 1

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MODIFICATION 1.A Article 1(d) of the existing contract is replaced, in its entirety, as follows:

(d) The term "service" means any commodities, financial incentives, goods and/or services generally available from the Contractor pursuant to its tariffs, rates, rules, regulations, riders, practices, or terms and conditions of service as may be amended, modified or supplemented by the Contractor and approved (to the extent required) from time to time by the Commission, and the rules and regulations adopted by the Commission;

MODIFICATION 1.B Article 1 of the existing contract is modified by the addition of the following clause after Article 1(e)

(f) the term "energy management service" means any service intended to provide energy savings, demand reduction and/or financial incentives in Federal facilities [Reference Articles 16(f) and 16(g)].

(g) the term "energy conservation measure" means any specific measure intended to provide energy savings, demand reduction, and/or other related cost savings in Federal facilities.

(h) the term "Contractor" shall mean the Potomac Electric Power Company and any corporate successors thereto.

CONTRACT GS-OOP-90-BSD-0027
MODIFICATION 1: Page 3 of 5

MODIFICATION 1.C Article 2(a) of the existing contract is modified as follows:

the final sentence is modified to read after annexed hereto to read: as **EXHIBIT "A"** Authorization for Electric Service and/or **EXHIBIT "B"** Authorization for Energy Management Services which, by this reference, are incorporated into this areawide contract.

MODIFICATION 1.D Article 13(b) of the existing contract is replaced, in its entirety, as follows:

(b) Unless otherwise authorized by Public Law or Federal Regulation, nothing contained herein shall be construed as binding the Government to expend, in any one fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year in furtherance of the subject matter of the contract or to involve the Government in an obligation for the future expenditure of monies before an appropriation is made [Anti-Deficiency Act, 31 U.S.C. 1341(a)(1)].

MODIFICATION 1.E Article 15 of the existing contract is modified by the addition of the following clauses after Article 15(c):

(d) Energy Conservation Measures will not be normally considered unless a net overall energy usage or cost reduction can be demonstrated. Life-cycle cost analysis may be tested against the current Building-Life-Cycle Cost (BLCC) software program of the National Institute of Standards and Technology for validation.

(e) Unless otherwise mutually agreed to, the Contractor shall pass through to the Agency all warranties on equipment installed or provided by it or its subcontractors with the following representation:

POTOMAC ELECTRIC POWER COMPANY ACKNOWLEDGES THAT THE UNITED STATES OF AMERICA WILL OWN OR LEASE THE EQUIPMENT AND/OR MATERIALS BEING INSTALLED OR SUPPLIED HEREUNDER, AND, ACCORDINGLY, AGREES THAT ALL WARRANTIES SET FORTH HEREIN, OR OTHERWISE PROVIDED BY LAW IN FAVOR OF COMPANY SHALL INURE ALSO TO THE BENEFIT OF THE UNITED STATES AND THAT ALL CLAIMS ARISING FROM ANY BREACH OF SUCH WARRANTIES OR AS A RESULT OF DEFECTS IN OR REPAIRS TO SUCH EQUIPMENT OR SUPPLIES MAY BE ASSERTED AGAINST POTOMAC ELECTRIC POWER COMPANY OR MANUFACTURER DIRECTLY BY THE UNITED STATES.

EXHIBIT "A"

MOD1:4/5

Contractor's ID NO. _____ (Optional)
Ordering Agency's ID _____ (Optional)

POTOMAC ELECTRIC POWER COMPANY
AUTHORIZATION FOR ELECTRIC SERVICE, CHANGE IN ELECTRIC SERVICE, OR
DISCONNECTION OF ELECTRIC SERVICE UNDER
CONTRACT NO. GS-OOP-90-BSD-0027

Ordering Agency: _____
Address: _____

Pursuant to Contract No. GS-OOP-90-BSD-0027 between the Contractor and the United States Government and subject to all the provisions thereof, service to the United States Government under such contract shall be rendered or modified as hereinafter stated. Contract Articles 2 and 4 shall be followed for the initiation of service under this contract.

PREMISES TO BE SERVED: _____
SERVICE ADDRESS: _____

NATURE OF SERVICE: ☐ Connect, ☐ Change, ☐ Disconnect, ☐ Continue Service, ☐ DSM Work,
☐ Line Extension, Alteration, Relocation, or Reinforcement, ☐ Special Facilities

OTHER TERMS AND CONDITIONS: _____
Attach any other relevant terms and conditions under which service will be provided.

POINT OF DELIVERY: _____

TERM OF SERVICE: From _____ through _____.

SERVICE HEREUNDER SHALL BE UNDER RATE SCHEDULE NO. _____*,
Hereafter amended or modified by the regulatory body having jurisdiction. (see article 5 of this contract.)

ESTIMATED ANNUAL ENERGY USAGE: _____ KWH, ESTIMATED DEMAND: _____ KW

ESTIMATED ANNUAL SERVICE COST: \$ _____
ESTIMATED CONNECTION/SPECIAL FACILITIES CHARGE: \$ _____ (if applicable)**

ACCOUNTING AND APPROPRIATION DATA FOR SERVICE: _____
FOR CONNECTION/SPECIAL FACILITIES CHARGE: _____

BILLS WILL BE RENDERED TO THE ORDERING AGENCY FOR PAYMENT AT THE FOLLOWING ADDRESS:
_____ in _____ copies.

