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**CONTRACTS
AND
PROCUREMENTS**



D.C. OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

JULY 1988

**ALAN S. WINTER
ADMINISTRATOR**

Property Of:
District of Columbia Government
Office of Contracting and Procurement
Office of Procurement Administration
441 4th Street, NW, Suite 700S
Washington, DC 20001
(202) 727-0252
Book Number: 0306

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS

TITLE 27

CONTRACTS AND PROCUREMENTS

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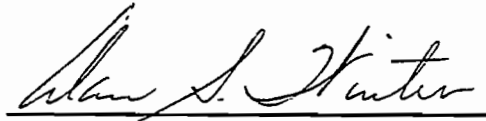
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CERTIFICATE

This document certifies, pursuant to §3(c) of the District of Columbia Documents Act, D.C. Law 2-153, D.C. Code §1-1612(3) (1981), that the text of the rules compiled or codified in this title have been compared with the original text of rules duly promulgated, filed and published in accordance with law and that the text has been found to be correct and complete.

Signed this 7th day of July, 1988

A handwritten signature in cursive script, reading "Alan S. Winter", is written over a horizontal line.

Alan S. Winter
Administrator

FOREWORD

The *District of Columbia Municipal Regulations* is the official code of the permanent rules and statements of general applicability and legal effect promulgated by Executive departments and agencies and by independent entities of the Government of the District of Columbia.

The code is currently divided into twenty-five (25) titles; however, as more agencies enact comprehensive rules embracing new topics, the number of titles will undoubtedly increase.

LEGAL STATUS

The publication of any document within a volume of the *District of Columbia Municipal Regulations* creates a rebuttable presumption that the document was duly issued, prescribed, adopted or enacted and that all requirements of Title III of the District of Columbia Administrative Procedure Act were met.

CITATION

Each title of this code is divided into chapters. Each chapter is further divided into sections and each section into subsections. In all cases, it is the subsection (including its paragraphs and subparagraphs) which contains the text of the document.

To cite a particular provision within the code, indicate the title number, the code abbreviation "DCMR," the subsection, and the date.

Example: 5 DCMR §2401.3 (1987)

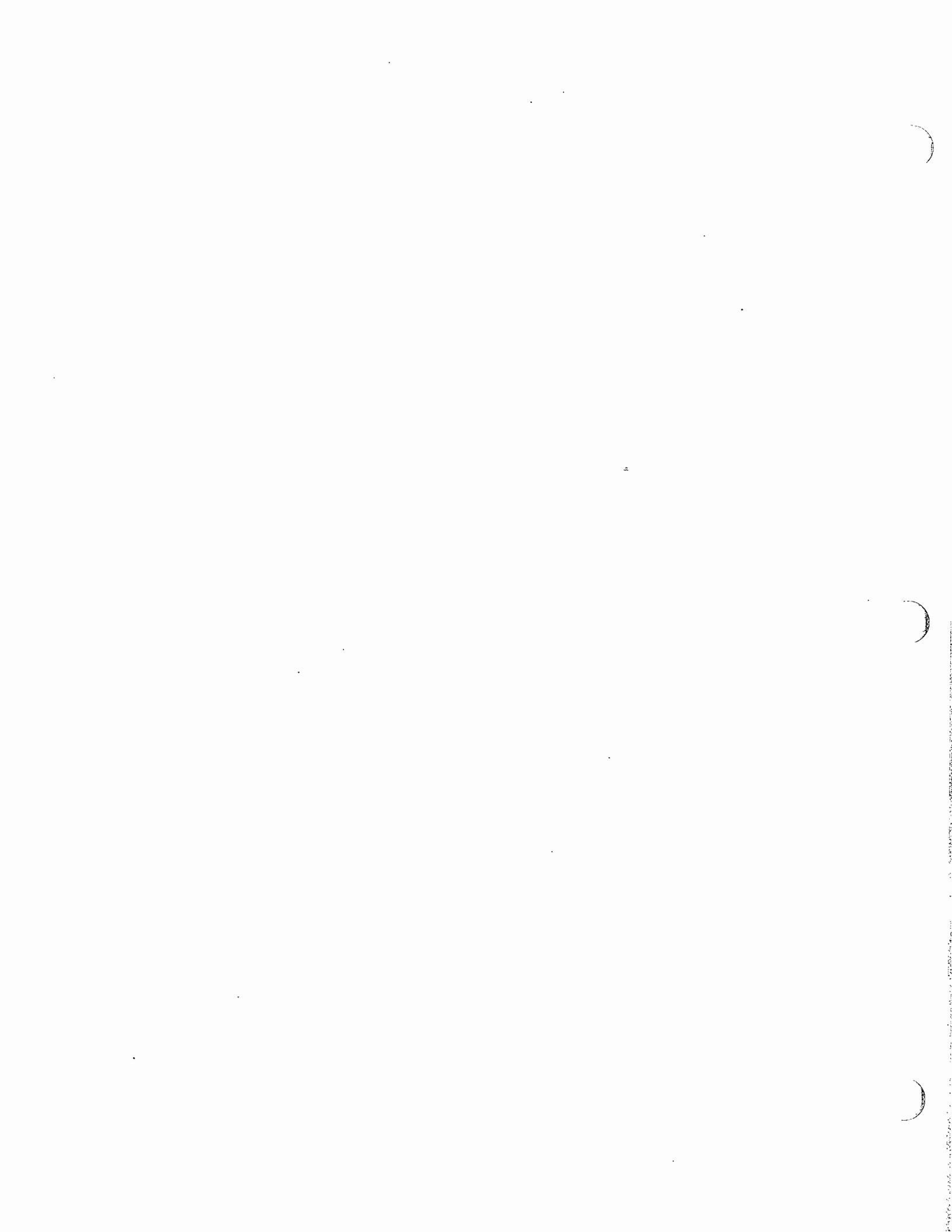
SUPPLEMENTS

The *District of Columbia Register* is the official supplement to the code. To ensure that one has the latest version of all duly published rules, one should consult the "List of Regulations Amended" appearing in the "Notices, Opinions, and Orders" section of the first *D.C. Register* of each month.

INQUIRIES

Requests for interpretations, explanations or summaries of any regulation in this volume should be addressed to the issuing agency. Sales requests and requests for reference assistance or assistance involving editing procedures may be addressed to the Office of Documents and Administrative Issuances, District Building, Suite 406, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004, Telephone (202) 727-5090.

Alan S. Winter
Administrator



DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS

TITLE 27 CONTRACTS AND PROCUREMENT

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100 **GENERAL PROVISIONS**

- 100.1 The Board shall function through panels as designated by the Chairperson; Provided, however, that the Board may function through the Chairperson or another law member to the extent provided in chapters 1 and 2 of this title.
- 100.2 The Chairperson shall assign members to panels of the Board and shall assign cases to panels for hearing and decision.
- 100.3 The Chairperson may, from time to time, designate another law member of the Board to perform with respect to particular cases any specified functions which by these rules are required or permitted to be performed by the Chairperson alone.
- 100.4 The Chairperson may designate another law member of the Board to serve as Acting Chairperson who, for the period of such designation, may exercise all authorities and perform all functions which under these rules may be exercised or performed by the Chairperson except that he or she may not designate an acting chairperson.
- 100.5 The Chairperson, acting alone may take any action which these rules authorize or require the Board to take, and any such action taken by the Chairperson, including the making of orders, shall be deemed the action or order of the Board; Provided, however, that the Chairperson acting alone may not make any decision which constitutes a final disposition of any appeal or part thereof except pursuant to stipulation of the parties.

- 100.6 Any party adversely affected by any action taken by the Chairperson pursuant to §100.5 who has not stipulated with respect thereto shall be entitled to a reconsideration by the Board, if, within ten (10) days after the Chairperson has transmitted to the party a copy of the order or other notice of the action taken by the Chairperson, the party files with the Board a motion for reconsideration setting forth the grounds therefor. Every motion shall be acted upon by the Board.
- 100.7 The Office of the Board is in Room 313, Superior Court, Building D, 451 Indiana Street, N.W., Washington, D.C. 20001. The telephone of the Board is (202) 727-6597.
- 100.8 The Office of the Board shall be open each day, except Saturdays, Sundays, and legal holidays, from 9:00 A.M. to 5:00 P.M.

AUTHORITY: Unless otherwise noted, the authority for the chapter is An Act approved July 1, 1902, 32 Stat. 591, ch. 1352, D.C. Code §1-331 (1981), and Part VI C. of Organization Order No. 9 issued July 6, 1968 in C.O. 68-399.

SOURCE: 36 DCRR §§1.2, 1.3, 2.1 and 2.2, DCR Sp. Ed. at 2 (August 30, 1970); as amended by Final Rulemaking published at 30 DCR 4065 (August 12, 1983); as further amended by Final Rulemaking published at 33 DCR 24 (January 3, 1986).

101 OFFICE OF THE CLERK

- 101.1 The Clerk to the Board shall maintain a docket of all appeals filed with the Board. Each appeal shall be assigned a number in the order of filing. All proceedings in an appeal will be indicated by appropriate docket entries.
- 101.2 The Clerk to the Board shall maintain a public file of the Rules of the Board, of all final decisions of the Board with the related findings of fact and conclusions of law or opinion, and of all final orders of the Board.
- 101.3 The files described in §101.2, the docket book, and the calendars of the Board shall be available for public inspection in the offices of the Board.
- 101.4 Upon request, the Clerk to the Board shall furnish the names and positions of all members of the Board, and of the individuals comprising the panel in any particular case.

SOURCE: 36 DCRR §§2.3, 2.5(b), 2.6, and 1.2(b), DCR Sp. Ed. at 2-5 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24 (January 3, 1986).

102 NOTICE OF APPEAL

- 102.1 An appeal shall be made by filing, either with the contracting officer from whose decision the appeal is taken or with the Board, an original and five (5) copies of a written notice of appeal. A notice of appeal will not be denied filing because the required number of copies does not accompany the original, but the proceedings provided by §103.1 shall be delayed until the copies have been filed with the Board.
- 102.2 The notice of appeal shall be filed within the time specified in the contract or prescribed by law; Provided, that if no time is specified or prescribed, within thirty (30) days from the date of the decision or action complained of in the notice of appeal.

- 102.3 A notice of appeal shall indicate the following information:
- (a) That an appeal is intended;
 - (b) Identification of the contract, preferably by contract number;
 - (c) The decision or action from which the appeal is taken; and
 - (d) The name of the person who rendered the decision or took the action from which the appeal is taken.
- 102.4 The complaint, pursuant to §104, may be filed in lieu of a notice of appeal; Provided, that the complaint shall be filed within the time, and with the same number of copies, required for the notice of appeal.
- 102.5 The notice of appeal shall be signed personally by the appellant (contractor appealing) or by an officer of an appellant corporation or member of an appellant partnership, or by the appellant's attorney.
- 102.6 A notice of appeal shall be considered filed when actually received by the contracting officer or by the Board.
- 102.7 When a notice of appeal in any form has been received by the contracting officer from whose decision the appeal is taken, he or she shall endorse on the notice of appeal the date and manner of receipt. In the event it has been received by mail the contracting officer shall also endorse the date of mailing as shown by postmark and attach the envelope in which received, and promptly forward the notice of appeal to the Board.

SOURCE: 36 DCRR §§6.1 through 6.5, DCR Sp. Ed. at 9 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24 (January 3, 1986).

103 APPEAL FILE

- 103.1 Upon receipt of the notice of appeal the Board shall promptly advise the appellant, counsel for the Government, and the contracting officer of its receipt. Within a reasonable time, not to exceed 30 days, thereafter the contracting officer shall compile and transmit to the Board copies of all documents pertinent to the appeal, including the following:
- (a) The findings of fact and the decision from which the appeal is taken;
 - (b) True copies of the contract and pertinent plans, specifications, addenda, amendments, and change orders;
 - (c) Correspondence between the parties and other data material to the appeal;
 - (d) Transcripts of any testimony taken, and notes or minutes of with the matter in dispute; and
 - (e) Any additional information as the contracting officer may consider material, or as may be designated by the Board.

- 103.2 The documents transmitted to the Board by the contracting officer pursuant to §103.1 shall be known as the Appeal File and shall be available for inspection by the parties at the offices of the Board. Prior arrangements for inspection of the file shall be made with the Clerk to the Board.
- 103.3 The Appeal File shall not contain confidential intradepartmental or interdepartmental correspondence or documents or information of a classified nature. Material documents of confidential or classified nature shall be forwarded separately to the Assistant Corporation Counsel assigned to represent the Government.
- 103.4 Any document transmitted to the Board pursuant to §103.1 may, after ten (10) days notice to the parties following filing of photographic copies thereof, be withdrawn by the contracting officer.
- 103.5 Documents contained in the appeal file shall be considered, without further action by the parties, as part of the record upon which the Board will render its decision, except for those as to which an objection has been sustained. Objections shall be made in advance of the hearing or of settling the record in the event there is no hearing on the appeal.
- 103.6 Within thirty (30) days after filing by the contracting officer of the Appeal File documents, or within such time as the Board may allow, the appellant may file with the Board for inclusion in the Appeal File, documents relevant to the appeal that have not been submitted by the Government, and furnish a copy of the document to Government counsel.
- 103.7 The Board may, at any time, on its own initiative request a contracting officer to supplement the appeal file with specified documents and shall in each instance notify the parties. Unless objection is filed with the Board within five (5) days from the date of the notice, objections to the inclusion of the documents in the appeal file and record of the case shall be deemed waived.
- 103.8 The Board may postpone or dispense with the submission of any or all Appeal File documents.

SOURCE: 36 DCRR §§6.6, 6.7, and 6.9(b), DCR Sp. Ed. at 10, 11 (August 30, 1970); and as amended by Final Rulemaking published at 33 DCR 24 (January 3, 1986).

104 COMPLAINT

- 104.1 Within thirty (30) days after a notice of appeal has been docketed with the Board, the appellant shall file with the Board an original and three (3) copies of a complaint.
- 104.2 The complaint shall set forth simple, concise and direct statements of each of appellant's claims showing that he or she is entitled to relief, and statements of the relief to which appellant deems himself or herself entitled including the dollar amount of each claim.
- 104.3 Each claim shall be separately identified and shall be stated with as much particularity as possible. Documentary evidence in support of claims may be filed as exhibits to the complaint.

104.4 No particular form shall be required. If a complaint is not received within thirty (30) days, the appellant's written claim and notice of appeal may, if in the opinion of the Board the issues are sufficiently defined, be deemed to set forth its complaint. The Government shall be so notified.

104.5 The complaint may be filed in lieu of a notice of appeal as provided in §102.

SOURCE: 36 DCRR §7.1, DCR Sp. Ed. at 11 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 25 (January 3, 1986).

105 ANSWER

105.1 Within thirty (30) days after service of the complaint, counsel for the Government shall file an original and three (3) copies of an answer with the Board, and shall serve a copy upon appellant.

105.2 The answer shall admit or deny the averments of the complaint and shall set forth simple, concise and direct statements of the Government's defense to each claim asserted by appellant. Each defense shall be set forth with as much particularity as is practicable.

105.3 If no answer is timely filed, the Board may enter a general denial on behalf of the Government, and the appellant shall be so notified.

SOURCE: 36 DCRR §7.2, DCR Sp. Ed. at 12 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 26 (January 3, 1986).

106 AMENDMENT OF PLEADINGS

106.1 The Board upon its own initiative or upon application by a party may, in its discretion, order or permit a party to make a more definite statement of its complaint or answer, or to reply to an answer.

106.2 A party may, within the proper scope of the appeal, amend his pleadings only by written consent of the adverse party or with the permission of the Board.

106.3 A party may plead in response to an amended pleading within twenty (20) days after service of the amended pleading.

106.4 When issues within the proper scope of the appeal but not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. An amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after decision, but failure so to amend does not affect the result of the trial of those issues.

106.5 If evidence is objected to at the hearing on the ground that it is not within the issues made by the pleadings, the Board may allow the pleadings to be amended within the proper scope of the appeal and shall do so freely when the presentation of the merits of the appeal will be subserved thereby and the objecting party fails to satisfy the Board that the admission of the evidence would prejudice him or her in maintaining his or her appeal or defense on the merits.

106.6 The Board may grant a continuance to enable the objecting party to meet the evidence which is the subject of objection in §106.5.

SOURCE: 36 DCRR §§7.3, and 7.4, DCR Sp. Ed. at 12 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 26 (January 3, 1986).

107 MOTIONS AND STIPULATIONS

107.1 A motion may be filed for any relief or action of the Board for which no other pleading is available. Dispositive motions, such as motions to dismiss for lack of jurisdiction or failure to state a claim upon which relief can be granted, or for failure to prosecute, or motions for summary relief (analogous to summary judgment) may properly be made before the Board.

107.2 Every motion, unless made during a hearing, shall be in writing. Oral motions made during hearings shall, if directed by the Board or the Chairperson, be reduced to writing and filed within the time specified in the direction.

107.3 Every motion shall contain a brief statement of the facts on which it is based or the reasons for the relief sought, shall cite the authority under which it is believed that the Board is empowered to grant the relief sought, and shall state the specific points of law and authorities to support the motion.

107.4 Any party upon whom a motion has been served may, within ten (10) days thereof, file a written opposition to the motion which shall include the specific points of law and authorities in support thereof.

107.5 The Board may permit hearing or oral argument on written motions, and may require additional submissions from either or both of the parties.

107.6 Hearings on motions filed prior to a hearing on the merits may, in the discretion of the Board, be deferred until the hearing on the merits. Decisions on these motions may be deferred until the hearing on the merits or until after the hearing on the merits, or may be incorporated in the decision on the merits.

107.7 The question of the lack of jurisdiction of the Board as to an entire appeal, a portion thereof, or as to any particular issue, may be raised by motion to dismiss which shall be filed, if possible, prior to notice of hearing on the merits, but the question of lack of jurisdiction may be raised at any time by any of the parties or by the Board on its own initiative.

107.8 The parties may, by stipulation in writing filed with the Board, agree upon the facts or any portion thereof involved in the appeal. The parties may also stipulate the testimony that would be given by a witness if the witness were present. The Board shall not be bound by any such stipulation and, in its discretion, may require additional evidence of any matter covered by stipulation.

SOURCE: 36 DCRR §§7.5, 7.6, and 7.7, DCR Sp. Ed. at 13 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 26 (January 3, 1986).

108 FORM OF PLEADINGS

108.1 Every pleading shall contain a caption setting forth the name of the Board, the title of the appeal, including address of appellant and the number of the contract involved, and the docket number, as follows:

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD**

APPEAL OF:

(Name of appellant))	
(Address of appellant))	
)	CAB NO.
Under Contract No.)	

108.2 Under the caption shall be placed a statement of the nature of the pleading and the relief, if any, sought.

108.3 All pleadings shall have numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances. A paragraph may be referred to by number in all succeeding pleadings. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading. Exhibits to a pleading shall be considered a part thereof for all purposes.

108.4 The original of any pleading shall be signed in ink by the party or his or her attorney and shall show the office and post office address of the person signing. All copies filed shall be fully conformed thereto. The signature for a partnership or corporation not represented by an attorney shall be by a person named in §112.1.

108.5 The signature of an attorney constitutes a certificate by the attorney that the attorney has read the pleading; that the attorney is authorized to file it; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

108.6 Pleadings shall be on opaque, white paper, approximately 8 to 8-1/2 inches wide by 10-1/2 to 11 inches long, unfolded, without back or cover, fastened at the top, with top and left hand margins not less than 1-1/4 inch, and other margins not less than 1 inch. Pica size typewriting is preferred.

108.7 Unless otherwise provided by chapters 1 and 2 of this title, every pleading or other document or paper required or permitted to be filed with the Board shall be accompanied by three (3) copies.

SOURCE: 36 DCRR §§3.1 through 3.5, DCR Sp. Ed. at 5 (August 30, 1970).

109 SERVICE AND FILING OF PLEADINGS

109.1 Filing required by chapters 1 and 2 of this title may be accomplished personally or by mail, but the time of filing by mail shall be the time of actual receipt by the addressee. Personal filing shall be accomplished as follows:

- (a) With the Contract Appeals Board, D.C., by delivery to the Chairperson of the Board, to his or her secretary, or to the Clerk to the Board; or
- (b) With the contracting officer, by delivery to the contracting officer, to his or her secretary, or to his or her deputy.

109.2 Service of any pleading or other paper may be made by delivering in person or by depositing in the United States Mail, properly addressed, with first-class postage prepaid, one copy thereof to each party.

109.3 Delivery of service in person to a partnership shall be by delivery to any partner.

109.4 Delivery of service in person to an association or corporation shall be by delivery to any officer thereof.

109.5 When any party has appeared by attorney, service upon the attorney shall be deemed service upon that party. The method of service shall be stated in the certificate of service described in §110.3.

109.6 The date of service is the date of personal delivery or the date of deposit in the mail.

109.7 In the case of service by the Clerk to the Board upon any officer or employee of the Government by means of departmental mail or messenger service, the date of service shall be deemed to be the next day, excluding Saturdays, Sundays and legal holidays, after the date of the Clerk's letter of transmittal.

SOURCE: 36 DCRR §§4.3 and 4.4, DCR Sp. Ed. at 6 (August 30, 1970).

110 CERTIFICATE OF SERVICE

110.1 Every pleading or other paper filed with the Board, except a notice of appeal, complaint, or notice of appearance, shall be served by the filing party and shall include the certificate of service required by §110.3.

110.2 In lieu of the service required by §110.1 a party may at the time of filing, tender one extra copy of the pleading or other paper for each other party together with a written request that service be by the Clerk to the Board, and that pleading or other paper shall be accepted for filing and be filed. The Clerk to the Board shall then serve the extra copies upon the other parties.

110.3 Except when service is to be made by the Clerk to the Board as provided in this chapter, every paper required by §§110.1 - 110.2 to be served shall, when filed with the Board, include a certificate of service upon all other parties. The certificate of service shall contain the following information:

- (a) The name and address of each person served;
- (b) The manner and date of service; and
- (c) The signature of the person who made the service.

110.4 Any pleading or other paper not bearing the certificate of service required by §110.3 may be refused filing.

SOURCE: 36 DCRR §§4.2 and 3.6, DCR Sp. Ed. at 5 and 6 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 26 (January 3, 1986).

111 COMPUTATION OF TIME

111.1 In computing any period of time prescribed or allowed by these rules, by order of the Board, by the contract involved or by any applicable law, the day of the act, event, or default after which the designated period of time begins to run is not to be included.

111.2 The last day of each period computed pursuant to §111.1 is to be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a holiday.

111.3 When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

111.4 A half-holiday shall be considered as other days and not as a holiday.

111.5 When by these rules or by a notice given thereunder or by order of the Board an act is required or allowed to be done at or within a specified time, the Board for cause shown may, at any time in its discretion, do the following:

- (a) With or without motion or notice order the period enlarged if a request is made before the expiration of the period originally prescribed or as extended by a previous order; or
- (b) Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

111.6 Subsection 1.5 shall not apply to time limitations specified in contracts.

111.7 Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served by mail, three (3) days shall be added to the prescribed period; Provided, however, that the provisions of this subsection shall not apply to the filing provisions of §109.1.

SOURCE: 36 DCRR §§4.5, 4.6 and 4.7, DCR Sp. Ed. at 7 (August 30, 1970).

112 APPEARANCE AND REPRESENTATION

112.1 In any proceeding before the Board an individual, receiver, trustee, or official may appear in his or her own behalf; a member of a partnership may represent the

partnership; an officer of a corporation or association may represent the corporation or association; and an officer or employee of the District of Columbia, the United States or a State or of a governmental agency may represent the government or agency.

- 112.2 A party may be represented in any proceeding by an attorney at law admitted to practice before the District of Columbia Court of Appeals or before the highest court of the State where he or she resides.
- 112.3 Each individual appearing before or transacting business with the Board in a representative capacity pursuant to the provisions of §§112.1 and 112.2, may be required to establish his or her authority to act in that capacity.
- 112.4 Each person, including an Assistant Corporation Counsel, representing a party in a case pending before the Board shall file with the Board a written Notice of Appearance on a form supplied by the Board bearing the following information:
- (a) The signature of the representative;
 - (b) The typed or printed name of the representative;
 - (c) The business address and telephone number of the representative; and
 - (d) The name of the party for whom the appearance is made.
- 112.5 Each Notice of Appearance shall become a part of the record.

SOURCE: 36 DCRR §§5.1, 5.2, 5.3 and 5.4(a), DCR Sp. Ed. at 8 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 26 (January 3, 1986).

EDITOR'S NOTE: Reference in §112.2 to the United States District Court for the District of Columbia was changed to the "District of Columbia Court of Appeals" in conformance with the District of Columbia Court Reorganization Act of 1970, D.C. Code §§11-2501 (1981).

113 DISMISSALS AND SUSPENSIONS

- 113.1 An appellant may, at any time, request dismissal of his or her appeal, and the Board may in its discretion grant or deny the request, and enter an appropriate order.
- 113.2 If an appellant fails to prosecute or to comply with the requirements of chapters 1 and 2 of this title, the Board may issue an order to show cause why the appeal should not be dismissed. If good cause is not shown the Board may dismiss the appeal or take other appropriate action.
- 113.3 At any time during the proceedings before the Board, either the appellant or the Government may, with the consent of the other party, file with the Board a motion that the subject matter of the appeal be remanded to the Contracting Officer for reconsideration of the decision from which the appeal was taken. The Board shall then enter an order for the remand and shall dismiss the appeal.
- 113.4 Upon notification from the parties, the Board may, in its discretion, enter an order dismissing the appeal and remanding the matter to the Contracting Officer.

- 113.5 The dismissal and remand of §§113.3 and 113.4 shall be without prejudice to the restoration of the appeal should the Contracting Officer fail to reconsider his or her decision, or fail to comply with the terms of the settlement agreement, or in the event appellant wishes to appeal the new decision of the Contracting officer.
- 113.6 The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board.
- 113.7 Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss the appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three (3) years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

SOURCE: Final Rulemaking published at 33 DCR 24, 27 (January 3, 1986).

199 DEFINITIONS

- 199.1 When used in this chapter, the following words and terms shall have the meanings ascribed:

Appellant - the person seeking relief from the Board, and who is generally a contractor with the Government.

Appeal File - the contract, plans, specifications, decision of the contracting officer appealed from, and all other documents transmitted to the Board by the contracting officer pursuant to §103.

Board - a panel of the Contract Appeals Board or alternatively, unless the context indicates otherwise, the Chairman or another law member acting alone pursuant to §§100.2 through 100.6.

Chairperson - the Chairman of the Board as defined in the Charter.

Charter - Part VI of Organization Order No. 9 of June 6, 1968, issued pursuant to Reorganization Plan No. 3 of 1967, as amended.

Contracting Officer - any officer or other authority whose decision may be reviewed by the Board under its charter.

Government - the District of Columbia, the Armory Board, and any other body politic, municipal organization or governmental body whose contractual disputes may be reviewed by the Board pursuant to its Charter.

Law Member - an active or retired Assistant Corporation Counsel who has been designated by the Corporation Counsel or an attorney appointed by the Mayor as a member of the Board.

Party - either the appellant or the government.

Person - an individual, partnership, corporation, association, body politic, municipal organization, governmental body, receiver, trustee, and any official acting in his official capacity.

Pleading - complaints, answers, replies, all amendments and supplements thereto, and motions.

SOURCE: 36 DCRR §1.1, DCR Sp. Ed. at 1 and 2 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 28 (January 3, 1986).

CHAPTER 2 CONTRACT APPEALS BOARD: HEARINGS AND DECISIONS

Secs.	
200	Pre-Hearing Procedures
201	Evidence
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203	Discovery Generally: Written Interrogatories, Admission of Facts, Production of Documents
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205	Hearings
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200 PRE-HEARING PROCEDURES

- 200.1 The Board may, upon its own initiative, or upon application of either party, arrange for a telephone conference or direct the parties to appear before the Chairperson at a specified time and place, prior to or during the course of a hearing on the merits, to consider the following:
- (a) The simplification of the issues;
 - (b) The necessity or desirability of amending the pleadings;
 - (c) The possibility of obtaining admissions of fact and stipulations concerning the use of documents to avoid unnecessary proof;
 - (d) The limitation of the number of witnesses;
 - (e) The possibility of prior mutual exchange between or among the parties of prepared testimony and exhibits;
 - (f) A schedule for the completion of discovery, if discovery is deemed necessary, and has not been completed; and
 - (g) Any other matters that may aid in shortening the hearing on the merits and in the disposition of the appeal.

- 200.2 The Chairperson shall make an order or memorandum which shall recite the action taken at the conference. This order or memorandum when filed shall be a part of the record in the appeal and shall control the subsequent course of the appeal unless modified by the Board or the Chairperson.
- 200.3 Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit pre-hearing briefs in any case in which a hearing will be held.
- 200.4 If the Board does not require pre-hearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a pre-hearing brief to the Board.
- 200.5 In any case where a pre-hearing brief is submitted, it shall be furnished so as to be received by the Board at least fifteen (15) days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

AUTHORITY: Unless otherwise noted, the authority for this chapter is An Act approved July 1, 1902, 32 Stat. 591, ch. 1352, D.C. Code §1-331 (1981), and Part VI C. of Organization Order No. 9 issued July 6, 1968 in C.O. 68-399.

SOURCE: 36 DCCR §§8.1 and 8.2, DCR Sp. Ed. at 14 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 28 (January 3, 1986).

201 EVIDENCE

- 201.1 Oral and documentary evidence, not ordinarily admissible under the generally accepted rules of evidence, may be received in evidence in the discretion of the Board.
- 201.2 The Board may exclude any evidence which is irrelevant, immaterial, unduly repetitious or cumulative, or which is not of the kind which would affect reasonable and fair-minded persons in the conduct of their daily affairs.
- 201.3 The Board may take official notice of matters not appearing in evidence in the record, but the Board shall in each instance so advise the parties who shall be afforded an opportunity, within the time specified by the Board, to show the contrary.
- 201.4 When books, papers, records, or documents have been received in evidence, a true copy of the evidence, or of any part of the evidence as may be material or relevant, may be substituted for the books, papers, records or documents.
- 201.5 Where written matter offered in evidence is embraced in a document containing other matter which is not intended to be offered in evidence, the offering party shall present the original document for inspection at the hearing or at the pre-hearing conference and shall offer a true copy of the matter which is to be introduced, unless the Chairperson, or the Board, determines that the matter is short enough to be read into the record. Other parties shall be afforded opportunity to introduce in evidence, in like manner, other portions of the original document.
- 201.6 After a final order has been entered, the Board may, upon request, permit the withdrawal of original exhibits, or any part thereof, by the party entitled to the

exhibits. Unless notified that a court appeal has been taken or is proposed, the Board may, at any time more than one (1) year from the date of the final order, dispose of any physical (as opposed to document) exhibits, unless it has been earlier withdrawn by the party that submitted it.

- 201.7 In order to conserve time and to reduce the length of transcripts of hearings, the direct testimony of any witness may be presented in writing when stipulated by the parties or directed in a pre-hearing conference order. The proposed testimony shall be dated, subscribed and sworn to by the witness.
- 201.8 Copies of the proposed testimony, taken pursuant to §201.7 shall be served upon all parties to the appeal at least five (5) days in advance of the session of the hearing at which that testimony is to be offered, unless all parties agree that all or any part of the five (5) days' prior service be waived or unless the Board permits the introduction of that testimony after having afforded all parties reasonable opportunity (not less than twenty-four (24) hours) to examine it.
- 201.9 Unless otherwise agreed by all parties, a witness whose written testimony is offered shall be present and shall be subject to cross examination. When written testimony is received in evidence it shall be incorporated by reference into the transcript of the hearing and shall not be set forth in full.

SOURCE: 36 DCRR §§9.1, 9.2, 9.3, 9.4 and 9.5, DCR Sp. Ed. at 14 and 15 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 29 (January 3, 1986).

202 DEPOSITIONS

- 202.1 After an appeal has been docketed by the Board either party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence at the hearing of the appeal. The attendance of witnesses may be compelled by the use of subpoenas as provided in §203.
- 202.2 All expenses in connection with the taking of a deposition shall be paid by the party taking the deposition, except as provided in §202.3.
- 202.3 Any other party shall be entitled to a copy of the deposition only upon payment of reasonable charges.
- 202.4 At any hearing or in any proceeding before the Board, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, to the extent provided in §§202.5 through 202.8.
- 202.5 Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.
- 202.6 The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose.
- 202.7 The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Board finds the following:

- (a) That the witness is dead;
 - (b) That the witness is at a greater distance than one hundred (100) miles from the District of Columbia, unless it appears that the absence of the witness was procured by the party offering the deposition;
 - (c) That the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;
 - (d) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
 - (e) That, upon application and notice, such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.
- 202.8 If only part of a deposition is offered in evidence by a party, an adverse party or the Board may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.
- 202.9 Objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.
- 202.10 Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; elsewhere the deposition may be taken before an officer or person agreed upon by the parties or designated by the Board.
- 202.11 A party desiring to take the deposition of any person upon oral examination shall give at least fifteen (15) days notice in writing to every other party to the appeal. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or her or the particular class or group to which he or she belongs. A copy of the notice shall be filed with the Board.
- 202.12 The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by some one acting under his or her direction and in his or her presence, record the testimony of the witness.
- 202.13 The testimony should be taken stenographically and transcribed unless the parties agree otherwise.
- 202.14 All objections made at the time of examination to the qualification of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, should be noted by the officer upon the deposition.
- 202.15 Evidence objected to shall be taken subject to the objections.

- 202.16 In lieu of participating in the oral examination parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.
- 202.17 When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless that examination and reading are waived by the witness and the parties.
- 202.18 Any change in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign.
- 202.19 If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress the Board holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.
- 202.20 Each deposition shall have a caption as in §108, and shall show the date and place of taking, the name of witness, and the names of all persons present.
- 202.21 The officer shall certify on the deposition that the witness was duly sworn by him and her and that the deposition is a true record of the testimony given by the witness, and shall enclose the original deposition and exhibits, if any, in a sealed package and shall promptly file the same with the Board or send it by registered or certified mail, postage prepaid, to the Board for filing.
- 202.22 A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken, and shall file a copy of the notice with the Board.
- 202.23 Within fifteen (15) days a party served with written interrogatories may serve cross interrogatories upon the party proposing to take the deposition. Within (ten) 10 days thereafter the latter may serve redirect interrogatories upon the party who has served cross interrogatories. Within five (5) days after being served with redirect interrogatories, a party may serve recross interrogatories upon the party proposing to take the deposition.
- 202.24 A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly in the manner provided by §§202.12 through 202.21 to take the testimony of the witness in response to the interrogatories and to prepare, certify, and file or mail the deposition, attaching a copy of the notice and interrogatories received by him or her.

SOURCE: 36 DCRR §§10.1, 10.2, 10.3, 10.4, 10.5 and 10.6, DCR Sp. Ed. at 16, 17 and 18 (August 30, 1970).

203 DISCOVERY GENERALLY: WRITTEN INTERROGATORIES, ADMISSION OF FACTS, PRODUCTION OF DOCUMENTS

- 203.1 The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.
- 203.2 After an appeal has been docketed and complaint filed, a party may serve on the other party written interrogatories, requests for admissions, and requests for production of documents.
- 203.3 Written interrogatories shall be answered separately in writing, signed under oath, and answered or objected to within forty-five (45) days after service.
- 203.4 An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory may involve an opinion or contention that relates to fact or the application of law to fact, but the Board may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-hearing conference has been held, or some other event has occurred.
- 203.5 A written request for the admission of the truth of any matter, within the proper scope of discovery, that relates to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents, is to be answered in writing and signed or objected to within forty-five (45) days after service; otherwise, the matter therein may be deemed to be admitted.
- 203.6 A written request for the production, inspection, and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, shall be answered or objected to within forty-five (45) days after service.
- 203.7 Upon request of either party, or on its own initiative, the Board may prescribe a period of time other than that specified in this section.

SOURCE: Final Rulemaking published at 33 DCR 24, 29 (January 3, 1986).

204 SUBPOENAS

- 204.1 Subpoenas for the attendance of witnesses or for the production of documentary evidence, or both, unless directed by the Board upon its own motion, will issue only upon application in writing to the Board or the Chairperson.
- 204.2 The written applications shall specify the relevancy, materiality, and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification as nearly as may be of the documents desired and the facts to be proved by them in sufficient detail to indicate the materiality and relevancy of the documents.
- 204.3 The party on whose application a subpoena is issued shall, unless otherwise provided by law, pay all fees of such witness, and each application, except when on behalf

of the District of Columbia, shall be accompanied by a deposit, satisfactory to the Chairperson, which shall at least equal the fees to which the witness to be subpoenaed may become entitled.

- 204.4 All subpoenas shall be issued by the Chairperson in the name of the Chief Judge of the Superior Court for the District of Columbia upon forms approved and provided by the Board.
- 204.5 Every witness, except those employed by the District of Columbia, subpoenaed to appear before the Board is entitled to the same fees as are paid witnesses for appearance before the Superior Court for the District of Columbia, except that the fees need not be tendered to the witness in advance of his or her appearing and testifying and/or producing books, records, papers, or other documents before the Board. [D.C. Code §4-801 (1981)]
- 204.6 A subpoena may be served by a member of the Metropolitan Police Department or, when authorized by the Board or the Chairperson, by any other person who is not a party to the appeal and is not less than eighteen (18) years of age. Service of subpoena upon the person named may be made by delivering a copy thereof to him or her or by leaving a copy thereof at his or her place of business with some person of suitable age and discretion there employed by that person, or at his or her dwelling house or usual place of abode and with some person of suitable age and discretion then residing therein.
- 204.7 Service by a member of the Metropolitan Police Department shall be procured by delivering the original subpoena with the copy to be served to the Chief of Police, Room 5080, East Administration Building, Municipal Center, 3rd Street and Indiana Avenue, N.W., Washington, D.C., and if personal service is desired specific request shall be made to the Chief of Police.
- 204.8 If service of a subpoena is made by a member of the Metropolitan Police Department, the service shall be evidenced by his or her return thereon. If service is made by any other person, that person shall make affidavit thereto, describing the manner, place, and time of service, and shall return the affidavit on or with the original subpoena.
- 204.9 In the event any witness having been personally served with a subpoena shall neglect or refuse to obey the subpoena issued, on written application by the party who procured the issuance of the subpoena, the Board may report the fact of the neglect or refusal to a judge of the Superior Court for the District of Columbia who may compel obedience to the subpoena as provided in D.C. Code §4-803 (1981).

SOURCE: 36 DCRR §§11.1, 11.2, 11.3, 11.4, and 11.5, DCR Sp. Ed. at 19 and 20 (August 30, 1970).

EDITOR'S NOTE: Reference in §204.4, §204.5, and §204.9 to the "United States District Court for the District of Columbia" was changed to the "Superior Court of District of Columbia" in conformance with the District of Columbia Court Reorganization Act of 1970, D.C. Code §11-921(a) (1981).

205 HEARINGS

- 205.1 Hearings shall be held in the District of Columbia and at the office of the Board unless otherwise directed by the Board.
- 205.2 When several appeals involving the same contract, or a common question of law or fact, are pending before the Board, on motion or its own initiative the Board may

order a joint hearing of any or all of the matters in issue in the appeals; it may order all such appeals consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

- 205.3 The Board shall give the parties at least seven (7) days' notice of the time and place of hearing, but such notice may be waived by the parties.
- 205.4 If the appellant desires to submit his or her appeal without a hearing, he or she shall so advise the Board in writing. In that event, there shall be no hearing on the merits, unless the Government objects or the Board otherwise directs. The parties may submit briefs within the periods of time specified in §206 of this title.
- 205.5 If a party, his or her attorney, or authorized representative fails to appear at the time and place set for a hearing, the Board shall wait a reasonable time before adjourning the hearing. If, within five (5) days thereafter, the absence is explained to the satisfaction of the Board, a new hearing date shall be set; otherwise the party shall be deemed to have waived a hearing and to have submitted his or her case subject to his or her right to file briefs as provided in §206.
- 205.6 All hearings shall be conducted by the Chairperson alone, unless the Board otherwise determines or one (1) of the parties objects. Prior to setting a date for a hearing which is to be conducted by the Chairperson alone he or she shall so notify the parties who shall have five (5) days from the date of notice to file an objection. At hearings the parties may supplement the record (see §§103.2, 103.6, and 103.7) with evidence produced at the hearing which, if admitted, shall become a part of the record.
- 205.7 Questions concerning the admissibility of evidence and other matters that may arise in the course of the hearing may be ruled upon by the Chairperson or the Board. Unless otherwise stipulated by the parties, every decision upon the merits or which constitutes a final disposition of any appeal or part thereof shall be by the Board.
- 205.8 Any member of the Board who is not present for all or part of a hearing may, nevertheless, participate in the decision of the Board, but he or she shall read the entire transcript of the hearing, or the portions of the transcript covering the period or periods of his absence from the hearing, and at least those other portions of the record (see §207) to which the parties refer at the hearing or in their briefs, together with the briefs and other submissions of the parties.
- 205.9 Witnesses at hearings shall be examined orally under oath or affirmation, which shall be administered by the Chairperson or a member of the Board designated by him or her. Any member of the Board may question any witness at any time during or after examination or cross-examination by the parties.
- 205.10 An official reporter designated by the Board shall make an official transcript of the proceedings at hearings on the merits. After the close of a hearing this transcript, together with any exhibits, briefs, or other documents filed in the proceeding, shall be filed with the board and become a part of the record.
- 205.11 The Board shall transmit one (1) copy of the transcript to the Government and, upon request, copies of the official transcript shall be supplied to other parties by

the official reporter at such rates as may be fixed by contract between the District Government and the official reporter.

- 205.12 Motions to correct an official transcript shall be filed with the Board within ten (10) days after the receipt of the last portion of the transcript, and shall certify the date when the last portion of the transcript was received by the maker of the motion.