The foregoing shall be effective upon the return of the fully executed original Authorization by the Contractor to the ordering Agency.

ACCEPTED:

POTOMAC ELECTRIC POWER COMPANY

(Ordering Agency)

By: _____
Authorized Signature
Title: _____
Date: _____

By: _____
Authorized Signature
Title: _____
Date: _____

* Include a reference to the applicable rate schedule, and attach a copy of such schedule.

** If necessary, attach and make part hereof supplemental agreements or sheets that cover required connection or extension charges and special facilities or service arrangements. (See Article 5 of this Contract for instructions.)

NOTE

A fully executed copy of this Authorization shall be transmitted by the ordering Agency to the Governmentwide Real Property Policy Utilities Division (PGU), General Services Administration, Washington, DC 20405.

EXHIBIT "B"

MOD1:5/5

Contractor's ID NO. _____ (Optional)
Ordering Agency's ID NO. _____ (Optional)

**POTOMAC ELECTRIC POWER COMPANY
AUTHORIZATION FOR ENERGY MANAGEMENT SERVICE
CONTRACT NO. GS-OOP-90-BSD-0027**

Ordering Agency: _____
Address: _____

Pursuant to Contract No. GS-OOP-90-BSD-0027 between the Contractor and the United States Government and subject to all the provisions thereof, service to the United States Government under such contract shall be rendered or modified as hereinafter stated. Contract Articles 2 and 4 shall be followed for the initiation of service under this contract.

PREMISES TO BE SERVED: _____

SERVICE ADDRESS: _____

NATURE OF SERVICE: ☐ Preliminary Energy Audit ☐ ECP Feasibility Study ☐ ECP Engineering & Design Study
☐ Energy Conservation Project (ECP) Installation ☐ Design Side Management (DSM) Project
☐ Other (See Remarks Below)

SERVICE HEREUNDER shall be provided consistent with the Contractor's applicable tariffs, rates, rules, regulations, riders, practices, and/or terms and conditions of service, as modified, amended or supplemented by the Contractor and approved, to the extent required, by the Commission, and in the event that specific approval is not required by the Commission, service hereunder shall be within the knowledge and/or supervision of the Commission. (See Article 5 of this contract.)

POINT OF DELIVERY: _____

ESTIMATED PROJECT COST: \$ _____

ACCOUNTING AND APPROPRIATION DATA: _____

LIST OF ATTACHMENTS:

☐ General Conditions	☐ Payment Provisions	☐ Special Requirements	☐ Economic Analysis
☐ Facility/Site Plans	☐ Historical Data	☐ Utility Usage History	☐ ECP Feasibility Study
☐ Design Drawings	☐ Design Specifications	☐ Certifications	☐ Commission Schedules

REMARKS:

ACCEPTED:

POTOMAC ELECTRIC POWER COMPANY

(Ordering Agency)

By: _____
Authorized Signature
Title: _____
Date: _____

By: _____
Authorized Signature
Title: _____
Date: _____

NOTE:

A fully executed copy of this Authorization shall be transmitted by the ordering Agency to the Governmentwide Real Property Policy Utilities Division (PGU), General Services Administration, Washington, DC 20405.



TRIGEN

Trigen Energy Corporation

A New York Stock Exchange Company

Mark C. Hall

Director of Government Affairs

One Water Street, White Plains, NY 10601-1009

(914) 286-6621

Fax (914) 948-9157/9190

mhall@trigen.com

Background Information on Proposal by Trigen and PEPCO Services to Construct and Operate the National Capital Energy Project¹

I. Summary

A team of private-sector energy developers, Trigen Energy Corporation and PEPCO Services, Inc., has proposed to build and operate a project to use surplus steam generated as the byproduct of the normal operations of an existing Washington-area electric power plant to meet the heating and cooling energy needs of federal government buildings in Washington D.C., including the White House.

Steam from the electric power plant would be delivered in a new pipeline to replace steam generated by the General Services Administration at its downtown steam plants. By allowing the federal government to shut down its own steam plants, this project would reduce carbon dioxide and other air emissions and cut government energy costs.

This project provides a number of unique benefits and attributes that could not be obtained from another entity or project. The project would be built with private funds.

II. Project Description

A. Overview

Most federal government buildings in Washington, D.C., including the White House and all principal agencies, are heated (and some are cooled) by steam supplied from the General Services Administration (GSA) through pipelines in underground tunnels that extend in a network from Georgetown to the foot of Capitol Hill. The steam is generated at two large boiler plants located in Georgetown and downtown Washington that are owned and operated by GSA.

Trigen Energy Corporation (Trigen) and PEPCO Services, Inc. (PEPCO Services), a subsidiary of Potomac Electric Power Company (PEPCO), have developed a project (the "National Capital Energy Project") which would substitute surplus steam from an existing PEPCO-owned power plant for steam that the GSA now generates itself. The Trigen-PEPCO Services team proposes to collect steam from PEPCO's Potomac River Electric Generating Station (in Alexandria) and deliver it via a new pipeline into the existing GSA pipeline distribution system.

The proposed change in steam source would allow GSA to cease most operations of its own plants. The project developers calculate that the federal government's fossil fuel consumption would drop by approximately 1.2 billion Btu's per year and would lower annual CO₂ emissions by approximately 39,000 tons. The developers believe also that the project would lead to net reductions in emissions of all regulated air pollutants.

¹ This document contains proprietary and business confidential information that is exempt from disclosure outside the Government and is to be used within the Government solely for purposes of evaluating this proposal.

The developers state that they can supply steam to GSA at a price that would be significantly lower than the costs incurred now by GSA and its customer agencies.

B. Description of Unique Features

The National Capital Energy Project presents a set of unique and valuable features, including:

- Unique and non-replicable surplus steam supply
- Regional air quality improvements
- Innovation in energy strategy
- Ease and speed of contracting
- Potential for expansion of service and benefits
- Cost savings to taxpayers
- Improved system reliability

Unique Surplus Steam Supply

PEPCO's Potomac River Generating Station is the only energy facility in the area with a supply of surplus steam of a volume adequate to replace the GSA steam boilers and located near enough to downtown-area customers to be economic.

The project developers are uniquely situated to provide this service because of their access to the steam supply from the PEPCO plant. Other private parties who might want to offer a substitute steam service to the federal government would have to build a large new power plant in the urban core of the Washington, D.C. area. This is a formidable, probably impassable hurdle, given the environmental, social, and other objections that would surely arise.

Regional Air Quality Improvements

The project developers calculate that the project would improve regional air quality in two ways. First, the project would essentially shut down two major pollution sources in downtown Washington, without requiring construction of any new energy facility in replacement. No significant changes in normal operations of PEPCO's plant are required. The elimination of unnecessary fuel-burning by GSA will result directly in reduced emissions of carbon dioxide and other pollutants. Second, the project proponents intend to install new, state-of-the-art NO_x and SO₂ emissions control equipment at the Potomac River plant. This improvement will further reduce regional pollution. No other proposal could result in as significant a regional reduction of carbon, NO_x and SO₂ emissions while also serving existing and incremental steam requirements for heating and cooling.

The project proponents estimate that the project's emission reductions will be as follows:

Fuel Saved	1,200 million Btu/year
CO ₂ reduced	39,000 tons per year
NO _x reduced	400 tons per year
SO ₂ reduced	1,000 tons per year

PEPCO has all necessary environmental permits for the Potomac River facility, and the few plant modifications required to implement the National Capital Energy Project would be minor and conform to all extant permitting requirements.

Innovation in energy strategy

The National Capital Energy Project would use sophisticated air pollution control and pipeline technologies. That said, the project's most prominent "innovation" would be its focus on the increased beneficial use of an existing energy source, rather than elimination of inefficiency in the consumption of energy. This project would show how certain existing electric power plants – and many new energy facilities – can and should also be used to supply steam heating and cooling to surrounding customers. This project would demonstrate the combination of environmental and economic benefits that can be achieved through the enhanced use of steam already being produced at an existing electric power plant.

Ease and Speed of Contracting

The project sponsors are able to negotiate contracts quickly with GSA. PEPCO has an "Areawide Utility Services Agreement" (including an "Energy Services" amendment) with the GSA. The agreement allows PEPCO to provide energy services to GSA and GSA's customer agencies in the District of Columbia, including the type of steam service contemplated here, on the basis of an expedited, non-competitive procurement. Similar Areawide Agreements have been used by utilities around the country to conduct similar projects on military bases and other government installations. In addition, both Pepco Services and Trigen are qualified energy savings performance contractors.

The project sponsors believe that all necessary agreements could be reached with GSA in a matter of weeks, presuming equal commitment from GSA. Project construction would require about 18 months.

Potential for expansion of service and benefits

The Potomac River plant creates enough steam that the National Capital Energy Project could serve not only the GSA but many additional large steam customers, as well. As circumstances permit, the project could be expanded to serve as the supply for the Pentagon's steam system, or the large steam system run by the Architect of the Capital that serves Legislative Branch facilities and other government installations on Capital Hill. The project could be expanded to serve private buildings, too. The project proponents intend to size project features with expansion in mind, meaning that the steam pipeline and other features will, initially, have significant surplus capacity.

The inclusion of additional customers will increase the environmental benefits of the project (each new customer would be able to stop operating its own boiler plant) and further decrease the cost of steam (the project's fixed capital costs can be spread over more customers).

Savings for Taxpayers

The project proponents believe that they will be able to sell steam to the GSA at a price considerably lower than the cost GSA incurs now to generate its own steam. The exact terms of a contract would be determined through negotiations with GSA, but the premise of savings is creditable because the project will rely on sale of what is now a non-commercialized byproduct of normal power plant operations. The project will be built entirely with private capital, and the sale price to the government would be guaranteed, eliminating current fuel market risks.