SOURCE: 36 DCRR §§12.1 through 12.11, DCR Sp. Ed. at 20-22 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 30 (January 3, 1986).

206 BRIEFS

- 206.1 Post-hearing briefs may be submitted upon the terms as may be directed by the Chairperson or the presiding officer at the conclusion of the hearing.

- 206.2 Briefs shall conform to the requirements of §108 of these rules except §108.3, and shall be served as provided in §109 of these rules.

SOURCE: 36 DCRR §§13.1 through 13.4, DCR Special Edition at 22 (August 30, 1970); as amended by Final Rulemaking published at 30 DCR 4065 (August 12, 1983).

207 RECORD

- 207.1 The record of the appeal shall include the notice of appeal, complaint, answer, appeal file, all motions and other papers filed by the parties with the Board pursuant to these rules, all correspondence exchanged between the Board and the parties or their attorney, transcripts made of hearings before the Board, and all findings, decisions, opinions and orders of the Board.

SOURCE: 36 DCRR §14.1, DCR Sp. Ed. at 23 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 30 (January 3, 1986).

208 DECISIONS

- 208.1 Decisions shall be made in writing, solely on the record, as described in §207.1.

- 208.2 With every decision finally disposing of an appeal or of any part thereof the Board will file separate findings of fact and conclusions of law, but if an opinion is filed the findings of fact and conclusions of law may appear therein.

- 208.3 A copy of each decision, including decisions after reconsideration, with its supporting findings of fact and conclusions of law or opinion, shall be transmitted to each party or his or her attorney and §112.9 shall apply.

- 208.4 A party may file a motion for reconsideration with the Board within twenty (20) days after the date of transmission of a copy of a decision to such party. Such motion shall clearly state its grounds, and if based upon alleged errors in any findings of fact or conclusions of law it shall specifically identify such alleged errors and state the changes or corrections desired.

- 208.5 Each alleged error shall be stated in a separately numbered paragraph. Opposition to such motion may be filed as provided in §107.3. The Board may permit or require submission of briefs, or oral argument, or both.

- 208.6 If the motion is granted the decision shall be vacated and the Board may require additional evidence, and may amend its findings of fact and conclusions of law or make new findings and conclusions, and make a new decision, or the Board may affirm its findings and conclusions and reinstate its decision. The action of the Board after reconsideration shall be set forth in writing and shall be considered a decision within the meaning of this section.
- 208.7 Every decision of the Board shall become final upon expiration of the time within which a motion for reconsideration of the decision may be filed or, if the motion has been filed, upon denial of the motion. A party may, in writing, waive the right to file a motion for reconsideration, and if all parties so waive the decision shall become final.
- SOURCE:** 36 DCRR §§15.1, 15.2, 15.3, DCR Sp. Ed. at 23, 24 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 30 (January 3, 1986).
- 209 **OPTIONAL SMALL CLAIMS (EXPEDITED) AND ACCELERATED PROCEDURES**
- 209.1 The procedures in this section are available solely at the election of the appellant.
- 209.2 In appeals where the amount in dispute is ten thousand dollars (\$10,000) or less, the appellant may elect to have the appeal processed under a **SMALL CLAIMS (EXPEDITED)** procedure requiring decision of the appeal, whenever possible, within one hundred twenty (120) days after the Board receives written notice of the appellant's election to utilize this procedure. An appellant may elect the **ACCELERATED** procedure rather than the **SMALL CLAIMS (EXPEDITED)** procedure for any appeal eligible for the **SMALL CLAIMS (EXPEDITED)** procedure.
- 209.3 In appeals where the amount in dispute is fifty thousand dollars (\$50,000) or less, the appellant may elect to have the appeal processed under an **ACCELERATED** procedure requiring decision of the appeal, whenever possible, within one hundred eighty (180) days after the Board receives written notice of the appellant's election to utilize this procedure.
- 209.4 The appellant's election of either the **SMALL CLAIMS (EXPEDITED)** procedure or the **ACCELERATED** procedure may be made by written notice within sixty (60) days after receipt of docketing, unless the period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.
- 209.5 In cases proceeding under the **SMALL CLAIMS (EXPEDITED)** procedure, the following time periods shall apply:
- (a) Within ten (10) days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the **SMALL CLAIMS (EXPEDITED)** procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under §103.1 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs; and

- (b) Within fifteen (15) days after the Board has acknowledged receipt of appellant's notice of election, the Chairperson or the assigned law member shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties:
- (1) Identify and simplify the issues;
 - (2) Establish a simplified procedure appropriate to the particular appeal involved;
 - (3) Determine whether either party wants a hearing and, if so, fix a time and place therefor;
 - (4) Require the Government to furnish all the additional documents relevant to the appeal; and
 - (5) Establish an expedited schedule for resolution of the appeal.

- 209.6 Pleadings, discovery, and other prehearing activity shall be allowed only when consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled to close the record, on a date that will allow decisions within the one hundred twenty (120) day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules as necessary to enable the Board to decide the appeal within the one hundred and twenty (120) day limit, allowing whatever time, up to thirty (30) days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.
- 209.7 Written decisions by the Board in cases processed under the **SMALL CLAIMS (EXPEDITED)** procedure shall be short and contain only summary findings of fact and conclusions. Decisions shall be rendered for the Board by the Chairperson or a single law member with the concurrence of the other, or by a majority among these two and a third member in case of disagreement.
- 209.8 In cases proceeding under the **ACCELERATED** procedure, the parties shall be encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed or allowed elsewhere in these rules, including §103.1, as necessary to enable the Board to decide the appeal within one hundred eighty (180) days after the Board has received the appellant's notice of election of the **ACCELERATED** procedure, and may reserve thirty (30) days for preparation of the decision.
- 209.9 Written decision by the Board in cases processed under the **ACCELERATED** procedure shall be rendered for the Board by the Chairperson or a single law member with the concurrence of the other, or by a majority among these two and a third member in case of disagreement.
- 209.10 Alternatively, in cases where the amount in dispute is ten thousand dollars (\$10,000) or less as to which the **ACCELERATED** procedure has been elected and in which

there has been a hearing, the Chairperson or the single member presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining any oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal.

209.11 Whenever an oral decision is rendered pursuant to §209.10, the Board shall subsequently furnish the parties a typed copy of the oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under §208.3.

209.12 Motions for reconsideration of cases decided under either the **SMALL CLAIMS (EXPEDITED)** procedure or the **ACCELERATED** procedure need not be decided within the original one hundred and twenty (120) day or one hundred eighty (180) day limit, but all motions shall be processed and decided rapidly so as to fulfill the intent of this rule.

SOURCE: Final Rulemaking published at 30 DCR 4065 (August 12, 1983).

210 **APPLICABILITY OF RULES**

210.1 The Board may at any time amend these rules in whole or in part, and the amendments shall be effective as specified by the Board in its order adopting such amendments.

210.2 This chapter shall govern proceedings in all appeals filed after December 27, 1985, and also all further proceedings in appeals then pending, except to the extent that in the opinion of the Board the application of a particular rule in a particular appeal pending when these amended rules take effect would not be feasible or would work injustice or hardship, in which event the Board shall modify the application of the rule as it may determine.

210.3 In any proceeding the Board may, in its discretion and in the interest of justice or to prevent hardship, waive any of the provisions of these rules. Any motion or request for a waiver shall be served as provided in §109 of these rules and objections may be filed within five (5) days after the date of service; failure to file objections shall be deemed a consent to the waiver sought.

SOURCE: 36 DCRR §§17.1, 17.2, 17.3, DCR Sp. Ed. at 24, 25 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 30 (January 3, 1986).

211 **EX PARTE COMMUNICATIONS**

211.1 No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members or to *ex parte* communications concerning the Board's administrative functions or procedures.

SOURCE: Final Rulemaking published at 33 DCR 24, 31 (January 3, 1986).

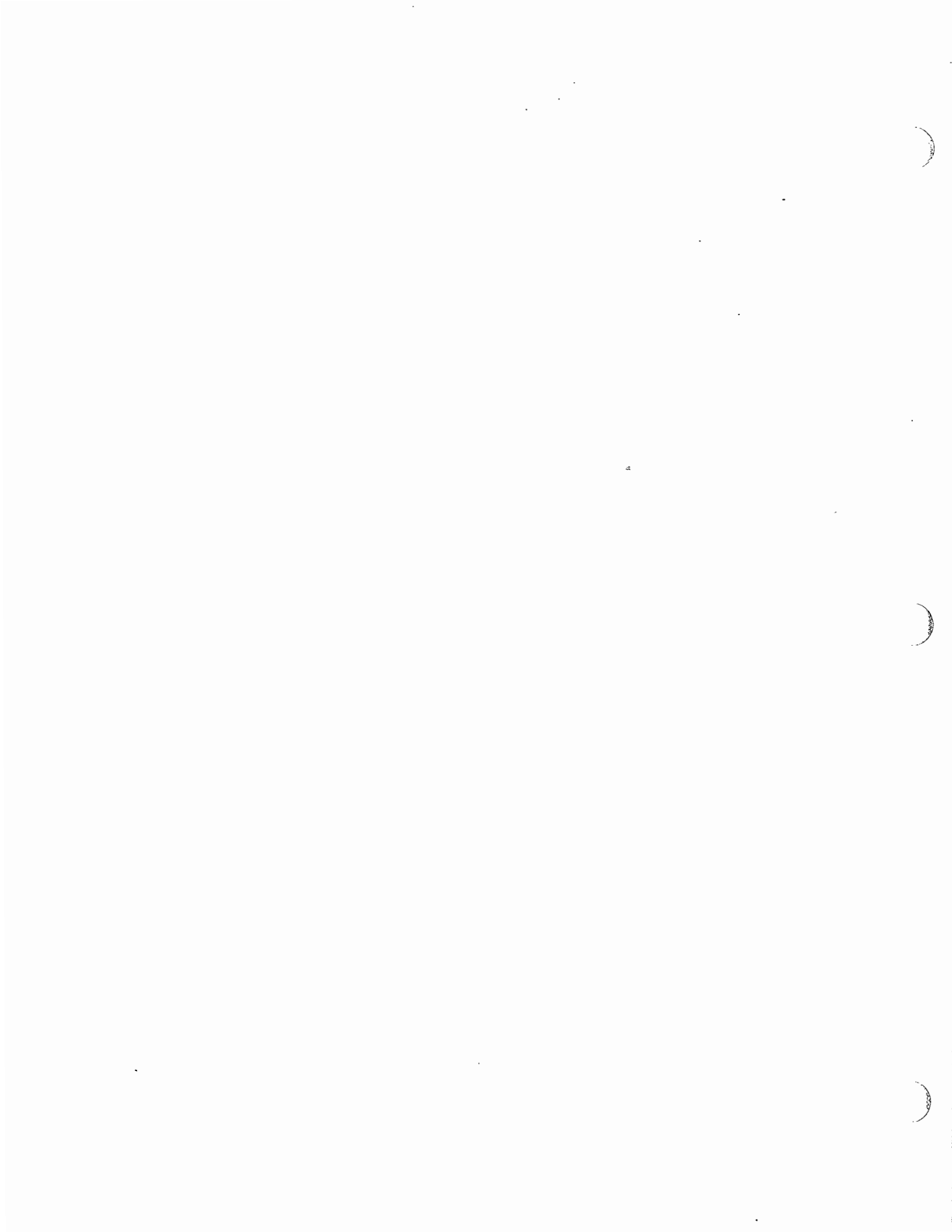
212 SANCTIONS

212.1 If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

SOURCE: Final Rulemaking published at 33 DCR 24, 31 (January 3, 1986).

299 DEFINITIONS

299.1 The meanings ascribed to the definitions appearing in §199.1 of chapter 1 of this title shall apply to the terms in this chapter.



CHAPTER 6 MINORITY BUSINESS DEVELOPMENT

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608	Bonding
699	Definitions

600 GENERAL PROVISIONS

- 600.1 The Minority Business Opportunity Commission shall establish and implement programs to encourage and increase the participation of local minority business enterprises in contract procurement by the government of the District of Columbia and to improve minority business opportunities generally in the District of Columbia.
- 600.2 The Commission shall promulgate rules and regulations in order to accomplish the goals of the Act and implement the various programs established under the authority of the "Minority Contracting Act of 1976."
- 600.3 The operations of the Commission shall be conducted in accordance with the provisions of the Act and chapters 6 and 7 of this title.
- 600.4 The Commission shall hold a regular meeting on the first Tuesday of each month at 2:00 p.m. at a place to be set by the Commission. In the event that the Commission fails to meet on the scheduled regular meeting date, a meeting shall be scheduled one (1) week later.
- 600.5 Meetings of the Commission shall be open to the public; Provided, that the Commission may meet in executive session to discuss information which is privileged by law.
- 600.6 Applicants wishing to make an appearance at a Commission meeting shall give written notice to the Commission at least five (5) days before the meeting at which they appear.
- 600.7 The official records of the proceedings and actions of the Commission shall be maintained by the Staff Director.

600.8 The Staff Director shall send written notice of each Commission meeting to each Commission member at least one (1) week in advance of each meeting. The notice shall include the agenda of the meeting and a copy of the minutes of the previous meeting.

600.9 The rules of evidence shall not apply to the proceedings of the Commission; however, the Commission may exclude irrelevant or repetitive testimony or evidence.

AUTHORITY: Unless otherwise noted, the authority for this chapter is §5(a) of the Minority Contracting Act, D.C. Law 1-95, D.C. Code §1-1144(a) (1981).

SOURCE: Final Rulemaking published at 26 DCR 2771, 2772 (December 21, 1979).

601 GENERAL PROGRAM POLICY

601.1 The Commission shall implement a sheltered market program in accordance with the provisions of the Act and chapters 6 and 7 of this title.

601.2 While it is the general policy of the Commission to encourage minority participation in contracting through the regular advertisement and bidding process, the Commission may take either of the following actions in specific instances:

(a) Require that the advertisement of selected contracts for construction, supplies, or services be limited to categories of contractors; or

(b) Authorize the letting of selected contracts by negotiation.

601.3 Acting pursuant to a written request from a certified contractor, the Commission may recommend that any of the following actions be taken by an agency:

(a) Advance, partial, progress, or other types of payments to contractors under contracts for property or services; Provided, that the payments shall not exceed the unpaid contract price, shall be based upon a finding by the agency head that they will be in the public interest, and shall be secured in accordance with the provisions of sec. 12(c) of the Act; or

(b) Waiver of bonding requirements where the waiver shall maintain the integrity of the District's procurement program.

601.4 A Commission recommendation on any of the actions set forth in §601.3 shall not be required prior to agency action. An agency may request the recommendation of the Commission prior to initiating any such action.

601.5 The Commission may, from time to time, review minority contracting problems and make recommendations for the improvement of minority business development in the District of Columbia in accordance with the provisions of the Act.

601.6 The Commission may make specific recommendations with respect to particular contracts. In making these recommendations, the Commission shall consider the following factors:

(a) Emergency or other unusual circumstances;

- (b) The location of the contractor or other entity;
- (c) Possible tax benefits to the District of Columbia;
- (d) The potential for enhancing the position of minority business in a particular market or industry;
- (e) The potential for encouraging entrepreneurship among residents of the District of Columbia; and
- (f) Other factors affecting the public interest and the promotion of minority business in the District of Columbia.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2772 (December 21, 1979).

602 SHELTERED MARKET PROGRAM: GOALS AND ESTABLISHMENT

- 602.1 Each agency of the District government shall be required to establish an annual program for minority procurement in accordance with the provisions of the Act and chapters 6 and 7 of this title.
- 602.2 Agency programs established pursuant to this section shall be submitted to the Commission annually for review and approval. The Commission shall provide forms for submission of annual sheltered market procurement programs.
- 602.3 In establishing its annual program, each agency shall allocate its contracting and procurement to meet the following goals:
- (a) Placement of thirty-five per cent (35%) of the total dollar amount of construction contracts in the sheltered market; and
 - (b) Placement of thirty-five per cent (35%) of procurement of goods and services in the sheltered market.
- 602.4 Annual programs shall be established on a fiscal year basis. Agencies shall submit proposed programs to the Commission at least sixty (60) days before the beginning of the fiscal year. Modifications to the program based on the actual fiscal year budget apportionment shall be submitted to the Commission within thirty (30) days of the receipt of the final apportionment by the agency.
- 602.5 Agency sheltered market programs may include any of the following types of placements:
- (a) Direct placement of contracts with certified MBE's;
 - (b) Direct placement of contracts with joint ventures certified under §701; or
 - (c) Indirect placement of contracts by requiring a portion of the subcontracts let under an open market contract to be let to certified MBE subcontractors in accordance with the requirements of §604.
- 602.6 Agency programs shall clearly indicate the manner in which the agency plans to reach the goals set forth in this section.

- 602.7 Agency programs shall specifically indicate the following:
- (a) The total dollar amount of construction contracts to be let by the agency during the fiscal year;
 - (b) The total dollar amount of goods and services to be procured by the agency during the fiscal year;
 - (c) The construction contracts and subcontracts which shall be placed in the sheltered market;
 - (d) Contracts and subcontracts for goods and services which shall be placed in the sheltered market;
 - (e) The dollar amounts represented by each construction contract (and subcontract) and procurement contract (and subcontract) listed pursuant to paragraphs (c) and (d) of this subsection;
 - (f) The percentages of total dollar amounts for both construction and procurement of goods and services represented by the portion of each which shall be placed in the sheltered market program; and
 - (g) Dollar amounts and percentages for joint venture contracts shall be adjusted to reflect the proportion of participation by the MBE(s) in each joint venture. Only those portions of contracts which are actually attributable to the minority participant(s) shall be counted toward an agency's program goals.

602.8 In any instance where the percentages of dollar amounts set forth in an agency's fiscal year sheltered market program are less than the goals set forth in this section for either category, the agency shall include a written justification of the difference.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2773 (December 21, 1979); as amended by Final Rulemaking published at 30 DCR 5734 (November 4, 1983).

603 COMMISSION REVIEW AND APPROVAL OF PROGRAMS

- 603.1 The Commission shall review each agency's proposed program. As part of its review, the Commission may hold discussions with agency staff and make recommendations for modifications in the agency's proposed program.
- 603.2 After receipt and review of an agency's proposed sheltered market program, the Commission shall take one of the following actions:
- (a) Approve the program as submitted and notify the agency;
 - (b) Approve that portion of the proposed program which is satisfactory and make recommendations for additional placements in the sheltered market or other actions by the agency to improve its program plans; or
 - (c) Reject the proposed program as unsatisfactory and make recommendations to the agency for sheltered market placements and other actions.

603.3 If an agency's proposed program is either rejected or partially approved, the Commission may require that the agency take additional steps to meet the goals set forth in this section, including, but not limited to, those set forth in §606.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2775 (December 21, 1979).

604 SHELTERED MARKET PROGRAM IMPLEMENTATION

604.1 The Commission shall establish and maintain a centralized list of certified contractors. The central list shall be used by agencies to identify contracts or classes of contracts for placement in the sheltered market. Appropriate certified contractors on the list shall also receive invitations to bid on open market contracts advertised by each agency.

604.2 Where an agency places specific contracts or categories of contracts in the sheltered market, consideration shall be given only to certified contractors.

604.3 An agency head may determine, subject to the approval of the Commission, that certain classes of procurements shall not be placed in the sheltered market. Agency heads shall give written notice of each determination to the Commission.

604.4 Each agency shall maintain and display in each procurement office bidders mailing lists which indicate the following:

- (a) The name of each contractor doing business with the office; and
- (b) Those contractors which are certified under the provisions of the Act and chapter 6 and 7 of this title.

604.5 Each agency shall also maintain for review by the Commission the following types of procurement lists:

- (a) Small purchase sources;
- (b) Term contracts;
- (c) Blanket purchase orders;
- (d) Repetitive or recurring procurements; and
- (e) GSA Schedule procurements.

604.6 All invitations for bid under the sheltered market shall include the following language:

This invitation for bid is designated for certified minority bidders only, under the provisions of D.C. Law 1-95, "The Minority Contracting Act of 1977."

604.7 A copy of the MBE letter of certification shall be attached to the outside cover of each sealed bid.

- 604.8 Invitations to bid in the sheltered market shall be sent to all certified MBE's which qualify under the work classification for which the contract shall be let.
- 604.9 Once an agency has placed a contract in the sheltered market, it shall not be removed by the agency without the approval of the Commission. That approval shall generally be given only upon a showing of the following:
- (a) There are no certified contractors available which are capable of performing the contract; or
 - (b) That at least one attempt to solicit bids for the contract in the sheltered market has failed to produce an acceptable bid.
- 604.10 Any District agency asserting that any bid made by a certified contractor or contractors is excessive shall indicate the reasons for that assertion to the Commission in writing, including an analysis of the following factors:
- (a) Wage determinations;
 - (b) Overhead;
 - (c) Man-hours required for performance;
 - (d) Use of brokers; and
 - (e) Other pertinent data.
- 604.11 Each agency shall submit a quarterly report to the Commission on the status of its sheltered market procurement program, in accordance with the provisions of §7(a)(3) of the Act, on forms to be provided by the Commission.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2775 (December 21, 1979).

605 SHELTERED MARKET CONTRACTS: PRIORITY CONSIDERATIONS

- 605.1 In accordance with §2(c) of D.C. Law 4-167, effective March 9, 1983, bids and proposals of certified minority business enterprises and joint ventures shall be evaluated so as to give preference to certain minority business enterprises and joint ventures for the purpose of awarding sheltered market contracts.
- 605.2 The Commission shall accord a preference to a minority business enterprise or joint venture which meets the requirements of §605.3, by reducing by five percent (5%) the bid or price proposal of that minority business enterprise or joint venture, solely for purposes of comparing that bid or price proposal with the bids or price proposals of other certified minority business enterprises or joint ventures.
- 605.3 A minority business enterprise or joint venture shall be eligible for a preference if it is certified by the Commission as having its principal office physically located in the District of Columbia, and either:
- (a) The minority business enterprise or joint venture is licensed pursuant to the general business and professional license law of the District of Columbia, §7 of

"An Act Making Appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30th, 1903, and for other purposes," approved July 1, 1902 (32 *Stat.* 622; D.C. Code, §47-2801 *et seq.* (1981)); or

- (b) The minority business enterprise or joint venture is subject to income and franchise taxes levied under title X of the "District of Columbia Income and Franchise Tax Act of 1947," approved July 16, 1947 (61 *Stat.* 349; D.C. Code, §47-1801.1 *et seq.* (1981)).

SOURCE: Final Rulemaking published at 30 DCR 5734, 5735 (November 4, 1983); as amended by Final Rulemaking published at 33 DCR 2490 (April 25, 1986).

606 SHELTERED MARKET SUBCONTRACTS

- 606.1 When an agency's sheltered market program includes placement of subcontracts in the sheltered market by one (1) or more of its prime contractors, those indirect placements shall be made in accordance with the provisions of this section.
- 606.2 Each solicitation for bids on the open market for contracts which include a percentage allocation of subcontracting opportunities to the sheltered market shall include a notice to bidders of the requirement for placement of certain subcontracts (or a percentage of all subcontracts or subcontract value) in the sheltered market.
- 606.3 All bids or offers on prime contracts covered by this section shall include the following:
- (a) The name of the employee of the offeror or bidder who shall administer the subcontracting program and a description of the duties of the employee;
 - (b) A description of the efforts which the offeror or bidder shall undertake to ensure that certified MBE's will be able to compete for subcontracts or participate in a sheltered MBE subcontracting program; and
 - (c) A proposed plan for implementation of the MBE subcontracting goal or requirement of the prime contract, including a description of the records which will be kept and made available to the agency and Commission to show compliance with the sheltered market program aspect of the contract.
- 606.4 Each solicitation for bids shall state that no contract will be awarded until an acceptable plan is negotiated with the contracting officer and incorporated in the contract. Acceptable plans shall, in the opinion of the contracting officer, provide the maximum practicable opportunity for certified MBE participation in the performance of the contract.
- 606.5 Prime contractors awarded contracts containing MBE subcontractor requirements shall submit quarterly reports to the contracting agency for inclusion in that agency's quarterly report to the Commission. These reports shall be made on forms supplied by the Commission.
- 606.6 If it appears that a prime contractor has not complied with the MBE participation requirements of a contract, the Commission may institute a compliance review investigation. After the investigation, the Commission shall notify the contractor of its

findings and recommendations for corrective measures. If the contractor fails to correct the deficiencies, the Commission may recommend that the contracting agency initiate sanctions or other action for breach of contract against the prime contractor.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2777 (December 21, 1979).

607 COMMISSION OVERSIGHT OF PROGRAM IMPLEMENTATION

- 607.1 If the Commission determines that an agency's proposed sheltered market program is unsatisfactory or that an agency is not fulfilling its commitment under an approved program, the Commission may make specific recommendations to the agency with regard to the agency's program or program implementation.
- 607.2 If the Commission determines that an agency's sheltered market program goal is too low or is not being met, the Commission may require the agency to give at least thirty (30) days advance notice to the Commission of the solicitation of bids on the open market for any contract in the amount of twenty-five thousand dollars (\$25,000) or more.
- 607.3 If the Commission determines that an agency's sheltered market procurement program goal is too low or is not being met, the Commission may require that, prior to the establishment of specifications for any procurement contract in the amount of \$2,000 or more, an agency shall inform the Commission whether the contract will be placed in the sheltered market.
- 607.4 If the agency has not determined whether the contract will be placed in the sheltered market, the Commission may make a recommendation for placement and provide the names of certified contractors to the agency.
- 607.5 If an agency does not place a contract in the sheltered market pursuant to a Commission recommendation under this section, the agency shall provide the Commission with a written explanation for placing the contract in the open market.
- 607.6 If the Commission determines that an agency's sheltered market program goal is too low or is not being met, the Commission may order that a portion of the agency's contracts be reserved for placement in the sheltered market program.
- 607.7 The Commission shall inform the Mayor of all determinations, recommendations, and orders issued pursuant to this section.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2778 (December 21, 1979).

608 BONDING

- 608.1 The Commission shall consider any certified MBE's request for bond waiver on any District of Columbia contract reserved exclusively for the sheltered market as defined in D.C. Code §1-1142(7) (1981).
- 608.2 A certified MBE requesting a bond waiver shall submit an affidavit including the following information:

- (a) History of the certified MBE, which shall contain the following:
 - (1) Records of prior completed contracts, including the extent of the MBE's involvement in each contract;
 - (2) The total value of each contract;
 - (3) The contracting agency, including the names and telephone numbers of agency representatives familiar with each contract;
 - (4) A description of each contract; and
 - (5) The amount of any bond provided, including the name, address, and telephone number of the bonding agent;
- (b) Statement of reasons why the bond should be waived;
- (c) Financial statement of the MBE's assets and liabilities not older than ninety (90) days; and
- (d) Evidence that the contractor has been denied a bond by two (2) surety companies.

608.3 The Commission shall maintain all information provided under §608.2 in confidence and shall return any data submitted by the certified MBE unless it becomes part of a recommendation to the Mayor for bond waiver.

608.4 Upon majority vote of a quorum of the Commission to waive bond on a specific contract, the Staff Director shall prepare and forward to the Mayor through the contracting officer a request for bond waiver stating the reason(s) for the waiver, and the benefits to be derived from waiving the bond.

608.5 The Commission shall not recommend a bond waiver unless in its judgment it is in the best interest of the District of Columbia to do so.

608.6 For a specified contract in excess of one hundred thousand dollars (\$100,000), the Commission may, prior to solicitation of bids, recommend that the requirement for bonding be waived or reduced, and may make such a request to the Mayor through the contracting officer by memorandum providing the basis for the recommendation and the benefit to the District of Columbia from waiving or reducing the bonding requirement.

SOURCE: Final Rulemaking published at 33 DCR 5659 (September 12, 1986).

699 DEFINITIONS

- 699.1 The definitions of the terms "minority," "minority business enterprise," "local business enterprise," "joint venture," "agency," and "sheltered market," set forth in sec. 3 of the Act are applicable to these rules and incorporated herein by reference.
- 699.2 In addition to the terms under §699.1, when used in this chapter, the following terms and phrases shall have the meanings ascribed:

Act - the Minority Contracting Act of 1976, as amended.

Principal office - the primary office (based upon the totality of the business activities) in which routine and essential business functions occur such as the following:

- (a) Bookkeeping and other record keeping;
- (b) Payroll maintenance;
- (c) Receipt of business telephone calls;
- (d) Receipt of correspondence;
- (e) Storing of books and records; or
- (f) Directing, controlling and coordinating of activities and policies by officers, principals and managers.

SOURCE: Final Rulemaking published at 26 DCR 2771 (December 21, 1979); as amended by Final Rulemaking published at 30 DCR 5734 (November 4, 1983).

CHAPTER 7 MINORITY BUSINESS ENTERPRISES

Secs.	
700	Certification Policy
701	Certification of Joint Ventures
702	Application for Certification
703	Denial of Certification
704	Renewal of Certification
705	Compliance Review
706	Revocation of Certification
707	Denial of Recertification
708	Hearing Procedures
709	Temporary Certification
710	Distributorships
799	Definitions

700 CERTIFICATION POLICY

- 700.1 The Commission shall certify *bona fide* local minority business enterprises which meet the requirements of the Act and this chapter for participation in the various programs of the District of Columbia operated under the auspices of the Commission for the promotion and enhancements of minority business opportunities in the District of Columbia.
- 700.2 In considering each application for certification, the Commission shall determine whether persons represented in the application are members of a "minority," as defined in the Act, by reviewing the application and accompanying documentation, the results of staff investigations, and other relevant information. Other relevant information may include the following:
- (a) Birth certificates;
 - (b) Employment records;
 - (c) Educational records;
 - (d) EEO and affirmative action records; and
 - (e) Other evidence of the minority status of persons named in the application.
- 700.3 In determining whether an applicant meets the requirements for minority participation set forth in §3 of the Act, the Commission shall review the extent to which *bona fide* minority participants have actual rights of ownership and control of the business

enterprise, including the proportion of ownership and control over decision-making, day-to-day operations, and profit and loss.

700.4 The Commission shall consider the extent to which the minority participants could operate the business enterprise in the absence of the non-minority participants.

700.5 The Commission shall review relevant documents and information including, but not limited to, the following:

- (a) Shareholders' agreements, pooling agreements, buy-sell agreements, voting trusts, management agreements, lease and rental agreements, and deeds or other evidence of ownership of real property;
- (b) Non-voting preferred stock, debentures and other debt instruments, dividends, and returns of capital or debt investment; and
- (c) Other information relating to the operation, management, accounts, and financing of the business enterprise.

700.6 In determining whether a minority business whose principal office is physically located outside the District of Columbia is a local business enterprise, the Commission shall consider the following factors:

- (a) The applicant's principal office is located in the Washington Standard Metropolitan Statistical Area;
- (b) More than thirty percent (30%) of assets of the business enterprise are located in the District of Columbia;
- (c) More than fifty percent (50%) of the applicant's employees are residents of the District of Columbia;
- (d) The owner(s) of more than fifty percent (50%) of the business enterprise are residents of the District of Columbia;
- (e) More than thirty percent (30%) of the total sales or other revenues is derived from the transactions of the business enterprise in the District of Columbia; and
- (f) Any other factors that indicate significant business or economic relations with the District of Columbia by the business enterprise.

700.7 In addition to the factors to be considered in §700.6, a minority business whose principal office is located physically outside the District of Columbia shall only be considered a local business enterprise if it also meets one of the following:

- (a) It is licensed pursuant to §7 of "An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes," approved July 1, 1902 (32 *Stat.* 622; D.C. Code, §47-2801 *et seq.*, (1981)); or
- (b) It is subject to the tax levied under title X of the "District of Columbia Income and Franchise Tax Act of 1947," approved July 16, 1947 (61 *Stat.* 349; D.C. Code, §47-1810.1 *et seq.*, (1981)).

700.8 In addition to the information supplied in the application and documents accompanying the application, the Commission may require an applicant to supply or provide access to additional information and documents relevant to the Commission's investigation and determination of the applicant's status as a local minority business enterprise. This additional information and documents may also be requested by the Commission in connection with any recertification, compliance review, investigation, or other Commission process undertaken pursuant to the Act or chapters 6 or 7 of this title.

700.9 Certification may be limited by the Commission to one (1) or more program areas. MBE's shall be eligible to participate only in those sheltered market program areas for which they are certified.

700.10 Certification shall be valid for a period of two (2) years from the date of approval by the Commission, unless revoked by the Commission. Renewal of certification shall be in accordance with the recertification procedures set forth in this chapter.

AUTHORITY: Unless otherwise noted, the authority for this chapter is §5(a) of the Minority Contracting Act of 1976, D.C. Law 1-95, D.C. Code §1-1144(a) (1981).

SOURCE: Final Rulemaking published at 26 DCR 2771 (December 21, 1979); as amended by Final Rulemaking published at 30 DCR 5734, 5736 (November 4, 1983).

701 CERTIFICATION OF JOINT VENTURES

701.1 The Commission shall determine the eligibility of a joint venture for certification on a contract-by-contract basis.

701.2 The Commission may certify joint ventures involving a MBE where such an agreement will contribute to minority business development and will permit the offering of a proposal on a specific contract where a MBE by itself lacks the necessary capacity to fulfill the requirements of the proposed contract, due to factors including, but not limited to, an inability to secure adequate bonding or an inability to obtain financial or technical resources.

701.3 The MBE participating in the joint venture shall represent not less than fifty percent (50%) each of the management aspect, control aspect, and ownership aspect of the joint venture; Provided, that where certification of the joint venture will further the MBE, the Commission may waive any or all of these requirements.

701.4 A joint venture shall not be certified under this section unless the participating MBE has been individually certified in accordance with the provisions of the Act and the requirements of chapters 6 and 7 of this title.

701.5 Individual certification of a MBE participating in a joint venture shall not automatically qualify the joint venture for certification.

701.6 If a MBE has not been certified by the Commission prior to its participation in a joint venture, the applications for individual certification of the MBE and of the joint venture may be submitted to and reviewed by the Commission simultaneously.

701.7 Every joint venture agreement shall include provisions which do the following:

- (a) Specify the purpose of the joint venture;
- (b) Identify parties to the joint venture and define their respective obligations and responsibilities;
- (c) Provide that not less than fifty percent (50%) of the net operating profits after taxes earned by the joint venture will be distributed to the minority business enterprise;
- (d) Provide for the establishment and administration of a special separate bank account in the name of the joint venture into which all funds received will be deposited and through which all expenses will be paid, and which requires all withdrawals and deposits to be signed by all members of the joint venture management committee;
- (e) Contain an itemized description of all major equipment, facilities, and other resources to be furnished by each venturer with a detailed schedule of costs; and
- (f) Specify the responsibilities of the parties in at least the areas of subcontract negotiation and contract and subcontract performance.

701.8 The Commission may deny certification of any joint venture whose joint venture agreement lacks any of the provisions stipulated in §701.7.

701.9 The joint venture shall make its records available to the Commission at any time deemed necessary by the Commission.

701.10 The joint venture shall submit to the Commission quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture principals) no later than forty-five (45) days after the end of each operating quarter.

701.11 The joint venture shall submit to the Commission a project-end profit and loss statement no later than ninety (90) days after completion of the contract with a statement of final profit distribution.

701.12 The Commission may revoke certification if it determines that incorrect data was submitted to the Commission in the application or supporting documents.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2781 (December 21, 1979); as amended by Final Rulemaking published at 33 DCR 5664 (September 12, 1986).

702 APPLICATION FOR CERTIFICATION

702.1 All applications for certification shall meet the following requirements in order to be accepted for Commission review:

- (a) All application forms shall be completely filled out;
- (b) All required documentation shall be supplied; and

- (c) The application shall be verified by the applicant on the affidavit form supplied by the Commission.
- 702.2 Any application which does not meet the requirements for filing set forth in §702.1 shall not be accepted for filing by the Commission.
- 702.3 Upon receipt of an application, the Commission staff shall conduct a preliminary review of the submission for compliance with the requirements of §702.1 and take one of the following actions:
- (a) If the application is complete, it shall be accepted for Commission review;
- (b) If the application is substantially incomplete or lacks the required verification, it shall be returned to the applicant with a notice indicating the need for additional actions or materials in order for the application to be accepted for review; or
- (c) If the application is incomplete, but the omissions are minor, the staff may hold the application pending receipt of all remaining materials required for acceptance. In these cases, the applicant shall be given notice that the application has not been accepted and the need for the submission of additional materials in order for the application to be accepted for review.
- 702.4 The Commission staff may hold interviews or discussions with an applicant or applicant's representative as part of the preliminary review process in order to assist the applicant in fulfilling the application requirements of this section.
- 702.5 Upon acceptance of an application, the Commission staff shall conduct a full review and analysis of the application. This review process may include interviews and discussions with the applicant or applicant's representative, requests for the submission of additional documentation or information, and an on-site inspection by the Commission staff.
- 702.6 The staff review shall include an audit of the books and records of the applicant. Each applicant shall be required to grant permission for an audit on the application form submitted to the Commission.
- 702.7 Upon completion of the staff review, the Commission staff shall prepare a report setting forth findings and recommendations. The report shall be submitted to the Commission with the application for consideration by the Commission in making its determination.
- 702.8 Each application shall contain the following information where applicable to the individual business entity seeking certification:
- (a) The name, mailing address, street address, and telephone number of the applicant;
- (b) Identification of all owners, directors, and officers by name, age, date-of-birth, place of birth, position, duties and responsibilities associated with the business, actual operating authority, and percentage of ownership;

- (c) Percentage of minority ownership of the business and identification of minority owners by name and minority group;
- (d) Business documentation, including articles of incorporation, by-laws, certificates of good standing, stock voting rights, minutes of organizational meetings, partnership agreements, profit sharing agreements, buy-out rights, joint venture agreements, tax returns, annual reports, and other information requested by the Commission;
- (e) Evidence of authority to do business in the District of Columbia, D.C. business licenses, occupancy permits, tax numbers, worker's compensation forms, lease agreements, and other information requested by the Commission;
- (f) Stock options or other ownership options which are outstanding, evidence of loans or other debts between owners, evidence of loans or other debts between owners and third parties which are related to the business, and identification of trusts affecting the finances or control of the business;
- (g) Copies of current balance sheets and operating statements;
- (h) Identification of the persons by name and title who decide which jobs the firm will take; who obtain, negotiate, and sign for bonds and insurance; and who sign motor fuel tax forms;
- (i) Type, quantity, and value of equipment owned;
- (j) Bonding limit, name of bonding company, sources of letters of credit, other sources of capital and other financing, and trade references; and
- (k) Experience of firm owners and managers in areas such as supervision; accounting, bookkeeping, and other record keeping; use of suppliers, and use of equipment.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2783 (December 21, 1979).

703 DENIAL OF CERTIFICATION

- 703.1 The Commission shall deny certification as a local minority business enterprise or MBE/joint venture to any business entity which fails to meet the requirements of D.C. Law 1-95 and chapters 6 and 7 of this title.
- 703.2 The Commission may base its denial of certification on any of the following grounds:
 - (a) Failure to qualify as a local minority business enterprise under the eligibility provisions of D.C. Law 1-95 or this chapter;
 - (b) Failure to provide sufficient information to the Commission on which a determination of eligibility can be based;
 - (c) Refusal to permit on-site inspections by the Commission or its representative(s);
or

- (d) Refusal to comply with a reasonable Commission request for information, data, or access to records pertinent to the application for certification.
- 703.3 If certification is denied, the Commission shall notify the applicant of the denial in writing along with the reasons for the denial.
- 703.4 A copy of each Notice of Denial of Certification shall be sent to the Mayor.
- 703.5 Certification shall be denied when it is established that the applicant knowingly provided the Commission with incorrect data in its certification application and accompanying documents.
- 703.6 Upon the denial of certification of an applicant by the Commission on one (1) or more grounds set forth in §703.1 or §703.2, or for any reason, the Commission shall not accept, review, or evaluate for a period of one (1) year from the date the applicant receives notice of the Commission's decision to deny certification, unless the applicant requests and receives a hearing in accordance with §708 of this chapter, any of the following:
- (a) New information on, amendments to, or the denied application; or
 - (b) New certification applications from the applicant, its agent(s), representative(s), or other members of the public on the applicant's behalf.
- 703.7 If the applicant receives a hearing in accordance with §708, the one (1) year waiting period commences on the date the applicant receives notice of the Commission's final decision on the hearing.
- 703.8 The one (1) year waiting period constitutes a moratorium on further review of the applicant's file for purposes of certification and participation in the sheltered market program.
- 703.9 Hearings shall be conducted in accordance with the procedures set forth in §708 of this chapter.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2781 (December 21, 1979); as amended by Final Rulemaking published at 33 DCR 5659, 5660 (September 12, 1986).

704 RENEWAL OF CERTIFICATION

- 704.1 Application for renewal of certification shall be submitted to the Commission not less than ninety (90) days before the date of expiration of the existing certificate.
- 704.2 The Commission shall issue a notice of pending expiration of certification to each certified MBE approximately one hundred twenty (120) days before the expiration of the two-year (2) certification period; Provided, that failure of the Commission to issue the notice or failure of the certified MBE to receive the notice shall not extend the existing certification period nor relieve the MBE of the obligation to submit a timely application for recertification in accordance with this section.

704.3 Applications for renewal of certification shall meet all of the requirements for application for certification set forth in §702 with all information, documents, other data, and verification updated to the date of the application for renewal.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2785 (December 21, 1979).

705 COMPLIANCE REVIEW

705.1 The Commission shall periodically review the practices and status of certified MBE's to determine whether they continue to meet the eligibility requirements for certification and are conducting their business activities in accordance with the requirements of D.C. Law 1-95 and this chapter.

705.2 Informal compliance review shall consist of monitoring reports and information submitted by agencies, MBE's, and joint ventures; on-site visits; or interviews and discussions conducted by the Commission staff.