Improved System Reliability

The proposed project would improve the reliability of GSA's system by adding the steam supply line from the Potomac River Generating Station. The surplus thermal energy available from either one of the Potomac River station's two boilers serving the project would be ample to serve the entire normal demand of the GSA steam system.

The proposed project anticipates retaining GSA's main plant on a standby basis, but retiring GSA's secondary plant, located at the base of Rock Creek Parkway, near Georgetown. This valuable site could be restored to park-land conditions, providing additional public benefits to the region.

III. Other issues

A. National Security Considerations

Some advisors have questioned whether elimination of steam generation at GSA's own plants raises security concerns for the White House or other agencies. Project proponents have pointed to several things that render this concern moot.

First, the GSA central plant would remain available for use if needed, and would remain under the ownership of GSA. Second, steam service is no more or less a security issue than is electrical service. PEPCO supplies electricity to the GSA in Washington, D.C. PEPCO was the Pentagon's electricity supplier for many years, and still provides the facility with emergency back-up service. At no time has the primary supply of this vital service to the government been considered something that the government must provide itself. Similarly, Trigen reliably serves government buildings with steam in Boston, Philadelphia, Trenton, Baltimore, Kansas City, Tulsa and Oklahoma City. Third, the Department of Defense is actively privatizing operation and maintenance of similar steam and other utility systems on military bases around the country – without any adverse effects to national security.

Trigen and PEPCO have significant experience in supplying reliable energy services to the GSA. PEPCO has reliably served the energy needs of the Nation's capital for more than a century. Trigen has 12 operating district energy systems in North America, while the existing GSA steam system is the only steam system operated and maintained by GSA. Site specific security issues (e.g., building access, construction activities, and the like) can be dealt with through contracts and service agreements.

B. GSA Steam Plant Employees

The GSA steam plant employs approximately 100 people, down by almost half from employment levels earlier this decade. If the National Capital Energy Project is implemented, many of those employees would likely be retained in their current operations and maintenance roles, though as private sector employees. Others could be reassigned within GSA. In all other cases, if any, the project proponents have made it clear that they are prepared to take those financial measures needed to assure a uncontroversial, broadly satisfactory transition.

DETERMINED TO BE AN ADMINISTRATIVE
MARKING INITIALS: M DATE: 7/4/11
7012-10937

~~CONFIDENTIAL~~

Troutman Sanders LLP

ATTORNEYS AT LAW

A Limited Liability Partnership

1300 "I" Street, N.W., Suite 500 East

Washington, DC 20005-3314

FACSIMILE TRANSMITTAL

*1/Am
Trigger People
TS:11
TJ
Randy Steer
Linda Lance*

SENDER'S DIRECT DIAL NO.

(202) 274-2945

FACSIMILE NO

(202) 274-2994

Date: Tue 06/30/98 01:21PM
To: Jonathan Adashek
Firm: The White House -- Office of the Staff Secretary
Fax #: 456 2215
From: Thomas Jensen

Number of pages including this cover sheet = 04
If all pages are not received, please call (202) 274-2945

***** COMMENTS *****

Jonathan,

Thank you for distributing this to the EOP attendees. I'll send to G Interior, and DOE directly.

The information which follows and is transmitted herewith is attorney/ client privileged, trade secret and/or confidential information intended only for the viewing and use of the individual recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that any review, use, communication, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal service or overnight delivery service at our expense. Thank you.

Trigen-PEPCO Services National Capital Energy Project

Summary : Trigen Energy Corporation and PEPCO Services, Inc. are proposing to build and operate the Trigen-PEPCO Services National Capital Energy Project. This project will provide heating and cooling energy to federal facilities in Washington D.C., including the White House, reducing carbon and other air emissions and cutting energy costs.

Project Description

The President and Vice President, Members of Congress, and the overwhelming majority of America's citizens have expressed their desire to improve and protect the environment in ways that strengthen our economy. Cleaning the air over our cities – and preventing human-induced changes to our climate – are challenges that will test our economy's resilience and our willingness to innovate and try new ways of meeting society's needs for energy.

In the spirit of innovation, President Clinton has challenged energy professionals to find ways to cut greenhouse gas emissions without disrupting the economy. Trigen Energy Corporation (Trigen) and PEPCO Services, Inc. (PEPCO Services), a subsidiary of Potomac Electric Power Company (PEPCO), have responded by jointly developing the National Capital Energy Project, a proposal to collect steam from PEPCO's Potomac River Electric Generating Station and deliver it to federal government and other buildings in the Washington, D.C. area to be used for heating and cooling.

The Trigen-PEPCO Services National Capital Energy Project would supply steam to the federal government through the General Services Administration (GSA) as a substitute for steam that GSA now generates at two plants located in downtown Washington, D.C. and Georgetown.

This new approach would enable the federal government to cut fossil fuel consumption by approximately 1,224 billion btu's per year and lower CO₂ emissions by approximately 39,000 tons, while simultaneously lowering the government's energy costs. This project will improve air quality for the entire region, cutting emissions of all regulated air pollutants.

The Trigen-PEPCO Services joint venture plans to install a 5-mile buried steam supply line running northward from the Potomac River plant, crossing the Potomac River on the 14th Street or other nearby bridge, and interconnecting with the existing GSA system at the central power plant, near the U.S. Department of Agriculture headquarters. That system serves over 100 federal executive office buildings, including the White House, at numerous locations throughout the District of Columbia. Other customers and systems which could be added at a later time include the Pentagon, the Architect of the Capitol steam system, National Airport, local universities, and many individual office buildings, hotels and high-rise apartments. These facilities and buildings currently rely on their own boilers for heating and/or cooling, but could just as easily, and with less cost, take advantage of the proposed project.

The project will be built entirely with private capital.

The Trigen-Pepco Services National Capital Energy Project is an example of how economics and environmental sustainability can be aligned. From any perspective, this is a positive project that offers:

Leadership by Example: The White House will join 10 Downing Street in the U.K. in providing energy efficiency leadership for the world. Both the U.S. and U.K. national leaders will have their homes heated and lit by combined heat and power (CHP) systems.

Environmental Benefits: Heat from PEPCO's Potomac River electric generating station will be used to displace existing boilers in downtown Washington D.C. that are currently used only to produce heat. The elimination of unnecessary fuel-burning results in reduced emissions of carbon dioxide and other pollutants.

Economic Benefits: The government will realize annual savings in energy costs while reducing carbon emissions.

Advanced Technology: The project combines the use of proven technology with technological advances, including the replacement of pressure reducing valves with small backpressure steam turbines to produce electricity. Overall energy efficiency may be further improved through the installation of steam absorption chillers in customer buildings.

Fuel Flexibility: The project proves that a conventional, coal-fired electric generating plant can be used to efficiently provide electricity and heat while providing environmental benefits.

Reliability: The heat from either of the Potomac River station's two boilers serving the project can normally serve the entire demand of the GSA district steam system. One GSA steam plant will be retired but the GSA Central Plant will be maintained for backup.

Next Steps

This project can be accomplished under present law and procurement regulations. Trigen and PEPCO Services look forward to working closely with all involved government and private stakeholders. Our next steps include:

- Contracting with GSA to supply steam and to operate and maintain the existing steam distribution system;
- Acquiring approvals to install the buried steam pipe in National Park Service lands;
- Obtaining approvals to use a bridge to carry the steam line across the Potomac River;
- Outreach to all stakeholders in Virginia, Maryland, and the District of Columbia.

For additional information contact:

Ed Mayberry, President, PEPCO Services, Inc. (202) 739-0804

Mark Hall, Director of Government Affairs, Trigen Energy (914) 286-6600

Tom Jensen, Project Counsel, Troutman Sanders LLP (202) 274 2945.

The National Capital Energy Project
A Working Template for a Proposed Competitive Solicitation
(Not to be Cited or Quoted)

Proposal: Last October the President challenged the private sector to find ways to reduce emissions while strengthening our economy. An emerging theme within that topic is to determine how the Federal Government itself might work cooperatively with the private sector to improve overall energy efficiency within its operations throughout the United States generally, and within the District of Columbia more specifically. To secure a maximum energy savings and reductions of air and carbon emissions, the Federal Government, invites qualified private-sector developers and/or energy suppliers to submit proposals that will: (1) reduce overall energy consumption within the nation's capital while maintaining or enhancing energy services now provided; (2) lower the net cost of energy services to the Federal Government; (3) provide a net reduction in the emission criteria pollutants and greenhouse gases; and (4) maintain or improve the existing environmental quality of the nation's capital.

Background: For purposes of this solicitation, the service territory to be served by proposed energy efficiency improvements include the building energy consumption within the x-square mile area within Washington, DC plus the adjacent properties maintained and/or own by DOD, GSA and others. Within this complex, the Federal Government consumes xxx trillion Btus of energy at an annual cost of \$x,xxx million dollars. Of this amount, xx% of the energy consumed is produced by the government's own facilities, including GSA and DOD, with the balance provided by a variety of private suppliers. Based upon 199x data:

Energy Consumption Data for Solicitation Area				
	Steam (MMBtu)	Heat (MMBtu)	Electricity (MMBtu)	Expenditure (\$MM)
Coal				
Natural Gas				
Petroleum				
Other				
Total				

The government seeks one or more qualified proposals that will reduce the overall energy consumption by xx percent within the next 5 years. In addition, the government seeks to reduce the emissions of both air criteria pollutants and greenhouse gases. All proposals shall be submitted based upon the scope and format referenced below:

Authority to Act:

NEPA, EPCA, EPACT and Executive Orders 12759 and 12902

Anticipated Regulatory Permits and Issues:

Clean Air Act Amendments, Clean Water Act, etc.

Submission Procedures:

This solicitation is: (open-ended with competitive proposals evaluated as received); or
(competitive with all proposals to be received by date certain)

The USG retains the right of refusal for any proposal submitted as part of this solicitation.

The process of submission begins with a letter of intent that references the background and qualifications of a developer and that contains a general description of the proposed project being offered by the developer.

Once a letter of ^{interest}~~intent~~ is accepted by the solicitation team, the USG will provide a point of contact to assist developers with obtaining needed information as they work through the proposal process.