705.3 If the Commission staff discovers correctable non-compliance as the result of an informal compliance review, it may seek compliance by the MBE prior to instituting further proceedings. In those cases, the Staff Director shall issue a Notice of Non-Compliance to the MBE specifying the nature of the alleged non-compliance and recommending steps to be taken by the MBE to correct the stated deficiencies. The staff may enter into discussions with the MBE to attempt to resolve the compliance problem(s) informally.

705.4 If the informal compliance procedures result in the correction of the deficiencies, the Staff Director shall make a report to the Commission which shall include the following:

- (a) The compliance review findings;
- (b) A copy of the Notice of Non-Compliance;
- (c) The steps taken to correct any deficiencies; and
- (d) The results of a follow-up investigation.

705.5 If the informal compliance procedures do not result in the correction of all deficiencies, the Staff Director may institute formal compliance review proceedings or, if formal compliance review procedures are unnecessary, submit a Compliance Review Report to the Commission.

705.6 Upon receipt of a sworn complaint from any person or a report of alleged violation by an agency head, the Commission may direct the Commission staff to conduct an informal compliance review or it may order a formal compliance review investigation which may include the following:

- (a) On-site visits;
- (b) Interviews and discussions with MBE representatives;

- (c) Requests for submission of information;
- (d) Audit of MBE books and records; and
- (e) Other means of determining the validity of the charge of alleged non-compliance.

705.7 Upon completion of the formal compliance review process, the Commission staff shall prepare and submit a report to the Commission setting forth its findings and recommendations.

705.8 Upon receipt of the Compliance Review Report, the Commission may hold an informal preliminary hearing at which the MBE shall be allowed to appear and state its position on the allegations. After the informal preliminary hearing, or without an informal hearing if the Commission so determines, the Commission shall take one of the following actions:

- (a) Dismiss the allegations as unfounded or trivial; or
- (b) Adopt formal charges and conduct a formal hearing on the allegations in accordance with the provisions of §708.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2786 (December 21, 1979).

706 REVOCATION OF CERTIFICATION

706.1 Formal charges against an MBE which may result in revocation of certification may be brought and adopted on any of the following grounds:

- (a) Fraud or deceit in obtaining certification, including the furnishing of substantially inaccurate or incomplete ownership or financial information in connection with the application;
- (b) Failure to report changes in the status or activities of the business entity or its minority membership which affect the MBE's eligibility for certification;
- (c) Gross negligence, incompetence, financial irresponsibility, or misconduct in the performance of contractual obligations or services; or
- (d) Willful violation of any provision of D.C. Law 1-95 or of chapter 6 or 7 of this title.

706.2 The Commission shall give written notice of the adoption of charges to the MBE or joint venture. The notice shall set forth the grounds and reasons for the denial and shall set forth the right to a hearing and hearing procedures.

706.3 A hearing before the Commission to contest the revocation of certification may be obtained by filing a written request for a hearing within ten (10) days of the receipt of the notice of revocation. A written response to the charges may be filed with the request for hearing or at any time prior to the conclusion of the hearing.

706.4 Hearings shall be conducted in accordance with the procedures set forth in §708.

706.5 Upon the revocation of certification by the Commission on one or more grounds set forth in §706.1, or for any other reason, the Commission shall not accept, review, or evaluate new certification applications from that MBE for a period of one (1) year from the date the MBE receives the notice, unless the MBE requests and receives a hearing in accordance with §§706.3 and 706.4.

706.6 If the MBE receives a hearing, the one (1) year waiting period commences on the date the applicant receives notice of the Commission's final decision on the hearing.

706.7 The one (1) year waiting period constitutes a moratorium on further review of the MBE's file for purposes of certification and participation in the sheltered market program.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2787 (December 21, 1979); as amended by Final Rulemaking published at 33 DCR 5659, 5661 (September 12, 1986).

707 DENIAL OF RECERTIFICATION

707.1 The Commission may deny recertification of an MBE on one or more of the grounds set forth in §703.2 or §706.1.

707.2 If recertification is denied, the Commission shall notify the applicant of the denial in writing along with the grounds and specific reasons for the denial. Notice of denial of recertification shall also include notice of the right to a hearing and hearing procedures.

707.3 A hearing before the Commission to contest the denial of recertification may be obtained by filing a written request for a hearing within ten (10) days of the receipt of the notice of denial. A written response to the grounds and reasons for denial may be filed with the hearing request or at any time prior to the conclusion of the hearing.

707.4 Hearings shall be conducted in accordance with the procedures set forth in §708.

707.5 Upon the denial of recertification of a MBE by the Commission on one or more grounds set forth in §703.2 or §706.1, or for any other reason, the Commission shall not accept, review, or evaluate for a period of one (1) year from the date the MBE receives notice of the Commission's final decision to deny recertification, unless the MBE requests and receives a hearing in accordance with §708 of this chapter, either of the following:

- (a) New information on, amendments to, or the recertification application; or
- (b) New certification applications from the applicant, its agent(s), representative(s), or other members of the public on the applicant's behalf.

707.6 If the MBE receives a hearing in accordance with §708, the one (1) year waiting period commences on the date the MBE receives notice of the Commission's final decision on the hearing.

707.7 The one (1) year waiting period constitutes a moratorium on further review of the MBE's file for purposes of recertification and participation in the sheltered market program.

707.8 Hearings shall be conducted in accordance with the procedures set forth in §708 of this chapter.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2787 (December 21, 1979); as amended by Final Rulemaking published at 33 DCR 5659, 5662 (September 12, 1986).

708 HEARING PROCEDURES

708.1 Hearings held in connection with denials of recertification and revocation of certification shall be conducted in accordance with the procedures set forth in this section.

708.2 Upon receipt of a request for hearing the Commission shall set a date for the hearing and shall give the party requesting the hearing at least thirty (30) days written notice of the date and time set for the hearing; Provided, that a party may waive the right to a full thirty (30) days notice of the hearing by stating that such right is waived in the request for hearing. If the right to thirty (30) days notice is waived, the Commission shall inform the MBE or joint venture of the hearing date and time at least ten (10) days prior to the hearing.

708.3 The Commission shall have the power to issue subpoenas to compel the attendance of persons and the production of documents;

708.4 MBE's against which charges have been made shall have the right to be represented by counsel, present evidence and witnesses, and cross-examine adverse witnesses;

708.5 All hearings shall be open to the public.

708.6 An electronic recording of the hearing shall be made which shall be a part of the official record of the proceedings. A copy of the recording shall be made available to the MBE without charge, upon request.

708.7 All testimony shall be given under oath or affirmation.

708.8 Any person may be excluded from the hearing for conduct which interferes with the hearing process.

708.9 The rules of evidence shall not strictly apply; however, the Commission shall have the power to exclude irrelevant or repetitive evidence or testimony.

708.10 The official record of the hearing shall consist of the following:

- (a) Notice of the hearing;
- (b) The written submissions of the MBE, if any;
- (c) The report(s) of the Commission staff upon which the charges or denial is based;
- (d) Any briefs and proposed findings and conclusions filed by the parties;
- (e) Exceptions to proposed findings and conclusions; and

(f) The electronic recording of the hearing.

708.11 The Commission may require the parties to a formal hearing to submit proposed findings of fact and conclusions of law within a specified time after the close of the formal hearing. If the proposed findings and conclusions are received, each party shall receive a copy of the adverse party's filing and shall have an opportunity to file exceptions.

708.12 The Commission's final decision shall be based upon the record of the hearing and a decision to revoke the certification of an MBE shall be supported by a preponderance of the evidence.

708.13 The final decision of the Commission must be issued in writing within ninety (90) days of the date on which the charges were adopted or notice of denial of recertification issued by the Commission.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2788 (December 21, 1979).

709 TEMPORARY CERTIFICATION

709.1 The Staff Director of the Commission may issue to an applicant a temporary certification for bidding purposes only when all of the following requirements are satisfied:

- (a) The applicant has submitted a completed application for certification under §700 of this chapter.
- (b) The completed application is scheduled to be reviewed by the Commission at its next scheduled meeting;
- (c) The application is certifiable under §700 based on staff review and recommendation;
- (d) The Staff Director determines, given the character of the contract at issue, the likelihood of such a contract being offered again in the sheltered market, and the amount of the contract, that the applicant's inability to bid on the contract would have a detrimental effect on the development of MBE's in the District of Columbia; and
- (f) The Staff Director has the approval of at least four (4) Commissioners for temporary certification for bidding purposes.

709.2 Temporary certification for bidding shall have no significance in the Commission's review of the application for certification under §700 of this chapter.

709.3 An applicant which has received temporary certification for bidding may only bid on contracts placed in the sheltered market. An applicant shall not be qualified as a

MBE to be awarded a contract placed in the sheltered market until the applicant is certified pursuant to §700 of this chapter.

SOURCE: Final Rulemaking published at 33 DCR 5664, 5666 (September 12, 1986).

710 DISTRIBUTORSHIPS

710.1 In determining whether an applicant meets the requirements for minority participation in the sheltered market as set forth in D.C. Code §1-1148(a) (1981), and to ensure compliance with the performance requirements for *bona fide* MBE's set forth in D.C. Code, §1-1147(c) and (d) (1981), the Commission shall review the extent to which a *bona fide* minority participant qualifies as a "distributorships."

710.2 For purposes of §710, the term "distributorship" means any legal entity organized in any form, other than a joint venture, to engage in lawful commercial transactions involving the sale of goods or services for resale; or any entity which sells chiefly to other vendors, retailers, industrial, institutional, or commercial users for resale or business use.

710.3 The term "distributorship" includes a business which owns, operates, or maintains an establishment that produces on the premises the materials, supplies, articles, or equipment of the character in which the applicant claims to be a distributorship; but the term does not include a business which only performs minimal operation on or minimal assembly of items being procured.

710.4 In order to qualify as a distributorship, an applicant shall meet the following minimum eligibility requirements in addition to certification requirements stipulated in §702 of this chapter:

- (a) Maintain an establishment in which materials, supplies, articles, or equipment of the character in which the applicant claims to be a distributorship are bought, kept in stock, and sold to wholesale or retail customers on a recurring basis in the usual course of business; and
- (b) Demonstrate that its business is an established and on-going concern regularly dealing in the particular materials, supplies, articles, or equipment of the character offered to the District of Columbia.

SOURCE: Final Rulemaking published at 33 DCR 5659, 5662 (September 12, 1986). 4, 1983).

799 DEFINITIONS

799.1 The meanings ascribed to the definitions appearing in §699.1 of chapter 6 of this title shall apply to the terms in this chapter.



CHAPTER 9 SURPLUS PROPERTY

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934	Certifications and Agreements (Including Terms, Conditions, Reservations and Restrictions) Covering the Donation of Donable Federal Surplus Property

900 GENERAL PROVISIONS

- 900.1 This chapter sets forth the operating procedures and practices to be carried out by the District of Columbia State Agency for Surplus Property (SASP) in effecting fair and equitable distribution of federal surplus personal property to District of Columbia Government Public Agencies, and District of Columbia non-profit, tax-exempt educational and health institutions as are determined to be eligible to receive surplus personal property under §203(j) of the Federal Property and Administrative Services Act of 1949, as amended.
- 900.2 Operating procedures and practices described in this chapter are in accordance with the regulations as set forth in FPMR 101-44 (41 CFR 101-44) as revised to conform to the provisions of Public Law 94-519, 94th Congress.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the Federal Property and Administrative Services Act of 1949, as amended, P.L. 81-698, approved August 16, 1950.

SOURCE: Final Rulemaking published at 30 DCR 2209 (May 13, 1983), incorporating Proposed Rulemaking published at 24 DCR 1705 (August 19, 1977).

EDITOR'S NOTE: Hereafter, source citations for this chapter are to the proposed rather than the final rulemaking notice.

901 AUTHORITY

901.1 In accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 698, 81st Congress, Chapter 720, 2d Session (H.R. 6104) was approved August 16, 1950 to authorize the District of Columbia State Agency for Surplus Property (SASP) to acquire and distribute to all eligible donees in the District of Columbia any and all surplus property deemed surplus to the Federal Government. The D.C. SASP is vested with all necessary powers and authorities to accomplish the above mentioned functions.

901.2 The D.C. SASP may make any certifications, take any actions, make any expenditures, and enter into any agreements and undertakings for and in the name of the District of Columbia, pursuant to applicable D.C. laws.

901.3 The D.C. SASP may enter into cooperative agreements as provided by the Federal Property and Administrative Services Act of 1949, as amended, and authorities cited in §§901.1 and 901.2.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1708 (August 19, 1977).

§902: RESERVED

903 DESIGNATION OF STATE AGENCY

903.1 The Surplus Acquisition Section of the Equipment Management Division, Materiel Management Administration, Department of Administrative Services, is designated as the Agency responsible for administering the State Plan of Operation pursuant to Commissioner's Order No. 69-96, dated March 7, 1969, and Reorganization Plan No. 5 of 1983.

903.2 The Administrator for Materiel Management, through the Chief, Equipment Management Division, shall be responsible for the operations of the SASP.

903.3 The Director of Administrative Services shall supervise the Administrator for Materiel Management, who is the Procurement Officer for the District of Columbia.

903.4 Organization, supervision, and staffing shall be as outlined on the organizational chart of the agency. Generally, the Chief, Equipment Management Division, as directed

by the Administrator, Materiel Management Administration, shall be responsible for requesting, receiving, storing and distributing surplus property.

903.5 The District of Columbia State Agent shall be the Chief of the Surplus Acquisition Section, and may make charges, assess fees, and distribute surplus property in accordance with all federal and District of Columbia laws and regulations governing the donation program.

903.6 The SASP shall distribute property from one warehouse at #5 Village Lane, S.W., Washington, D.C.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1709 (August 19, 1977).

904 INVENTORY CONTROL

904.1 The SASP shall use the D.C. Systems for inventory control and accounting, as promulgated by the Audit Office of the District of Columbia Department of Finance and Revenue.

904.2 The inventory control system shall include all property allocated to SASP on SF-123, with no exceptions. Accountability records of all single items having a unit acquisition cost of three thousand dollars (\$3,000), or more, and all motor vehicles regardless of cost, shall be maintained on a Stock Record Ledger Card and supplemented with the Control Sheet for Restricted Donable Property at the time of issue.

904.3 Property shall be checked into the warehouse upon receipt, using the SF-123 as the warehouse receiving report recorded on the Stock Record Ledger card. Issues shall be posted against the Card, and periodic inventories shall be taken to verify card balances. Actual count shall determine shortages and overages. Certain items such as nuts, bolts, screws, and washers, shall be isolated when received and sold in units of pounds or other measurements of acceptance.

904.4 Verification of property on hand shall be accomplished by complete or random sampling inventory. Random sampling inventories shall always be used whenever discrepancies are noted by the warehouse clerk.

904.5 Overages and shortages of receipts shall be recorded on the receiving report. In the case of overages on line items over five hundred dollars (\$500), Form SF-123 shall be prepared and forwarded to GSA. Overage and shortage reports shall be handled pursuant to FPMR 101-44.115 (a) and (b).

904.6 The SASP shall conduct at least one (1) complete inventory each fiscal year. Property verifications shall be recorded on the the Stock Record Ledger Card and all discrepancies shall be reported to the Chief, Equipment Management Division, for review and action. Adjustment action shall be performed by the Accounting Division, Department of Administrative Services.

904.7 Property shall be issued to eligible donees on D. C. Form 2630-12, Property Receipt, which shall be signed by an authorized representative of the donee at the time of issues. An authorized signature file shall be maintained by the SASP for all

authorized donee-agents. Items with a unit acquisition cost of three thousand dollars (\$3,000) or more, and motor vehicles regardless of cost shall also be issued on the D.C. Form 2630-12, which has the special restrictions printed on the reverse side.

- 904.8 Property distributed directly to a donee shall be physically received and issued as described in §§904.3 and 904.7, with the exception being the absence of the property at the warehouse.
- 904.9 The audit trail shall be provided by the Stock Record Ledger Card which contains the D.C. (State) Serial Number assigned the Form SF-123, the requesting and receiving document, and the voucher number assigned the D.C. Form 2630-12, the issue and accounts receivable document.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1710 (August 19, 1977).

905 ACCOUNTING

- 905.1 The accounting system for the SASP, consisting of a double-entry system, shall be maintained by the Accounting Division, Department of Administrative Services. It shall include a chart of accounts, a general ledger with accounts for all assets, liabilities, income and expenses, and journals for the original record of transactions.
- 905.2 The accounting system for the SASP shall identify and separately account for funds accumulated from service charges which are recorded from the Property Receipts forwarded by SASP each month. The Accounting Division shall maintain the documents by donee. The SASP shall maintain the documents by numerical voucher-order sequence on a monthly basis.
- 905.3 The Accounting Division shall utilize the District of Columbia's Financial Management System for recording its receipts and expense transactions. This System furnishes budgetary information and fund accounting on a double-entry cash basis.
- 905.4 Accounts receivable shall be recorded at the fund level, but shall not be recognized as revenue in the accounts until collected. The Accounting System shall allow for recording encumbrances, if necessary, and shall be available for inspection by authorized representatives following due notice.
- 905.5 At the end of each quarter, Administrative Services Accounting shall prepare for the Equipment Management Division a set of statements to include a Statement of Operations, a Balance Sheet, and an aged schedule of accounts receivable. These statements shall be prepared on the accrual basis of accounting.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1712 (May 13, 1983).

§§906-907: RESERVED

908 RETURN OF DONATED PROPERTY

908.1 When a determination has been made that property has not been put into use by a donee within one year from the date of receipt, or when the donee ceases to use the property within one (1) year after placing the property in use, under the terms and conditions of the Certifications and Agreements the donee shall, at the direction of SASP, do one (1) of the following:

- (a) Return all property, while usable, at its own expense to the SASP warehouse;
- (b) Retransfer all usable property to another eligible donee; or
- (c) Make some other disposal as deemed appropriate.

908.2 The SASP shall periodically emphasize the provisions §908.1 when corresponding and meeting with donees, and when surveying the utilization of donated property at donee facilities. Property returned by donees shall be received in the inventory for reissue.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1713 (August 19, 1977).

909 FINANCING AND SERVICE CHARGES

909.1 The SASP shall be financed through the use and collection of service charges.

909.2 The service charge shall be based on the prorated expenses incurred annually by the SASP, and shall be assessed at a rate designed to provide adequate coverage for all cost factors involved in the acquisition and distribution of surplus property. Moreover, the service charges shall be fair and equitable in relation to the services performed.

909.3 The SASP may accept gifts of a redeeming value from concerned District of Columbia entities to augment its financial posture, if approved prior to acceptance by the Director of Administrative Services or his or her authorized designee.

909.4 The factors considered in determining service charges shall be as follows:

- (a) Original acquisition cost and present value of property;
- (b) Screening;
- (c) Quantity of property available;
- (d) Condition of property;
- (e) Desirability of property;
- (f) Transportation to include fuels, lubricants, and maintenance;
- (g) Warehousing and storage;

- (h) Loading and unloading;
- (i) Packing and crating;
- (j) Repair and rehabilitation of property;
- (k) Utilization and compliance;
- (l) Depreciation and reserve;
- (m) Administration and accounting;
- (n) Utilities and telephone;
- (o) Trash removal;
- (p) Printing;
- (q) Supplies;
- (r) Travel; and
- (s) Personnel.

909.5 Generally, items shall be priced as follows:

- (a) At thirty-five percent (35%) or less for items with a unit acquisition cost between one cent (\$.01) and five hundred dollars (\$500);
- (b) At twenty-five percent (25%) or less for items between five hundred and one dollars (\$501) and one thousand dollars (\$1,000);
- (c) At fifteen percent (15%) or less for items between one thousand and one dollars (\$1,001) and fifteen hundred dollars (\$1,500); and
- (d) At ten percent (10%) or less for items over fifteen hundred dollars (\$1,500). No item shall cost more than two thousand dollars (\$2,000), excluding special freight and handling.

909.6 Direct costs shall be added to the service charges for the following:

- (a) Special rehabilitation of property;
- (b) Overseas property returned to the United States at the request of the donee;
- (c) Long-distance hauling;
- (d) Special handling such as packing and cratings; and
- (e) Special purchases to replace parts.

909.7 Minimum service charges shall be assessed in cases where the SASP provides only minimum services. Those cases may include direct transfer of property whereby the donee furnishes labor and equipment to locate, screen, and pickup property.

- 909.8 When transactions cited in §909.7 occur, SASP shall discount the service charge that would have been normally assessed by twenty-five percent (25%) for locating and screening, and twenty-five percent (25%) for pickup. This direct method shall be authorized only in the case where technical or scientific properties are involved, and the expertise of selection exceeds the capabilities of the SASP employees. Under this arrangement, no transaction shall cost less than sixty dollars (\$60), and no more than one thousand dollars (\$1,000), excluding special freight and handling and the exceptions itemized in §909.6.
- 909.9 Minimum charges, when appropriate, may also reflect the sum total of SASP expenses prorated by the number of documents processed for the month.
- 909.10 The SASP shall not refund service charges to donees in excess of the working capital reserve. However, when a determination has been made by Administrative Services Accounting that the working capital reserve reflects an excessive amount, the service charges shall be reduced by the percentage recommended by Administrative Services Accounting necessary to counteract only that amount determined to be in excess. The period of the reduced service charges shall be as defined by Administrative Services Accounting, or as otherwise directed.
- 909.11 Service charge funds remitted by donees, including those accumulated prior to October 17, 1977, shall be used for the benefit of the participating donees, and the sole operation of the SASP Distribution Center. Included in the use shall be coverage of the direct and indirect cost of the SASP operations, as subject to D.C. law and budgetary requirements, and improvements to or acquisition of additional office and warehousing facilities. The service charge funds may also be used to purchase necessary equipment and supplies, and to repair and rehabilitate existing equipment.
- 909.12 Any funds realized from either the sale or dissolution of the SASP facilities shall be deposited to the District of Columbia General Fund.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1714 (August 19, 1977).

910 TERMS AND CONDITIONS ON DONABLE PROPERTY

- 910.1 The SASP shall require each eligible donee, in support of eligibility, to file with the SASP a Certification and Agreements Form, which outlines the certifications, agreements, terms, conditions, reservations, and restrictions under which all Federal surplus personal property will be donated, as specified in §934.
- 910.2 The SASP shall require each eligible donee, in support of eligibility, to file with the SASP the Civil Rights Assurance Form, which prohibits discrimination on the basis of race, religion, national origin, sex, handicap, age, and education.
- 910.3 Each form filed pursuant to §§910.1 and 910.2 shall be signed by the Governing Board or Chief Executive Officer of the donee-organization agreeing to all stipulations prior to donation. The terms, conditions, and restrictions contained in the Certifications and Agreements are printed on the reverse side of the D.C. 2630-12, Property Receipt.
- 910.4 The following periods of restriction shall be followed by the SASP regarding property with a unit acquisition cost of three thousand dollars (\$3,000) or more, and all motor vehicles regardless of cost:

- (a) Motor vehicles - Twenty-four (24) months from the date the property is placed in use. D.C. Public Agencies requesting purchase of vehicles from SASP shall produce a bonafide certification of fleet addition or fleet replacement prior to obtaining vehicles of any sort.
- (b) Compliance property (items with a unit acquisition cost of three thousand dollars (\$3,000) or more) - twenty-four (24) months from the date property is placed in use.
- (c) Aircraft (non-combat type), and Vessels (fifty feet (50") or more in length - sixty (60) months from the date property is placed in use. These donations shall be subject to the requirements of the Non-Combat Aircraft Conditional Transfer Document and the Vessel Conditional Transfer Document.

910.5 In addition to the periods of restrictions cited in §910.4- above, the SASP shall impose the statutory requirements that all items donated shall be placed into use within one year of the donation period, and be used for the purposes acquired for one year thereafter, or become subject to the provisions of §908 of this chapter.

910.6 Excluding combat-type aircraft, the SASP may reduce the period of restriction to eighteen (18) months on donable property providing sufficient rationale justifies the request, and is approved by SASP at the time of donation.

910.7 The SASP, when considered reasonable or appropriate, may impose such terms, conditions, reservations, and restrictions on the use of all donable property, regardless of acquisition cost, except such conditions involving special handling or use limitations as GSA may determine, which shall be mandatory.

910.8 The SASP may amend, modify, or grant release of any terms, conditions, reservations, or restrictions it has imposed on donated property, in accordance with the standards outlined in the Release of Restrictions Form, provided the cogency of each situation has been previously ratified by SASP and made a matter of public record.

910.9 The SASP shall not authorize release of any federal or District of Columbia law or regulation except where authority is specifically granted by those laws or regulations.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1715 (August 19, 1977).

911 NON-UTILIZED DONABLE PROPERTY

911.1 All property in the possession of the SASP for two (2) complete inventory cycles, and all property which cannot be utilized by eligible donees in the District of Columbia, regardless of time, shall be disposed in accordance with FPMR 101-44.205 by one (1) of the following methods:

- (a) Retransfer to another SASP;
- (b) Abandonment or destruction; or
- (c) As prescribed by GSA.

911.2 When donable property is either retransferred or disposed as prescribed by GSA, the District of Columbia SASP may seek reimbursement for the cost of care and handling as authorized by FPMR 101-44.205(j).

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1720 (August 19, 1977).

912 FAIR AND EQUITABLE DISTRIBUTION

912.1 The SASP shall distribute all donable surplus property to all eligible donees of the District of Columbia on a fair and equitable basis considering relative needs, relative resources, and the ability to utilize the property as the prime factors.

912.2 The procedures for effecting the distribution shall be determined by the following factors:

(a) Relative needs, which shall include an assessment of the following factors:

- (1) Justification;
- (2) Size and type of program in operation; and
- (3) Type and quantity of property previously issued.

(b) Relative resources, which shall include an assessment of the following factors:

- (1) Economic condition of donee;
- (2) Funding source and availability of funds; and
- (3) Ability to maintain property in use.

(c) Ability to utilize property, which shall include an assessment of the following factors:

- (1) Planned usage of property;
- (2) Length of time for contemplated usage; and
- (3) Ability and timeliness of selection and removal.

912.3 The SASP shall maintain a donee want-list which shall serve as a fundamental tool designed to neutralize the necessity of frequent visits to the Distribution Center in search of desired properties. The SASP employees shall be guided by these requests in the screening and selection of property.

912.4 The SASP, insofar as practical, shall select property as requested by the donees, and, upon request, arrange for direct shipment.

912.5 The SASP shall prioritize its efforts to locate and distribute needed property to any donee that suffers any type of major disaster due to fire, vandalism, Acts of God, or any other type of uncontrollable catastrophe.

- 912.6 Catalogs and bulletins, containing listings of available property, shall be mailed by SASP periodically to all eligible donees in order to enhance item awareness and avoid customer stagnation.
- 912.7 The SASP shall conclude all competing requests utilizing the provisions cited in this section.
- SOURCE:** Final Rulemaking incorporating 24 DCR 1705, 1721 (August 19, 1977).

913 ELIGIBILITY

- 913.1 Pursuant to FPMR 101-44.207(e), the State Agency (D.C. SASP) is responsible for the determination that an applicant is eligible as a public agency or a non-profit educational or public health institution or organization to participate in the program and receive donations of surplus personal property. However, in establishing eligibility, the standards and guidelines as set forth in FPMR 101-44.207 shall be utilized, as well as the final approval of the Director of the Department of Administrative Services.
- 913.2 Surplus property may be donated through SASP to any public agency in the District of Columbia that carries out or promotes one or more public purpose.
- 913.3 For the purposes of this section, a public agency, as defined in FPMR 101-44.001-10, includes any political subdivision thereof, including any unit of local government or economic development district; or any department, agency, instrumentality thereof, including instrumentalities created by compact or other agreement between States or political subdivisions, multijurisdictional substate districts established by or pursuant to State law; or any Indian tribe, band, group, pueblo, or community located on a State reservation.
- 913.4 For the purposes of this section, public purpose, as defined in FPMR 101-44.207(a)(22), means a program or programs carried out by a public agency which are legally authorized in accordance with the laws of the State or political subdivision thereof and for which public funds may be expended. Public purposes include, but are not limited to, programs such as conservation, economic development, education, parks and recreation, public health, and public safety.
- 913.5 Surplus property may be donated through SASP to non-profit educational or public health institutions, or tax-exempt organizations within the District of Columbia that are classified as medical institutions, hospitals, clinics, health centers, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, child care centers, radio and television stations licensed by the FCC as educational, museums attended by the public, and libraries serving free all residents of the District of Columbia.
- 913.6 A non-profit, tax-exempt institution, as defined in FPMR 101-44.207(17), includes any educational or public health institution or organization of which no part of the net-earnings inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held to be tax-exempt under the provisions of §501 of the Internal Revenue Code of 1954.

913.7 The SASP shall provide full assistance to the perpetual development of potential donees in the District of Columbia with constant vigilance towards manifesting optimum program participation.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1723 (August 19, 1977).

914 APPLICATION

914.1 Each donee-applicant shall be required to file the following information:

- (a) An application form containing the following information:
 - (1) The legal name, address and telephone;
 - (2) Status as a public agency or non-profit, tax-exempt educational or public health unit, and evidence of status given;
 - (3) Detailed analysis of program activities;
 - (4) Types of property needed;
 - (5) Financial information;
 - (6) Proof of tax exemption under §501 of the Internal Revenue Code of 1954; and
 - (7) Proof that applicant is approved, accredited or licensed, if any one is required.
- (b) A Certifications and Agreements Form signed by the Chief Executive Officer accepting the terms and conditions under which property will be transferred.
- (c) An Assurance of Compliance Form indicating acceptance of civil rights and non-discrimination on the basis of race, religion, national origin, sex, handicap, age or education, in accordance with GSA regulations and requirements.
- (d) A written authorization signed by the chairperson of the governing body or executive head of the donee activity, or a resolution of the governing body designating one or more representatives to act for the applicant in the obligation of any necessary funds and the execution of property receipts.

914.2 Each donee applicant shall file the application at the SASP Distribution Center, and should allow a normal processing period of thirty (30) days. Unusual applications may require a longer period.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1725 (August 19, 1977).

915 MAINTAINING ELIGIBILITY

915.1 The SASP shall review and update all approved applicants every three years.

915.2 When an eligible donee ceases to operate, whether by loss of license, accreditation, or approval, or otherwise, the SASP shall terminate the distribution of all property immediately upon notification.

- 915.3 When an eligible donee fails to satisfy all financial obligations as required or fails to maintain a reasonable posture regarding all financial obligations, the SASP shall terminate distribution of property immediately upon notification.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1726 (August 19, 1977).

916 COMPLIANCE AND UTILIZATION

- 916.1 Representatives of SASP shall survey a minimum of twenty percent (20%) of all eligible donees on its regular annual utilization reviews, which shall serve as the period of inspection to determine compliance with terms, conditions, reservations and restrictions imposed for property having an acquisition cost of three thousand dollars (\$3,000) or more and any passenger vehicle.

- 916.2 The utilization review shall also include a survey of donee compliance with any special handling conditions or use limitations stipulated, as well as the statutory requirement that all property donated is being used for purposes acquired, and that same has been placed into use within one year of acquisition and used for one year thereafter.

- 916.3 The SASP shall set the utilization reviews to coincide with the first anniversary of the property-issue date, and continue in sequential order during the restriction periods. SASP shall rotate all accounts to insure total District of Columbia review within a 5-year period.

- 916.4 The SASP shall prepare reports on all utilization reviews conducted indicating donees visited, property inspected, and any corrective actions taken. Reports shall be available for inspection by all authorized representatives.

- 916.5 In cases where fraud or misuse of donated property is discovered, the SASP shall initiate an investigation to determine if further legal action is required. Where fraud is indicated, the SASP shall notify the proper authorities in the Department of Administrative Services, the Federal Bureau of Investigation, and the appropriate regional office of GSA. Further, the SASP shall assist General Services Administration, or any other Federal or State Agency in the investigation of alleged fraud or misuse.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1727 (August 19, 1977).

917 CONSULTATION WITH ADVISORY BODIES AND PUBLIC AND PRIVATE GROUPS

- 917.1 The SASP shall meet at the direction of the Administrator for Materiel Management Administration with the advisory board designated by the Director of the Department of Administrative Services.

- 917.2 The advisory board shall be composed of not more than ten (10) members, with total membership comprising representatives of the tax-supported, tax-exempt, and non-profit educational and health institutions in the District of Columbia. The board members shall serve without compensation and at the pleasure of the Director of the Department of Administrative Services, and may submit reports and recommendations to the Director regarding status of relative needs and resources of donees, and utilization and distribution of property to meet program functions.

- 917.3 The reports and recommendations of the board members shall be used by SASP to aid the determination of relative needs and resources of donees, and to ascertain the extrinsic nature of utilization and distribution of donable property to fill existing needs. Moreover, SASP shall solicit expressions of need and interest from the advisory board, and public and private groups, in order to advise GSA of such requirements for specific items of property.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1729 (August 19, 1977).

918 AUDIT

- 918.1 Commencing eighteen (18) months after acceptance of this plan, and not less than every two (2) years subsequent, the SASP shall be audited by either the District of Columbia Auditor or by the General Accounting Office. This audit shall include a review of agency conformance with the provisions of this plan, and the requirements of 41 CFR 101-44. A copy of the audit report shall be furnished to the appropriate GSA regional office along with a resume of corrective actions take. All books and records of the SASP shall be available for periodic inspection by representatives of GSA, GAO, or other authorized Federal Agencies.

- 918.2 An internal audit of the SASP shall be conducted by the D.C. Director of the Department of Administrative Services, or an authorized representative not less than every two years.

- 918.3 GSA may conduct its own audit of the SASP following due notice to the Mayor of the District of Columbia indicating reasons for an audit.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1730 (August 19, 1977).

919 COOPERATIVE AGREEMENTS

- 919.1 The SASP may enter into cooperative agreements. This may include use of donable property by SASP, use of FTS, Inter-State cooperative agreements, use of Federal facilities and overseas property, and other agreements as provided by §203(n) of the Federal Property and Administrative Services Act of 1949, as amended, FPMR 101-44.206, and the D.C. Home Rule Act.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1731 (August 19, 1977).

920 LIQUIDATION

- 920.1 A liquidation plan shall be submitted to the appropriate GSA Regional Office in accordance with FPMR 101-44.202(c)(14) prior to actual liquidation. That plan shall include the following information:

- (a) Reasons for liquidation;
- (b) A liquidation schedule and an estimated termination date;
- (c) A method of disposing of surplus property on hand;
- (d) The method of disposing of the physical and financial assets; and

- (e) Provisions for the retention of all books and records for a two-year (2) period following liquidation.

920.2 Any funds realized following liquidation shall be deposited in the District of Columbia General Fund.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1732 (August 19, 1977).

§§921-929: RESERVED

930 FORMS

930.1 Applicants and participants shall complete and file all forms as specified by the SASP.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1733 (August 19, 1977).

931 RECORDS

931.1 All records pertaining to the operations of SASP, including, but not limited to, fiscal, applications for property, inventory control and distribution documents shall be retained for a minimum of three years.

931.2 Records on vessels and non-combat aircraft shall be retained for one (1) year after expiration of the period of restriction, and longer if required by the District of Columbia.

931.3 Records on items in compliance status shall be retained for one (1) year following completion of the compliance action.

931.4 Records on combat aircraft shall be retained for one (1) year after return of the aircraft to the Federal Government.

931.5 All records shall be retained for any period as required under applicable District of Columbia or federal regulations. If any regulations are inconsistent as to the period of retention, the longer period shall be applicable.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1734 (August 19, 1977).

932 ADMISSION TO SASP DISTRIBUTION CENTER AND SELECTION OF PROPERTY

932.1 Admission to the SASP Distribution Center, as well as authorization to select property, shall be by Warehouse Authorization Card only. The cards shall be furnished to each donee institution, in the amount specified by the institution, and shall be

signed by the agent as well as the head of the institution. For each card issued by the donee institution, SASP shall maintain a corresponding card in its file for control and identification purposes. Cards shall be updated by SASP every two (2) years, and shall not be transferrable.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1735 (August 19, 1977).

933 DONEE-SCREENERS

933.1 In accordance with FPMR 101-44.116, the State Agency (D.C. SASP) shall recommend and submit to GSA the names of donee representatives to be authorized to screen and select personal property.

933.2 Each donee representative shall be authorized and certified by GSA prior to conducting visits to any Federal installation.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1736 (August 19, 1977).

934 CERTIFICATIONS AND AGREEMENTS (INCLUDING TERMS, CONDITIONS, RESERVATIONS AND RESTRICTIONS) COVERING THE DONATION OF DON-ABLE FEDERAL SURPLUS PROPERTY

934.1 The Certification and Agreements Form which shall be filed pursuant to §910.1, shall contain the provisions specified in this section.

934.2 The donee shall certify that it is a public agency; or a nonprofit educational or public health institution or organization, exempt from taxation under §501 of the Internal Revenue Code of 1954; within the meaning of §203(j) of the Federal Property and Administrative Services Act of 1949, as amended, and the regulations of the Administrator of Administrative Services.

934.3 The donee shall certify that, if a public agency, the property is needed and shall be used by the recipient for carrying out or promoting for the residents of a given political area one (1) or more public purposes; or, if a nonprofit tax-exempt institution or organization, the property is needed for and shall be used by the recipient for educational or public health purposes, and including research for such purpose. The donee shall certify that the property is not being acquired for any other use or purpose or for sale or other distribution; or for permanent use outside the State, except with prior approval of the State Agency for Surplus Property (SASP).

934.4 The donee shall certify that funds are available to pay all costs and charges incident to donation.

934.5 The donee shall certify that this transaction shall be subject to the nondiscrimination regulations governing the donation of surplus personal property issued under Title VI of the Civil Rights Act of 1964, §606 of Title VI of the Federal Property and Administrative Services Act of 1949, as amended, §504 of the Rehabilitation Act of 1973, as amended, Title IX of the Education Amendments of 1972, as amended, and §303 of the Age Discrimination Act of 1975.

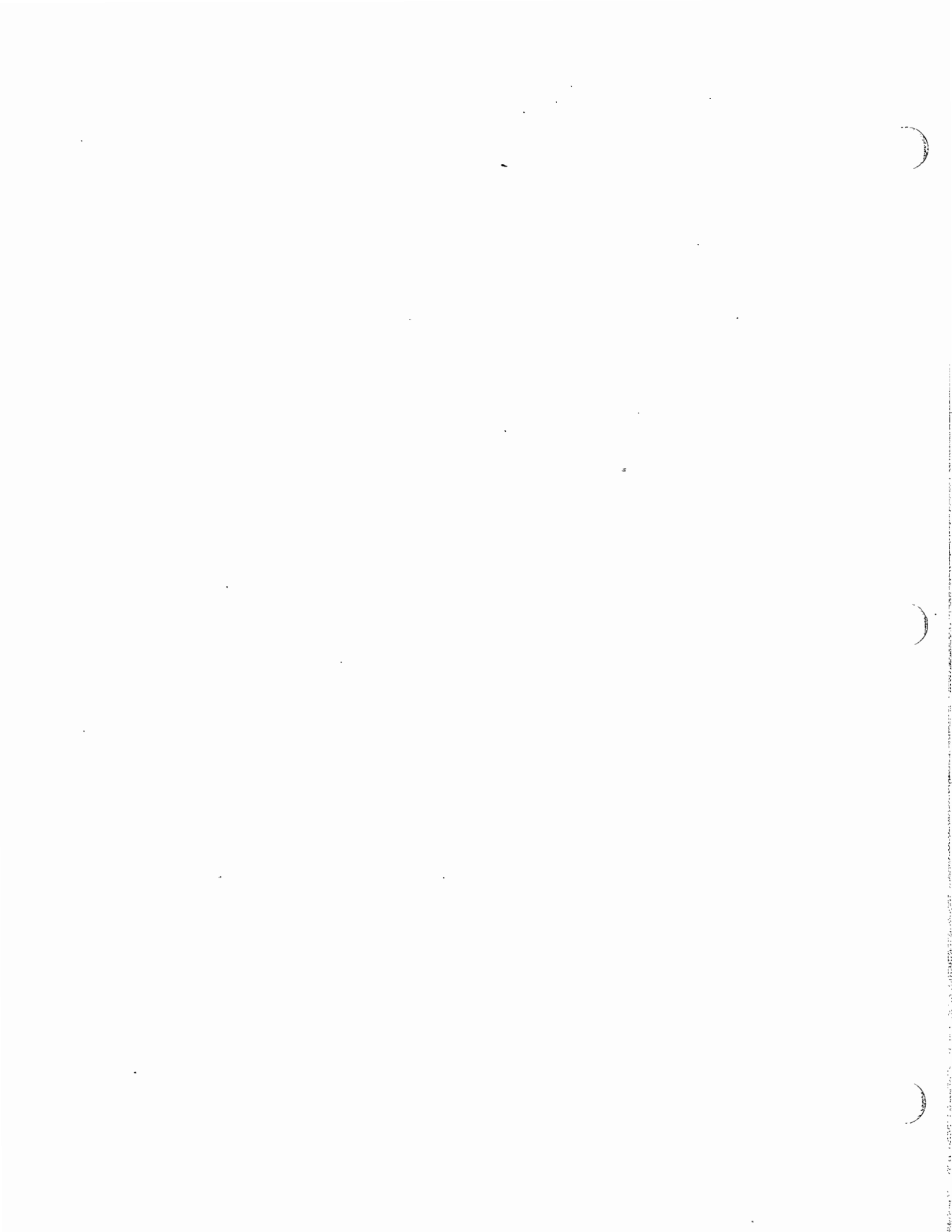
934.6 The donee shall agree that all items of property shall be placed in use for the purposes for which acquired within one (1) year of receipt and shall be continued in use for

such purposes for one (1) year from the date the property was placed in use. In the event the property is not so placed in use, or continued in use, the donee shall immediately notify the SASP and at the donee's expense, return such property to the SASP, or otherwise make the property available for transfer or other disposal by the SASP, provided the property is still usable as determined by the SASP.