The criteria for evaluating the proposal will include:

- Background and experience of the developer team
- Financial capacity and plan to implement the project
- Cost-effectiveness of the project
- Level of energy savings and reduction in emissions
- Level of disruption of existing services
- Other

Submission Schedule:

Skip Laitner, EPA/OAP
o: (202) 564-9833
f: (202) 565-2147

The federal government buildings in the District of Columbia consumes an enormous amount of energy ~~from a number of different sources~~ to provide electricity, heat and cooling. This energy comes from a number of different sources.

Federal District Heating in Washington, DC

Introduction: Currently, most of the heating needs of Federal buildings in the District of Columbia (DC) are provided by steam plants owned and operated by the Federal government. The General Services Administration (GSA) provides steam to civilian agencies from the Central and West Heating Plants; the Department of Defense (DoD) provides steam from the Pentagon and Navy Yard Plants; and the Architect of the Capitol provides steam to legislative buildings from the Capitol Heating Plant. In addition to these ~~on-site~~ ^{on-site} ~~plants~~ ^{plants} that may exist anywhere, ~~electrical power is provided to other buildings by a separate power source.~~ ^{electrical power is provided to other buildings by a separate power source.}

Purpose: Are Federally owned and operated heating plants in DC the best way to provide for the heating needs of Federal buildings?

Criteria: The best solution to DC Federal buildings heating requirements will be evaluated using the following criteria (in order of importance), assuming the system currently meets or exceeds current Federal standards for reliability, security, and maintenance:

- Lowest cost: The goal is to obtain the lowest ^{overall} energy bill for the Federal community.
- Lowest energy consumption: The goal is to reduce overall energy consumption in Federal facilities in meeting mandated goals.
- Lowest local air pollution: The goal is to ensure that the emissions of pollutants are as low as possible across all Federal government facility energy sources.
- Lowest carbon emissions: The goal is to significantly reduce carbon emissions in the provision of energy for Federal facilities.
- Innovation: The goal is to promote innovative technologies, such as co-generation, and to help make these technologies commercially viable.

The next step is to determine the answers to the following questions:

Is the provision of energy for heating a commercial service, which can be provided by the private sector?

If subject to private provision, is it currently within any existing contractual authority to provide these services?

If not, what range of private contractors would be capable of providing these services?

Which formal or informal processes are available to us to determine which private contractor(s) should perform these services?

TROUTMAN SANDERS LLP

A T T O R N E Y S A T L A W
A LIMITED LIABILITY PARTNERSHIP

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TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2917
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202-274-2945

September 15, 1998

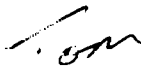
Bill Antholus
White House Climate Change Task Force
227 Old Executive Office Bldg.
Washington, DC 20503

RE: Attached White Paper

Dear Bill:

Please substitute this version for the version delivered earlier today. This version includes legalistic mumbo jumbo in a footnote that has no effect on the substance but is important in these circumstances.

With best regards,



Tom Jensen

Background Information on Proposal by Trigen and PEPCO Services to Construct and Operate the National Capital Energy Project¹

I. Summary

A team of private-sector energy developers, Trigen Energy Corporation and PEPCO Services, Inc., has proposed to build and operate a project to use surplus steam generated as the byproduct of the normal operations of an existing Washington-area electric power plant to meet the heating and cooling energy needs of federal government buildings in Washington D.C., including the White House.

Steam from the electric power plant would be delivered in a new pipeline to replace steam generated by the General Services Administration at its downtown steam plants. By allowing the federal government to shut down its own steam plants, this project would reduce carbon dioxide and other air emissions and cut government energy costs.

This project provides a number of unique benefits and attributes that could not be obtained from another entity or project. The project would be built with private funds.

II. Project Description

A. Overview

Most federal government buildings in Washington, D.C., including the White House and all principal agencies, are heated (and some are cooled) by steam supplied from the General Services Administration (GSA) through pipelines in underground tunnels that extend in a network from Georgetown to the foot of Capitol Hill. The steam is generated at two large boiler plants located in Georgetown and downtown Washington that are owned and operated by GSA.

Trigen Energy Corporation (Trigen) and PEPCO Services, Inc. (PEPCO Services), a subsidiary of Potomac Electric Power Company (PEPCO), have developed a project (the “National Capital Energy Project”) which would substitute surplus steam from an existing PEPCO-owned power plant for steam that the GSA now generates itself. The Trigen-PEPCO Services team proposes to collect steam from PEPCO’s Potomac River Electric Generating Station (in Alexandria) and deliver it via a new pipeline into the existing GSA pipeline distribution system.

The proposed change in steam source would allow GSA to cease most operations of its own plants. The project developers calculate that the federal government’s fossil fuel consumption would drop by approximately 1.2 billion Btu’s per year and would lower annual CO₂ emissions by approximately 39,000 tons. The developers believe also that the project would lead to net reductions in emissions of all regulated air pollutants.

¹ This document contains proprietary and business confidential information that is exempt from disclosure outside the Government and is to be used within the Government solely for purposes of evaluating this proposal.

The developers state that they can supply steam to GSA at a price that would be significantly lower than the costs incurred now by GSA and its customer agencies.