- 934.7 The donee shall agree to any special handling or use limitations as are imposed by General Services Administration (GSA) on any item(s) of property listed hereon.
- 934.8 The donee shall agree that in the event the property is not so used or handled as required by §§934.6 and 934.7, title and right to the possession of that property shall at the option of GSA revert to the United States of America and upon demand the donee shall release that property to that person as GSA or as its designee shall direct.
- 934.9 The donee agrees to the following conditions imposed by the SASP, applicable to items with a unit acquisition cost of three thousand dollars (\$3,000) or more and passenger motor vehicles, regardless of acquisition cost, except vessels fifty feet (50") or more in length and aircraft:
- (a) The property shall be used only for the purpose(s) for which acquired and for no other purpose(s).
 - (b) There shall be a period of restriction which will expire after that property has been used for the purpose(s) for which acquired for a period of eighteen (18) months from the date the property is placed in use, except for any items of major equipment, listed on the form, on which the SASP designates a further period of restriction.
 - (c) In the event the property is not so used as required by §§934.9(a) and (b) and 934.6 and 934.7 have expired then title and right to the possession of that property shall at the option of the SASP revert to the State of D.C. and the donee shall release that property to any person as the SASP shall direct.
- 934.10 The donee shall agree that from the date it receives the property listed hereon and through the period(s) of time the conditions imposed by §§934.6, 934.7, 934.8 and 934.9 remain in effect, the donee shall not sell, trade, lease, lend, bail, cannibalize, encumber, or otherwise dispose of such property, or remove it permanently, for use outside the State, without the prior approval of GSA or the SASP pursuant to this section. The proceeds from any sale, trade, lease, loan, bailment, encumbrance or other disposal of the property, when any action is authorized by GSA or by the SASP, shall be remitted promptly by the donee to GSA or the SASP, as the case may be.
- 934.11 The donee shall agree that in the event any of the property listed hereon is sold, traded, leased, loaned, bailed, cannibalized, encumbered, or otherwise disposed of by the donee from the date it receives the property through the period(s) of time the conditions imposed by this section and remain in effect, without the prior approval of GSA or the SASP, the donee, at the option of GSA or the SASP shall pay to GSA or SASP, as the case may be, the proceeds of the disposal or for the fair market value or the fair rental value of the property at the time of the disposal, as determined by GSA or the SASP.

- 934.12 The donee shall agree that if at any time, from the date it receives the property through the period(s) of time the conditions imposed by this section remain in effect, any of the property listed hereon is no longer suitable, usable, or further needed by the donee for the purpose(s) for which acquired, the donee shall promptly notify the SASP, and shall, as directed by the SASP, return the property to the SASP, release the property to another donee or another SASP, a department or agency of the United States, sell or other-wise dispose of the property. The proceeds from any sale shall be remitted promptly by the donee to the SASP.
- 934.13 The donee shall make reports to the SASP on the use, condition, and location of the property listed hereon, and on other pertinent matters as may be required from time to time by the SASP.
- 934.14 At the option of the SASP, the donee may abrogate the conditions set forth in (c) and the terms, reservations and restrictions pertinent thereto in (d) by payment of an amount as determined by SASP.
- 934.15 The donee shall agree the property acquired by the donee is on an "as is" basis, without warranty of any kind.
- 934.16 Where a donee carries insurance against damages to or loss of property due to fire or other hazards and where loss or damage to donated property with unexpired terms, conditions, reservations or restrictions, occurs, the SASP shall be entitled to reimbursement from the donee out of the insurance proceeds, of an amount equal to the unamortized portion of the fair value of the damaged or destroyed donated items.
- 934.17 The donation of aircraft and vessels (fifty feet (50") or more in length) having an acquisition cost of three thousand dollars (\$3,000) or more, regardless of the purpose for which acquired shall be subject to the terms, conditions, reservations, and restrictions set forth in the Conditional Transfer Document executed by the authorized donee representative.

SOURCE: Final Rulemaking incorporating 24 DCR 1705, 1742 (August 19, 1977).



CHAPTER 10 DISTRICT OF COLUMBIA PROCUREMENT SYSTEM

Secs.	
1000	Procurement Regulations
1001	Procurement Manual
1002	Contracting Officers
1003	Authority and Responsibilities of Contracting Officers
1004	Delegation of Contracting Authority by Agency Heads
1005	Compliance with Procurement Act and Regulations
1006	Conduct of Contracting Officers
1007	Reporting of Suspected Improper or Unlawful Conduct
1008	Prohibition against Contingent Fees
1009	[Reserved]
1010	Contract Review
1011	Procurement Review Committee
1099	Definitions

1000 PROCUREMENT REGULATIONS

- 1000.1 The District of Columbia Procurement Regulations (the "DCPR"), which comprise a subtitle consisting of chapters 10 through 50 of this title, are issued by the Mayor or his or her designee in accordance with the provisions of the District of Columbia Procurement Practices Act, D.C. Law 6-85, as amended, D.C. Code, Title 1, chapter 11A, §1-1181.1 *et seq.* (1981) (also referred to in the DCPR as the "Act").
- 1000.2 The provisions of this subtitle shall be promulgated in accordance with §§204 and 205 of the Act, D.C. Code §§1-1182.4 and 1182.5 (1981).
- 1000.3 The provisions of this subtitle shall apply to the procurement of supplies, services, and construction. The provisions of this subtitle shall not apply to the procurement or disposal of an interest in real property.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1385 (February 26, 1988).

1001 PROCUREMENT MANUAL

- 1001.1 The Director of the Department of Administrative Services (the "Director") shall issue and maintain the District of Columbia Procurement Manual (the "Procurement Manual"), which shall include all procurement procedures and guidelines for implementing the DCPR.

- 1001.2 The Procurement Manual shall include, but shall not be limited to, the following:
- (a) Procedures for implementing the DCPR;
 - (b) Standard contract clauses required by or to be used in implementing the provisions of the DCPR;
 - (c) Examples of solicitation forms and notices; and
 - (d) Explanations of procurement regulations and procedures, with illustrative examples when applicable.

1001.3 The Director shall establish a procedure for issuing modifications and updates to the Procurement Manual which will enable contracting officers and other users to maintain a current compilation of the manual.

1001.4 The Director shall make the Procurement Manual available to the public at a reasonable cost.

SOURCE: Final Rulemaking published at 35 DCR 1385 (February 26, 1988).

1002 CONTRACTING OFFICERS

1002.1 In accordance with §105 of the Act, D.C. Code §1-1181.5 (1981), the Mayor shall appoint contracting officers from among the agency heads of the various District agencies.

1002.2 Each appointment of an agency head as a contracting officer by the Mayor shall include the following:

- (a) Any limitations on the agency head's authority as a contracting officer; and
- (b) Any limitations on the authority of the agency head to delegate contracting authority to officials under the administrative control of the agency head.

1002.3 For purposes of the DCPR, the title "contracting officer" shall include each agency head appointed by the Mayor as a contracting officer and each official to whom contracting authority is delegated by an agency head in accordance with this section and §1004.

1002.4 Each delegation of contracting authority by an agency head to an official under his or her administrative control shall be in writing and shall include clear instructions on the limitations of the contracting authority being delegated. In no instance shall an agency official designated as a contracting officer be delegated or presume any greater contracting authority than the agency head making the delegation.

SOURCE: Final Rulemaking published at 35 DCR 1386 (February 26, 1988).

1003 AUTHORITY AND RESPONSIBILITIES OF CONTRACTING OFFICERS

1003.1 A contracting officer shall be authorized to enter into, administer, and terminate contracts. However, a contracting officer may bind the District only to the extent of

the contracting authority set forth in the Mayoral appointment under §1002.2 or the delegation by an agency head under §1002.4, whichever is applicable.

- 1003.2 A contracting officer shall make all determinations and findings required by the Act or this title to be made by the contracting officer for each solicitation or contract for which he or she is responsible.
- 1003.3 A contracting officer shall not enter into a contract unless the contracting officer has ensured that all requirements of law, Mayor's Orders, Mayor's Memoranda, rules, and all other applicable procedures (including approvals) have been met.
- 1003.4 A contracting officer shall have wide latitude to exercise business judgment.
- 1003.5 A contracting officer shall ensure that contractors receive impartial, fair, and equitable treatment in accordance with the Act and this title.
- 1003.6 A contracting officer shall request and consider the advice of specialists in auditing, law, engineering, transportation, and other fields when necessary or appropriate to the exercise of the contracting officer's authority.
- 1003.7 A contracting officer shall ensure that sufficient unencumbered budget authority is available for obligation for each contract, in accordance with §3240 of chapter 32 of this title.
- 1003.8 The contracting officer shall not make any purchase or enter into any contract for an amount in excess of his or her specifically delegated contracting authority. When a purchase or contract would exceed the contracting officer's authority, the contracting officer shall do one (1) following:
- (a) If the agency head or another contracting officer in the agency has a higher level of delegated contract authority, refer the request for procurement to the agency head or other contracting officer with the proper level of authority; or
 - (b) Forward the request for procurement to the Department of Administrative Services.

SOURCE: Final Rulemaking published at 35 DCR 1386 (February 26, 1988).

1004 DELEGATION OF CONTRACTING AUTHORITY BY AGENCY HEADS

- 1004.1 The Director shall establish a system for use by agency heads (who have been appointed contracting officers by the Mayor) to designate agency contracting officers. The system shall include procedures and guidelines for the following:
- (a) Selection of contracting officers;
 - (b) Delegation of contracting authority; and
 - (c) Modification and termination of contracting authority.
- 1004.2 Each agency head with contracting authority shall use the system established by the Director and the criteria set forth in this section to delegate, modify, and terminate the contracting authority of officers under his or her administrative control.

- 1004.3 When selecting persons to become contracting officers, an agency head shall consider the following criteria for each candidate:
- (a) The complexity and dollar value of the procurements to be assigned;
 - (b) General experience, training, education, business acumen, judgment, character, and reputation;
 - (c) Experience in District contracting and administration, commercial purchasing, or related fields;
 - (d) Education or special training in business administration, law, accounting, engineering, or related fields;
 - (e) Knowledge of District procurement laws, rules, and procedures, including the provisions of this title, and applicable federal laws and regulations;
 - (f) Specialized knowledge in particular contracting areas, such as automated data processing services and equipment, pharmaceuticals, and other specialties; and
 - (g) Satisfactory completion of procurement training courses.

1004.4 An agency head shall use a form approved by the Director for each written delegation or modification of contracting authority. The executed form shall include the following:

- (a) The limitations on the scope of delegated authority to be exercised (or the revised limitations in any modification of that authority);
- (b) The limitations on the authority set forth in applicable laws and regulations; and
- (c) The signature of the agency head.

1004.5 Termination of a contracting officer's appointment shall be in writing unless the written delegation or modification of authority contains a provision for automatic termination or expiration. No termination shall operate retroactively.

1004.6 The agency head shall send a copy of each form used for delegation or modification of contracting authority, and a copy of each letter terminating contracting authority, to the Mayor, the Director, and the Inspector General. The agency head shall also maintain a permanent file of copies of each of these documents.

SOURCE: Final Rulemaking published at 35 DCR 1387 (February 26, 1988).

1005 COMPLIANCE WITH PROCUREMENT ACT AND REGULATIONS

1005.1 Except as otherwise provided in the Act or this section, a contract which is entered into in violation of the Act or this title is void.

1005.2 Notwithstanding the provisions of §1005.1, a contract shall not be void if a determination is made that good faith has been shown by all parties and that there has been

substantial compliance with the provisions of the Act and this title. The determination of good faith and substantial compliance may be made by any of the following:

- (a) The Director, pursuant to a review and recommendation by the Procurement Review Committee (the "PRC");
- (b) The Contract Appeals Board; or
- (c) A court of competent jurisdiction.

1005.3 A determination of good faith and substantial compliance made by the Director pursuant to §1005.2(a) shall be in writing based on the following:

- (a) A written request for review by the contractor or contracting officer. The request shall fully describe the contract, the status of performance, the reason why the contract is void, and the grounds for a determination under §1005.2;
- (b) A review by the PRC of the request and any response to the request by the contractor or contracting officer. The PRC may require the submission of additional material or response to questions by the contractor and contracting officer; and
- (c) A written recommendation by the PRC based on its review of the contract and other relevant facts.

1005.4 If, in its discretion, the PRC determines that an informal hearing would be of assistance in making its recommendation, an informal hearing may be conducted by the PRC to elicit additional facts and testimony. The contracting officer and the contractor (and its counsel or other representative) shall be allowed to be present at the informal hearing, which shall be conducted in accordance with the informal hearing procedures set forth in chapter 38 of this title.

SOURCE: Final Rulemaking published at 35 DCR 1389 (February 26, 1988).

1006 CONDUCT OF CONTRACTING OFFICERS

1006.1 The procurement business of the District shall be conducted in a manner above reproach and, except as authorized by law, with complete impartiality and with preferential treatment for none.

1006.2 The Director shall ensure that each contracting officer, including each agency head with contracting authority, is thoroughly familiar with the conflict of interest and other employee conduct provisions of chapter 18 of the District personnel regulations (Title 6 DCMR), and the applicability of those regulations to contracting officers and the procurement process.

SOURCE: Final Rulemaking published at 35 DCR 1390 (February 26, 1988).

1007 REPORTING OF SUSPECTED IMPROPER OR UNLAWFUL CONDUCT

1007.1 A contracting officer shall report to the Director each incidence of identical bids when the procurement is estimated to exceed ten thousand dollars (\$10,000).

- 1007.2 A contracting officer shall report to the Director any bids which evidence a violation of the anti-trust laws, and the Director shall consult the Corporation Counsel within ten (10) days of the report to ascertain whether a reasonable basis exists for believing that collusion has occurred among any businesses for purposes of defrauding the District.
- 1007.3 Practices or events that may evidence violations of antitrust laws include the following:
- (a) The existence of an "industry price list" or "price agreement" to which a contractor refers in formulating its offer;
 - (b) A sudden change from competitive bidding to identical bidding;
 - (c) Simultaneous price increases or follow-the-leader pricing;
 - (d) Rotation of bids or proposals, so that each competitor takes a turn in sequence as low bidder, or so that certain competitors bid low only on some sizes of contracts and high on other sizes;
 - (e) Division of the market, so that certain competitors bid low only for contracts solicited by certain agencies, or for contracts in certain geographical areas or on certain products, and bid high in all other jobs;
 - (f) Establishment by competitors of a collusive cost or price estimating system;
 - (g) The filing of a joint bid by two (2) or more competitors when at least one (1) of the competitors has sufficient technical capability and productive capacity for contract performance;
 - (h) Incidents suggesting direct collusion among competitors, such as the appearance of identical calculations or spelling errors in two (2) or more competitive offers, or the submission by a single firm of offers for other firms; or
 - (i) Assertions by employees or former employees, or competitors of offerors, that an agreement to restrain trade exists.

SOURCE: Final Rulemaking published at 35 DCR 1390 (February 26, 1988).

1008 PROHIBITION AGAINST CONTINGENT FEES

- 1008.1 The contracting officer shall ensure that each solicitation, other than those for small purchases, contains language, approved by the Director, giving notice to prospective contractors of the prohibition against contingent fee arrangements set forth in §317 of the Act (D.C. Code, §1-1183.17).
- 1008.2 The contracting officer shall ensure that the language required by §317(a) of the Act is inserted in each contract, except contracts for small purchases.
- 1008.3 Except as permitted in §317(a) of the Act, a contracting officer shall not award any contract to a contractor that has made arrangements to pay a contingent fee or other consideration for soliciting or obtaining the contract.

- 1008.4 If the contracting officer has reason to believe that a prospective contractor or contractor is or has been involved in a contingent fee arrangement prohibited under §317 of the Act, the contracting officer shall inform the Director in writing, including any evidence or documentation of the alleged prohibited arrangement.
- 1008.5 If the Director determines that a prohibited contingent fee has been paid or that a contractor has entered into an arrangement to pay a prohibited contingent fee under an existing contract, the Director shall terminate an existing contract or take any other remedial action authorized under §317 of the Act.
- 1008.6 If the Director determines that a prospective contractor has entered into an arrangement to pay a prohibited contingent fee, the contracting officer shall notify the prospective contractor that it is no longer eligible for award of the contract.

SOURCE: Final Rulemaking published at 35 DCR 1391 (February 26, 1988).

§1009: RESERVED

1010 CONTRACT REVIEW

- 1010.1 The Director shall perform contract review on a pre-solicitation, pre-execution, or post-execution basis, in accordance with the provisions of the Act and this title.
- 1010.2 Prior to solicitation, the Director shall conduct a review of the following:
- (a) Each determination and findings (D&F) justifying procurement on a sole source basis when the requirement is estimated to exceed twenty-five thousand dollars (\$25,000); and
 - (b) Each determination and findings for (D&F) solicitation on a competitive sealed proposal basis when the requirement is estimated to exceed twenty-five thousand dollars (\$25,000).
- 1010.3 The requirements for review and approval of D&F's under §1010.2 shall not apply to emergency procurements under chapter 17 or the procurement of architect-engineering services, medical and human care services, or real property appraisal services. These contracts shall be reviewed on a post-execution basis.
- 1010.4 The Director may conduct a pre-execution review of each of the following:
- (a) A proposed award to other than the apparent low bidder in a procurement by competitive sealed bids;
 - (b) A proposed award to other than the highest scored offeror in a procurement by competitive sealed proposals;

- (c) A proposed award to other than the highest bidder for sale of surplus property;
- (d) A prospective contractor's claim of a mistake or request to withdraw its bid;
- (e) A proposed contract award over one million dollars (\$1,000,000);
- (f) A proposed contract award on the basis of sole source when the amount is greater than twenty-five thousand dollars (\$25,000);
- (g) A proposed contract modification (except to a construction contract) in an amount greater than one hundred thousand dollars (\$100,000); and
- (h) A proposed modification to a construction contract when the amount of the contract before modification is greater than fifty thousand dollars (\$50,000).

1010.5 Except as provided in §1010.4, the contracting officer shall submit to the Director, on a post-execution basis, a completed review form, approved by the Director, for each contract award and modification over ten thousand dollars (\$10,000).

1010.6 The Director may establish a Procurement Review Committee (the "PRC"), in accordance with §1011, to assist in the Director's review of contracts entered into or proposed to be entered into by contracting officers on behalf of an agency to ensure compliance with applicable laws, rules, and procedures.

1010.7 The Director may make an expedited review and determination without the assistance of the PRC whenever the Director determines that there is insufficient time for PRC assistance.

SOURCE: Final Rulemaking published at 35 DCR 1392 (February 26, 1988).

1011 PROCUREMENT REVIEW COMMITTEE

1011.1 The Procurement Review Committee (the "PRC"), if established pursuant to §1010.6, shall consist of three (3) members.

1011.2 The chairperson of the PRC shall be an employee of the Department of Administrative Services designated by the Director.

1011.3 The chairperson of the PRC shall designate the other two (2) members, who shall be contracting officers. The chairperson may also designate alternate members, who shall serve when called on by the chairperson.

1011.4 A contracting officer who is responsible for a solicitation, proposed contract, or contract shall not sit as a member of the PRC when it reviews that solicitation, proposed contract, or contract. However, the chairperson may participate in the review of all contracts executed or to be executed by the Department of Administrative Services.

1011.5 The PRC shall hold regular meetings at times and places set by the chairperson. The chairperson may call emergency meetings of the PRC as necessary.

1011.6 The PRC shall act by majority vote. The actions of the PRC shall be in the form of a recommendation to the Director.

SOURCE: Final Rulemaking published at 35 DCR 1393 (February 26, 1988).

1099 DEFINITIONS

1099.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Agency head - the director or chief official, regardless of actual title, of any District agency, office, department, or other entity of the District other than an independent agency, the District of Columbia courts, the Mayor, or the Council of the District of Columbia.

Contingent fee - any commission, percentage, brokerage, or other fee that is dependant upon or tied to the success that a person or concern has in securing a District contract.

Director - the Director of the Department of Administrative Services.

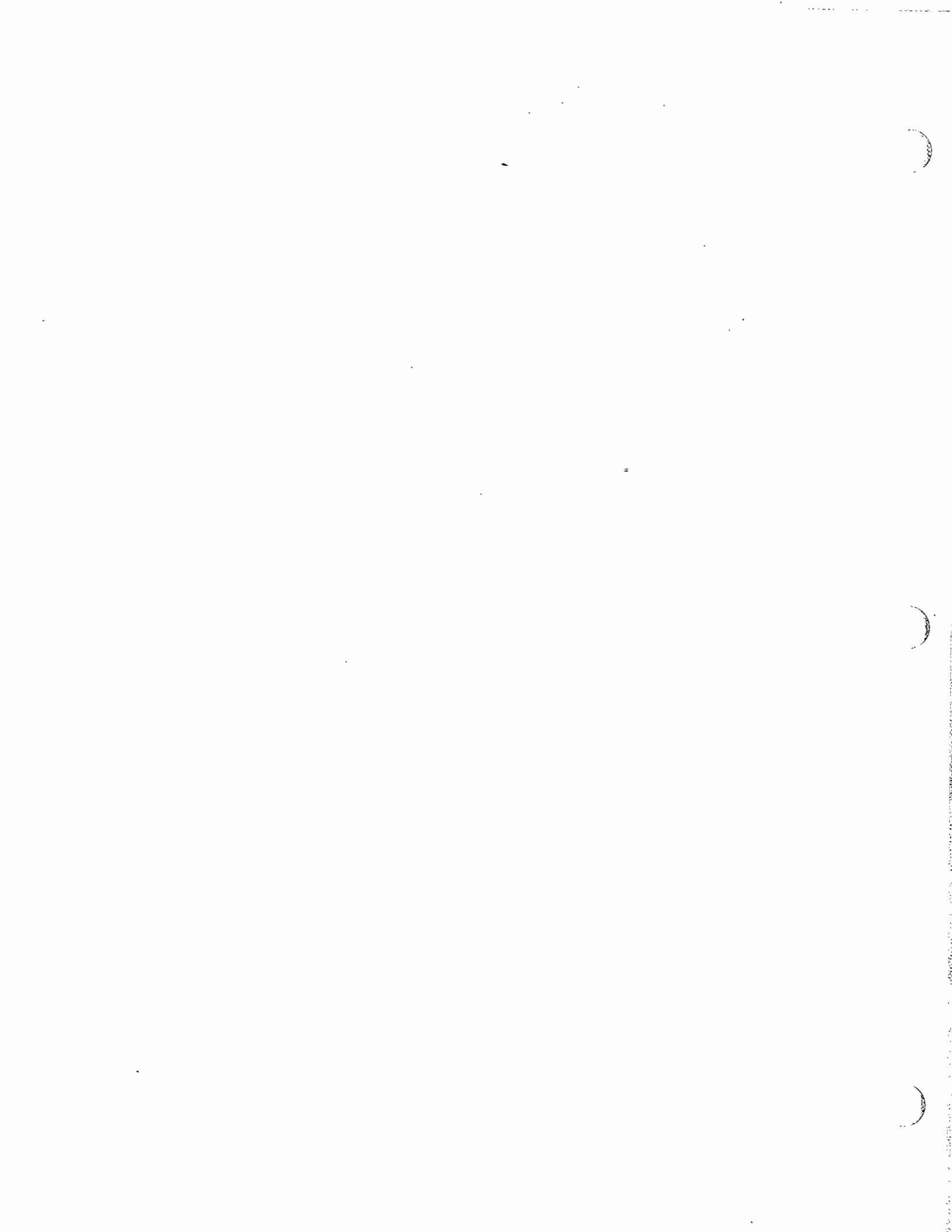
Identical bids - bids for the same line item that are determined to be identical as to unit price or total line item amount with or without the application of factors such as discount or transportation cost.

Post-execution - after signature by the contracting officer on a contract, change order, or modification.

Pre-execution - prior to signature by the contracting officer on a contract, change order, or modification.

Pre-solicitation - prior to issuance of a solicitation or in a proposed sole source procurement, prior to the transmittal by the District of any proposed contract documents to the proposed contractor.

SOURCE: Final Rulemaking published at 35 DCR 1394 (February 26, 1988).



CHAPTER 11 MINORITY AND OTHER BUSINESS PREFERENCES

Secs.	
1100	Certified Minority Business Preferences
1101	MBOC Review of Procurements
1102	Cancellation of a Sheltered Market Solicitation
1103	Sheltered Market Subcontracting
1104	Sheltered Market Subcontracting Plans
1105	Review and Acceptance of Subcontracting Plans
1106-1109	[Reserved]
1110	District-Based Business Preferences
1199	Definitions

1100 CERTIFIED MINORITY BUSINESS PREFERENCES

- 1100.1 Each sheltered market procurement shall be made in accordance with the provisions of the Procurement Practices Act of 1985 (the "Act"), the Minority Contracting Act of 1976, D.C. Code §1-1141 *et seq.* (1981), and this title.
- 1100.2 The contracting officer shall review each proposed procurement to determine whether the procurement must be made from a required source under §2100 of chapter 21 of this title. If the procurement may be made from other sources under §2100.1(i), the contracting officer shall determine whether the procurement falls within the agency sheltered market program established in accordance with chapter 6 of this title.
- 1100.3 If the procurement is to be made by competitive sealed bids or by competitive sealed proposals, the contracting officer may designate for the sheltered market the entire procurement or a portion of any subcontracting.
- 1100.4 Before a procurement is restricted to the sheltered market under §1100.3, the contracting officer shall make the following determinations:
- (a) That there is a reasonable expectation that bids or offers will be obtained from at least two (2) responsible certified minority businesses; and
 - (b) That an award will be made at reasonable prices.
- 1100.5 If the contracting officer is unable to make a determination of the availability of prospective certified minority contractors under §1100.4(a), the contracting officer shall obtain from the Minority Business Opportunity Commission (the "MBOC"), in accordance with §1101, a list of all available certified minority business enterprises and the MBOC's recommendation regarding the feasibility of placing the procurement in the sheltered market.
- 1100.6 A contracting officer may make a procurement in the sheltered market on a sole source basis; Provided, that the provisions of chapter 17 of this title applicable to sole source procurements in the sheltered market shall be followed.

1100.7 A contracting officer may make a procurement in the sheltered market on an emergency basis; Provided, that the provisions of chapter 17 applicable to emergency procurements shall be followed.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1395 (February 26, 1988).

1101 MBOC REVIEW OF PROCUREMENTS

1101.1 The contracting officer shall send a copy of the following to the MBOC:

- (a) Each procurement request over ten thousand dollars (\$10,000) that has been designated for the sheltered market by the contracting officer under §1100.3; and
- (b) Each procurement request, regardless of the dollar amount, that is being considered for the sheltered market when the contracting officer is unable to determine the availability of prospective certified minority contractors under §1100.5.

1101.2 When submitting a procurement request to the MBOC under §1101.1(b), the contracting officer shall request a recommendation from the MBOC regarding the feasibility of a sheltered market procurement and a list of minority businesses certified in the specific supply, service, or construction area of the procurement.

1101.3 The contracting officer shall request the MBOC to provide the contracting officer with a recommendation and a list of certified minority businesses in accordance with §1101.2 within ten (10) working days after the date of the contracting officer's submittal of the procurement request. If the MBOC has not responded within ten (10) working days after receipt of the request, the contracting officer may proceed with the procurement based on the contracting officer's determination without further notice to the MBOC.

1101.4 After receiving an MBOC recommendation under §1101.3 that sheltered market procurement is feasible, if the contracting officer decides to solicit the procurement in the open market, the contracting officer shall inform the head of the contracting agency in writing of the reasons for the decision to solicit in the open market, and shall send a copy of the determination to the MBOC.

SOURCE: Final Rulemaking published at 35 DCR 1396 (February 26, 1988).

1102 CANCELLATION OF A SHELTERED MARKET SOLICITATION

1102.1 If the contracting officer cancels a sheltered market solicitation for any of the reasons set forth in chapters 15, 16, or 17, the contracting officer shall provide a copy of the determination to the MBOC in addition to complying with the reporting requirements of this title.

1102.3 After the contracting officer cancels a sheltered market solicitation, the contracting officer may resolicit in the open market if the service, supply, or construction is still required.

SOURCE: Final Rulemaking published at 35 DCR 1396 (February 26, 1988).

1103 SHELTERED MARKET SUBCONTRACTING

1103.1 The contracting officer shall review each solicitation that has not been designated for the sheltered market to determine whether the agency sheltered market program established by the using agency would apply to subcontracts that might be let under the proposed contract, in accordance with chapter 6 of this title.

1103.2 The contracting officer shall include in each solicitation for which a portion of the subcontracting is designated for the sheltered market a clause, approved by the Director, which sets forth the requirements for a sheltered market subcontracting plan, including the time limits for submitting the plan.

1103.3 For each solicitation in which a portion of the subcontracting is designated for the sheltered market, the contracting officer shall require the low bidder or the apparently successful offeror to submit a sheltered market subcontracting plan, in accordance with §1104.

1103.4 If the low bidder or apparently successful offeror does not submit a sheltered market subcontracting plan within the time limit set by the contracting officer in the solicitation, that bidder or offeror shall be ineligible for award.

SOURCE: Final Rulemaking published at 35 DCR 1397 (February 26, 1988).

1104 SHELTERED MARKET SUBCONTRACTING PLANS

1104.1 Each certified minority business subcontracting plan required under §1103 shall include the following:

- (a) A percentage goal for using certified minority businesses;
- (b) The name of an individual employed by the bidder or offeror who will administer the sheltered market subcontracting program, and a description of the duties of the individual;
- (c) A description of the efforts the bidder or offeror will make to ensure that certified minority businesses will have an equitable opportunity to compete for subcontracts;
- (d) In all subcontracts that offer further subcontracting opportunities, assurances that the bidder or offeror will include a clause, approved by the Director, that the subcontractor will adopt a sheltered market plan similar to the plan required by the contract;
- (e) Assurances that the bidder or offeror will cooperate in any studies or surveys that may be required by the contracting officer, and submit periodic reports to

the contracting officer to allow the District to determine the extent of compliance by the bidder or offeror with the subcontracting plan;

- (f) A recitation of the types of records the bidder or offeror will maintain to demonstrate procedures adopted to comply with the requirements and goals set forth in the plan, including establishing source lists; and
- (g) A description of the bidder's or offeror's recent efforts to locate certified minority businesses and to award subcontracts to them.

1104.2 A contractor may establish a master subcontracting plan which contains all the elements required except percentage goals, subject to approval by the contracting officer. The contracting officer shall recognize the master subcontracting plan for a one (1) year period after approval.

1104.3 When incorporated in an individual contract, the master subcontracting plan shall apply to that contract throughout the life of the contract.

SOURCE: Final Rulemaking published at 35 DCR 1397 (February 26, 1988).

1105 REVIEW AND ACCEPTANCE OF SUBCONTRACTING PLANS

1105.1 The contracting officer shall review each sheltered market subcontracting plan for adequacy, ensuring that the required information, goals, and assurances are included.

1105.2 The contracting officer shall consider each plan in terms of the circumstances of the particular procurement, including the following:

- (a) Previous involvement of certified minority businesses as prime contractors or subcontractors in similar procurements;
- (b) Proven methods of involving certified minority businesses as subcontractors in similar procurements; and
- (c) The previous success of methods the contractor intends to use to meet the goals and requirements of the plan, as evidenced by records maintained by contractors.

1105.3 If, in a procurement by competitive sealed bidding, a bidder does not submit a plan which incorporates the required elements set forth in §1104.1, the bidder shall be ineligible for award. If the plan, although responsive, reflects the bidder's intention not to comply with its obligations under the plan, the contracting officer may find the bidder nonresponsive.

1105.4 In competitive sealed proposals, the contracting officer shall determine whether the plan is acceptable based on the negotiation of each of the elements of the plan.

1105.5 In determining the acceptability of a proposed subcontracting plan, the contracting officer shall do the following:

- (a) Evaluate the bidder's or offeror's past performance in awarding subcontracts for the same or similar supplies or services to certified minority businesses, or

if information is not available on a specific type of supply or service, evaluate the bidder's or offeror's overall past performance;

- (b) If the contract involves supplies or services that are particularly specialized or not generally available in the commercial market, consider the bidder's or offeror's current capacity to perform the work and the possibility of reduced subcontracting opportunities;
- (c) Evaluate subcontracting potential, considering the nature of the supplies or services to be subcontracted, and the known availability of certified minority businesses in the geographical area where the work will be performed; and
- (d) Evaluate the feasibility of the bidder's or offeror's proposed percentage goals.

1105.6 The contracting officer may request the MBOC to review a sheltered market subcontracting plan within five (5) working days of receipt of the plan by the MBOC and submit recommendations to the contracting officer. The recommendations shall be considered advisory in nature.

1105.7 When the solicitation requires submission of a subcontracting plan, the contracting officer shall ensure that an acceptable subcontracting plan is incorporated into and made a part of the contract.

1105.8 After a contract containing a sheltered market subcontracting plan is awarded, the contracting officer shall notify the MBOC of the award and send a copy of the subcontracting plan to the MBOC.

SOURCE: Final Rulemaking published at 35 DCR 1398 (February 26, 1988).

§§1106 - 1109: RESERVED

1110 DISTRICT-BASED BUSINESS PREFERENCES

1110.1 In order to qualify as a District-based business, a business enterprise, including a sole proprietorship, shall be required to satisfy all of the following criteria:

- (a) The business, if required to be licensed in the District under the general business and professional license law, D.C. Code §47-2801 *et seq.* (1981), or other District law or regulations, has the required license in force;
- (b) The business is subject to the District of Columbia Income and Franchise Taxes Act of 1947, D.C. Code §47-1807 *et seq.* (1981), and at least sixty percent (60%) of the net income of the business is taxable income, as defined in D.C. Code §§47-1806.1, 47-1807.1, or 47-1808.2 (1981), whichever is applicable;
- (c) At least sixty percent (60%) of the amount deducted as wages of employees of the business for District income tax purposes is paid to residents of the District; and

(d) The principal office of the business is located in the District.

1110.2 When using the competitive sealed proposal method of procurement, the contracting officer may increase the offeror's evaluation point score by not more than five percent (5%) of the total possible number of evaluation points for a proposal submitted by a District-based business. The number of preference points shall be stated in the solicitation.

1110.3 When a solicitation is in the sheltered market, the contracting officer may accord a preference to a minority business enterprise having a principal office located in the District according to §605 of this title.

SOURCE: Final Rulemaking published at 35 DCR 1400 (February 26, 1988).

1199 DEFINITIONS

1199.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Certified minority business enterprise - any firm certified in accordance with the provisions of the Minority Contracting Act of 1976, effective March 29, 1977, D.C. Law 1-95, D.C. Code §1-1141 *et seq.* (1981).

Director - the Director of the Department of Administrative Services.

Master subcontracting Plan - a subcontracting plan containing the elements specified in §1104.1, except percentage goals.

Principal office - the primary office, based upon the totality of the business activities, in which routine and essential business functions occur, to include at least three (3) of the following:

- (a) Bookkeeping and other record keeping;
- (b) Payroll maintenance;
- (c) Receipt of business telephone calls;
- (d) Storage of books and records; or
- (e) Directing, controlling, and coordinating of activities and policies by officers, principals, and managers.

Procurement request - a request to a contracting office to procure supplies, services, or construction (see definition in the Act, §107(38), D.C. Code §1-1181.7(15) (1981).

Sheltered market procurement - a process by which contracts or subcontracts are designated, before solicitation of bids or proposals, for competition among minority business enterprises on the basis of competitive sealed proposals or competitive sealed bids.

SOURCE: Final Rulemaking published at 35 DCR 1401 (February 26, 1988).



CHAPTER 12 CONTRACT MANAGEMENT AND ADMINISTRATION

Secs.	
1200	Contract Execution by the District
1201	Contract Execution by Contractors
1202	Contract Distribution
1203	Contract Files
1204	Closeout of Contract files
1205	Physically Completed Contracts
1206	Determinations and Findings
1207	Class Determinations and Findings
1208	Expiration of Determinations and Findings
1209	[Reserved]
1210	Procurement Planning
1211	Postaward Orientation
1212	Postaward Conference
1213	Postaward Conference with Subcontractors
1214	[Reserved]
1215	Indirect Cost Rates
1216	Disallowance of Costs
1217	Disallowance of Incurred Costs
1218-1219	[Reserved]
1220	Novation and Change-Of-Name Agreements
1299	Definitions

1200 CONTRACT EXECUTION BY THE DISTRICT

- 1200.1 Only a contracting officer is authorized to sign and enter into a contract on behalf of the District.
- 1200.2 The contracting officer's name and official title shall be typed, stamped, or printed on the contract.
- 1200.3 The contracting officer shall sign the contract after it has been signed by the contractor.
- 1200.4 The contracting officer shall ensure that the person signing for the contractor has authority to bind the contractor.
- 1200.5 If the contract is with a partnership, the contracting officer, before signing for the District, shall obtain a list of all general partners and ensure that each person signing for the partnership has authority to bind the partnership.

1200.6 When a corporation is participating in a joint venture, the contracting officer shall obtain from the corporation secretary a certificate stating that the corporation is authorized to participate in the joint venture.

1200.7 When an agent is to sign a contract, the agent's authorization to bind the principal shall first be established by evidence satisfactory to the contracting officer.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1402 (February 26, 1988).

1201 CONTRACT EXECUTION BY CONTRACTORS

1201.1 A contract with an individual shall be signed by that individual.

1201.2 A contract with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's typed, stamped, or printed name and the words "an individual doing business as [insert name of firm]."

1201.3 A contract with a partnership shall be signed in the partnership name by a general partner with authority to bind the partnership.

1201.4 A contract with a corporation shall be signed in the corporate name, followed by the word "by" and the signature and title of the person authorized to sign for the corporation.

1201.5 A contract with joint venturers may involve any combination of individuals, partnerships, or corporations. The contract shall be signed by each participant in the joint venture in the manner set forth in this section.

SOURCE: Final Rulemaking published at 35 DCR 1402 (February 26, 1988).

1202 CONTRACT DISTRIBUTION

1202.1 The contracting officer shall distribute copies of contracts or modifications within ten (10) working days after execution by all parties.

1202.2 The contracting officer shall distribute simultaneously signed copies or reproductions of the signed contract to the contractor and to the requesting agency.

SOURCE: Final Rulemaking published at 35 DCR 1403 (February 26, 1988).

1203 CONTRACT FILES

1203.1 The head of each office performing contracting or contract administration functions shall establish files containing the records of all contractual actions pertinent to that office's responsibility.

1203.2 The documentation in each contract file maintained by the contract office shall be sufficient to constitute a complete history of the transaction for the following purposes:

- (a) Providing a complete background as a basis for informed decisions at each step of the procurement process;
 - (b) Supporting actions taken;
 - (c) Providing information for reviews and investigations; and
 - (d) Furnishing essential facts in the event of litigation.
- 1203.3 The following contract files shall be established:
- (a) A file for canceled solicitations; and
 - (b) A file for each contract.
- 1203.4 The contracting office file shall document the basis for the procurement and the award, the assignment of contract administration (including payment responsibilities), and any subsequent action taken by the contracting office.
- 1203.5 The contract file shall document actions prerequisite to, substantiating, and reflecting contract payments.
- 1203.6 Each file normally shall be kept separate. However, if appropriate, any or all of the files may be combined, especially if all functions or any combination of the functions are performed by the same office.
- 1203.7 Files shall be maintained at organizational levels that ensure the following:
- (a) Effective documentation of contract actions;
 - (b) Ready accessibility to principal users;
 - (c) Minimal establishment of duplicate and working files; and
 - (d) Conformance with any regulations or procedures for file location and maintenance.
- 1203.8 A central control and, if needed, a locator system shall be established to ensure the ability to locate promptly any contract files.
- SOURCE:** Final Rulemaking published at 35 DCR 1403 (February 26, 1988).
- 1204 CLOSEOUT OF CONTRACT FILES**
- 1204.1 The provisions of this section shall govern time standards for closing out contract files.
- 1204.2 Small purchase files shall be considered closed when the contracting officer receives evidence of receipt of property and final payment.
- 1204.3 Files for all firm-fixed-price contracts, other than small purchases, shall be closed within six (6) months after the end of the month in which the contracting officer receives evidence of physical completion.

1204.4 Files for contracts requiring settlement of indirect cost rates shall be closed within thirty-six (36) months after the end of the month in which the contracting officer receives evidence of physical completion.

1204.5 Files for all other contracts shall be closed within twelve (12) months after the end of the month in which the contracting officer receives evidence of physical completion.

1204.6 The contracting officer shall ensure that all required contractual actions have been completed and shall prepare a statement to that effect. This statement is authority to close the contract file and shall be made a part of the official contract file.

1204.7 A contract file shall not be closed in any of the following situations:

- (a) If the contract is the subject of a claim or dispute;
- (b) If the contract is in litigation or under appeal; or
- (c) In the case of a termination, if all termination actions have not been completed.

SOURCE: Final Rulemaking published at 35 DCR 1404 (February 26, 1988).

1205 PHYSICALLY COMPLETED CONTRACTS

1205.1 A contract shall be considered physically completed when any of the following has occurred:

- (a) The contractor has completed the required deliveries, and the District has inspected and accepted the supplies;
- (b) The contractor has performed all services, and the District has accepted these services;
- (c) All option provisions, if any, have expired; or
- (d) The District has given the contractor a notice of complete contract termination.

1205.2 Facilities contracts and rental, use, and storage agreements shall be considered physically completed when either of the following has occurred:

- (a) The District has given the contractor a notice of complete contract termination;
or
- (b) The contract period has expired.

SOURCE: Final Rulemaking published at 35 DCR 1405 (February 26, 1988).

1206 DETERMINATIONS AND FINDINGS

1206.1 Except as provided in §1207, a determination and findings (D&F) shall be used for an individual contract action and shall be retained in the contract file.