B. Description of Unique Features

The National Capital Energy Project presents a set of unique and valuable features, including:

- Unique and non-replicable surplus steam supply
- Regional air quality improvements
- Innovation in energy strategy
- Ease and speed of contracting
- Potential for expansion of service and benefits
- Cost savings to taxpayers
- Improved system reliability

Unique Surplus Steam Supply

PEPCO's Potomac River Generating Station is the only energy facility in the area with a supply of surplus steam of a volume adequate to replace the GSA steam boilers and located near enough to downtown-area customers to be economic.

The project developers are uniquely situated to provide this service because of their access to the steam supply from the PEPCO plant. Other private parties who might want to offer a substitute steam service to the federal government would have to build a large new power plant in the urban core of the Washington, D.C. area. This is a formidable, probably impassable hurdle, given the environmental, social, and other objections that would surely arise.

Regional Air Quality Improvements

The project developers calculate that the project would improve regional air quality in two ways. First, the project would essentially shut down two major pollution sources in downtown Washington, without requiring construction of any new energy facility in replacement. No significant changes in normal operations of PEPCO's plant are required. The elimination of unnecessary fuel-burning by GSA will result directly in reduced emissions of carbon dioxide and other pollutants. Second, the project proponents intend to install new, state-of-the-art NO_x and SO₂ emissions control equipment at the Potomac River plant. This improvement will further reduce regional pollution. No other proposal could result in as significant a regional reduction of carbon, NO_x and SO₂ emissions while also serving existing and incremental steam requirements for heating and cooling.

The project proponents estimate that the project's emission reductions will be as follows:

Fuel Saved	1,200 million Btu/year
CO ₂ reduced	39,000 tons per year
NO _x reduced	400 tons per year
SO ₂ reduced	1,000 tons per year

PEPCO has all necessary environmental permits for the Potomac River facility, and the few plant modifications required to implement the National Capital Energy Project would be minor and conform to all extant permitting requirements.

Innovation in energy strategy

The National Capital Energy Project would use sophisticated air pollution control and pipeline technologies. That said, the project's most prominent "innovation" would be its focus on the increased beneficial use of an existing energy source, rather than elimination of inefficiency in the consumption of energy. This project would show how certain existing electric power plants – and many new energy facilities – can and should also be used to supply steam heating and cooling to surrounding customers. This project would demonstrate the combination of environmental and economic benefits that can be achieved through the enhanced use of steam already being produced at an existing electric power plant.

Ease and Speed of Contracting

The project sponsors are able to negotiate contracts quickly with GSA. PEPCO has an "Areawide Utility Services Agreement" (including an "Energy Services" amendment) with the GSA. The agreement allows PEPCO to provide energy services to GSA and GSA's customer agencies in the District of Columbia, including the type of steam service contemplated here, on the basis of an expedited, non-competitive procurement. Similar Areawide Agreements have been used by utilities around the country to conduct similar projects on military bases and other government installations. In addition, both Pepco Services and Trigen are qualified energy savings performance contractors.

The project sponsors believe that all necessary agreements could be reached with GSA in a matter of weeks, presuming equal commitment from GSA. Project construction would require about 18 months.

Potential for expansion of service and benefits

The Potomac River plant creates enough steam that the National Capital Energy Project could serve not only the GSA but many additional large steam customers, as well. As circumstances permit, the project could be expanded to serve as the supply for the Pentagon's steam system, or the large steam system run by the Architect of the Capital that serves Legislative Branch facilities and other government installations on Capital Hill. The project could be expanded to serve private buildings, too. The project proponents intend to size project features with expansion in mind, meaning that the steam pipeline and other features will, initially, have significant surplus capacity.

The inclusion of additional customers will increase the environmental benefits of the project (each new customer would be able to stop operating its own boiler plant) and further decrease the cost of steam (the project's fixed capital costs can be spread over more customers).

Savings for Taxpayers

The project proponents believe that they will be able to sell steam to the GSA at a price considerably lower than the cost GSA incurs now to generate its own steam. The exact terms of a contract would be determined through negotiations with GSA, but the premise of savings is creditable because the project will rely on sale of what is now a non-commercialized byproduct of normal power plant operations. The project will be built entirely with private capital, and the sale price to the government would be guaranteed, eliminating current fuel market risks.

Improved System Reliability

The proposed project would improve the reliability of GSA's system by adding the steam supply line from the Potomac River Generating Station. The surplus thermal energy available from either one of the Potomac River station's two boilers serving the project would be ample to serve the entire normal demand of the GSA steam system.

The proposed project anticipates retaining GSA's main plant on a standby basis, but retiring GSA's secondary plant, located at the base of Rock Creek Parkway, near Georgetown. This valuable site could be restored to park-land conditions, providing additional public benefits to the region.

III. Other issues

A. National Security Considerations

Some advisors have questioned whether elimination of steam generation at GSA's own plants raises security concerns for the White House or other agencies. Project proponents have pointed to several things that render this concern moot.