1206.2 The approval granted by a D&F shall be restricted to the proposed contract actions described in the D&F.

- 1206.3 A D&F may provide for a reasonable degree of flexibility, and reasonable variations in estimated quantities or prices may be permitted.
- 1206.4 If an option is anticipated, the D&F shall state the approximate quantity or period of performance to be awarded initially, the extent of the increase in quantity or period of performance to be permitted by the option, and the date by which the option must be exercised.
- 1206.5 Each D&F shall set forth enough facts and circumstances to justify clearly and convincingly the specific determination made.
- 1206.6 Each D&F shall include at least the following information in a format prescribed by the Director:
- (a) Identification of the agency and of the contracting activity and specific identification of the document as a "Determination and Findings";
 - (b) The nature or description of the action being approved;
 - (c) Citation of the appropriate statute or regulation upon which the D&F is based;
 - (d) Findings that detail the particular circumstances, facts, or reasoning essential to support the determination, including supporting documentation obtained from appropriate requirements and technical personnel;
 - (e) A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation;
 - (f) The expiration date of the D&F, if required; and
 - (g) The signature of the official authorized in accordance with this title to sign the D&F, and the date signed.
- 1206.7 If a D&F is superseded by another D&F, that action shall not render invalid any action taken under the original D&F prior to the date of supersession.
- 1206.8 For those D&F's required by law to be certified by the Director, the Director shall certify the determination and the head of the using agency shall certify the findings.

SOURCE: Final Rulemaking published at 35 DCR 1405 (February 26, 1988).

1207 CLASS DETERMINATIONS AND FINDINGS

- 1207.1 A class D&F shall provide authority for a class of contracting actions.
- 1207.2 A class D&F may consist of contracting actions for the same or related supplies or services or other contracting actions that require essentially identical justification.
- 1207.3 The findings in a class D&F shall fully support the proposed action either for the class as a whole or for each action.

1207.4 A class D&F shall be for a specified period, with the expiration date stated in the document.

1207.5 The contracting officer shall ensure that individual actions taken pursuant to the authority of a class D&F are within the scope of the D&F.

SOURCE: Final Rulemaking published at 35 DCR 1406 (February 26, 1988).

1208 EXPIRATION OF DETERMINATIONS AND FINDINGS

1208.1 Expiration dates are required for class D&F's and are optional for individual D&F's.

1208.2 Authority to act under an individual D&F shall expire when the authority is exercised or on an expiration date specified in the document, whichever occurs first.

1208.3 Authority to act under a class D&F shall expire on the expiration date specified in the document.

1208.4 When a solicitation has been furnished to prospective offerors before the expiration date, the authority under the D&F shall continue until award of the contract(s) resulting from the solicitation.

SOURCE: Final Rulemaking published at 35 DCR 1407 (February 26, 1988).

§1209: RESERVED

1210 PROCUREMENT PLANNING

1210.1 Agencies shall perform procurement planning and conduct market surveys to promote and provide for full and open competition with due regard to the nature of the supplies and services to be acquired.

1210.2 When full and open competition is not required by law, agencies shall perform procurement planning and conduct market surveys to obtain competition to the maximum extent practicable.

1210.3 Procurement planning shall integrate the effort of all personnel responsible for significant aspects of the procurement.

1212.4 The Director shall prescribe procedures for the following:

- (a) Ensuring that contracts are awarded after full and open competition with adequate procurement planning and availability of funds;
- (b) Ensuring that procurement planning addresses the requirement to specify needs, develop specifications, and to solicit offers in a manner that will promote and

provide for full and open competition with due regard to the nature of the supplies and services to be acquired;

- (c) Establishing criteria and thresholds at which increasingly greater detail and formality in the planning process is required as the procurement becomes more complex and costly, specifying those cases in which a written plan must be prepared;
- (d) Writing plans either on a system basis or on an individual contract basis, depending upon the procurement;
- (e) Ensuring that the principles of this section are used, as appropriate, for all procurements whether or not a written plan is required;
- (f) Reviewing and approving procurement plans and revisions to these plans;
- (g) Establishing criteria and thresholds at which design-to-cost and life-cycle cost techniques will be used;
- (h) Establishing standard procurement plan formats, if desired, suitable to agency needs; and
- (i) Waiving requirements of detail and formality as necessary in planning for procurements having compressed delivery or performance schedules because of the urgency of the need.

1210.5 Procurement planning shall begin as soon as the agency need is identified, preferably well in advance of the fiscal year in which the contract award is necessary. In developing the plan, the planner may form a team consisting of all those who will be responsible for significant aspects of the procurement, such as contracting, fiscal, legal, and technical personnel and, when applicable, the Minority Business Opportunity Commission.

1210.6 In order to facilitate attainment of the procurement objectives, each plan shall identify milestones at which decisions should be made. The plan shall address all the technical, business, management, and other significant considerations that will control the acquisition.

SOURCE: Final Rulemaking published at 35 DCR 1407 (February 26, 1988).

1211 POSTAWARD ORIENTATION

1211.1 If the contracting officer determines that a postaward orientation of contractors and subcontractors is necessary, it shall be conducted through a conference, a letter, or some other written form of communication. Contracting officers shall decide whether a postaward orientation in any form is necessary.

1211.2 If a postaward orientation is conducted, it shall be conducted to assist both the District and contractor personnel to achieve a clear and mutual understanding of all contract requirements and identify and resolve potential problems. However, it shall not be a substitute for the contractor's full understanding of the work requirements

at the time offers are submitted, nor shall it be used to alter the final agreement arrived at in any negotiations leading to contract award.

1211.3 The use of postaward orientation shall be encouraged to assist sheltered market contractors.

1211.4 When deciding whether postaward orientation is necessary and, if so, what form it shall take, the contracting officer shall consider, among other factors, the following:

- (a) The nature and extent of the preaward survey and any other prior discussions with the contractor;
- (b) The type, value, and complexity of the contract;
- (c) The complexity and acquisition history of the product or service;
- (d) Requirements for spare parts and related equipment;
- (e) The urgency of the delivery schedule and relationship of the product or service to critical programs.
- (f) The length of the planned production cycle;
- (g) The extent and nature of subcontracting;
- (h) The contractor's performance history and experience with the product or service;
- (i) The contractor's status, if any, as a minority business, District-based business, or women-owned business;
- (j) The contractor's performance history with minority business, District-based business, or women-owned business;
- (k) Safety precautions required for hazardous materials or operations; and
- (l) Complex financing arrangements, such as progress payments, advance payments, or guaranteed loans.

1211.5 If a letter or other written form of communication is used instead of a conference, the letter shall identify the District representative responsible for administering the contract and cite any unusual or significant contract requirements.

SOURCE: Final Rulemaking published at 35 DCR 1409 (February 26, 1988).

1212 POSTAWARD CONFERENCE

1212.1 If the contracting officer decides that a postaward conference is needed, he or she shall be responsible for the following:

- (a) Establishing the time and place of the conference;

- (b) Preparing the agenda, when necessary;
- (c) Notifying appropriate District representatives;
- (d) Notifying appropriate contractor representatives;
- (e) Designating or acting as chairperson;
- (f) Conducting a preliminary meeting of District personnel; and
- (g) Preparing a summary report of the conference.

- 1212.2 The chairperson of the conference shall conduct the meeting.
- 1212.3 Unless a contract change is contemplated, the chairperson shall emphasize that it is not the purpose of the meeting to change the contract.
- 1212.4 The contracting officer may make commitments or give directions, within the scope of the contracting officer's authority, and shall put in writing and sign any commitment or direction, whether or not it changes the contract.
- 1212.5 Any change to the contract that results from the postaward conference shall be made only by a formal contract modification referencing the applicable terms of the contract.
- 1212.6 Participants without authority to bind the District shall not take action which alters the contract in any way.
- 1212.7 The chairperson shall prepare and sign a summary report of the postaward conference.
- 1212.8 The chairperson shall include in the summary report all information and guidance provided to the contractor.
- 1212.9 The report shall cover all items discussed, including areas requiring resolution, controversial matters, the names of the participants assigned responsibility for further actions, and the due dates for the actions.
- 1212.10 The chairperson shall furnish copies of the report to the contracting office, the contractor, and others who require the information.

SOURCE: Final Rulemaking published at 35 DCR 1410 (February 26, 1988).

1213 POSTAWARD CONFERENCE WITH SUBCONTRACTORS

- 1213.1 The prime contractor shall be responsible for conducting postaward conferences with subcontractors. The contracting officer shall determine whether a conference is necessary for any or all subcontractors and shall notify the prime contractor.
- 1213.2 The prime contractor shall ensure that representatives from involved contract administration offices are invited.

1213.3 At postaward conferences with subcontractors, District representatives shall recognize the lack of privity of contract between the District and subcontractors, and shall not take action that is inconsistent with or alters the subcontracts.

1213.4 District representatives shall ensure that any changes in direction or commitment affecting the prime contract or contractor resulting from a subcontractor conference are made by written direction of the contracting officer to the prime contractor.

SOURCE: Final Rulemaking published at 35 DCR 1411 (February 26, 1988).

§1214: RESERVED

1215 INDIRECT COST RATES

1215.1 The establishment of final indirect cost rates shall provide the following:

- (a) Uniformity of approach with a contractor when more than one (1) contract or agency is involved;
- (b) Economy of administration; and
- (c) Timely settlement under cost-reimbursement contracts.

1215.2 Billing rates shall be established as a method for interim reimbursement of indirect costs at estimated rates subject to adjustment during contract performance and at the time the final indirect cost rates are established.

1215.3 The Director shall be responsible for establishing indirect cost rates for each contractor. These rates shall be binding on all agencies and their contracting offices, unless otherwise specifically prohibited by statute.

1215.4 Billing rates and final indirect cost rates shall be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

SOURCE: Final Rulemaking published at 35 DCR 1412 (February 26, 1988).

1216 DISALLOWANCE OF COSTS

1216.1 The contracting officer shall insert a provision, approved by the Director, on disallowance of costs in solicitations and contracts when a cost-reimbursement contract, fixed-price incentive contract, or contract providing for price redetermination is contemplated.

1216.2 The disallowance of cost provision shall include a statement that only costs determined in writing to be reimburseable in accordance with cost principles by the contracting officer shall be reimburseable.

- 1216.3 At any time during the performance of the contract, the contracting officer may issue the contractor a written notice of intent to disallow specified costs incurred or planned for incurrence.
- 1216.4 The purpose of the notice shall be to notify the contractor as early as practicable during contract performance that the cost is considered unallowable under the contract terms and District cost principles and to provide for timely resolution of any resulting disagreement.
- 1216.5 Before issuing a written notice, the contracting officer shall make every reasonable effort to reach a satisfactory settlement through discussions with the contractor.
- 1216.6 If the contractor disagrees with the notice, the contractor may submit a written response to the contracting officer.
- 1216.7 The notice of disallowance of costs shall contain at least the following:
- (a) A reference to the contract provision required by §1216.2;
 - (b) The contractor's name and a list of the numbers of all affected contracts;
 - (c) A description of the costs to be disallowed, including estimated dollar value by item and applicable time period;
 - (d) The reasons for the intended disallowance;
 - (e) A description of the potential impact on billing rates and forward pricing rate agreements;
 - (f) The effective date of the notice and the date by which a written response must be received;
 - (g) A list of the recipients of copies of the notice; and
 - (h) A request that the contractor acknowledge receipt of notice.
- 1216.8 If a contractor submits a response that disagrees with the notice, the contracting officer who issued the notice shall either withdraw the notice or issue a written decision affirming the notice within sixty (60) days of the receipt of the response.

SOURCE: Final Rulemaking published at 35 DCR 1412 (February 26, 1988).

1217 DISALLOWANCE OF INCURRED COSTS

- 1217.1 Cost-reimbursement contracts, the cost-reimbursement portion of fixed-price contracts, letter contracts that provide for reimbursement of costs, and time-and-material and labor-hour contracts shall provide for disallowing costs during the course of performance after the costs have been incurred.
- 1217.2 A contracting officer may receive reimbursement vouchers directly from contractors, approve for payment those vouchers found acceptable, and suspend payment of questionable costs.

1217.3 If the examination of a voucher raises a question regarding the allowability of a cost under the contract terms, the contracting officer, after informal discussion as appropriate, may issue a notice of contract costs suspended or disapproved simultaneously to the contractor and the disbursing officer for deduction from current payments with respect to cost claimed but not considered reimbursable.

1217.4 If the contractor disagrees with the deduction from current payments, the contractor may appeal the contracting officer's decision to the Director in accordance with the disputes provision of the contract.

SOURCE: Final Rulemaking published at 35 DCR 1413 (February 26, 1988).

§§1218-1219: RESERVED

1220 NOVATION AND CHANGE-OF-NAME AGREEMENTS

1220.1 A request by a contractor to recognize a successor in interest or change in name shall be submitted in writing to the contracting officer.

1220.2 When a contractor asks the District to recognize a successor in interest, the contractor shall submit to the contracting officer three (3) signed copies of the proposed novation agreement and one (1) copy of each of the following:

- (a) A list of all affected contracts and purchase orders remaining unsettled between the transferor and the District showing for each the contract number and type, name and address of the contracting office, total dollar value as amended, and the remaining unpaid balance;
- (b) The opinions of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of the transfer;
- (c) Evidence of the transferee's capability to perform the contracts;
- (d) The consent of sureties on all contracts listed if bonds are required, or a statement from the transferor that no bond is required; and
- (e) Any other documents or evidence that the contracting officer deems appropriate.

1220.3 The contracting officer shall determine whether or not it is in the best interests of the District to recognize the proposed successor in interest. The contracting officer's decision shall include a determination whether the proposed successor is responsible under provisions of chapter 22 of this title.

1220.4 When it is in the best interests of the District not to concur in the transfer of a contract to another company, the original contractor shall remain under contractual

obligation to the District, and the contract may be terminated for reasons of default if the original contractor does not perform.

- 1220.5 The Corporation Counsel shall review each proposed novation and change-of-name agreement for legal sufficiency before execution.
- 1220.6 If recognizing a successor in interests to a District contract is consistent with the best interest of the District, the responsible contracting officer shall execute a novation agreement with the transferor and the transferee.
- 1220.7 The novation agreement shall contain the following requirements:
- (a) That the transferee assumes all of the transferor's obligations under the contract including those incurred in the past unless the contracting officer waives these obligations in writing after determining waiver to be in the best interests of the District;
 - (b) That the transferor waives all rights under the contract against the District, except as otherwise provided in the novation agreement;
 - (c) That the transferor guarantees performance of the contract by the transferee or provides a satisfactory performance bond; and
 - (d) That nothing in the agreement shall relieve the transferor or transferee from compliance with any applicable law or regulation.
- 1220.8 Any of the requirements set forth in §1220.7 may be waived by the contracting officer if waiver is in the best interests of the District. Each proposed waiver shall be included in the Corporation Counsel pre-execution review required by §1220.5.
- 1229.9 The contracting officer shall forward signed copies of the executed novation or change-of-name agreement to the transferor and transferee and retain a signed copy in the case file.

SOURCE: Final Rulemaking published at 35 DCR 1414 (February 26, 1988).

1299 DEFINITIONS

- 1299.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Billing rate - an indirect cost rate established temporarily for interim reimbursement of incurred indirect cost and then adjusted as necessary pending establishment of final indirect cost rates.

Change-of-name agreement - a legal instrument executed by the contractor and the District that recognizes the legal change of name of the contractor without disturbing the original contractual rights and obligations of the parties.

Design-to-cost - a concept that establishes cost elements as management goals to achieve the best balance between life-cycle cost, acceptable performance, and schedule. Under this concept, cost is a design constraint during the design and development phases and a management discipline throughout the acquisition and operation of the system or equipment.

Determination and Findings (D&F) - a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contracting actions. The "determination" is a conclusion or decision supported by the "findings." The "findings" are statements of fact or the rationale essential to support the determination and cover each applicable requirement of the statute or regulation.

Director - the Director of the Department of Administrative Services.

Final indirect cost rate - the indirect cost rate established and agreed upon by the District and the contractor which is not subject to change. It is usually established after the close of the contractor's fiscal year to which it applies, unless the parties decide upon a different period.

Indirect cost rate - the percentage or dollar factor that expresses the ratio of indirect expense incurred in a given period to direct labor cost, manufacturing cost, or another appropriate base for the same period.

Life-cycle cost - the total cost to the District of procuring, operating, supporting, and (if applicable) disposing of the items being acquired.

Market survey - a testing of the marketplace to ascertain whether other qualified sources capable of satisfying the District's requirement exist. It may range from written or telephone contacts with knowledgeable experts regarding similar or duplicate requirements, and the results of any market test recently undertaken, to the more formal sources-sought announcements in pertinent publications (such as technical or scientific journals or the Commerce Business Daily) or solicitations for information or planning purposes.

Novation agreement - a legal instrument executed by a contractor (transferor), the successor in interest (transferee), and the District by which, among other things, the District recognizes the transfer of the contract and related assets.

Planner - the designated person or office responsible for developing and maintaining a written plan, or for the planning function in those acquisitions not requiring a written plan.

Procurement planning - the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling agency needs in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

SOURCE: Final Rulemaking published at 35 DCR 1416 (February 26, 1988).

CHAPTER 13 PUBLICIZING CONTRACT ACTIONS

Secs.	
1300	Notice of Proposed Solicitations
1301	Notice of Contract Awards
1399	Definitions

1300 NOTICE OF PROPOSED SOLICITATIONS

- 1300.1 An agency shall give public notice of a solicitation in accordance with §§303 and 304 of the D.C. Procurement Practices Act of 1985 (the "Act"), D.C. Code §§1-1183.3 and 1-1183.4 (1981).
- 1300.2 The contracting officer shall publish each proposed solicitation for proposed contracts with an estimated price over ten thousand dollars (\$10,000) in accordance with §303(c) of the Act, except as provided in §1300.7.
- 1300.3 The solicitation shall be advertised for at least thirty (30) days before the date set forth for the receipt of bids or proposals.
- 1300.4 The advertisement shall appear at least once in a newspaper of general circulation and any trade publications considered appropriate by the Director as long as the appearance occurs at least thirty (30) days before the date set for the receipt of bids or proposals. However, the contracting officer may place additional advertisements when it is in the best interests of the District.
- 1300.5 Contracting officers shall submit solicitation information for the contract information hotline in accordance with §206(a)(3) of the Act, D.C. Code §1-1182.6 (1981) to the Director on a weekly basis.
- 1300.6 The contracting officer may provide additional advertisement of solicitations in the following manner:
- (a) Displaying a copy or summary of each solicitation on bulletin boards in the contracting office and other public places;
 - (b) Mailing a copy of the solicitation to all prospective bidders or offerors on the bidder's mailing list; and
 - (c) Sending copies of notices or summaries of solicitations to organizations that maintain, without charge to the public or subscribers, display rooms for the benefit of prospective bidders, subcontractors, and material suppliers.
- 1300.7 The requirements for pre-solicitation advertising set forth in this section shall not apply to any of the following:
- (a) Sole source procurements under chapter 17 of this title;

- (b) Emergency procurements under chapter 17 of this title;
- (c) Small purchases under chapter 18 of this title; or
- (d) Procurement of architect-engineering services, medical and human care services, or real property appraisal services.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1418 (February 26, 1988).

1301 NOTICE OF CONTRACT AWARDS

- 1301.1 Notices of awards of contracts for ten thousand dollars (\$10,000) and above shall be published in the "District of Columbia Procurement Digest."

SOURCE: Final Rulemaking published at 35 DCR 1419 (February 26, 1988).

1399 DEFINITIONS

- 1399.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Director - the Director of the Department of Administrative Services.

SOURCE: Final Rulemaking published at 35 DCR 1419 (February 26, 1988).

CHAPTER 15 PROCUREMENT BY COMPETITIVE SEALED BIDDING

Secs.	
1500	Invitation for Bids
1501	Preparation of the Invitation for Bids
1502	Bid Requirements
1503	Time for Submission of Bids
1504	Telegraphic Bids
1505	[Reserved]
1506	Bid Samples
1507	Descriptive Literature
1508	Notices of Invitations for Bids
1509	Records of Invitations for Bids and Bids
1510	Solicitation Mailing Lists
1511	Removal of Names from Mailing Lists
1512	Reinstatement on Solicitation Mailing Lists
1513	Excessively Long Mailing Lists
1514-1515	[Reserved]
1517	Amendment of Invitations for Bids
1518	Cancellation of Invitations for Bids before Opening
1519-1520	[Reserved]
1521	Submission of Bids: General Provisions
1522	Modification or Withdrawal of Bids
1523	Late Bids, Late Modifications, and Late Withdrawals
1524	Notice to Bidders of Late Actions
1525	[Reserved]
1526	Receipt and Safeguarding of Bids
1527	Opening of Bids
1528	Postponement of Bid Opening
1529	Recording of Bids
1530	Cancellation of an Invitation for Bids after Opening
1531	Rejection of Individual Bids
1532	All or None Qualifications
1533-1534	[Reserved]
1535	Minor Informalities or Irregularities in Bids
1536	Mistakes in Bids before Award
1537	Mistakes in Bids after Award
1538-1539	[Reserved]
1540	Bid Evaluation
1541	Contract Awards
1542	Economic Price Adjustment
1548	Resolving Tie Bids
1544	Information to Bidders

1545-1549	[Reserved]
1550	Two-Step Sealed Bidding
1551	Conditions for use of Two-Step Sealed Bidding
1552	Two-Step Bidding Solicitations
1553	Receipt and Evaluation of Step One Proposals
1554	Step Two Procedures
1599	Definitions

1500 INVITATION FOR BIDS

- 1500.1 The contracting officer shall solicit goods, services, and construction using the competitive sealed bidding process except when other procurement methods are specifically allowed under §303(a) of the D.C. Procurement Practices Act of 1985, D.C. Code §1-1183.3 (the "Act").
- 1500.2 An invitation for bids ("IFB") shall be used to solicit goods, services, and construction under competitive sealed bidding procedures.
- 1500.3 Each IFB shall be published in accordance with the provisions of chapter 13 of this title.
- 1500.4 If the Director has determined that an IFB is to be canceled, and that the use of negotiation is appropriate to complete the procurement, the contracting officer shall proceed in accordance with §1601 of chapter 16 of this title.
- 1500.5 Each IFB shall include the following:
- (a) Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of the bids and the address where bids are to be delivered;
 - (b) The purchase description, delivery, or performance schedule, and any special instructions necessary; and
 - (c) A statement indicating whether award will be made on the basis of the lowest bid price or the lowest evaluated bid price, whichever is applicable.
- 1500.6 If the lowest evaluated bid price is the basis for award, the objective measurable criteria to be used shall be set forth in the IFB. The objective measurable criteria shall be related to price.
- 1500.7 The IFB shall require written acknowledgement by each bidder of the receipt of all amendments, addenda, and changes issued.
- 1500.8 The District shall evaluate bids without discussions with bidders.
- 1500.9 The contracting officer shall use firm-fixed-price contracts when the method of contracting is sealed bidding. However, fixed-price contracts with economic price adjustment clauses may be used if authorized by the Director.

- 1500.10 Postage or envelopes bearing "Postage and Fees Paid" indicia shall not be distributed with the IFB or otherwise supplied to prospective bidders.
- 1500.11 The contracting officer shall thoroughly review each IFB before issuance to detect and correct discrepancies or ambiguities that could limit competition or result in the receipt of nonresponsive bids.
- 1500.12 Information concerning proposed acquisitions shall not be released outside the District before solicitation, except for pre-solicitation notices.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1420 (February 26, 1988).

1501 PREPARATION OF THE INVITATION FOR BIDS

- 1501.1 The contracting officer shall prepare each IFB using a uniform contract format except for procurement of the following:
- (a) Construction;
 - (b) Perishable subsistence items; or
 - (c) Supplies or services for which another contract format is authorized by the Director.
- 1501.2 The uniform contract format shall contain the following in the order specified:
- (a) The solicitation and contract form prescribed by the Director;
 - (b) A description of the supplies, services, or other items; quantities; and prices;
 - (c) Any description or specifications needed in addition to §1501.2(b) that are necessary to permit maximum practical competition;
 - (d) Packaging, packing, preservation, and marking requirements;
 - (e) Inspection, acceptance, quality assurance, and reliability requirements;
 - (f) Requirements for time, place, and method of delivery or performance;
 - (g) Requirements for accounting and appropriation data and any required contract administration information;
 - (h) Special contract requirements;
 - (i) Contract clauses or provisions required by law or this title;
 - (j) A list of documents, exhibits, and other attachments;
 - (k) Representations, certifications, and other statements of bidders;

- (l) Instructions, conditions, and notices to bidders; and
- (m) Evaluation factors for award, such as any price related factors other than the bid price.

SOURCE: Final Rulemaking published at 35 DCR 1421 (February 26,1988).

1502 BID REQUIREMENTS

- 1502.1 Each bid shall be based upon specifications contained in the IFB.
- 1502.2 Each bid shall be typewritten or written legibly in ink.
- 1502.3 All erasures or alterations shall be initialed by the signer in ink.
- 1502.4 Each bid, except for a telegraphic bid, shall be signed in ink.
- 1502.5 Each bid shall be submitted in an envelope that clearly indicates that it contains a bid and identifies the IFB.

SOURCE: Final Rulemaking published at 35 DCR 1422 (February 26,1988).

1503 TIME FOR SUBMISSION OF BIDS

- 1503.1 The contracting officer shall provide a reasonable time for prospective bidders to prepare and submit bids in all IFB's, consistent with the needs of the District, but in no event less than thirty (30) days from the first day of publication.
- 1503.2 When establishing a reasonable bidding time, the contracting officer shall consider the following factors:
 - (a) Degree of urgency;
 - (b) Complexity of requirements;
 - (c) Anticipated extent of subcontracting; and
 - (d) Normal mailing time for both invitations and bids.

SOURCE: Final Rulemaking published at 35 DCR 1422 (February 26,1988).

1504 TELEGRAPHIC BIDS

- 1504.1 Telegraphic bids shall be authorized only in the following circumstances:
 - (a) If the date for opening of bids will not allow bidders sufficient time to submit bids on the prescribed forms; or
 - (b) If prices are subject to frequent changes.
- 1504.2 Telegraphic bids shall not be considered unless permitted by the IFB.

- 1504.3 Telegraphic bids shall contain the following:
- (a) Specific reference to the IFB;
 - (b) The items, quantities, and prices for which the bid is submitted;
 - (c) The time and place required for delivery of the bid; and
 - (d) A statement that the bidder agrees to all the terms, conditions, and provisions of the IFB.
- 1504.4 If telegraphic bids are authorized, a telegraphic bid received by the designated office not later than the time set for opening of bids shall be considered.

SOURCE: Final Rulemaking published at 35 DCR 1423 (February 26,1988).

§1505: RESERVED

1506 BID SAMPLES

- 1506.1 The IFB shall state when the bidder is required to furnish samples.
- 1506.2 The contracting officer shall not require bidders to furnish bid samples unless there are characteristics of the product that cannot be described adequately in the specifications or purchase description.
- 1506.3 Bid samples shall be used only to determine the responsiveness of the bid and shall not be used to determine a bidder's ability to produce the required items.
- 1506.4 The contracting officer shall reject a bid as nonresponsive if the sample fails to conform to each of the characteristics listed in the IFB.

SOURCE: Final Rulemaking published at 35 DCR 1423 (February 26,1988).

1507 DESCRIPTIVE LITERATURE

- 1507.1 Each IFB shall state whether the bidder is required to furnish descriptive literature.
- 1507.2 The contracting officer shall not require bidders to furnish descriptive literature unless the contracting officer needs it to determine before award whether the products offered meet the specifications or to establish exactly what the bidder proposes to furnish.
- 1507.3 The contracting officer shall document, in writing, the reasons why product acceptability cannot be determined without submission of descriptive literature and shall include the document in the contract file.

- 1507.4 The IFB shall clearly identify the following:
- (a) The descriptive literature required to be furnished;
 - (b) The purpose for which the literature is required;
 - (c) The extent to which the literature will be considered in the evaluation of bids; and
 - (d) The rules that will apply if a bidder fails to furnish the literature before bid opening or if the literature furnished does not comply with the requirements of the IFB.

- 1507.5 The contracting officer may waive the requirement for furnishing descriptive literature if either of the following occurs:
- (a) The bidder states in the bid that the product being offered is the same as a product previously or currently being furnished to the District; or
 - (b) The contracting officer, on advice of technical personnel, determines that the product offered by the bidder complies with the specification requirements of the current IFB.

- 1507.6 Unsolicited descriptive literature not required by the IFB shall not be considered as qualifying the bid and shall be disregarded.

SOURCE: Final Rulemaking published at 35 DCR 1424 (February 26, 1988).

1508 NOTICES OF INVITATIONS FOR BIDS

- 1508.1 Invitations for bids or notices of the availability of IFB's shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition.
- 1508.2 Each IFB shall be publicized in accordance with the provisions specified in chapter 13 of this title.
- 1508.3 Notice of each IFB for which the bid amount is reasonably expected to be over ten thousand dollars (\$10,000) shall be published in the "District of Columbia Procurement Digest."

SOURCE: Final Rulemaking published at 35 DCR 1424 (February 26, 1988).

1509 RECORDS OF INVITATIONS FOR BIDS AND BIDS

- 1509.1 Each contracting office shall retain a file of each IFB that it issues and each abstract or record of bids.
- 1509.2 The file for each IFB shall include the following:
- (a) The name and address of each prospective bidder on the solicitation mailing list to which the IFB was sent and additional prospective bidders that were sent copies of the IFB upon request;

- (b) The name of each publication in which notice of the IFB was published and the date of each publication; and
- (c) The date on which the IFB was issued.

SOURCE: Final Rulemaking published at 35 DCR 1425 (February 26,1988).

1510 SOLICITATION MAILING LISTS

- 1510.1 Contracting officers shall establish solicitation mailing lists to ensure access to adequate sources of supplies and services, except when the requirements of the District can be obtained within the local trading area through use of the small purchase procedures or are nonrecurring.
- 1510.2 The Department of Administrative Services may establish a central list for use by all contracting offices.
- 1510.3 All eligible concerns that have submitted solicitation mailing applications, or that the contracting officer considers capable of filling the requirements of a particular acquisition, shall be placed on the appropriate solicitation mailing list.
- 1510.4 Prospective bidders shall be notified that they have been added to solicitation mailing lists.
- 1510.5 An applicant shall be notified if it is not put on the list and of the reasons why the applicant was rejected.

SOURCE: Final Rulemaking published at 35 DCR 1425 (February 26,1988).

1511 REMOVAL OF NAMES FROM MAILING LISTS

- 1511.1 A business that fails to respond to solicitations on three (3) consecutive IFB's of similar items may be removed by the contracting officer from the applicable mailing list but only for the items involved in the IFB.
- 1511.2 In individual cases, prospective bidders that fail to respond may be retained on a list if retention is in the best interests of the District.
- 1511.3 Prospective bidders that have been debarred or suspended from District contracts or otherwise determined to be ineligible to receive awards shall be removed from solicitation mailing lists to the extent required by the debarment, suspension, or other determination of ineligibility.

SOURCE: Final Rulemaking published at 35 DCR 1426 (February 26,1988).

1512 REINSTATEMENT ON SOLICITATION MAILING LISTS

- 1512.1 Prospective bidders that have been removed from solicitation mailing lists may be reinstated by the contracting officer upon request or by filing a new application.

1512.2 No bidder which is debarred or suspended shall be reinstated during the period of a debarment or suspension.

SOURCE: Final Rulemaking published at 35 DCR 1426 (February 26,1988).

1513 EXCESSIVELY LONG MAILING LISTS

1513.1 Solicitation mailing lists shall be used to promote competition commensurate with the dollar value of the proposed contract.

1513.2 If the number of bidders on a mailing list is excessive in relation to a specific procurement, the list may be reduced by either of the following methods:

(a) Rotation of lists or using a different portion of a list for separate procurements;
or

(b) Using pre-solicitation notices instead of initially forwarding complete bid sets.

1513.3 The fact that less than an entire mailing list is used shall not preclude furnishing of bid sets to other prospective bidders, upon request, or consideration of bids received from bidders to whom the IFB was not mailed or delivered.

SOURCE: Final Rulemaking published at 35 DCR 1426 (February 26,1988).

§§1514-1515: RESERVED

1516 PRE-BID CONFERENCES

1516.1 The contracting officer may use pre-bid conferences to explain the procurement requirements.

1516.2 Pre-bid conferences shall be announced to all prospective bidders in the IFB.

1516.3 The pre-bid conference shall be held as early as possible after the IFB has been issued and before the bids are opened.

1516.4 Nothing stated at the pre-bid conference shall change the IFB unless a change is made by the contracting officer by written amendment.

1516.5 The contracting officer shall prepare a written report of the conference and shall supply it to all prospective bidders who request a copy in writing.

1516.6 The report of the pre-bid conference shall be a public document.

SOURCE: Final Rulemaking published at 35 DCR 1427 (February 26,1988).

1517 AMENDMENT OF INVITATIONS FOR BIDS

- 1517.1 Amendments to an IFB shall be identified as such and shall require the bidder to acknowledge receipt of all amendments issued.
- 1517.2 If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, or other items, or to correct a defective or ambiguous IFB, the change shall be accomplished by amendment of the IFB.
- 1517.3 Each amendment shall reference the portion of the IFB it amends.
- 1517.4 The contracting officer shall send each amendment to all prospective bidders to which an IFB has been furnished.
- 1517.5 The contracting officer shall distribute each amendment within a reasonable time to allow all prospective bidders to consider the information in submitting or modifying their bids.
- 1517.6 If the time and date for receipt of bids does not permit preparation of the bid, the contracting officer shall increase the time for submission of the bids to the extent possible in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment.

SOURCE: Final Rulemaking published at 35 DCR 1427 (February 26,1988).

1518 CANCELLATION OF INVITATIONS FOR BIDS BEFORE OPENING

- 1518.1 An IFB shall not be canceled unless the Director determines in writing that cancellation is in the best interests of the District.
- 1518.2 The contracting officer shall forward the notice of cancellation to the Inspector General within seventy-two (72) hours of the cancellation.
- 1518.3 If an IFB is canceled, bids that have been received shall be returned unopened to the bidders.
- 1518.4 The contracting officer shall send a notice of cancellation to all prospective bidders to which IFB's were issued.

SOURCE: Final Rulemaking published at 35 DCR 1428 (February 26,1988).

§§1519-1520: RESERVED

1521 SUBMISSION OF BIDS: GENERAL PROVISIONS

- 1521.1 To be considered for award, a bid shall be required to comply in all material respects with the IFB.
- 1521.2 Bids shall be filled out, executed, and submitted in accordance with the instructions in the IFB.
- 1521.3 Bids shall be submitted so that they will be received in the office designated in the IFB not later than the exact time set for opening of bids.

SOURCE: Final Rulemaking published at 35 DCR 1428 (February 26,1988).

1522 MODIFICATION OR WITHDRAWAL OF BIDS

- 1522.1 A bid may be modified or withdrawn by written or telegraphic notice received in the office designated in the IFB not later than the exact time set for opening of bids.
- 1522.2 If a bid is withdrawn in accordance with this section, any bid security shall be returned to the bidder.
- 1522.3 All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate contract file.

SOURCE: Final Rulemaking published at 35 DCR 1428 (February 26,1988).

1523 LATE BIDS, LATE MODIFICATIONS, AND LATE WITHDRAWALS

- 1523.1 Unless the solicitation states another time, the deadline for receipt of bids shall be 2:00 p.m., local time, for the designated District office on the date that bids are due.
- 1523.2 Any bid received at the place designated in the solicitation after the time and date set for receipt of bids shall be considered a "late" bid unless it was received prior to the contract award and either of the following applies:
- (a) It was sent by registered or certified mail not later than five (5) calendar days before the bid receipt date specified; or
 - (b) It was sent by mail (or telegram if authorized) and the contracting officer determines that the late receipt was due solely to mishandling by the District after receipt at the location specified in the IFB.
- 1523.3 Any request for withdrawal or request for modification received after the time and date set for opening of bids at the place designated for opening shall be considered late.
- 1523.4 The only acceptable evidence to establish the date of a late bid, late modification, or late withdrawal sent either by registered or certified mail shall be a U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the

bid, modification, or withdrawal shall be deemed to have been mailed late. When the postmark shows the date but not the hour, the time is presumed to be the last minute of the date shown. If no date is shown in the postmark, the bid shall be considered late unless the bidder can furnish evidence from the postal authorities of timely mailing.

- 1523.5 A late bid, late request for modification, or late request for withdrawal shall not be considered, except as provided in this section.
- 1523.6 A late modification of a successful bid which makes its terms more favorable to the District shall be considered at any time it is received and may be accepted.
- 1523.7 A late bid, late modification of bid, or late withdrawal of bid that is not considered shall be held unopened, unless opened for identification, until after award and then retained with unsuccessful bids.
- 1523.8 The following information shall, if available, be included in the contracting office files with respect to each late bid, late modification, or late withdrawal of bid:
- (a) A statement of the date and hour of mailing, filing, or delivery;
 - (b) A statement of the date and hour of receipt;
 - (c) A written determination, with supporting facts, why the late bid, late modification, or late withdrawal was or was not considered;
 - (d) A statement of the disposition of the late action; and
 - (e) The envelope, or other covering, if the late bid or modification was considered.

SOURCE: Final Rulemaking published at 35 DCR 1428 (February 26,1988).

1524 NOTICE TO BIDDERS OF LATE ACTIONS

- 1524.1 If a bid, modification of bid, or withdrawal of bid is received late, and it is clear from available information that it cannot be considered, the contracting officer shall promptly notify the bidder.
- 1524.2 If a late bid, late modification of bid, or late withdrawal of bid is transmitted by registered or certified mail and is received before award, but it is not clear from available information whether it can be considered, the bidder shall be promptly notified.

SOURCE: Final Rulemaking published at 35 DCR 1430 (February 26,1988).

§1525: RESERVED

1526 RECEIPT AND SAFEGUARDING OF BIDS

- 1526.1 All bids and modifications received before the time set for the opening of bids shall be kept secure.
- 1526.2 Except as provided in §§1526.5 and 1526.6, all bids shall remain unopened in a locked box or safe.
- 1526.3 Necessary precautions shall be taken to ensure the security of the bid box or safe.
- 1526.4 If an IFB is canceled, bids shall be returned to the bidders.
- 1526.5 Before bid opening, information concerning the identity and number of bids received shall be made available only to District employees, and then only as required in the execution of their duties.
- 1526.6 When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.
- 1526.7 Each bid shall be marked with the date and time of receipt.
- 1526.8 Envelopes marked as bids which do not identify the bidder or the solicitation may be opened solely for the purpose of identification or to determine whether a bidder is eligible to bid, and then only by an official designated for this purpose.
- 1526.9 A person who opens a sealed bid by mistake, or for the reasons set forth in §1526.8, shall sign the envelope opened, indicate the person's position, and deliver it to the contracting officer. The contracting officer shall immediately write the following on the envelope and then sign and reseal the envelope:
- (a) An explanation of the opening;
 - (b) The date and time opened; and
 - (c) The IFB number.

SOURCE: Final Rulemaking published at 35 DCR 1430 (February 26,1988).

1527 OPENING OF BIDS

- 1527.1 Bids and modifications shall be opened publicly, at the time, date, and place designated in the IFB.
- 1527.2 The name of each bidder, the bid price, and other information that is deemed appropriate shall be read aloud or otherwise made available. This information shall be recorded at the time of bid opening.
- 1527.3 The bids shall be tabulated or a bid abstract made.
- 1527.4 Examination of bids by interested persons shall be permitted if it does not interfere unduly with the conduct of District business or violate the provisions of chapter 42 of this title.

- 1527.5 The original copy of the bid may be examined by the public only under the immediate supervision of a District official and under conditions that preclude the possibility of a substitution, addition, deletion, or alteration of the bid.

SOURCE: Final Rulemaking published at 35 DCR 1431 (February 26,1988).

1528 POSTPONEMENT OF BID OPENING

- 1528.1 The contracting officer may postpone a bid opening until after the time scheduled for bid opening under the following circumstances:

- (a) If the contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mail for causes beyond the control of bidders without their fault or negligence, such as flood, fire, accident, weather conditions, or strikes; or
- (b) If emergency or unanticipated events interrupt normal governmental processes so that the conduct of bid openings as scheduled is impractical.

- 1528.2 At the time of a determination to postpone a bid opening, an announcement of the determination shall be publicly posted. If practical, before issuance of a formal amendment of the IFB, the determination shall be otherwise communicated to prospective bidders who are likely to attend the scheduled bid opening.

- 1528.3 When a bid opening is postponed, the time of actual bid opening shall be the time established for determining "late bids" or other late actions under §1523.

- 1528.4 The contracting officer shall prepare a written memorandum for the file explaining the circumstances of the postponement.

- 1528.5 The contracting officer may proceed with the bid opening as soon as practical after the original scheduled time without prior amendment to the IFB or notice to bidders, whenever any delay incident to the issuance of the amendment or notice would not be in the best interests of the District.

SOURCE: Final Rulemaking published at 35 DCR 1431 (February 26,1988).

1529 RECORDING OF BIDS

- 1529.1 A "bid abstract" form shall be completed and certified as to its accuracy by the bid opening officer at a reasonable time after bid opening, but prior to contract award.

- 1529.2 The abstract information shall be made available for public inspection.

- 1529.3 If the IFB is canceled before the time set for bid opening, this fact shall be recorded, together with a statement of the number of bids invited and the number of bids received.

SOURCE: Final Rulemaking published at 35 DCR 1432 (February 26,1988).

1530 CANCELLATION OF AN INVITATION FOR BIDS AFTER OPENING

- 1530.1 An IFB may be canceled, or all bids rejected, only if the Director determines in writing that the action taken is in the best interest of the District. If all bids have been rejected, the contracting officer shall cancel the solicitation. The contracting officer shall notify the Inspector General of each cancellation within seventy-two (72) hours.
- 1530.2 Every effort shall be made to anticipate changes in a requirement before the date of opening and to notify all prospective bidders of any resulting modification or cancellation.
- 1530.3 After the opening of a bid, an IFB shall not be canceled and resolicited due solely to increased requirements for the items being procured. Award shall be made on the initial IFB and the additional quantity shall be treated as a new procurement.
- 1530.4 An IFB may be canceled and all bids rejected before award but after opening when the Director determines in writing that cancellation is in the best interests of the District for any reason, including the following:
- (a) Inadequate or ambiguous specifications were cited in the IFB;
 - (b) Specifications have been revised;
 - (c) The supplies or services being contracted for are no longer required;
 - (d) The IFB did not provide for consideration of all factors of cost to the District;
 - (e) Bids received indicate that the needs of the District can be satisfied by a less expensive article differing from that for which the bids were invited;
 - (f) All otherwise acceptable bids received are at unreasonable prices, or only one (1) bid is received and the contracting officer cannot determine the reasonableness of the bid price, or no responsive bid has been received from a responsible bidder; or
 - (g) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
- 1530.5 If administrative difficulties are encountered after bid opening which may delay award beyond the bidders' acceptance period, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for readvertisement.

SOURCE: Final Rulemaking published at 35 DCR 1432 (February 26, 1988).

1531 REJECTION OF INDIVIDUAL BIDS

- 1531.1 Any bid that fails to conform to the essential requirements of the IFB shall be rejected.

- 1531.2 Any bid that does not conform to the applicable specifications shall be rejected unless the IFB authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the IFB.
- 1531.3 Any bid that fails to conform to the delivery schedule or permissible alternates stated in the IFB shall be rejected.
- 1531.4 A bid shall be rejected if the bidder imposes conditions that would modify requirements of the IFB or limit the bidder's liability to the District. For example, a bid shall be rejected if the bidder does the following:
- (a) Protects against future changes in conditions, such as increased costs, if total possible costs to the District cannot be determined;
 - (b) Fails to state a price and indicates that price shall be "price in effect at time of delivery" or words of equivalent meaning;
 - (c) States a price but qualifies it as being subject to "price in effect at time of delivery" or words of equivalent meaning;
 - (d) When not authorized by an IFB, the bidder conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder receives (or does not receive) award under a separate solicitation; or
 - (e) Limits the rights of the District under any contract clause.
- 1531.5 A low bidder may be requested to delete objectionable conditions from a bid, so long as the conditions do not go to the substance, as distinguished from the form, of the bid or would give the bidder an unfair advantage over other bidders. A condition goes to the substance of a bid when it affects price, quantity, quality, or delivery of the items or services offered.
- 1531.6 Any bid may be rejected if the contracting officer determines in writing that the bid price is unreasonable.
- 1531.7 A bid received from any bidder that is suspended, debarred, or otherwise ineligible shall be rejected if the period of suspension, debarment, or ineligibility has not expired by the bid opening date.
- 1531.8 Low bids received from bidders determined to be not responsible shall be rejected.
- 1531.9 When a bid security is required and a bidder fails to furnish the security in accordance with the requirements of the IFB, the rules set forth in §2701 of chapter 27 of this title shall be applicable.
- 1531.10 The originals of all rejected bids, and any written findings with respect to the rejections, shall be maintained in the contract file.

- 1531.11 If the contracting officer determines that it is necessary to reject all bids, the contracting officer shall notify each bidder that all bids have been rejected and shall state the reason for the action.

SOURCE: Final Rulemaking published at 35 DCR 1433 (February 26,1988).

1532 ALL OR NONE QUALIFICATIONS

- 1532.1 Unless the solicitation provides otherwise, a bid may be responsive even though the bidder specifies that award will be accepted only on all, or a specified group, of the items.

- 1532.2 Bidders shall not be permitted to withdraw or modify an "all or none" qualification after bid opening because "all or none" qualifications are substantive and affect the rights of other bidders.

SOURCE: Final Rulemaking published at 35 DCR 1435 (February 26,1988).

§§1533-1534: RESERVED

1535 MINOR INFORMALITIES OR IRREGULARITIES IN BIDS

- 1535.1 Minor informalities or irregularities in bids may be waived if the contracting officer determines that the waiver is in the best interests of the District.

- 1535.2 The contracting officer may determine that the following, among others, are minor informalities or irregularities:

- (a) When a bidder fails to return the number of copies of signed bids required by the IFB;
- (b) When the bidder fails to furnish information concerning the number of its employees;
- (c) When a bidder fails to sign its bid, but only if one (1) of the following applies:
 - (1) The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself); or
 - (2) The firm submitting the bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature; submits evidence of that authorization; and the bid carries the proper signature.

- (d) When the bidder fails to acknowledge receipt of an amendment to the IFB, but only if one (1) of the following applies:
 - (1) The bid received clearly indicates that the bidder received the amendment (such as where the amendment added another item to the IFB and the bidder submitted a bid on the item); or
 - (2) The amendment involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item bid upon.

1535.3 When the bidder fails to provide timely certifications or information with respect to Equal Opportunity and Affirmative Action Programs or other IFB requirements, the contracting officer may allow additional time for the submission to be made prior to the award.

1535.4 When it is in the best interests of the District, the contracting officer shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or waive the deficiency.

SOURCE: Final Rulemaking published at 35 DCR 1435 (February 26, 1988).

1536 MISTAKES IN BIDS BEFORE AWARD

- 1536.1 After the opening of bids, the contracting officer shall examine each bid for mistakes.
- 1536.2 In cases of apparent mistakes and in cases where the contracting officer has reason to believe that a mistake may have been made, the contracting officer shall request from the bidder a verification of the bid and call attention to the suspected mistake.
- 1536.3 If the bidder alleges a mistake, the matter shall be processed before award in accordance with this section.
- 1536.4 The contracting officer may correct an apparent clerical mistake before award. If correction is allowed, the bid shall be corrected to the intended correct bid and may not be withdrawn.
- 1536.5 The authority to permit corrections of bids is limited to bids that, as submitted, are responsive to the IFB and shall not be used to permit correction of bids to make them responsive.
- 1536.6 If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn.
- 1536.7 A bidder may be permitted to withdraw a low bid in either of the following circumstances:
 - (a) If a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

- (b) If the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

1536.8 When a bid is corrected or withdrawn, or correction or withdrawal is denied, the contracting officer shall prepare a determination showing that the relief was granted or denied in accordance with this section.

SOURCE: Final Rulemaking published at 35 DCR 1436 (February 26, 1988).

1537 MISTAKES IN BIDS AFTER AWARD

1537.1 If a mistake in a bid is not discovered until after award, the mistake may be corrected by contract amendment if correcting the mistake would be favorable to the District without changing the essential requirements of the specifications.

1537.2 In addition to the cases contemplated in §1537.1 or as otherwise authorized by law, if a mistake in a bid is not discovered until after award, the Director shall make one (1) of the following determinations:

- (a) To rescind a contract;
- (b) To reform a contract to delete the items involved in the mistake or to reform a contract to increase the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original IFB; or
- (c) That no change shall be made in the contract as awarded.

1537.3 Determinations under §§1537.2(a) and 1537.2(b) shall be made only on the basis of clear and convincing evidence that a mistake was mutual or unilaterally made by the contractor, and was so apparent as to have given the contracting officer notice of the probability of the mistake.

1537.4 Each proposed determination shall be submitted to the Corporation Counsel for review.

1537.5 Each agency shall include in the contract file a record of each determination made in accordance with this section, the facts involved, and the action taken.

SOURCE: Final Rulemaking published at 35 DCR 1437 (February 26, 1988).

§§1538-1539: RESERVED

1540 BID EVALUATION

1540.1 The contracting officer shall determine whether a prospective contractor is responsible and whether the prices offered are reasonable.

- 1540.2 Prompt payment discounts shall not be considered in the evaluation of bids. However, any discount offered will form a part of the award and will be taken by the District if payment is made within the discount period specified by the bidder.

SOURCE: Final Rulemaking published at 35 DCR 1438 (February 26,1988).

1541 CONTRACT AWARDS

- 1541.1 Each contract shall be awarded to the responsible and responsive bidder whose bid meets the requirements set forth in the IFB, and is the lowest bid price or lowest evaluated bid price, considering only price and price related factors included in the IFB.
- 1541.2 A bid shall not be evaluated for any criterion that is not disclosed in the IFB.
- 1541.3 Award shall not be made until all required approvals have been obtained.
- 1541.4 The contracting officer shall make a contract award by written notice within the time for acceptance specified in the bid or an extension.
- 1541.5 A contract shall be deemed to have been awarded on the date that the contracting officer signed the contract.
- 1541.6 Following an award, a record showing the basis for determining the successful bidder shall be made a part of the contract file.

SOURCE: Final Rulemaking published at 35 DCR 1438 (February 26,1988).

1542 ECONOMIC PRICE ADJUSTMENT

- 1542.1 If a solicitation does not contain an economic price adjustment clause, but a bidder proposes an adjustment clause with a ceiling that the price will not exceed, the bid shall be evaluated on the basis of the maximum possible economic price adjustment of the quoted base price.
- 1542.2 If a bid received with an unsolicited economic price adjustment clause is eligible for award, the contracting officer shall request the bidder to agree to the inclusion in the award of a standard District economic price adjustment clause, approved by the Director, that is subject to the same ceiling. If the bidder will not agree to an approved clause, the award may be made on the basis of the bid as originally submitted.
- 1542.3 A bid that contains an economic price adjustment with no ceiling shall be rejected unless a clear basis for evaluation exists.
- 1542.4 If an IFB contains an economic price adjustment clause and no bidder takes exception to the provisions, bids shall be evaluated on the basis of the quoted prices without the addition of the allowable economic price adjustment.
- 1542.5 If a bidder increases the maximum percentage of economic price adjustment stipulated in the IFB or limits the downward economic price adjustment provisions of the IFB, the bid shall be rejected as nonresponsive.

1542.6 If a bid indicates deletion of the economic price adjustment clause, the bid shall be rejected as nonresponsive.

1542.7 If a bidder decreases the maximum percentage of economic price adjustment stipulated in the IFB, the bid shall be evaluated at the base price on an equal basis with bids that do not reduce the stipulated ceiling. However, after evaluation, if the bidder offering the lower ceiling is in a position to receive the award, the award shall reflect the lower ceiling.

SOURCE: Final Rulemaking published at 35 DCR 1438 (February 26, 1988).

1543 RESOLVING TIE BIDS

1543.1 Contracts shall be awarded in the following order by priority when two (2) or more low bids are equal in all respects:

- (a) Minority business certified by the Minority Business Opportunity Commission;
- (b) District-based business;
- (c) Other businesses.

1543.2 Notwithstanding the requirements of §1543.1, when the imposition of a penalty pursuant to D.C. Law 6-116 results in equal lowest price evaluation between bidders with business interests in the Republic of South Africa or Namibia and a bidder who does not have these business interests, the contract shall be awarded to the bidder with no business interests in the Republic of South Africa or Namibia.

1543.3 If two (2) or more bidders remain equally eligible for award, award shall be made by a drawing by lot limited to those bidders.

1543.4 The drawing shall be witnessed by at least three (3) persons, and the contract file shall contain the names and addresses of the witnesses and the person supervising the drawing.

1543.5 If an award is made by using the priorities in this section, the contracting officer shall include a written agreement in the contract that the contractor will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot.

SOURCE: Final Rulemaking published at 35 DCR 1439 (February 26, 1988).

1544 INFORMATION TO BIDDERS

1544.1 Written notice of award shall be sent to the successful bidder.

1544.2 Notice of award shall be made available to the public.

1544.3 Notices of awards of all contracts of ten thousand dollars (\$10,000) and above shall be published in the "District of Columbia Procurement Digest."

1544.4 The contracting officer shall notify unsuccessful bidders promptly that their bids were not accepted, and shall return any bid security furnished with the unsuccessful bids to the unsuccessful bidders.

SOURCE: Final Rulemaking published at 35 DCR 1440 (February 26,1988).

§§1545-1549: RESERVED

1550 TWO-STEP SEALED BIDDING

1550.1 The two-step sealed bidding method may be used for procurements requiring technical proposals, particularly those for complex items.

1550.2 The two-step sealed bidding method shall be conducted as follows:

- (a) The first step consists of solicitation of technical proposals, evaluation of proposals, and (if necessary) discussion of the proposals; and
- (b) The second step involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one.

1550.3 The contracting officer shall not request, and the bidder shall not submit, price or price information in step one.

1550.4 The contracting officer shall determine the acceptability of the supplies or services offered through clarification and discussion, if necessary, relating to technical proposals.

1550.5 Bids submitted shall be evaluated and awards made in accordance with the provisions of this chapter.

SOURCE: Final Rulemaking published at 35 DCR 1440 (February 26,1988).

1551 CONDITIONS FOR USE OF TWO-STEP SEALED BIDDING

1551.1 Two-step sealed bidding may be used in preference to competitive sealed bids and proposals when all of the following conditions are present:

- (a) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the District;
- (b) Definite criteria exist for evaluating technical proposals;

- (c) More than one (1) technically qualified source is expected to be available;
- (d) Sufficient time will be available for use of the two-step method; and
- (e) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

1551.2 None of the following shall preclude the use of two-step sealed bidding:

- (a) Multi-year contracting;
- (b) District-owned facilities to be made available to the successful bidder; or
- (c) A sheltered market procurement.

SOURCE: Final Rulemaking published at 35 DCR 1441 (February 26, 1988).

1552 TWO-STEP BIDDING SOLICITATION

1552.1 Each request for technical proposals shall be publicized and distributed in accordance with chapters 13 and 16 of this title and shall include, at least, the following:

- (a) A description of the supplies or services required;
- (b) A statement of intent to use the two-step method;
- (c) The requirements of the technical proposal;
- (d) The evaluation criteria;
- (e) A statement that the technical proposals shall not include prices or pricing information;
- (f) The date and hour by which the proposal must be received;
- (g) A statement that in the second step only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards and that each bid in the second step must be based on the bidder's own technical proposals;
- (h) A statement that offerors should submit proposals that are acceptable without additional explanation or information, that the District may make a final determination regarding the acceptability of the proposal solely on the basis of the proposal as submitted, and that the District may proceed with the second step without requesting further information from any offeror; Provided, that the District may request additional information from offerors of proposals that it considers reasonably susceptible of being made acceptable and may discuss proposals with these offerors;
- (i) A statement that a notice of unacceptability will be forwarded to the offeror upon completion of the proposal evaluation and final determination of unacceptability; and

- (j) A statement either that only one (1) technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted.

1552.2 When specifications permit different technical approaches, multiple proposals may be authorized if it would be in the best interests of the District.

1552.3 The request shall indicate that information on delivery or performance is not binding on the District and that the actual delivery or performance requirements will be contained in the IFB issued under step two.

SOURCE: Final Rulemaking published at 35 DCR 1442 (February 26, 1988).

1553 RECEIPT AND EVALUATION OF STEP ONE PROPOSALS

1553.1 Upon receipt, the contracting officer shall do the following:

- (a) Safeguard proposals against disclosure to unauthorized persons;
- (b) Accept and handle data with restrictive disclosure procedures in accordance with chapter 31 of this title; and
- (c) Remove any reference to price or cost.

1553.2 The contracting officer shall establish a time period for evaluating technical proposals. The period may vary with the complexity and the number of proposals received.

1553.3 Evaluations shall be based on the criteria in the request for proposals without consideration of responsibility.

1553.4 Proposals shall be categorized as one (1) of the following:

- (a) Acceptable;
- (b) Reasonably susceptible of being made acceptable; or
- (c) Unacceptable.

1553.5 Any proposal which modifies or fails to conform to the essential requirements or specifications of the request for technical proposals shall be considered nonresponsive and categorized as unacceptable.

1553.6 The contracting officer may proceed directly with step two if there are a sufficient number of acceptable proposals to ensure adequate price competition under step two, and if further time, effort, and delay to make additional proposals acceptable and thereby increase competition would not be in the best interests of the District.

1553.7 If it is not in the best interests of the District to proceed directly with step two, the contracting officer shall request bidders whose proposals may be made acceptable to submit additional clarifying or supplemental information.

1553.8 If discussions are held, the contracting officer shall identify the nature of the deficiencies in the proposal or the nature of the additional information required.

- 1553.9 No proposal shall be discussed with any offeror other than the submitting offeror.
- 1553.10 When initiating a request for additional information, the contracting officer shall fix an appropriate time for bidders to conclude discussions, if any, submit all additional information, and incorporate that additional information as part of their proposals.
- 1553.11 The time for completing the actions under §1553.10 may be extended at the discretion of the contracting officer.
- 1553.12 If the additional information incorporated as part of a proposal within the final time fixed by the contracting officer establishes that the proposal is acceptable, it shall be so categorized. Otherwise, it shall be categorized as unacceptable.
- 1553.13 If a technical proposal is found unacceptable, either initially or after clarification, the contracting officer shall promptly notify the offeror of the basis of the determination and notify the offeror that a revision of the proposal will not be considered.
- 1553.14 Upon written request, and as soon as possible after award, the contracting officer may debrief unsuccessful offerors.
- 1553.15 If it is necessary to discontinue two-step sealed bidding, the contracting officer shall include a statement of the facts and circumstances in the contract file.
- 1553.16 Each offeror shall be notified in writing of the discontinuance of two-step sealed bidding.

SOURCE: Final Rulemaking published at 35 DCR 1443 (February 26,1988).

1554 STEP TWO PROCEDURES

- 1554.1 Competitive sealed bidding procedures shall be followed except as follows:
- (a) An IFB shall be issued only to those offerors submitting acceptable technical proposals in step one;
 - (b) The IFB shall prominently state that the bidder shall comply with the specifications and the bidder's technical proposal; and
 - (c) The IFB shall not be advertised in newspapers or publicly posted.

SOURCE: Final Rulemaking published at 35 DCR 1444 (February 26,1988).

1599 DEFINITIONS

- 1599.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Apparent clerical mistake - clerical or typographical mistake apparent on the face of a bid.

Bid samples - a sample to be furnished by a bidder to show the characteristics of the product offered in a bid.

Descriptive literature - information (such as cuts, illustrations, drawings, and brochures) which shows the characteristics or construction of a product or explains its operation.

Director - the Director of the Department of Administrative Services.

District-based business - a business which qualifies as a "District-based business" for preferential treatment in District procurement under the provisions of chapter 11 of this title.

Local trading area - the Greater Washington Metropolitan Statistical Area as defined by the Greater Washington Research Center or any successor entity recognized by the Director.

Lowest evaluated bid price - the lowest bid price after considering all price related factors including but not limited to trade discounts and price penalty for businesses having business interest in the Republic of South Africa or Namibia.

Minor informality or irregularity - some immaterial defect in a bid or variation of a bid from the exact requirements of the IFB that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the requirement.

Postmark - a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. or Canadian Postal Service.

Responsive bid - a bid that conforms in all material respects to the invitation for bids.

Telegraphic bids - bids or amendments to bids furnished by telegraph or mailgrams.

Two-step sealed bidding - a method of contracting designed to obtain the benefits of competitive sealed bidding when adequate specifications are not available.

SOURCE: Final Rulemaking published at 35 DCR 1445 (February 26, 1988).



CHAPTER 16 PROCUREMENT BY COMPETITIVE SEALED PROPOSALS

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1600 USE OF COMPETITIVE SEALED PROPOSALS

1600.1 The contracting officer shall use competitive sealed proposals only under the circumstances specified by §§303(a)(1) and 303(a)(4) of the D.C. Procurement Practices Act

of 1985, D.C. Code §§1-1183.3(a)(1) and (a)(4) (the "Act") and after a determination and findings (D&F) has been approved by the Director.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1446 (February 26, 1988).

1601 NEGOTIATION AFTER CANCELLATION OF INVITATION FOR BIDS

1601.1 If the Director has determined that an invitation for bids ("IFB") is to be canceled and that use of negotiation is appropriate to complete the procurement, the contracting officer may award after using negotiation procedures without issuing a new solicitation if all of the following conditions are met:

- (a) Notice of intention to use negotiation procedures and a reasonable opportunity to negotiate is given by the contracting officer to each responsible bidder that submitted a bid in response to the IFB;
- (b) The negotiated price is the lowest negotiated price offered by any responsible bidder; and
- (c) The negotiated price is lower than the lowest rejected bid price of a responsible bidder that was received under the IFB.

1601.2 If an IFB has been canceled in accordance with §§1530.4(f) or 1530.4(g) of chapter 15 of this title, and the Director has authorized, in the determination to cancel the IFB, the completion of the procurement through negotiation, the contracting officer shall proceed with the procurement in accordance with the provisions of this chapter and the sole source provisions of chapter 17 of this title, if applicable.

SOURCE: Final Rulemaking published at 35 DCR 1446 (February 26, 1988).

1602 SOLICITATION OF PROPOSALS

1602.1 A request for proposals ("RFP") shall be the solicitation used to communicate the District's requirements to prospective contractors when the competitive sealed proposal ("CSP") method is used. Each RFP shall conform to the uniform contract format specified in §1501 of chapter 15 of this title.

1602.2 The contracting officer shall issue written solicitations which contain all information necessary to enable prospective contractors to prepare proposals properly.

1602.3 The contracting officer shall furnish identical information concerning a proposed procurement to all prospective contractors receiving the RFP.

1602.4 District personnel shall not provide advance knowledge or information about a future solicitation to any prospective contractor.

1602.5 Except for solicitations for information or planning purposes, the contracting officer shall not solicit proposals unless there is a definite intention to award a contract.

1602.6 The contracting officer shall establish, maintain, and use lists of potential sources.

1602.7 Each RFP shall be publicized in accordance with the provisions of chapter 13 of this title.

SOURCE: Final Rulemaking published at 35 DCR 1446 (February 26, 1988).

1603 SOLICITATIONS FOR INFORMATION AND PLANNING PURPOSES

1603.1 When information necessary for planning purposes cannot be obtained from potential sources by more economical and less formal means, the contracting officer may determine in writing that a solicitation for information or planning purposes is justified. If this determination is approved by the Director, the contracting officer shall then issue the solicitation.

1603.2 An RFP shall not be used as a solicitation for information or planning purposes.

SOURCE: Final Rulemaking published at 35 DCR 1447 (February 26, 1988).

1604 PRESOLICITATION NOTICES AND CONFERENCES

1604.1 Presolicitation notices and conferences may be used as preliminary steps in procurements by CSP in order to accomplish any of the following:

- (a) Develop or identify interested sources;
- (b) Request preliminary information based on a general description of the supplies or services involved;
- (c) Explain complicated specifications and requirements to interested sources; or
- (d) Aid prospective contractors in later submitting proposals without undue expenditure of effort, time, and money.

1604.2 If presolicitation notices are used, the contracting officer shall prepare and issue each notice to potential sources and shall publicize the notice in a newspaper of general circulation and any trade publication deemed appropriate by the Director.

1604.3 A presolicitation notice shall include the following:

- (a) A description of the information to be furnished in the response;
- (b) An indication whether the notice will be followed by a conference and a formal solicitation; and
- (c) A request that parties interested in the contemplated procurement respond by a specified date.

1604.4 In complex procurements, the presolicitation notice may request information pertaining to management, engineering, and production capabilities.

1604.5 The contracting officer shall furnish copies of the solicitation to all those responding affirmatively to the presolicitation notice and to other prospective contractors upon their request.

1604.6 A presolicitation conference may be used only when approved by the contracting officer.

SOURCE: Final Rulemaking published at 35 DCR 1447 (February 26, 1988).

1605 PRE-PROPOSAL CONFERENCES

1605.1 The contracting officer may hold a pre-proposal conference to brief prospective offerors after a solicitation has been issued but before offers are submitted.

1605.2 The contracting officer or designated representative shall do the following:

- (a) Conduct the pre-proposal conference;
- (b) Furnish all prospective offerors identical information concerning the proposed procurement;
- (c) Make a complete record of the conference; and
- (d) Promptly furnish a copy of that record to all prospective offerors that request a copy in writing.

1605.3 The contracting officer shall inform all pre-proposal conference attendees of the following:

- (a) That remarks and explanations at the conference do not qualify or amend the terms of the solicitation; and
- (b) That the terms of the solicitation and specifications remain unchanged unless the solicitation is amended in writing.

SOURCE: Final Rulemaking published at 35 DCR 1448 (February 26, 1988).

§1606: RESERVED

1607 AMENDMENT OF SOLICITATIONS BEFORE CLOSING DATE

1607.1 After issuance of a solicitation, but before the date set for receipt of proposals, the contracting officer may make changes in the solicitation to reflect the following:

- (a) Significant changes in quantity, specifications, or delivery schedules;
- (b) The correction of defects or ambiguities;
- (c) Any change in the closing date for receipt of proposals; or

(d) Any other appropriate purpose affecting the procurement.

1607.2 The contracting officer shall determine if the closing date needs to be changed when amending a solicitation.

1607.3 If the time available before closing is insufficient, the contracting officer shall notify prospective offerors by telegram or telephone of the extension of the closing date and shall, by written amendment to the solicitation, confirm the extension of the closing date.

1607.4 The contracting officer shall not award a contract unless all amendments made to the RFP have been issued in sufficient time to be considered by prospective offerors.

SOURCE: Final Rulemaking published at 35 DCR 1449 (February 26, 1988).

1608 RECEIPT OF PROPOSALS

1608.1 The procedures for receipt and handling of proposals shall be in accordance with the requirements of §1526 of chapter 15 of this title.

SOURCE: Final Rulemaking published at 35 DCR 1449 (February 26, 1988).

1609 LATE PROPOSALS, LATE MODIFICATIONS, AND LATE WITHDRAWALS

1609.1 Offerors shall submit offers, and any modifications, so that they will reach the District office designated in the solicitation on time.

1609.2 Unless the solicitation states a specific time, the deadline for receipt shall be 4:30 p.m., local time, at the designated District office on the date that proposals are due.

1609.3 Proposals and modifications to proposals that are received in the designated District office after the exact time specified in the RFP or under §1609.2 are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

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

(b) The proposal or modification was sent by mail and it is determined by the contracting officer that the late receipt at the location specified in the RFP was caused by mishandling by the District after receipt; or

(c) The proposal is the only proposal received.

1609.4 The only acceptable evidence to establish the date of a late proposal, late modification, or late withdrawal sent either by registered or certified mail shall be a U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the proposal, modification, or withdrawal shall be deemed to have been mailed late. When the postmark shows the date but not the hour, the time is presumed to be the last

minute of the date shown. If no date is shown in the postmark, the proposal shall be considered late unless the offeror can furnish evidence from the postal authorities of timely mailing.

- 1609.5 Any request for withdrawal or request for modification received after the time and date set for submission of offers at the place designated for submission shall be considered "late."
- 1609.6 A late proposal, late request for modification, or late request for withdrawal shall not be considered, except as provided in this section.
- 1609.7 A late modification of a successful proposal which makes its terms more favorable to the District shall be considered at any time it is received and may be accepted.
- 1609.8 A late proposal, late modification of bid, or late withdrawal of offer that is not considered shall be held unopened, unless opened for identification, until after award and then retained with unsuccessful offers.
- 1609.9 The following information shall, if available, be included in the contract office files with respect to each late offer, late modification, or late withdrawal of offer:
- (a) A statement of the date and hour of mailing, filing, or delivery;
 - (b) A statement of the date and hour of receipt;
 - (c) A written determination with supporting facts, why the late offer or modification was or was not considered for award;
 - (d) A statement of the disposition of the late action; and
 - (e) The envelope, or other covering, if the late offer or modification was considered for award.

SOURCE: Final Rulemaking published at 35 DCR 1450 (February 26, 1988).

1610 DISCLOSURE AND USE OF INFORMATION BEFORE AWARD

- 1610.1 After receipt of proposals, the information contained in them and the number or identity of offerors shall not be made available to the public or to anyone in the District not required to have access to the information in the performance of his or her duties.
- 1610.2 During the pre-award period of a CSP procurement, only the contracting officer and others specifically authorized may transmit technical or other information and conduct discussions with prospective contractors.
- 1610.3 No District employee or agent shall furnish information to a prospective contractor if, alone or together with other information, it might give the prospective contractor an advantage over others. However, general information that is not prejudicial to others may be furnished upon request.

- 1610.4 In order to ensure that solicited proposals (whether bearing a restrictive notice or not) are properly handled, the following notice shall be placed on the cover sheet of each proposal upon receipt:

NOTICE FOR HANDLING PROPOSALS

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this notice shall be applied to any reproduction or abstract of this proposal. Any authorized restrictive notices which the submitter places on this proposal shall also be strictly complied with. Disclosure of this proposal outside the District for evaluation purposes shall be made only to the extent authorized by, and in accordance with, the procedures established under the District of Columbia Procurement Regulations (Title 27 DCMR).

- 1610.5 A contracting officer may release proposals outside the District for evaluation, consistent with the following requirements:
- (a) A written agreement shall be obtained from the outside evaluator that the information contained in the proposal will be used only for evaluation purposes and will not be further disclosed; and
 - (b) Any authorized restrictive legends placed on the proposal by the prospective contractor or subcontractor or by the District shall be affixed to any reproduction or abstracted information made by the evaluator.

SOURCE: Final Rulemaking published at 35 DCR 1451 (February 26, 1988).

§1611: RESERVED

1612 UNSOLICITED PROPOSALS

- 1612.1 Unsolicited proposals may be considered by agencies in order to obtain innovative or unique methods or approaches to accomplishing their missions from sources outside the District.
- 1612.2 A valid unsolicited proposal shall meet all of the following criteria:
- (a) It must be innovative and unique;
 - (b) It must have been independently originated and developed by the offeror;
 - (c) It must have been prepared without District supervision;

- (d) It must include sufficient detail to permit a determination that District support would be worthwhile; and
- (e) It must show that the proposed work could benefit the mission of the agency.

1612.3 Unsolicited proposals shall contain the following information to permit consideration in an objective and timely manner:

- (a) The offeror's name and address and type of organization, such as profit, non-profit, educational, or certified minority business;
- (b) The names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;
- (c) The identity of proprietary data to be used only for evaluation purposes;
- (d) The signature of a person authorized to represent and obligate contractually the offeror;
- (e) The proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;
- (f) The period of time for which the proposal is valid;
- (g) The type of contract preferred; and
- (h) The proposed duration of effort.

SOURCE: Final Rulemaking published at 35 DCR 1452 (February 26, 1988).

1613 EVALUATION OF UNSOLICITED PROPOSALS

1613.1 When performing an evaluation of an unsolicited proposal, the following factors shall be considered, in addition to any others appropriate for the particular proposal:

- (a) The unique and innovative methods, approaches, or concepts demonstrated by the proposal;
- (b) The overall scientific, technical, or socio-economic merits of the proposal;
- (c) The potential contribution of the effort to the agency's specific mission;
- (d) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives; and
- (e) The qualifications, capabilities, and experience of the proposed team leader or key personnel who are critical to achieving the proposal objective.

1613.2 An agency shall return an unsolicited proposal to an offeror, citing reasons, when its substance meets any of the following criteria:

- (a) It is available to the District without restriction from another source;
- (b) It closely resembles a pending competitive requirement;
- (c) It does not demonstrate an innovative and unique method, approach, or concept.

1613.3 A favorable evaluation of an unsolicited proposal shall not, by itself, justify awarding a contract without full and open competition.

1613.4 The contracting officer may commence negotiations only when the following conditions are met:

- (a) The unsolicited proposal has received a favorable comprehensive evaluation;
- (b) The unsolicited proposal is not disqualified under the provisions of §1613.2;
- (c) The agency technical office sponsoring the contract supports its recommendations with facts and circumstances that preclude competition and has the necessary funds;
- (d) The sponsoring agency has obtained approval from the Director in the form of a D&F; and
- (e) The contracting officer has publicized the requirement in accordance with chapter 13 of this title.

SOURCE: Final Rulemaking published at 35 DCR 1453 (February 26, 1988).

1614 SOURCE SELECTION

1614.1 Selection of a contractor through the use by means of CSP's shall be based on the following:

- (a) Cost or price competition between proposals that meet the District's minimum requirements stated in the solicitation; or
- (b) Competition involving an evaluation and comparison of cost or price and other factors.

1614.2 Source selection procedures in this chapter shall be designed to accomplish the following:

- (a) Maximize competition;
- (b) Minimize the complexity of the solicitation, evaluation, and the selection decision;
- (c) Ensure impartial and comprehensive evaluation of offerors' proposals; and
- (d) Ensure selection of the source whose proposal has the highest degree of realism and whose performance is expected to best meet stated District requirements.

- 1614.3 The contracting officer shall be responsible for source selection.
- 1614.4 The contracting officer shall be responsible for contractual actions related to the CSP process, including, but not limited to, the following:
- (a) Issuing solicitations in accordance with the provisions of this chapter;
 - (b) Conducting or controlling all negotiations concerning cost or price, technical requirements, and other terms and conditions; and
 - (c) Selecting the contractor for contract award.

SOURCE: Final Rulemaking published at 35 DCR 1454 (February 26, 1988).

1615 CHANGES IN DISTRICT REQUIREMENTS

- 1615.1 When, either before or after receipt of proposals, the District increases, decreases, or otherwise changes its requirements, the contracting officer shall issue a written amendment to the solicitation, in accordance with §1607.
- 1615.2 In deciding which firms to notify of a change, the contracting officer shall consider the state in the procurement cycle at which the change occurs and the magnitude of the change, as follows:
- (a) If proposals are not yet due, the amendment shall be sent to all firms that have received a solicitation;
 - (b) If the time for receipt of proposals has passed but proposals have not yet been evaluated, the amendment shall be sent only to the responding offerors; and
 - (c) If the competitive range has been established, the amendment shall be sent only to those offerors within the competitive range.
- 1615.3 If a change is so substantial that it warrants complete revision of a solicitation, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the state of the procurement. The new solicitation shall be issued to all firms originally solicited and to any firms added to the original list, and shall be advertised in accordance with the requirements of this title.
- 1615.4 If the proposal considered to be most advantageous to the District (as determined by using the established evaluation criteria) involves a departure from the stated requirements, the contracting officer shall provide all offerors an opportunity to submit new or amended proposals on the basis of the revised requirements, if this can be done without revealing to the other offerors the solution proposed in the original departure or any other information that is entitled to protection.

SOURCE: Final Rulemaking published at 35 DCR 1455 (February 26, 1988).

1616 DISCLOSURE OF MISTAKES BEFORE AWARD

- 1616.1 The contracting officer shall examine all proposals before award for minor informalities or irregularities and apparent clerical mistakes.

- 1616.2 Communication with offerors to resolve apparent minor mistakes or irregularities shall be only for clarification, not discussion. However, if the resulting communication prejudices the interest of other offerors, the contracting officer shall not make award without discussions with all offerors within the competitive range.

SOURCE: Final Rulemaking published at 35 DCR 1456 (February 26, 1988).

1617 EVALUATION FACTORS OF PROPOSALS

- 1617.1 The evaluation factors that will be considered in evaluating proposals shall be tailored to each procurement and shall include only those factors that will have an impact on the source selection decision.
- 1617.2 The contracting officer shall include in the solicitation the evaluation factors, including price or cost and any significant sub-factors. The solicitation shall include the minimum requirements that apply to particular evaluation factors or significant sub-factors.
- 1617.3 The contracting officer may include in the solicitation the numerical weights which may be used in the evaluation of the proposals.
- 1617.4 Evaluation factors shall be stated in descending order of importance.
- 1617.5 Price or cost to the District shall be included as an evaluation factor in each RFP.
- 1617.6 While the lowest price or lowest total cost to the District may be an important or even a deciding factor in most source selections, the District may select the source whose proposal offers the greatest value to the District in terms of technical merit and other factors.
- 1617.7 When awarding a cost-reimbursement contract, the cost proposal shall not be controlling. The contracting officer shall consider which offeror can perform the contract in a manner most advantageous to the District as determined by evaluation of proposals according to the established evaluation criteria.

SOURCE: Final Rulemaking published at 35 DCR 1456 (February 26, 1988).

1618 PROPOSAL EVALUATION

- 1618.1 The contacting officer shall evaluate each proposal in accordance with the evaluation criteria in the solicitation.
- 1618.2 The contracting officer shall evaluate the cost estimate or price, not only to determine whether it is reasonable, but also to determine the offeror's understanding of the work and ability to perform the contract.
- 1618.3 The contracting officer shall document the cost or price evaluation.
- 1618.4 If any technical evaluation is necessary beyond ensuring that the proposal meets the minimum requirements in the solicitation, the contracting officer shall forward the proposals to the appropriate technical official for technical evaluation.

- 1618.5 If a technical evaluation is done, a technical evaluation report shall be prepared by the technical official and shall contain the following:
- (a) The basis for evaluation;
 - (b) An analysis of the technically acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the technical requirements;
 - (c) A summary, matrix, or quantitative ranking of each technical proposal in relation to the best rating possible; and
 - (d) A summary of findings.

1618.6 A contracting officer may reject all proposals received in response to a solicitation by a written determination that to do so would be in the best interests of the District. The contracting officer's determination shall be approved by the Director.

- 1618.7 The reasons given for rejection may include, but are not limited to, the following:
- (a) All otherwise acceptable proposals received are at unreasonable prices; or
 - (b) The proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

1618.8 When all proposals are rejected and no award will be made as a result of the RFP, the contracting officer shall cancel the RFP and notify the Inspector General within seventy-two (72) hours of the cancellation.

SOURCE: Final Rulemaking published at 35 DCR 1457 (February 26, 1988).

1619 DISCUSSIONS WITH OFFERORS

- 1619.1 The contracting officer shall conduct written or oral discussions with all offerors in the competitive range, except in the following circumstances:
- (a) If prices are fixed by law or regulation; or
 - (b) If it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussion would result in the lowest overall cost to the District at a fair and reasonable price.
- 1619.2 If discussions are held with offerors, the contracting office shall determine which proposals are in the competitive range, and shall conduct written or oral discussions with the offerors who submitted those proposals.
- 1619.3 If discussions are not held pursuant to §1619.1(b), the following requirements shall be met:
- (a) All offerors must have been notified of the possibility that an award might be made without discussion; and

- (b) The award must be made without any written or oral discussion with any offeror.

SOURCE: Final Rulemaking published at 35 DCR 1458 (February 26, 1988).

1620 DETERMINATION OF COMPETITIVE RANGE

1620.1 The competitive range shall be determined on the basis of cost or price and other factors, in accordance with the evaluation criteria that were stated in the solicitation, and shall include all proposals that have a reasonable chance of being selected for award.

1620.2 If there is doubt as to whether a proposal is in the competitive range, the proposal shall be included.

1620.3 The contracting officer shall notify, in writing, an unsuccessful offeror at the earliest practicable time that its proposal is no longer being considered for award.

SOURCE: Final Rulemaking published at 35 DCR 1459 (February 26, 1988).

1621 CONDUCT OF DISCUSSIONS WITH OFFERORS

1621.1 The contracting officer shall ensure that, if discussions are held with any offeror within the competitive range, discussions are held with all offerors in the competitive range.

1621.2 During discussion with offerors, the contracting officer shall do the following:

- (a) Control all discussions;
- (b) Advise the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the District's requirements;
- (c) Attempt to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal;
- (d) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process; and
- (e) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal that may result from the discussions.

1621.3 The contracting officer shall not assist an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal.

1621.4 The contracting officer shall not disclose technical information pertaining to a proposal that results in improvement of a competing proposal.

1621.5 The contracting officer shall not indicate to an offeror a cost or price it must meet to obtain further consideration, advise an offeror of its standing relative to another offeror, or otherwise furnish information about any other offeror's prices.

SOURCE: Final Rulemaking published at 35 DCR 1459 (February 26, 1988).

1622 BEST AND FINAL OFFERS

1622.1 Upon completion of discussions, the contracting officer shall issue to all offerors within the competitive range a request for best and final offers.

1622.2 The request for best and final offers shall include the following:

- (a) Notice that discussions are concluded;
- (b) Notice that this is the opportunity to submit a best and final offer;
- (c) A common cut-off date and time that allows a reasonable opportunity for submission of written best and final offers; and
- (d) Notice that if any modification is submitted, it must be received by the date and time specified and is subject to the provisions of this chapter covering late proposals.

1622.3 After receipt of best and final offers, the contracting officer shall not reopen discussions unless it is clearly in the best interests of the District to do so.

1622.4 Reasons for reopening discussions may include, but are not limited to, the fact that it is clear that information available at the time is inadequate to reasonably justify contractor selection and award based on the best and final offers received.

1622.5 If discussions are reopened, the contracting officer shall issue an additional request for best and final offers to all offerors within the competitive range.

1622.6 After evaluation of the best and final offers, the contracting officer shall select that source whose best and final offer is most advantageous to the District, considering only price and other factors included in the solicitation.

1622.7 The contracting officer shall prepare supporting documentation for the selection decision that shows the relative differences among the proposals and their strengths, weaknesses, and risks in terms of the evaluation factors. The supporting documentation shall include the basis for the selection.

SOURCE: Final Rulemaking published at 35 DCR 1460 (February 26, 1988).

1623 PRICE NEGOTIATION

1623.1 Before issuing a solicitation, the contracting officer shall develop an estimate of the proper price level of value of the supplies or services to be purchased.

1623.2 Among other areas of discussion under §1621, the contracting officer may enter into price negotiations with the offeror with the intent of agreeing on a fair and reasonable price.

1623.3 The contracting officer shall not be required to reach agreement on every element of cost, and may make reasonable compromises if necessary.

SOURCE: Final Rulemaking published at 35 DCR 1461 (February 26, 1988).

1624 COST AND PRICING DATA

1624.1 The contracting officer shall require a prime contractor to submit and certify cost or pricing data for any contract awarded through competitive sealed proposals, sole source procedures, or any change order or contract modification.

1624.2 The contracting officer shall require that each contractor certify that, to the best of the contractor's knowledge, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date.