First, the GSA central plant would remain available for use if needed, and would remain under the ownership of GSA. Second, steam service is no more or less a security issue than is electrical service. PEPCO supplies electricity to the GSA in Washington, D.C. PEPCO was the Pentagon's electricity supplier for many years, and still provides the facility with emergency back-up service. At no time has the primary supply of this vital service to the government been considered something that the government must provide itself. Similarly, Trigen reliably serves government buildings with steam in Boston, Philadelphia, Trenton, Baltimore, Kansas City, Tulsa and Oklahoma City. Third, the Department of Defense is actively privatizing operation and maintenance of similar steam and other utility systems on military bases around the country – without any adverse effects to national security.

Trigen and PEPCO have significant experience in supplying reliable energy services to the GSA. PEPCO has reliably served the energy needs of the Nation's capital for more than a century. Trigen has 12 operating district energy systems in North America, while the existing GSA steam system is the only steam system operated and maintained by GSA. Site specific security issues (e.g., building access, construction activities, and the like) can be dealt with through contracts and service agreements.

B. GSA Steam Plant Employees

The GSA steam plant employs approximately 100 people, down by almost half from employment levels earlier this decade. If the National Capital Energy Project is implemented, many of those employees would likely be retained in their current operations and maintenance roles, though as private sector employees. Others could be reassigned within GSA. In all other cases, if any, the project proponents have made it clear that they are prepared to take those financial measures needed to assure a uncontroversial, broadly satisfactory transition.

Key Features: Trigen-Pepco Services National Capital Energy Project

Overview: The White House, Old Executive Office Building, and most Federal Government buildings in Washington, DC are heated (and some are cooled) by steam supplied from the General Services Administration ("GSA"). GSA delivers steam through pipelines in underground tunnels that extend in a network from Georgetown to the foot of Capitol Hill. GSA makes steam at two large boiler plants – one in downtown Washington, the other in Georgetown.

Two private companies, Trigen Energy Corporation and Pepco Services Inc., have jointly developed a project (the "National Capital Energy Project"), which would substitute surplus steam from an existing, efficiently operating Pepco-owned power plant for the steam that GSA makes. Functionally, the Trigen-Pepco Services team proposes to collect steam from Pepco's Potomac River plant (in Alexandria) and deliver it via a new pipeline into the existing GSA pipeline system.

The GSA plants cost about \$23-28 million each year to run. They are relatively clean, yet because of their size, location, and operational patterns, they are significant (and the Federal Government's largest) sources of air pollution and greenhouse gas emissions in the Washington region. There is no other existing power plant in the region that could supply substitute steam into the GSA system. GSA has authority and discretion to procure the offered services from the Trigen-Pepco Services team.

Congress operates a steam plant and pipeline system similar to GSA's that could, if Congress chose to do so, be incorporated into the overall system, cutting Congress' energy costs, freeing-up valuable land, and further improving the area's air quality.

Cutting Energy Costs: The project will cut an estimated \$2-3 million from the Federal Government's annual energy costs in Washington. The actual savings will increase every time a large new customer (e.g., the Capitol plant, or new convention center) joins the system, because fixed costs will be spread more broadly. No new government expenditures would be required.

Cleaning up the Capital Region's Air: The project will reduce emissions of all regulated pollutants both in downtown DC and at Pepco's power plant in Alexandria, significantly benefiting regional air quality. Each new customer added to the system will cause additional pollution reductions.

Stimulating DC's Economy: The project will offer a new, competitive energy service in DC, giving government and business an additional choice for heating and cooling – thereby helping make DC more attractive to development. The system will serve DC government – cutting its costs. It will also allow removal of the anachronistic government power plant in Rock Creek Park, near Georgetown, permitting new more appropriate public uses of the site.

Reducing Greenhouse Gases: The project will shut down the federal government's largest regional source of greenhouse gas emissions.

GSA's view of viability under current contract?

Crivella: pepco proposal raised a number of issues.

- Primary concern: services don't really fall within original area-wide authority.
- Contract was modified; GSA lawyers were concerned about whether the modification was allowable within the scope of the contract.
- GSA will get back to us on whether it fits within the modification.

If not viable, what procedurally do we need to do to make a decision on RFI?

- Need to approach architect of the capitol before hand.
- NEC, CEQ, Todd, COS, DOE, EPA, raised in NEC meetings as an agenda item that we're moving ahead on. (GSA would need to brief congressional, public, labor)
- RFI: put into the Commerce Business Daily, allowing 3 weeks to a month to respond, submitting thier comments back to a GSA contracting officer.
- GSA and EPA will pull together current specs on emissions, energy use, including existing permits.
- Product: Industry will respond with feedback on what their recommendation would be best alternative for the government to reduce area wide energy production.

If there are more than one reasonably competitive demonstrations of interest.

- We would need to consider the various suggestions (particularly if this include dispensing with current assetts) and then draft an RFP (request for proposals).
- USG would then need to review any other extant issues.

A-76? Legal steps needed? Political steps needed?

- GSA needs to determine if A-76 happens in parallel or sequentially.
- GSA will outline steps for both a uncontested and contested A-76 process.
- Contested process. Once RFI proposals come in, we would then need to identify if federal employees are to be displaced. We would need to complete the comparison study to see whether the businesses could compete with federal employees. Could take a year or more.