1624.3 When cost or pricing data are required, the contracting officer shall include a contract clause, approved by the Director, which provides that the price, including profit or fee, will be adjusted to exclude any significant price increases occurring because the contractor's cost or price information, as of the specified date, was inaccurate, incomplete, or not current.

SOURCE: Final Rulemaking published at 35 DCR 1461 (February 26, 1988).

1625 PRICE ANALYSIS

1625.1 The contracting officer shall be responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price.

1625.2 One (1) or more of the following techniques may be used to perform price analysis:

- (a) Comparison of proposed prices received in response to the solicitation;
- (b) Comparison of prior proposed prices and contract prices with current proposed prices for the same or similar items;
- (c) Application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry;
- (d) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements; and
- (e) Comparison of proposed prices with independent District cost estimates.

SOURCE: Final Rulemaking published at 35 DCR 1461 (February 26, 1988).

1626 COST ANALYSIS

1626.1 The contracting officer shall be required to perform a cost analysis in either of the following circumstances:

- (a) The award of any contract in excess of five hundred thousand dollars (\$500,000);
or

- (b) The modification of any contract when the modification exceeds five hundred thousand dollars (\$500,000).
- 1626.2 When cost analysis is required, the contracting officer shall perform cost analysis by using the techniques and procedures set forth in this section.
- 1626.3 The contracting officer shall verify cost or pricing data and evaluate the cost elements, including the following:
- (a) The necessity for and reasonableness of the proposed cost, including allowances for contingencies;
 - (b) A projection of the offeror's cost trends on the basis of current and historical cost or pricing data;
 - (c) A technical appraisal of the estimated labor, material, tooling, and facilities requirements and of the reasonableness of scrap and spoilage factors; and
 - (d) The application of audited or negotiated indirect cost rates, labor rates, and other factors.
- 1626.4 The contracting officer shall evaluate the effect of the offeror's current practices on future costs. In conducting this evaluation, the contracting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future.
- 1626.5 The contracting officer shall compare the costs proposed by the offeror for individual cost elements with the following:
- (a) Actual costs previously incurred by the same offeror;
 - (b) Previous cost estimates from the offeror or from other offerors for the same or similar items;
 - (c) Other cost estimates received in response to the District's request;
 - (d) Independent District cost estimates by technical personnel; and
 - (e) Forecasts or planned expenditures.
- 1626.6 The contracting officer shall verify that the offeror's cost submissions are in accordance with the contract cost principles and procedures set forth in chapter 33 of this title.
- 1626.7 The contracting officer shall review each proposal to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have been submitted or identified in writing by the contractor.

SOURCE: Final Rulemaking published at 35 DCR 1462 (February 26, 1988).

1627 PRE-NEGOTIATION OBJECTIVES

- 1627.1 The contracting officer shall establish pre-negotiation objectives before the negotiation of any contract or modification in excess of one hundred thousand dollars (\$100,000). When cost analysis is required under §1626, the contracting officer shall address the pertinent issues to be negotiated, the cost objectives, and a profit or fee objective.
- 1627.2 The contracting officer shall develop pre-negotiation objectives to judge the overall reasonableness of proposed prices and to negotiate a fair and reasonable price or cost and fee.
- 1627.3 In determining the pre-negotiation objectives, the contracting officer shall analyze the offeror's proposal and consider technical analysis and other pertinent data, such as District cost estimates and price histories.

SOURCE: Final Rulemaking published at 35 DCR 1463 (February 26, 1988).

1628 PRICE NEGOTIATION MEMORANDUM

- 1628.1 At the conclusion of each price negotiation, the contracting officer shall promptly prepare a memorandum of the principal elements of the price negotiations.
- 1628.2 The price negotiation memorandum shall be included in the contract file and shall contain at least the following information:
- (a) The purpose of the negotiation;
 - (b) A description of the procurement, including appropriate identifying numbers;
 - (c) The name, position, and organization of each person representing the contractor and the District in the negotiation;
 - (d) If certified cost or pricing data were required, the extent to which the contracting officer did the following:
 - (1) Relied on the cost or pricing data submitted and used them in negotiating the price; and
 - (2) Recognized as inaccurate, incomplete, or noncurrent any cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated.
 - (e) The most significant facts or considerations controlling the establishment of the pre-negotiation price objective and the negotiated price including an explanation of any significant differences between the two (2) positions; and
 - (f) The basis for determining the pre-negotiation profit or fee objective, and the profit or fee negotiated.

SOURCE: Final Rulemaking published at 35 DCR 1463 (February 26, 1988).

1629 PROFIT OR FEES

- 1629.1 When price negotiation is based on cost analysis, the contracting officer shall analyze profit or fee.
- 1629.2 The contracting officer shall use the District's pre-negotiation cost objective amounts as the basis for calculating the profit or fee pre-negotiation objective.

SOURCE: Final Rulemaking published at 35 DCR 1464 (February 26, 1988).

1630 NOTIFICATIONS, PROTESTS, AND MISTAKES

- 1630.1 The contracting officer shall notify each offeror whose proposal is determined to be unacceptable before award unless disclosure might prejudice the best interests of the District.
- 1630.2 If the proposal evaluation period for a solicitation is expected to exceed thirty (30) days, or when a limited number of offerors have been selected as being within the competitive range, the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror.
- 1630.3 The contracting officer shall award a contract with reasonable promptness to the successful offeror by transmitting written notice of the award to that offeror.
- 1630.4 Promptly after the award of each contract, the contracting officer shall notify unsuccessful offerors in writing, unless pre-award notice was given.
- 1630.5 If a contract is awarded on a basis other than price alone, the contracting officer shall provide a debriefing for any unsuccessful offeror that submits a written request for debriefing, unless the Director determines that to do so is not in the best interests at the District.
- 1630.6 If a debriefing is held, debriefing information shall include the District's evaluation of the significant weak or deficient factors in the proposal. However, point-by-point comparisons with other offerors' proposals shall not be made.
- 1630.7 Debriefing shall not reveal the relative merits or technical standing of competitors or the evaluation scoring.

SOURCE: Final Rulemaking published at 35 DCR 1464 (February 26, 1988).

1699 DEFINITIONS

- 1699.1 When used in this chapter, the following words and terms shall have the meanings ascribed:

Clarification - communication with an offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal. It is achieved by explanation or substantiation, either in response to District inquiry or as initiated by the offeror.

Contribution - a concept, suggestion, or idea presented to the District for its use with no indication that the source intends to devote any further effort to it on the District's behalf.

Cost analysis - the review and evaluation of the separate cost elements and proposed profit of an offeror's or contractor's cost or pricing data and the judgmental factors applied in projecting from the data to the estimated costs, in order to form an opinion on the degree to which the proposed costs represent what the contract should cost, assuming reasonable economy and efficiency.

Cost or pricing data - all facts as of the time or price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include factors such as vendor quotations; nonrecurring costs; information on changes in production methods or purchasing volume; data supporting projections of business prospects and objectives and related operational costs; and unit cost trends, such as those associated with labor efficiency, make-or-buy decisions, estimated resources to attain business goals, and information on management decisions that could have a significant bearing on cost.

Deficiency - any part of a proposal that fails to satisfy the District's requirement.

Director - the Director of the Department of Administrative Services.

Discussion - any oral or written communication between the District and an offeror (other than communications conducted for the purpose of minor clarification) whether or not initiated by the District, that involves information essential for determining the acceptability of a proposal, or provides the offeror an opportunity to revise or modify its proposal.

Price - cost plus any fee or profit applicable to the contract type.

Price analysis - the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

Solicitation - request for proposals (RFP), except as provided otherwise in §1603.

Technical analysis - the examination and evaluation by personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management of proposed quantities and kinds of materials, labor, processes, special tooling, facilities, and associated factors set forth in a proposal.

Unsolicited proposal - a written proposal that is submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the District and that is not in response to a solicitation.

SOURCE: Final Rulemaking published at 35 DCR 1465 (February 26, 1988).



CHAPTER 17 SOLE SOURCE AND EMERGENCY PROCUREMENTS

1700	General Provisions
1701	Sole Source Procurement
1702	Single Available Source
1703	Sheltered Market Procurements
1704	[Reserved]
1705	Sole Source Determinations and Findings
1706	Sole Source Procurement Procedures
1707-1709	[Reserved]
1710	Emergency Procurements
1711	Emergency Procurement Determinations and Findings
1712	Emergency Procurement Procedures
1799	Definitions

1700 GENERAL PROVISIONS

- 1700.1 A contracting officer shall not award a District contract without using the competitive sealed bid procedures set forth in chapter 15 of this title or the competitive sealed proposal procedures set forth in chapter 16 of this title, except as specifically authorized by §§305 and 312 of the District of Columbia Procurement Practices Act of 1985 (the "Act"), D.C. Code §§1-1183.5 and 1183.12 (1981).
- 1700.2 In each instance where the sole source or emergency procurement procedures set forth in this chapter are used, the contracting officer shall do the following:
- (a) Prepare a written determination and findings ("D&F") justifying the procurement which specifically demonstrates that procurement by competitive sealed bids or competitive sealed proposals is not required by the provisions of the Act or this title; and
 - (b) Ensure that all of the steps required under this chapter for the justification, documentation, and approval of the procurement are completed before the contract is awarded.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1467 (February 26, 1988).

1701 SOLE SOURCE PROCUREMENT

- 1701.1 Each contracting officer shall take reasonable steps to avoid using sole source procurement except in circumstances where it is both necessary and in the best interests of the District. The contracting officer shall take action, whenever possible, to avoid

the need to continue to procure the same supply, service, or construction without competition.

1701.2 If the only justification for using sole source procurement is based on the lack of sufficient time to complete the process of competitive sealed bids or competitive sealed proposals, the contracting officer shall not award a contract on a sole source basis unless a legitimate emergency, as defined in this chapter, exists with respect to the need for the supply, service, or construction being procured. Sole source procurement shall not be justified on the basis of any of the following circumstances:

- (a) The lack of adequate advance planning for the procurement of the required commodities, services, or other items;
- (b) Delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
- (c) Pending expiration of budget authority.

1701.3 The contracting officer shall ensure that each sole source procurement is reviewed or approved by the Director, in accordance with the provisions of §1010 of chapter 10 of this title, as follows:

- (a) Each sole source D&F for a procurement in an amount greater than twenty-five thousand dollars (\$25,000) shall be reviewed by the Director before solicitation under §1010.2(a) and shall be approved by the Director before contract execution under §1010.4(f); and
- (b) Each sole source procurement in an amount greater than ten thousand dollars (\$10,000) but not more than twenty-five thousand dollars (\$25,000) shall be reviewed by the Director on a post-execution basis in accordance with §1010.5.

SOURCE: Final Rulemaking published at 35 DCR 1467 (February 26, 1988).

1702 SINGLE AVAILABLE SOURCE

1702.1 The contracting officer may award a contract by using the noncompetitive negotiation procedures set forth in §1706 upon making a determination and findings that there is only one (1) available source for a supply, service, or construction.

1702.2 When determining whether there is only one (1) source for the requirement, the contracting officer (and, for procurements over twenty-five thousand dollars (\$25,000), the Director) shall consider whether there is a reasonable basis to conclude that the District's minimum needs can only be satisfied by the supplies, services, or construction proposed to be procured, and whether the proposed sole source contractor is the only source capable of providing the required supplies, services, or construction.

1702.3 If the reason for making a procurement on a sole source basis is based on the particular source's ownership or control of limited rights in data, patent rights, copyrights, or trade secrets applicable to the required supplies, services, or construction, the Director shall require that the written findings clearly demonstrate the need for the specific supplies, services, or construction, and that one (1) of the following applies:

- (a) The requirements cannot be modified to allow procurement by competitive sealed bids or competitive sealed proposals; or
 - (b) It is in the best interests of the District to meet its requirements through procurement of the specific supplies, services, or construction, and that the proposed contractor is the only source for the specific supply, service, or construction.
- 1702.4 If the proposed sole source procurement is for electric power, gas, water, or other utility services, the Director shall determine whether circumstances dictate that only one (1) supplier can economically furnish the required services.
- 1702.5 The Director may determine that sole source negotiations are justified for the procurement of specific makes and models of technical equipment and parts if all of the following requirements are met:
- (a) The specific technical equipment or parts are being procured for standardization purposes, and that standardization of the equipment or parts is in the best interests of the District;
 - (b) The equipment or parts will be used to meet the District's requirements for replacement parts or additional units that are compatible with existing District equipment;
 - (c) The existing equipment for which the parts or additional units are being procured was obtained by the District through the use of competitive procurement procedures, or was obtained through a separately justified and approved sole source procurement; and
 - (d) No identical or compatible parts or equipment are available from any other source.
- 1702.6 Justification for a sole source procurement shall cover all of the supplies, services, or construction being procured under a single contract. The justification of the sole source procurement of some supplies, services, or construction shall not be used to avoid competitive procedures for obtaining other commodities, services, or construction which do not qualify for sole source procurement under the same contract.
- SOURCE:** Final Rulemaking published at 35 DCR 1468 (February 26, 1988).
- 1703 SHELTERED MARKET PROCUREMENTS**
- 1703.1 When a procurement has been designed for the sheltered market under the Minority Contracting Act of 1976, D.C. Code §1-1141 *et seq.* (1981), and only one (1) bid or proposal is received from a responsible, certified firm, the contracting officer shall not make an award to the proposed contractor unless the contracting officer determines that the proposed contractor qualifies as a sole source in accordance with the Act and this chapter.
- 1703.2 Review and approval of sheltered market sole source procurements shall be conducted in accordance with §1701.3.

- 1703.3 If the contracting officer cannot justify procuring the supplies, services, or construction from the single sheltered market vendor on a sole source basis (in accordance with §305(a) of the Act and this chapter), or if the Director does not approve a sole source D&F for the contract under §1010, the contracting officer shall do one (1) of the following:
- (a) Cancel the invitation for bids (IFB) or request for proposals (RFP) and reissue the solicitation on the open market;
 - (b) In the case of an IFB issued under chapter 15, determine whether the bid price is competitive with the open market in accordance with the provisions of §1703.4; or
 - (c) In the case of an RFP issued under chapter 16, negotiate the contract with the sheltered market vendor using the negotiation procedures applicable under chapter 16 and §§1703.5 through 1703.7.
- 1703.4 If the contracting officer, using the methods and standards set forth in chapter 16 of this title, is able to determine from price history or price analysis that the bid price offered on the IFB by the single sheltered market vendor is reasonably competitive with a price that might be obtained on the open market, the contracting officer may issue the contract based on a finding that the price offered is competitive and that issuing the contract is in the best interests of the District.
- 1703.5 Before attempting to negotiate a contract with the single sheltered market vendor under §1703.3(c), the contracting officer, using the methods and standards set forth in chapter 16 of this title, shall establish a pre-negotiation position based on a reasonable price and other terms under which the contract might be let in the open market.
- 1703.6 The contracting officer shall negotiate with the sheltered market vendor on the basis of competitive price and contract terms (in accordance with the contracting officer's pre-negotiation position under §1703.5) and may award the contract if the price and other terms agreeable to the vendor are reasonably within the range of price and terms that could be obtained in the open market.
- 1703.7 If the contracting officer is unable to negotiate a contract with the single sheltered market vendor on the basis of reasonably competitive price and terms (in accordance with §§1703.5 and 1703.6), the contracting officer shall cancel the sheltered market RFP and reissue the solicitation in the open market.

SOURCE: Final Rulemaking published at 35 DCR 1470 (February 26, 1988).

§1704: RESERVED.

1705 SOLE SOURCE DETERMINATIONS AND FINDINGS

1705.1 When a sole source procurement is proposed, the contracting officer shall prepare a written determination and findings ("D&F") that sets forth the justification for the sole source procurement. If the procurement is in excess of twenty-five thousand dollars (\$25,000), the D&F shall be approved by the Director in accordance with §1010.2(a) of chapter 10 of this title.

1705.2 Each sole source D&F shall include the following:

- (a) Identification of the agency and specific identification of the document as a sole source D&F;
- (b) The nature or description of the proposed procurement;
- (c) A description of the requirement, including the estimated value or cost;
- (d) A specific citation to the applicable provisions of §305(a) of the Act and this chapter that provide legal authority for the sole source procurement;
- (e) An explanation of the unique nature of the procurement or other factors that qualify the requirement for sole source procurement;
- (f) An explanation of the proposed contractor's unique qualifications or other factors that qualify the proposed contractor as a sole source for the procurement;
- (g) A determination that the anticipated costs to the District will be fair and reasonable;
- (h) A description of the market survey conducted and the results, or a statement of the reasons why a market survey was not conducted, and a list of the potential sources contacted by the contracting officer or which expressed, in writing, an interest in the procurement; and
- (i) Any other pertinent facts or reasons supporting the use of a sole source procurement.

SOURCE: Final Rulemaking published at 35 DCR 1471 (February 26, 1988).

1706 SOLE SOURCE PROCUREMENT PROCEDURES

1706.1 The contracting officer shall not be required to publicize a solicitation for a procurement made on a sole source basis.

1706.2 Each award of a sole source contract valued at ten thousand dollars (\$10,000) or more shall be publicized in the "District of Columbia Procurement Digest."

1706.3 The contracting officer may use a letter to request a proposal for a sole source procurement.

1706.4 If the contracting officer uses a letter to request a proposal for a sole source procurement, the contracting officer shall ensure that the letter is as clear and concise as

possible and does not include unnecessary verbiage or notices. The letter shall only contain the data and information necessary for providing a proposal.

1706.5 The contracting officer shall comply with the applicable negotiation procedures in §§1621 through 1629 of chapter 16 of this title, except as specifically exempted in this chapter or where those procedures apply only to negotiation with more than one (1) source.

1706.6 The contracting officer shall ensure that each sole source contract contains all of the required clauses, representations, and certifications, in accordance with the requirements of the Act and this title.

SOURCE: Final Rulemaking published at 35 DCR 1472 (February 26, 1988).

§§1707-1709: RESERVED

1710 EMERGENCY PROCUREMENTS

1710.1 In accordance with §312 of the Act, the Director or his or her designee may approve a procurement on an emergency basis which does not otherwise comply with the requirements of the Act or this title if the procurement is essential to a District requirement to deal with an existing emergency condition, as defined in §1710.2.

1710.2 For purposes of an emergency procurement under this chapter, an "emergency condition" is a situation (such as a flood, epidemic, riot, equipment failure, or other reason set forth in a proclamation issued by the Mayor) which creates an immediate threat to the public health, welfare, or safety. The existence of an emergency condition creates an immediate need for supplies, services, or construction which cannot be met through normal procurement methods, and the lack of which would seriously threaten one (1) or more of the following:

- (a) The health or safety of any person;
- (b) The preservation or protection of property; or
- (c) The continuation of necessary governmental functions.

1710.3 The justification for emergency procurement shall not be based solely on internal governmental circumstances. In the absence of an emergency condition, an emergency procurement shall not be justified on the basis of any of the following circumstances:

- (a) The lack of adequate advance planning for the procurement of required supplies, services, or construction;

- (b) Delays in procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
 - (c) Pending expiration of budget authority.
- 1710.4 The emergency procurement of supplies or services shall be limited to quantities or time period sufficient to meet the immediate threat and shall not be used to meet long-term requirements.
- 1710.5 The emergency procurement of services shall be limited to a period of not more than one hundred twenty (120) days.
- 1710.6 If a long-term requirement for the supplies, services, or construction is anticipated, the contracting officer shall initiate a separate non-emergency procurement action at the same time that the emergency procurement is made.
- 1710.7 A contract procured on an emergency basis shall not be modified to expand the scope or extend the time of the procurement unless a limited number of additional commodities, services, or other items are needed to fill an on-going emergency requirement until regular procurement action procedures initiated under §1710.6 can be completed.

SOURCE: Final Rulemaking published at 35 DCR 1472 (February 26, 1988).

1711 EMERGENCY PROCUREMENT DETERMINATIONS AND FINDINGS

- 1711.1 When an emergency procurement is proposed, the contracting officer shall prepare a written determination and findings (D&F) that sets forth the justification for the emergency procurement.
- 1711.2 Each emergency procurement D&F shall include the following:
- (a) Identification of the agency and specific identification of the document as an emergency procurement D&F;
 - (b) The nature or description of the proposed procurement action;
 - (c) A specific citation to §312 of the Act and the applicable provisions of this chapter that provide legal authority for the emergency procurement;
 - (d) A description of the emergency, including the nature of the threat to the public health, welfare, or safety, and the nature of the harm that the public might suffer if the requirement were not met by emergency procurement;
 - (e) A description of the requirement, including the estimated value or cost;
 - (f) A description of the efforts made to ensure that proposals or offers are received from as many potential sources as possible under the circumstances, or a sole source justification in accordance with the provisions of §1705;

- (g) A determination that the anticipated costs to the District will be fair and reasonable; and
- (h) Any other pertinent facts or reasons supporting the procurement on an emergency basis.

SOURCE: Final Rulemaking published at 35 DCR 1474 (February 26, 1988).

1712 EMERGENCY PROCUREMENT PROCEDURES

- 1712.1 The contracting officer shall not be required to publicize the solicitation of a procurement made on an emergency basis in accordance with chapter 13 of this title.
- 1712.2 Each award of a contract valued at ten thousand dollars (\$10,000) or more on an emergency basis shall be publicized in the "District of Columbia Procurement Digest."
- 1712.3 The contracting officer shall attempt to solicit offers or proposals from as many potential contractors as possible under the emergency condition. An emergency procurement shall not be made on a sole source basis unless the emergency D&F includes justification for the sole source procurement, in accordance with §1705.
- 1712.4 A contracting officer may use a letter or a verbal request to solicit proposals for an emergency procurement.
- 1712.5 If a letter request is used, the contracting officer shall ensure that the letter is as clear and concise as possible and does not include unnecessary verbiage or notices. A letter request shall only contain the data and information necessary for providing a proposal.
- 1712.6 The contracting officer shall comply with all applicable requirements of chapter 16 of this title except as specifically exempted in this chapter.
- 1712.7 The contracting officer shall ensure that each emergency procurement contract contains the required clauses, representations, and certifications, in accordance with the Act and this title.
- 1712.8 Each emergency procurement shall be reviewed by the Director on a post-execution basis in accordance with chapter 10 of this title.
- 1712.9 The Director shall ensure that proper records of each emergency procurement are maintained, in accordance with §312(b) of the Act.

SOURCE: Final Rulemaking published at 35 DCR 1474 (February 26, 1988).

1799 DEFINITIONS

- 1799.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

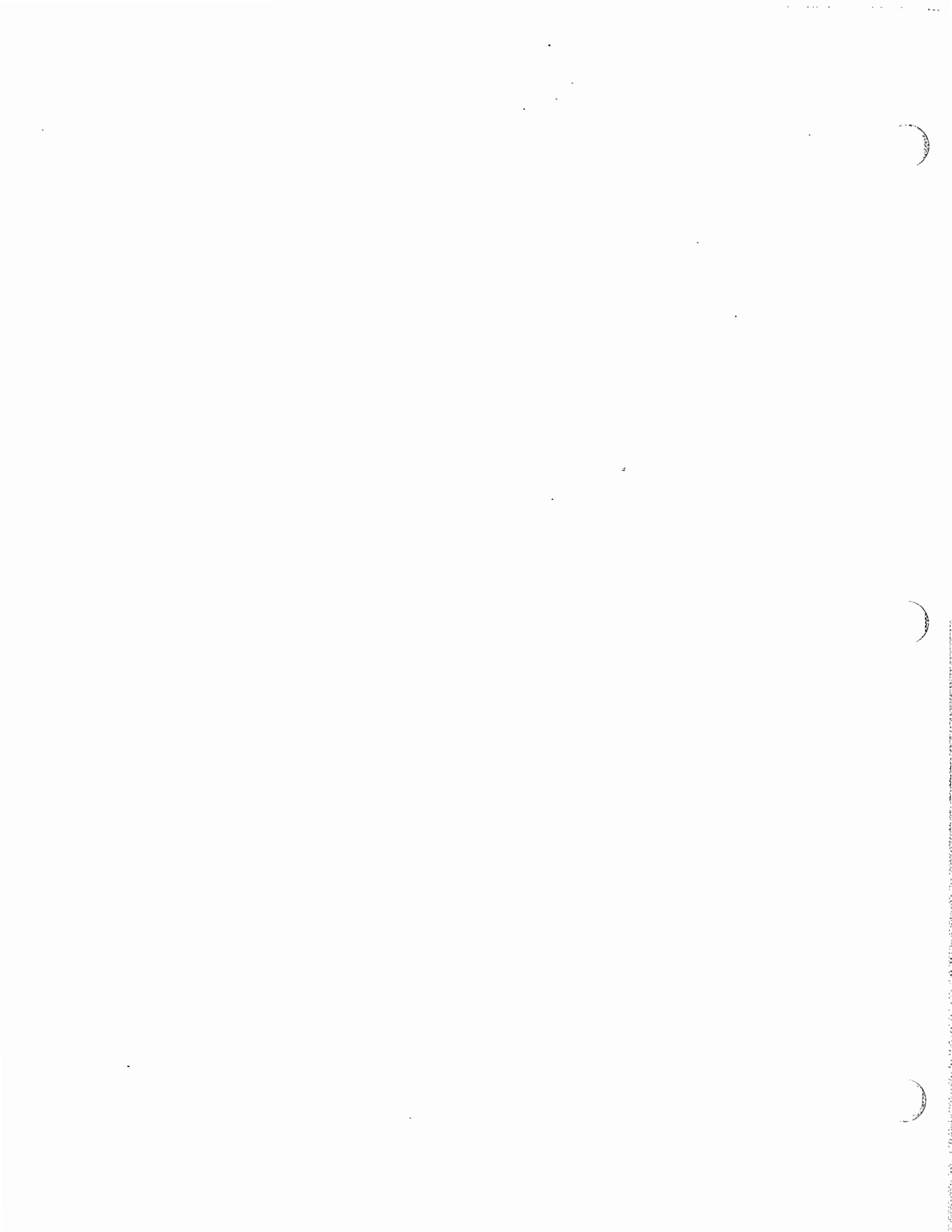
Director - the Director of the Department of Administrative Services.

Price analysis - the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

Price history - a chronological record of prices previously paid for a particular supply, service, or construction item.

Solicitation - any attempt, verbal or in writing, to obtain a proposal or bid from one (1) or more contractors.

SOURCE: Final Rulemaking published at 35 DCR 1475 (February 26, 1988).



CHAPTER 18 SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Secs.	
1800	Use of Small Purchase Procedures
1801	Agency Small Purchase Authority
1802	Non-Competitive Small Purchases
1803	Competitive Small Purchases
1804	Determination of Reasonable Price and Award
1805-1809	[Reserved]
1810	Blanket Purchase Agreements
1811	Blanket Purchase Procedures
1812-1814	[Reserved]
1815	Imprest Funds
1816-1819	[Reserved]
1820	Purchase Orders
1821	Unpriced Purchase Orders
1822	Modification of Purchase Orders
1823	Termination and Cancellation of Purchase Orders
1899	Definitions

1800 USE OF SMALL PURCHASE PROCEDURES

- 1800.1 The small purchase procedures set forth in this chapter may only be used for the procurement of supplies, services, and other items when the total amount of the procurement does not exceed ten thousand dollars (\$10,000), in accordance with §306 of the District of Columbia Procurement Practices Act of 1985 (the "Act"), D.C. Code §1-1183.6 (1981).
- 1800.2 Notwithstanding the provisions of §1800.1, an agency shall not use small purchase procedures when the total amount of the procurement exceeds that agency's small purchase authority limit set forth in §§1801.3 or 1801.4.
- 1800.3 A contracting officer shall not use small purchase procedures when the requirement can be met by using a requirements contract, an indefinite quantity contract, a federal supply schedule, or other required source of supply.
- 1800.4 A contracting officer shall not use small purchase procedures when the procurement requirement is initially estimated to exceed the agency's small purchase limitation, even though the resulting award does not exceed that limit.
- 1800.5 A contracting officer shall not split a procurement totaling more than the agency's small purchase limitation into several purchases that are less than the limit in order to permit the use of the small purchase procedures.

1800.6 A procurement requirement shall not be parceled, split, divided, or purchased over a period of time in order to avoid the dollar limitations for use of small purchase procedures.

1800.7 A contracting officer shall use the small purchase procedure that is most suitable, efficient, and economical based on the circumstances of each procurement.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1476 (February 26, 1988).

1801 AGENCY SMALL PURCHASE AUTHORITY

1801.1 The small purchase contracting authority of the following officials shall be ten thousand dollars (\$10,000):

- (a) City Administrator and Deputy Mayor for Operations;
- (b) Deputy Mayor for Finance;
- (c) Deputy Mayor for Economic Development; and
- (d) Corporation Counsel.

1801.2 The small purchase contracting authority of the head of each of the following agencies shall be ten thousand dollars (\$10,000):

- (a) Department of Consumer and Regulatory Affairs;
- (b) Department of Corrections;
- (c) Department of Employment Services;
- (d) Department of Finance and Revenue;
- (e) Department of Housing and Community Development;
- (f) Department of Human Services;
- (g) Department of Public Works;
- (h) Metropolitan Police Department;
- (i) Office on Aging;
- (j) Office of Business and Economic Development;
- (k) Office of Financial Management; and
- (l) Office of Planning.

1801.3 The small purchase contracting authority of the head of each of the following agencies shall be five thousand dollars (\$5,000):

- (a) Office of the Budget.
- (b) Commission on the Arts and Humanities;
- (c) Office of Criminal Justice Plans and Analysis;
- (d) Office of Emergency Preparedness;
- (e) Energy Office;
- (f) Fire Department;
- (g) Office of Human Rights; and
- (h) Office of Personnel.

1801.4 The small purchase contracting authority of the head of each agency not delegated a higher limit of small purchase authority under §§1801.2 or 1801.3 shall be two thousand five hundred dollars (\$2,500).

SOURCE: Final Rulemaking published at 35 DCR 1477 (February 26, 1988).

1802 NON-COMPETITIVE SMALL PURCHASES

1802.1 A procurement for an amount of two hundred fifty dollars (\$250) or less may be made without obtaining competitive quotations if the contracting officer determines the price to be reasonable.

1802.2 Non-competitive small purchases shall be distributed equitably among suppliers. When practical, a quotation shall be solicited from a vendor other than the previous supplier before placing a repeat order.

1802.3 The contracting officer shall take action to verify price reasonableness in the following instances:

- (a) When the contracting officer suspects or has information (such as comparison to previous prices paid or personal knowledge of the item involved) to indicate that the price may not be reasonable; or
- (b) when purchasing an item for which no comparable pricing information is readily available (such as an item that is not the same as, or is not similar to, other items that have been recently purchased on a competitive basis).

SOURCE: Final Rulemaking published at 35 DCR 1478 (February 26, 1988).

1803 COMPETITIVE SMALL PURCHASES

1803.1 For each procurement in an amount over two hundred fifty dollars (\$250), the contracting officer shall solicit quotations from at least three (3) sources to promote competition to the maximum extent practicable and to ensure that the purchase is in the best interests of the District, considering price and other factors (including the

administrative cost of the purchase). If practicable, two (2) sources not included in the previous solicitation for similar items shall be requested to furnish quotations.

- 1803.2 If the contracting officer determines that it is impractical under the circumstances to solicit more than two (2) sources (due to time constraints, lack of available sources, or other factors set forth in §1803.4), the contracting officer may solicit quotations from two (2) sources. In no instance shall the contracting officer solicit quotations from fewer than two (2) sources unless the provisions of §1803.5 are followed.
- 1803.3 If the contracting officer determines that the best interests of the District (or other factors set forth in §1803.4) indicate that quotations should be obtained from more than three (3) sources, the contracting officer may require the solicitation of additional quotations.
- 1803.4 The contracting officer shall consider the following factors when deciding how many quotations will be solicited:
- (a) The nature of the item or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or if it is relatively non-competitive;
 - (b) Information obtained in making recent purchases of the same or similar item;
 - (c) The urgency of the proposed purchase;
 - (d) The dollar value of the proposed purchase; and
 - (e) Past experience concerning specific contractors' prices.
- 1803.5 A small purchase procurement solicitation may only be limited to a sole source when the contracting officer determines, in writing, that one (1) of the four (4) conditions in §305(a) of the Act is satisfied, in accordance with chapter 17 of this title.
- 1803.6 A contracting officer may orally solicit quotations. However, a contracting officer shall use a written solicitation in the following circumstances:
- (a) When a large number of line items is included in a single proposed procurement;
 - (b) When obtaining oral quotations is not considered economical or practical;
 - (c) When extensive specifications are involved; or
 - (d) When the suppliers are located outside the local trading area.
- 1803.7 A contracting officer shall maximize competition for small purchases and shall not limit solicitations to suppliers of well known and widely distributed makes or brands, or solicit on a personal preference basis.

1803.8 Each contracting officer shall maintain a small purchase source list (or lists, if more convenient). The list shall indicate whether the business is a certified minority business.

SOURCE: Final Rulemaking published at 35 DCR 1479 (February 26, 1988).

1804 DETERMINATION OF REASONABLE PRICE AND AWARD

1804.1 The contracting officer shall determine, in writing, that the price to be paid to the successful offeror is fair and reasonable.

1804.2 When only one (1) response is received to a request for quotations, or the price variance between multiple responses reflects a lack of adequate competition, the contracting officer shall include a statement in the contract file giving the basis for the determination of a fair and reasonable price.

1804.3 The determination that a proposed price is fair and reasonable may be based on either of the following:

(a) Competitive quotations; or

(b) Comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items, value analysis, the contracting officer's personal knowledge of the item being purchased, or any other reasonable basis.

1804.4 The contracting officer shall establish and maintain informal records of oral price quotations and include the record in the purchase file. The informal records shall consist of the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

1804.5 The contracting officer may limit written records of solicitations to notes or abstracts to show prices, delivery, references to printed price lists used, the vendor or vendors contacted, and other pertinent data.

1804.6 The contracting officer shall retain records supporting small purchases for a minimum of three (3) years.

1804.7 The contracting officer shall notify unsuccessful suppliers only if requested.

SOURCE: Final Rulemaking published at 35 DCR 1480 (February 26, 1988).

§§1805-1809: RESERVED

1810 BLANKET PURCHASE AGREEMENTS

- 1810.1 A blanket purchase agreement (BPA) may be used, in accordance with the provisions of this chapter, as a simplified method of filling anticipated repetitive needs for supplies, services, or other items by establishing charge accounts with sources of supply.
- 1810.2 A contracting officer may establish a BPA if one (1) or more of the following criteria apply:
- (a) There is a wide variety of items in a broad class of goods that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably;
 - (b) There is a need to provide commercial sources of supply for one (1) or more offices in an agency that do not otherwise have or need direct authority to purchase; or
 - (c) The administrative cost of writing numerous purchase orders can be avoided through the use of this procedure.
- 1810.3 A BPA shall not be used for any commodity, service, or other item for which a requirements type contract has been issued by the District.
- 1810.4 A BPA is not a contract and may be established without a purchase requisition or the obligation of funds.
- 1810.5 To the extent practical, BPA's for items of the same type shall be placed concurrently with more than one (1) supplier. All competitive sources shall be given an equal opportunity to furnish supplies, services, or other items under a BPA.
- 1810.6 A BPA may be limited to furnishing individual items or commodity groups or classes, or it may be unlimited for all items or services that the source of supply is in a position to furnish, except as provided otherwise under this section.
- 1810.7 The contracting officer shall not use a BPA to authorize purchases that are not otherwise authorized by law or this title and shall not purchase off a BPA to avoid the small purchase authority limitation.
- 1810.8 The existence of a BPA shall not justify procurement on a sole source basis.
- 1810.9 When there is an insufficient number of vendors with BPA's to ensure maximum practicable competition for a particular purchase, the contracting officer shall do the following:
- (a) Solicit quotations from other sources and make the purchase as appropriate; and

- (b) Establish additional BPA's to facilitate future purchases when recurring requirements for the same or similar items or services seem likely, when qualified sources are willing to accept a BPA, or when it is otherwise practical to do so.

SOURCE: Final Rulemaking published at 35 DCR 1481 (February 26, 1988).

1811 BLANKET PURCHASE PROCEDURES

- 1811.1 The contracting officer shall prepare and issue a BPA on a BPA form approved by the Director.
- 1811.2 The contracting officer shall include the following information in each BPA:
 - (a) A statement that the supplier will furnish supplies or services, described in general terms, if and when requested by the contracting officer during a specified period and within a stipulated total amount;
 - (b) A statement that the District is obligated only to the extent that authorized purchases are actually made under the BPA;
 - (c) A statement that the prices to the District shall be as low or lower than those charged to the supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment; and
 - (d) A statement that specifies the dollar limitation for purchases under the BPA (not to exceed the agency's small purchase authority).
- 1811.3 The contracting officer shall furnish to each supplier a list of names of individuals authorized to purchase under the BPA, identified by organizational component, and the dollar limitation per purchase for each individual.
- 1811.4 Each BPA shall contain a requirement that all deliveries or shipments under the agreement (except subscriptions and other charges for newspapers, magazines, or periodicals) shall be accompanied by delivery tickets or sales slips which contain the following minimum information:
 - (a) The name of the supplier;
 - (b) The BPA number.
 - (c) The date of purchase;
 - (d) The purchase order number;
 - (e) An itemized list of supplies or services furnished;
 - (f) The quantity, unit price, and extension of each item, less applicable discounts; and
 - (g) The date of delivery or shipment.

- 1811.5 Each BPA shall require that one (1) of the following procedures be followed:
- (a) That a vendor submit to the contracting officer a summary invoice at least monthly or upon expiration of the BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets;
 - (b) That the vendor submit to the contracting officer an itemized invoice at least monthly or upon expiration of the BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets; or
 - (c) That an invoice submitted by the vendor to the contracting officer for subscriptions or other charges for newspapers, magazines, or other periodicals show the starting and ending dates and state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.
- 1811.6 Each order placed against a BPA shall be recorded on a BPA order form, approved by the Director, which shall include a discreet BPA order number, accounting data identifying the source of funds, the items or services ordered, the name of the person placing the order, the date of the order, and other information required by the Director.
- 1811.7 Purchases against a BPA may be made orally; Provided, that each order shall be documented on a BPA order form. After making an oral purchase, the contracting officer may send a copy of the BPA order form to the contractor to ensure that the contractor and the contracting officer agree concerning the transaction.
- 1811.8 The contracting officer executing a BPA shall do the following:
- (a) Maintain adequate records to ensure that the total dollar volume of orders does not exceed the stated total aggregate amount;
 - (b) Ensure that only authorized individuals are placing purchases against a BPA; and
 - (c) Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant new arrangements with different suppliers or the modification of existing arrangements.
- 1811.9 An individual BPA shall be considered terminated when the purchases under it equal its total dollar limitation or when its stated time period expires.

SOURCE: Final Rulemaking published at 35 DCR 1482 (February 26, 1988).

§§1812-1814: RESERVED

1815 IMPREST FUNDS

- 1815.1 A cash purchase using imprest funds may be made when the transaction does not exceed one hundred fifty dollars (\$150). The head of an agency may establish a lower limit on imprest fund purchases for that agency.
- 1815.2 A contracting officer shall specifically designate in writing persons authorized to make purchases using imprest funds.
- 1815.3 Each purchase using imprest funds shall be recorded on an imprest fund purchase form, approved by the Director, which shall include a discreet imprest fund purchase number, accounting data identifying the specific imprest fund account, the items or services purchased, the name of the person making the purchase, the purchase date, and other information required by the Director.
- 1815.4 The contracting officer shall further document each purchase using imprest funds by including a record of receipt and acceptance of supplies and services by the District, receipt of cash payment by the supplier, and the cash advances and reimbursements.
- 1815.5 When using imprest funds, the contracting officer may place orders to suppliers orally and without soliciting competition if prices are determined to be reasonable. The contracting officer shall distribute purchases equitably among suppliers, and shall solicit prompt payment discounts.
- 1815.6 The contracting officer, or other employee authorized under §1815.2, shall furnish a copy of the imprest fund purchase form to the imprest fund cashier with the following information annotated:
- (a) That an imprest fund purchase has been made;
 - (b) The unit and extended prices;
 - (c) The supplier's name and address; and
 - (d) The anticipated delivery date.
- 1815.7 The contracting officer shall require that the supplier include the following with each delivery:
- (a) An invoice, packing slip, or other sales instrument;
 - (b) The supplier's name and address;
 - (c) A list and quantity of items;
 - (d) The unit and extended prices; and
 - (e) The trade discount, if any.

SOURCE: Final Rulemaking published at 35 DCR 1484 (February 26, 1988).

§§1816-1819: RESERVED**1820 PURCHASE ORDERS**

- 1820.1 Each purchase order shall be issued on a form prescribed by the Director.
- 1820.2 Except as provided in §1821, a contracting officer shall issue a purchase order on a fixed-price basis and shall not include economic price adjustment or redetermination provisions.
- 1820.3 Each purchase order shall include any trade and prompt payment discounts that are offered.
- 1820.4 Each purchase order shall specify the quantity of supplies or services ordered.
- 1820.5 When applicable, a purchase order shall provide that inspection and acceptance will be at destination. When inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to the point of receipt. Receiving reports shall be completed by the contracting officer or other designated District official immediately upon receipt and acceptance of material.
- 1820.6 Each purchase order shall contain a definite calendar date by which delivery of supplies or performance of services is required.
- 1820.7 Distribution of copies of purchase orders shall be limited to those required for essential administration and transmission of contractual information.
- 1820.8 If the contracting officer wants to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require written acceptance of the purchase order by the contractor.

SOURCE: Final Rulemaking published at 35 DCR 1485 (February 26, 1988).

1821 UNPRICED PURCHASE ORDERS

- 1821.1 A contracting officer shall use an unpriced purchase order only under the following circumstances:
- (a) When the transaction will not exceed the agency's small purchase limit;
 - (b) When it is impractical to obtain pricing in advance of issuance of the purchase order; and
 - (c) When the purchase is for repairs to equipment requiring disassembly to determine the nature and extent of repairs, material available from only one (1) source and for which cost cannot be readily established, or supplies or services for which prices are known to be competitive but exact prices are not known.

- 1821.2 A contracting officer shall issue each unpriced purchase order by using a written purchase order form and shall set a realistic dollar ceiling, either for each line item or for the total order. The dollar limitation shall be an obligation subject to adjustment when the firm price is established.

SOURCE: Final Rulemaking published at 35 DCR 1486 (February 26, 1988).

1822 MODIFICATION OF PURCHASE ORDERS

- 1822.1 A purchase order may be modified by using the modification form approved by the Director. Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.

- 1822.2 The contracting officer shall obtain a contractor's written acceptance of a purchase order modification if the written acceptance is determined by the contracting officer to be necessary to ensure the contractor's compliance with the purchase order as revised.

SOURCE: Final Rulemaking published at 35 DCR 1487 (February 26, 1988).

1823 TERMINATION AND CANCELLATION OF PURCHASE ORDERS

- 1823.1 If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination action in accordance with the provisions of chapter 37 of this title.

- 1823.2 If a purchase order that has not been accepted in writing by the contractor is to be canceled, the contracting officer shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written acceptance of the cancellation, and proceed in accordance with the provisions of §§1823.3 and 1823.4.

- 1823.3 If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action shall be required and the purchase order shall be considered canceled.

- 1823.4 If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall treat the action as a termination in accordance with the provisions of chapter 37 of this title.

SOURCE: Final Rulemaking published at 35 DCR 1487 (February 26, 1988).

1899 DEFINITIONS

- 1899.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Blanket purchase agreement - a pre-contractual agreement with a vendor that establishes a charge account for supplies or services which allows an agency to make small purchases without the

issuance of a purchase order for each individual purchase. Payments are made on a monthly basis.

Certified minority business - a contractor certified in accordance with the provisions of the Minority Contracting Act of 1976, effective March 29, 1977, (D.C. Law 1-95; D.C. Code §1-1141 *et seq.* (1981)).

Director - the Director of the Department of Administrative Services.

Imprest fund - a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for very small purchases.

Imprest fund cashier - the individual responsible for dispensing monies from an imprest fund.

Local trading area - the Greater Washington Metropolitan Statistical Area as defined by the Greater Washington Research Center or any successor entity recognized by the Director.

Purchase order - an offer by the District to buy certain supplies, services, or other items from commercial sources, upon specified terms and conditions, the aggregate amount of which does not exceed the small purchase limit.

Quotation - a citation of price and delivery terms or a period of performance by a contractor in response to a contracting officer's request on procurements of ten thousand dollars (\$10,000) or less.

Receiving report - written documentation of supplies delivered or services performed as noted by the contracting officer or other authorized District personnel.

Small purchase - a procurement of supplies, services, or other items in an aggregate amount not exceeding the small purchase authority limitations set forth in this chapter.

Trade discount - a price allowance or deduction, usually as a percentage, allowed to different classes of customers.

Unpriced purchase order - an order for supplies, services or other items, the price of which is not established at the time of issuance of the order.

SOURCE: Final Rulemaking published at 35 DCR 1488 (February 26, 1988).

CHAPTER 19 CONTRACTING FOR SERVICES

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1900 GENERAL PROVISIONS

- 1900.1 The provisions of this chapter shall apply to contracts for the provision of services, as defined in §107(42) of the District of Columbia Procurement Practices Act of 1985 (the "Act"), D.C. Code §1-1181.7 (1981).
- 1900.2 The provisions of the Act and this title requiring competition and setting forth the requirements and procedures for competitive procurement shall apply to the procurement of services.
- 1900.3 A contract for services may provide for services to be performed by professional or non-professional personnel on an individual or organizational basis.
- 1900.4 A contract may be used to provide services including, but not limited to, the following:

- (a) Maintenance, overhaul, and repair;
- (b) Routine recurring maintenance of real property;
- (c) Housekeeping services;
- (d) Consulting services;
- (e) Engineering and technical services;
- (f) Operation of District-owned equipment, facilities, and systems;
- (g) Communications services;
- (h) Architectural and engineering services (in accordance with chapter 26 of this title);
- (i) Transportation and related services;
- (j) Day care services;
- (k) Janitorial services;
- (l) Stenographic reporting services;
- (m) Medical and human care services (in accordance with §§1905 to 1912); and
- (n) Real property appraisal services (in accordance with §§1915 to 1922).

1900.5 Contracts for services that cross fiscal years or include multiyear provisions and which are funded by annual appropriations shall include a contract provision approved by the Director indicating that payment for services for the period other than the current fiscal year will be subject to the availability of funds.

1900.6 The contracting officer shall ensure that the applicable provisions of the Service Contract Act of 1965 (41 U.S.C. §§351-358) and any applicable wage determination are incorporated in accordance with federal regulations into all solicitations in accordance with chapter 43 of this title.

1900.7 In order to provide continuity of services between contractors, or when the District anticipates difficulties during the transition from one contractor to another, the contracting officer shall include a provision approved by the Director in the contract providing for phase-in training and other actions by the current contractor to effect an orderly transition to the successor.

1900.8 Contracts for expert or consulting services shall not be awarded in a manner that gives preferential treatment to former District employees.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1489 (February 26, 1988).

1901 EXPERT AND CONSULTING SERVICES

- 1901.1 A contracting officer may contract for expert and consulting services when essential to the agency's mission or when those services would achieve maximum effectiveness or economy of operations. Expert and consulting services may include, but are not limited to, the following:
- (a) Specialized opinions or professional or technical advice not available within the agency or from another agency;
 - (b) Outside points of view, to avoid too limited a judgment on critical issues;
 - (c) Advice on developments in industry, university, or foundation research;
 - (d) The opinions of experts whose national or international prestige can contribute to the success of important projects; or
 - (e) Citizen advisory participation in developing or implementing District programs that by their nature or by statutory provision require citizen participation.
- 1901.2 A contracting officer shall not contract for expert or consulting services for any of the following purposes:
- (a) To perform work of a policy-making, decision-making, or managerial nature that is the direct responsibility of agency officials;
 - (b) To bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures; or
 - (c) To specifically aid in influencing or enacting legislation in the Council of the District of Columbia.
- 1901.3 The contracting officer shall ensure that a contract for expert or consulting services does not establish or allow any of the following:
- (a) An employer-employee relationship between the District and the contractor;
 - (b) Detailed control or supervision by District personnel of the contractor or its employees with respect to the day-to-day operations of the contractor or the methods of accomplishment of the services;
 - (c) A regularly established tour of duty for the contractor; or
 - (d) Supervision of District employees by the contractor.
- 1901.2 The contracting officer shall determine in writing that the contract for expert or consulting services rather than the use of District employees is in the best interests of the District for one (1) or more of the following reasons:
- (a) The use of a contract for services is substantially more economical, feasible, or necessary due to unusual or emergency circumstances;

- (b) The services are needed for short periods only or are needed in connection with a specific project that is to be completed within a specified period; or
 - (c) The services are difficult to obtain due to scarcity of skilled personnel or because the services are of a highly specialized nature.
- 1901.5 The contracting officer shall be responsible for determining whether a request by an agency to contract for expert or consulting services, regardless of dollar value, is justified under §1901.4 or whether the services must be obtained in accordance with District personnel law and regulations. The contracting officer's determination shall be final.
- 1901.6 Before processing any contractual action or solicitation for expert or consulting services, the contracting officer shall ensure that the applicable provisions of this chapter have been complied with and that the required documentation is complete and included in the contract file.
- 1901.7 For procurement of expert or consulting services, the contracting officer shall ensure that the following are accomplished:
- (a) Each requirement is appropriate and fully justified in a written determination and findings. The justification shall include a statement of need and the requesting official's certification that the services do not unnecessarily duplicate any previously performed work or services;
 - (b) Each work statement is specific and complete, and states a fixed period of performance within which the services are to be provided;
 - (c) Each contract is awarded pursuant to the Act and this title;
 - (d) Appropriate disclosure is required of, and warning is given to, contractor personnel to avoid conflicts of interest;
 - (e) Each contract is properly administered and monitored to ensure that performance meets the requirements of the contract; and
 - (f) Each proposed contract action is properly authorized by a written, signed document.
- 1901.8 A contract for expert or consulting services shall not be extended by modification. When additional services are required, a new contract shall be awarded subject to the requirements and limitations of this section.

SOURCE: Final Rulemaking published at 35 DCR 1490 (February 26, 1988).

§§1902-1904: RESERVED

1905 MEDICAL AND HUMAN CARE SERVICES

- 1905.1 The contracting officer shall publicly announce all requirements for medical and human care services in accordance with chapter 13 of this title.
- 1905.2 The contracting officer shall negotiate contracts for medical and human care services based on the demonstrated competence and qualifications of prospective contractors to perform the services required at fair and reasonable prices.
- 1905.3 The contracting officer shall use the procedures set forth in §§1905 through 1912 of this chapter rather than the solicitation or source selection procedures specified elsewhere in this title.
- 1905.4 Compliance with §§1905 through 1912 of this chapter shall constitute a competitive procedure for the procurement of medical and human care services.
- 1905.5 The contracting officer shall evaluate each potential contractor based on the following criteria:
- (a) Professional qualifications necessary for satisfactory performance of the required services;
 - (b) Specialized experience and technical competence in the type of work required;
 - (c) Capacity to accomplish the work in the required time;
 - (d) Past performance on contracts with the District, other governmental entities, and private industry in terms of cost control, quality of work, and compliance with performance schedules; and
 - (e) Acceptability under other appropriate evaluation criteria.

SOURCE: Final Rulemaking published at 35 DCR 1492 (February 26, 1988).

1906 MEDICAL AND HUMAN CARE SERVICES EVALUATION BOARDS

- 1906.1 The director of the agency procuring medical and human care services shall appoint one (1) or more permanent or *ad hoc* medical and human care services evaluation boards, which shall be composed of members who, collectively, have experience in medical and human care services and District and related procurement matters.
- 1906.2 Members of evaluation boards shall include highly qualified professional employees of the District and may include private practitioners of medicine, human care services, or related professions.
- 1906.3 The director of the agency procuring medical and human care services shall designate one (1) District employee member of each board as the chairperson of that evaluation board.
- 1906.4 No firm or individual shall be eligible for award of a medical and human care services contract during the period in which any of its principals or associates are participating

as members of the awarding evaluation board, or when any member of the awarding evaluation board has a financial interest in the firm.

1906.5 The evaluation board shall perform the following functions under the general direction of the contracting officer:

- (a) Review the current data files on eligible firms or individuals and responses to the public notice required in accordance with chapter 13 of this title;
- (b) Evaluate the firms or individuals in accordance with the criteria prescribed in §1905;
- (c) Hold discussions with at least three (3) of the most highly qualified firms or individuals concerning concepts and the relative utility of alternative methods of furnishing the required services (but not including fees), when the prospective medical or human care services contract is estimated to exceed ten thousand dollars (\$10,000); and
- (d) Prepare a selection report for the contracting officer recommending, in order of preference, at least three (3) firms or individuals that are considered to be the most highly qualified to perform the required services.

1906.6 The selection report shall include a description of the discussions and evaluation conducted by the board to allow the contracting officer to review the considerations upon which the recommendations are based.

SOURCE: Final Rulemaking published at 35 DCR 1493 (February 26, 1988).

1907 MEDICAL AND HUMAN CARE SERVICES SELECTION

1907.1 The contracting officer shall review the recommendations of the evaluation board and, with the advice of appropriate technical and staff representatives, shall make the final selection.

1907.2 The final selection shall be a listing, in order of preference, of the firms or individuals considered most highly qualified to perform the work.

1907.3 If the firm or individual listed by the contracting officer as the most preferred is not the same as that recommended as the most highly qualified by the evaluation board, the contracting officer shall include in the contract file a written explanation of the reason for the selection.

1907.4 All firms or individuals on the final selection list shall be considered "selected firms or individuals" with which the contracting officer may negotiate in accordance with §1911.

1907.5 The contracting officer shall not add firms or individuals to the selection report. If the firms or individuals recommended in the report are not deemed to be qualified or the report is considered inadequate for any reason, the contracting officer shall record the reasons and return the report to the evaluation board for appropriate revision.

- 1907.6 The contracting officer shall promptly inform the board of the final selection.
- 1907.7 After final selection has taken place, the contracting officer may release information identifying the medical or human care services firms or individuals with which a contract will be negotiated.

SOURCE: Final Rulemaking published at 35 DCR 1494 (February 26, 1988).

1908 MEDICAL AND HUMAN CARE: SMALL PURCHASE CONTRACTS

- 1908.1 When authorized by the Director, the procedure set forth in this section may be used as an alternative to the process set forth in §§1906 and 1907 to select firms for medical and human care contracts not estimated to exceed ten thousand dollars (\$10,000).

- 1908.2 If the contracting officer decides that formal action by the board is not necessary in connection with a particular selection, the following procedures shall be used:

- (a) The chairperson of the board shall perform the functions of the evaluation board under §1906;
- (b) The contracting officer shall review the report and approve it or return it to the chairperson for appropriate revision; and
- (c) Upon receipt of an approved report, the chairperson of the board shall furnish the contracting officer with a copy of the report which will serve as an authorization for the contracting officer to commence negotiations.

SOURCE: Final Rulemaking published at 35 DCR 1495 (February 26, 1988).

1909 MEDICAL AND HUMAN CARE PROVIDER QUALIFICATIONS

- 1909.1 The Department of Human Services (or other agency with authority to contract for medical or human care services) shall receive and maintain data on firms and individuals that request to be considered for District medical or human care services contracts.

- 1909.2 To be considered for a medical or human care services contract, a firm or individual shall file the appropriate medical and human care services qualification data form with the Department of Human Services or other agency, as appropriate.

- 1909.3 The office maintaining the medical and human care services qualification data files shall classify each firm or individual with respect to the following:

- (a) Location;
- (b) Specialized experience;
- (c) Professional capabilities; and
- (d) Capacity, with respect to the scope of work that the firm or individual can undertake.

- 1909.4 Each office maintaining qualification data files shall review and update each file at least once each year. The review and update shall include the following:
- (a) Encouraging firms and individuals to submit an updated statement of qualifications and performance report;
 - (b) Reviewing and updating the classification of each firm or individual;
 - (c) Recording any contract awards made to each firm or individual in the preceding year;
 - (d) Ensuring that the file contains a copy of each pertinent performance evaluation report;
 - (e) Discarding any material that is no longer pertinent which has not been updated within the previous three (3) years; and
 - (f) Posting the date of the review in the file.
- 1909.5 Evaluation boards and other appropriate District employees or agents shall have access to data files.

SOURCE: Final Rulemaking published at 35 DCR 1495 (February 26, 1988).

1910 DISTRICT COST ESTIMATE FOR MEDICAL AND HUMAN CARE SERVICES

- 1910.1 The agency contracting for medical or human care services shall prepare an independent District estimate of the cost of the services and shall furnish it to the contracting officer before commencing negotiations in accordance with §1911 for each proposed contract or contract modification estimated to exceed ten thousand dollars (\$10,000).
- 1910.2 Access to information concerning the District estimate shall be limited to District personnel and agents whose official duties require knowledge of the estimate.
- 1910.3 The contracting officer may make an exception of §1910.2 during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the District estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price. However, the overall amount of the District's estimate shall not be disclosed.

SOURCE: Final Rulemaking published at 35 DCR 1496 (February 26, 1988).

1911 NEGOTIATION OF MEDICAL AND HUMAN CARE SERVICES CONTRACTS

- 1911.1 The final selection shall constitute authority for the contracting officer to begin negotiations.
- 1911.2 Beginning with the most preferred firm in the final selection, the contracting officer shall request a proposal from the firm or individual.
- 1911.3 The contracting officer shall limit subcontracting to those firms agreed upon during negotiations.

- 1911.4 If a mutually satisfactory contract cannot be negotiated, the contracting officer shall notify the firm or individual that negotiations have been terminated. The contracting officer shall then initiate negotiations with the next firm or individual on the list. This procedure shall be continued until a mutually satisfactory contract has been negotiated.
- 1911.5 If negotiations fail with all selected firms or individuals, the contracting officer shall request the evaluation board to recommend additional firms or individuals.
- 1911.6 If negotiations are terminated without awarding a contract to the highest rated firm or individual, the contracting officer may release that information and state that the negotiations will be undertaken with another named medical or human care services firm or individual.
- 1911.7 When an award has been made, the contracting officer may release award information to the public, and publicize the award in accordance with chapter 13 of this title.

SOURCE: Final Rulemaking published at 35 DCR 1497 (February 26, 1988).

1912 MEDICAL AND HUMAN CARE PERFORMANCE EVALUATIONS

- 1912.1 The contract administrator shall prepare a performance evaluation report for contracts of more than ten thousand dollars (\$10,000) and may prepare a report for contracts of ten thousand dollars (\$10,000) or less.
- 1912.2 The contract administrator shall prepare the performance report quarterly and after completion of the service or after contract termination, as appropriate.
- 1912.3 If the contract administrator concludes that the overall performance of a firm or individual is unsatisfactory, the contracting officer shall advise the firm or individual in writing that a report of unsatisfactory performance is being prepared and shall state the basis for the report.
- 1912.4 If the firm or individual responds to the notice issued under §1912.3 with any written comments, the contract administrator shall include them in the report, consider them in resolving any alleged factual discrepancies, and make appropriate changes in the report.
- 1912.5 The contracting officer shall review each performance report for accuracy and reasonableness.
- 1912.6 The contracting officer shall include the performance report in the contract file, and shall send a copy to the office responsible for maintenance of the firm's or individual's qualifications data. The office shall retain the report for at least six (6) years after the date of the report.

SOURCE: Final Rulemaking published at 35 DCR 1497 (February 26, 1988).

§§1913-1914: RESERVED**1915 REAL PROPERTY APPRAISAL SERVICES**

- 1915.1 The contracting officer shall publicly announce all requirements for real property appraisal services in accordance with chapter 13 of this title.
- 1915.2 The contracting officer shall negotiate contracts for real property appraisal services based on the demonstrated competence and qualifications of prospective contractors to perform the services required at fair and reasonable prices.
- 1915.3 The contracting officer shall use the procedures set forth in §§1915 through 1922 of this chapter rather than the solicitation or source selection procedures specified elsewhere in this title.
- 1915.4 Compliance with the provisions of §§1915 through 1922 of this chapter shall constitute a competitive procedure for the procurement of real property appraisal services.
- 1915.5 The contracting officer shall evaluate each potential contractor based on the following criteria:
- (a) Professional qualifications necessary for satisfactory performance of the required services;
 - (b) Specialized experience and technical competence in the type of work required;
 - (c) Capacity to accomplish the work in the required time;
 - (d) Past performance on contracts with the District, other governmental entities, and private industry in terms of cost, quality of work, and compliance with performance schedules; and
 - (e) Acceptability under other appropriate evaluation criteria.

SOURCE: Final Rulemaking published at 35 DCR 1498 (February 26, 1988).

1916 REAL PROPERTY APPRAISAL SERVICES EVALUATION BOARDS

- 1916.1 The director of the agency procuring real property appraisal services shall appoint one (1) or more permanent or *ad hoc* real property appraisal evaluation boards, which shall be composed of members who, collectively, have experience in real estate, real property appraisal, and District and related procurement matters.
- 1916.2 Members of evaluation boards shall include highly qualified professional employees of the District and may include private practitioners of real estate, appraisal, or related professions.
- 1916.3 The director of the agency procuring real property appraisal services shall designate one (1) District employee member of each board as the chairperson of that evaluation board.

- 1916.4 No firm or individual shall be eligible for award of a real property appraisal contract during the period in which any of its principals or associates are participating as members of the awarding evaluation board, or when any member of the awarding evaluation board has a financial interest in the firm.
- 1916.5 The evaluation board shall perform the following functions under the general direction of the contracting officer:
- (a) Review the current data files on eligible firms and responses to the public notice required in accordance with chapter 13 of this title;
 - (b) Evaluate the firms or individuals in accordance with the criteria prescribed in §1915;
 - (c) Hold discussions with at least three (3) of the most highly qualified firms concerning concepts and the relative utility of alternative methods of furnishing the required services (but not including appraisal fees), when the prospective real property appraisal contract is estimated to exceed ten thousand dollars (\$10,000); and
 - (d) Prepare a selection report for the contracting officer recommending, in order of preference, at least three (3) firms that are considered to be the most highly qualified to perform the required services.
- 1916.6 The selection report shall include a description of the discussions and evaluation conducted by the board to allow the contracting officer to review the considerations upon which the recommendations are based.
- SOURCE: Final Rulemaking published at 35 DCR 1499 (February 26, 1988).
- 1917 REAL PROPERTY APPRAISAL SERVICES SELECTION**
- 1917.1 The contracting officer shall review the recommendations of the evaluation board and, with the advice of appropriate technical and staff representatives, shall make the final selection.
- 1917.2 The final selection shall be a listing, in order of preference, of the firms or individuals considered most highly qualified to perform the work.
- 1917.3 If the firm or individual listed as the most preferred by the contracting officer is not the same as that recommended as the most highly qualified by the evaluation board, the contracting officer shall include in the contract file a written explanation of the reason for the selection.
- 1917.4 All firms on the final selection list shall be considered "selected firms" with which the contracting officer may negotiate in accordance with §1915.
- 1917.5 The contracting officer shall not add firms to the selection report. If the firms recommended in the report are not deemed to be qualified or the report is considered inadequate for any reason, the contracting officer shall record the reasons and return the report to the evaluation board for appropriate revision.

- 1917.6 The contracting officer shall promptly notify the board of the final selection.
- 1917.7 After final selection has taken place, the contracting officer may release information identifying the real property appraisal firm with which a contract will be negotiated.
- SOURCE:** Final Rulemaking published at 35 DCR 1500 (February 26, 1988).
- 1918 REAL PROPERTY APPRAISAL: SMALL PURCHASE CONTRACTS**
- 1918.1 When authorized by the Director, the procedure set forth in this section may be used as an alternative to the process set forth in §§1916 and 1917 to select firms for real property appraisal contracts not estimated to exceed ten thousand dollars (\$10,000)
- 1918.2 If the contracting officer decides that formal action by the board is not necessary in connection with a particular selection, the following procedures shall be used:
- (a) The chairperson of the board shall perform the functions of the evaluation board under §1916;
 - (b) The contracting officer shall review the report and approve it or return it to the chairperson for appropriate revision; and
 - (c) Upon receipt of an approved report, the chairperson of the board shall furnish the contracting officer with a copy of the report which will serve as an authorization for the contracting officer to commence negotiations.
- SOURCE:** Final Rulemaking published at 35 DCR 1500 (February 26, 1988).
- 1919 REAL PROPERTY APPRAISAL: QUALIFICATIONS**
- 1919.1 The Department of Administrative Services (or other agency with authority to contract for real property appraisal services) shall receive and maintain data on firms and individuals that request to be considered for District real property appraisal contracts.
- 1919.2 To be considered for a real property appraisal contract, a firm or individual shall file an appropriate qualification data form with the Department of Administrative Services, or other agency, as appropriate.
- 1919.3 The office maintaining the real property appraisal qualification data files shall classify each firm or individual with respect to the following:
- (a) Location;
 - (b) Specialized experience;
 - (c) Professional capabilities; and
 - (d) Capacity, with respect to the scope of work that the firm or individual can undertake.
- 1919.4 Each office maintaining qualification data files shall review and update each file at least once each year. The review and update shall include the following:

- (a) Encouraging firms and individuals to submit an updated statement of qualifications and performance report;
- (b) Reviewing and updating the classification of each firm or individual;
- (c) Recording any contract awards made to each firm in the preceding year;
- (d) Ensuring that the file contains a copy of each pertinent performance evaluation report;
- (e) Discarding any material that is no longer pertinent which has not been updated within the previous three (3) years; and
- (f) Posting the date of the review in the file.

1919.5 Evaluation boards and other appropriate District employees shall have access to data files.

SOURCE: Final Rulemaking published at 35 DCR 1501 (February 26, 1988).

1920 DISTRICT COST ESTIMATE FOR REAL PROPERTY APPRAISAL SERVICES

1920.1 The agency contracting for real property appraisal services shall prepare an independent District estimate of the cost of the services and shall furnish it to the contracting officer before commencing negotiations in accordance with §1921 for each proposed contract or contract modification estimated to exceed ten thousand dollars (\$10,000).

1920.2 Access to information concerning the District estimate shall be limited to District personnel and agents whose official duties require knowledge of the estimate.

1920.3 The contracting officer may make an exception of §1920.2 during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the District estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price. However, the overall amount of the District's estimate shall not be disclosed.

SOURCE: Final Rulemaking published at 35 DCR 1502 (February 26, 1988).

1921 NEGOTIATION OF REAL PROPERTY APPRAISAL CONTRACTS

1921.1 The final selection shall constitute authority for the contracting officer to begin negotiations.

1921.2 Beginning with the most preferred firm in the final selection, the contracting officer shall request a proposal from the firm or individual.

1921.3 The contracting officer shall limit subcontracting to firms or individuals agreed upon during negotiations.

1921.4 If a mutually satisfactory contract cannot be negotiated, the contracting officer shall notify the firm or individual that negotiations have been terminated. The contracting

officer shall then initiate negotiations with the next firm on the list. This procedure shall be continued until a mutually satisfactory contract has been negotiated.

1921.5 If negotiations fail with all selected firms, the contracting officer shall request the evaluation board to recommend additional firms.

1921.6 If negotiations are terminated without awarding a contract to the highest rated firm or individual, the contracting officer may release that information and state that the negotiations will be undertaken with another named real property appraisal firm or individual.

1921.7 When an award has been made, the contracting officer may release award information to the public.

SOURCE: Final Rulemaking published at 35 DCR 1502 (February 26, 1988).

1922 REAL PROPERTY APPRAISAL PERFORMANCE EVALUATIONS

1922.1 The contract administrator shall prepare a performance evaluation report for contracts of more than ten thousand dollars (\$10,000) and may prepare a report for contracts of ten thousand dollars (\$10,000) or less.

1922.2 The contract administrator shall prepare the performance report after final acceptance of the work or after contract termination, as appropriate.

1922.3 If the contract administrator concludes that the overall performance of a firm or individual is unsatisfactory, the contracting officer shall advise the firm or individual in writing that a report of unsatisfactory performance is being prepared and shall state the basis for the report.

1922.4 If the firm or individual responds to the notice issued under §1922.3 with any written comments, the contract administrator shall include them in the report, consider them in resolving any alleged factual discrepancies, and make appropriate changes in the report.

1922.5 The contracting officer shall review each performance report for accuracy and reasonableness.

1922.6 The contracting officer shall include the performance report in the contract file, and shall send a copy to the office responsible for maintenance of the firm's qualifications data. The office shall retain the report for at least six (6) years after the date of the report.

SOURCE: Final Rulemaking published at 35 DCR 1503 (February 26, 1988).

§§1923-1924: RESERVED**1925 DISMANTLING, DEMOLITION, OR REMOVAL OF STRUCTURES**

1925.1 Contracts for dismantling, demolition, or removal of structures shall be awarded in accordance with either the Service Contract Act 1965 (41 U.S.C. §§351-358) or the Davis-Bacon Act (40 U.S.C. §§276a-276a-7).

1925.2 When the contract is solely for dismantling, demolition, or removal of structures, the provisions of the Service Contract Act shall be followed.

1925.3 When the contract is for dismantling, demolition, or removal of structures and further work will result in the construction, alteration, or repair of a public building or public work at the same location even though by separate contract, the provisions of the Davis-Bacon Act shall be followed with respect to the contract for dismantling, demolition, or removal.

1925.4 The contracting officer shall comply with the requirements of the Service Contract Act and the Davis-Bacon Act in accordance with chapter 43 of this title.

1925.5 When a contract is solely for dismantling, demolition, or removal of structures, the contracting officer may require the contractor to furnish a performance bond or other security in accordance with the provisions of chapter 27 of this title in an amount that the contracting officer considers adequate to do the following:

- (a) Ensure completion of the work;
- (b) Protect property to be retained by the District;
- (c) Protect property to be provided as compensation to the contractor; and
- (d) Protect the District against damage to adjoining property.

1925.6 Any requirement for a bond under this section shall be documented by the contracting officer in accordance with the provisions of chapter 27 of this title.

SOURCE: Final Rulemaking published at 35 DCR 1504 (February 26, 1988).

1926 PAYMENTS FOR SALVAGE AND REMOVAL

1926.1 A contract may provide that the District pay the contractor for the dismantling or demolition of structures or that the contractor pay the District for the right to salvage and remove the materials resulting from the dismantling or demolition operation.

1926.2 The contracting officer shall determine whether the District shall retain materials resulting from a dismantling or demolition operation in accordance with §§1926.3 and 1926.4.

- 1926.3 If property is determined more useful to the District than its value as salvage to the contractor, the contract shall expressly designate that the property be retained by the District.
- 1926.4 The contracting officer, on advice of technical personnel, shall determine the fair market value of any property designated as salvage which will be retained by the contractor. The fair market value estimate shall be a guide in determining the amount of payment, if any, that will be made to the contractor.

SOURCE: Final Rulemaking published at 35 DCR 1504 (February 26, 1988).

1999 DEFINITIONS

- 1999.1 When used in this chapter, the following words and terms shall have the meanings ascribed:

Appraisal services - services performed by an expert licensed by a state, city, county, or other governmental unit which are associated with the purchase and lease of real property relating to the determination of the value of that real property.

Award information - information regarding the name of the contractor and the amount of the contract award.

Consultant - a firm or individual with knowledge and special abilities not generally available to an agency who renders services of a purely advisory nature relating to governmental functions or agency administration and management.

Consulting services - services of a purely advisory nature relating to governmental functions, agency administration and management, or program management which are normally provided by persons that are considered to have knowledge and special abilities not generally available within the agency.

Expert - a person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field, whose knowledge and mastery of the principles, practices, problems, methods, and techniques of his or her field of activity, or of a specialized area in the field, are clearly superior to those usually possessed by ordinarily competent persons in that activity, and whose attainment is such that he or she usually is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity. An expert may be a person who performs or supervises regular duties and operating functions.

Medical and human care services - services provided by professionals whose occupations are subject to licensure under the D.C. Health Occupations Revision Act of 1988, D.C. Law 6-99, D.C. Code §2-3301.1 *et seq.* (1986 Supp.).

SOURCE: Final Rulemaking published at 35 DCR 1505 (February 26, 1988).

CHAPTER 20 SPECIAL CONTRACTING METHODS

Secs.	
2000	Multiyear Contracts
2001	Cancellation of Multiyear Contracts
2002	Multiyear Contract Solicitations
2003	Lowest Evaluated Unit Price
2004	Cancellation Ceiling
2005	Use of Options
2006	Solicitation of Contracts with Options
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2008	Exercise of Options
2099	Definitions

2000 MULTIYEAR CONTRACTS

- 2000.1 Unless prohibited by the provisions of an appropriations act, a contracting officer may issue the following types of contracts on a multiyear basis:
- (a) Firm-fixed-price contracts;
 - (b) Fixed-price contracts with economic adjustments;
 - (c) Fixed-priced incentive contracts; and
 - (d) Cost-reimbursement contracts.
- 2000.2 Multiyear contracting may be used in procurement by competitive sealed bids or competitive sealed proposals, or by sole source procurement.
- 2000.3 Multiyear procurement may be used for sheltered market solicitations.
- 2000.4 The term of a multiyear contract shall not be longer than five (5) years.
- 2000.5 Each multiyear contract shall provide that, after the end of each fiscal year, the contract shall be canceled (pursuant to a multiyear cancellation clause approved by the Director) if sufficient budget authority is not available to fund the contract during the subsequent fiscal year.
- 2000.6 Before issuing a multiyear contract, the contracting officer shall determine the following in writing:
- (a) That the contract requires the special production of definite quantities or the furnishing of long-term services to meet the District's needs;

- (b) That there is a reasonable expectation that, throughout the contemplated contract period, the requesting agency will request sufficient budget authority to fund the contract at the level required to avoid contract cancellation;
- (c) That any technical risks associated with the item or service are not excessive;
- (d) That a multiyear contract will serve the best interests of the District by encouraging competition or otherwise promoting economies in procurement; and
- (e) That estimated requirements cover the period of the contract and are reasonably firm and continuing.

2000.7 Budget authority to fund a multiyear contract shall be obligated on an annual basis. The initial obligation of funds shall be for the first fiscal year requirements of the contract, and funds for requirements in each subsequent fiscal year shall be obligated one (1) fiscal year at a time.

2000.8 The contracting officer may use a pre-bid, pre-proposal, or pre-solicitation conference to ensure that all interested sources are informed of the special nature of multiyear contracts, including all cancellation provisions required by this chapter.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1506 (February 26, 1988).

2001 CANCELLATION OF MULTIYEAR CONTRACTS

2001.1 If sufficient budget authority is not made available to fund any fiscal year after the first fiscal year of a multiyear contract, the contracting officer shall cancel the contract.

2001.2 Each multiyear contract shall provide that if the contract is canceled due to unavailability of funds, the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies delivered or services performed under the contract.

2001.3 When a contract is terminated for the convenience of the District, including items subject to cancellation, the District's obligation shall not exceed the amount specified for contract performance plus the cancellation ceiling set forth in the contract in accordance with §2004.

SOURCE: Final Rulemaking published at 35 DCR 1507 (February 26, 1988).

2002 MULTIYEAR CONTRACT SOLICITATIONS

2002.1 Each solicitation for a multiyear contract shall include the following:

- (a) The requirements by item or services for the first fiscal year;
- (b) Multiyear contract requirements including requirements for each fiscal year;
- (c) A requirement that the unit price for each item or service shall be the same for all fiscal years included, except to the extent that the contracting officer

determines that it is in the best interests of the District to include an economic price adjustment clause approved by the Director;

- (d) The criteria that will be used by the District to compare the lowest evaluated submission on the first fiscal year's requirement with the lowest evaluated submission on the multiyear requirements;
- (e) The criteria for evaluation factors other than price where the procurement is on the basis of factors in addition to price;
- (f) If the multiyear procurement is on the basis of factors in addition to price, the relative importance of the evaluation factors;
- (g) Notice that if the District determines before award that only the first fiscal year requirements are needed, the District may evaluate offers and make award solely on the basis of price offered on the first fiscal year requirements;
- (h) A cancellation ceiling established in accordance with §2004;
- (i) A prominently placed notice describing the multiyear features of the solicitation;
- (j) A statement that an award will not be made on less than the first fiscal year requirements; and
- (k) Notice of the special cancellation provisions applicable to multiyear contracts.

- 2002.2 The solicitation for a multiyear contract shall require that each response must quote a price for the first fiscal year of the contract and for each subsequent fiscal year of the contract, as well as a price for the total multiyear requirement.
- 2002.3 The contracting officer shall evaluate bids or offers to determine the lowest overall evaluated cost to the District for both the multiyear and the first fiscal year requirements. The contracting officer shall also compare the cost of buying the total requirement under a multiyear procurement with the cost of buying the total requirement in successive independent requirements.
- 2002.4 If the procurement is by competitive sealed bids (on the basis of price and price related factors) the contracting officer shall award the contract on the basis of the lowest evaluated unit price determined in accordance with §2003, whether that price is based on a single-year or a multiyear contract.
- 2002.5 If the procurement is by competitive sealed proposals (on the basis of price and other non-price related factors), the contracting officer shall award the contract to the offeror submitting the proposal most advantageous to the District on the basis of price and other factors considered.

2002.6 In the case of a sole source procurement, a contracting officer shall make an award only if a detailed review of the cost and technical proposal supports the objectives of multiyear contracting and significant cost savings will result from the award of a multiyear procurement contract.

SOURCE: Final Rulemaking published at 35 DCR 1507 (February 26, 1988).

2003 LOWEST EVALUATED UNIT PRICE

2003.1 To determine the lowest evaluated bid price, the contracting officer shall compare the lowest evaluated offer on the first fiscal year alternative against the lowest evaluated offer on the multiyear alternative, as follows:

- (a) Multiply the evaluated unit price for each item of the lowest evaluated offer on the first fiscal year alternative by the number of units of that item required by the multiyear alternative;
- (b) Add the total amount for all the items to the dollar amount of any administrative costs identified in the solicitation; and
- (c) Compare the result of the computations performed under §2003.1(a) and (b) against the total evaluated price of the lowest offer on the multiyear alternative.

2003.2 If the multiyear procurement is being computed on a basis other than price alone, the contracting officer shall conduct the evaluation based on the evaluation factors contained in the solicitation.

SOURCE: Final Rulemaking published at 35 DCR 1509 (February 26, 1988).

2004 CANCELLATION CEILING

2004.1 For each fiscal year of a multiyear contract subject to cancellation, the contracting officer shall establish a cancellation ceiling, which shall be stated in the contract.

2004.2 Each ceiling amount shall exclude amounts for items included in prior fiscal years.

2004.3 The contracting officer shall reduce the cancellation ceiling for each fiscal year in direct proportion to the remaining requirements subject to cancellation.

2004.4 In determining cancellation ceilings, the contracting officer shall estimate and include the reasonable reproduction and other nonrecurring costs that would be incurred by an average contractor or subcontractor, and which would be applicable to the items or services being furnished and normally amortized over the life of the contract.

2004.5 The contracting officer may modify a cancellation ceiling contained in an invitation for bids by amending the solicitation prior to bid opening.

2004.6 The contracting officer may modify a cancellation ceiling in any other type of solicitation by informing the prospective contractor(s) prior to final negotiation and contract execution.

SOURCE: Final Rulemaking published at 35 DCR 1509 (February 26, 1988).

2005 USE OF OPTIONS

2005.1 Except as provided in §§2005.2 and 2005.3, a contracting officer may include an option in a contract when the option is in the best interests of the District.

2005.2 A contracting officer shall not use an option (unless compelling factors favoring the use of an option exist) when, in the judgment of the contracting officer, the foreseeable requirements involve the following:

- (a) Quantities large enough to permit the recovery of start-up costs and the production of required supplies at a reasonable price; and
- (b) Delivery requirements far enough into the future to permit competitive procurement, production, and delivery.

2005.3 A contracting officer shall not use an option in any of the following circumstances:

- (a) If the contractor would incur undue risks, such as when the price or availability of necessary materials or labor is not reasonably foreseeable;
- (b) If an indefinite quantity or requirements term contract would be more appropriate; Provided, that a contracting officer may use an option to extend the term of these types of contracts;
- (c) If market prices for the supplies or services involved are likely to change substantially; or
- (d) If the option represents known firm requirements for which funds are available, unless the basic quantity is a learning or testing quantity and competition for the option would be impractical after the initial contract is awarded.

2005.4 A contracting officer may include options in a contract for services if there is an anticipated need for similar services beyond the first contract period.

2005.5 The period within which an option may be exercised may extend beyond the date specified for completion of the services in a contract for services, but in no event shall the option be exercised after the contract term has expired.

2005.6 The total of the basic and option periods in a contract for services shall not exceed five (5) years.

2005.7 The total of the basic and option quantities shall not exceed the requirement for five (5) years in contracts for supplies, unless otherwise authorized by law.

2005.8 The contracting officer shall justify in writing the quantities or the term under option, the notification period for exercising the option, and any limitation on the option

price. The contracting officer shall include the justification document in the contract file.

- 2005.9 Any written determination and findings required for a contract entered into by negotiations shall specify both the basic requirement and the increase permitted by an option.
- 2005.10 The cost of each option shall be readily discernible from the contract provisions that set forth the option.
- 2005.11 Contract provisions, approved by the Director, setting forth the cost of the option may include, but are not limited to, the following:
- (a) A specific dollar amount;
 - (b) An amount to be determined by applying provisions (or a formula) provided in the basic contract, but not including renegotiation of the price for work in a fixed-price type contract;
 - (c) In a cost-type contract, a stated fixed or maximum fee, or a fixed or maximum fee amount determinable by applying a formula contained in the basic contract;
 - (d) A specific price that is subject to an economic price adjustment provision; or
 - (e) A specific price that is subject to change as a result of changes to the prevailing labor rates provided by the U.S. Department of Labor.

SOURCE: Final Rulemaking published at 35 DCR 1510 (February 26, 1988).

2006 SOLICITATION OF CONTRACTS WITH OPTIONS

- 2006.1 If a contract will provide for the exercise of an option, the solicitation shall include appropriate option clauses, approved by the Director.
- 2006.2 Each solicitation containing an option provision shall state the basis of evaluation, either exclusive or inclusive of the option, and, when appropriate, shall inform bidders that the District may exercise the option at the time of award.
- 2006.3 A solicitation shall allow option quantities to be offered without limitation as to price, but there shall be no limitation with regard to price if the option quantity will be considered in the evaluation for award.
- 2006.4 A solicitation may require that an option must be offered at prices no higher than those for the initial requirements in either of the following circumstances:
- (a) When the option quantities will not be evaluated for award purposes; or
 - (b) When future competition for the option is not practical.
- 2006.5 A solicitation that requires the offering of an option at prices no higher than those for the initial requirement shall specify the following:

- (a) That the District will accept an offer contains an option price higher than the base price only if the acceptance does not prejudice any other offeror; and
- (b) That option quantities for additional supplies will be limited to not more than fifty percent (50%) of the initial quantity of the same contract line item. However, in unusual circumstances, the agency head may approve a greater percentage or quantity.

2006.6 Each solicitation and contract shall specify limits on the purchase of additional supplies or services, or the overall duration of the term of the contract, including any option extension.

2006.7 Each solicitation and contract shall state the period within which an option may be exercised and the period shall be set in order to provide the contractor adequate lead time to ensure continuous production or services

2006.8 A solicitation or contract may express options for increased quantities of supplies or services in terms of the following:

- (a) A percentage of specific line items;
- (b) An increase in specific line items; or
- (c) An additional numbered line item identified as the option.

SOURCE: Final Rulemaking published at 35 DCR 1512 (February 26, 1988).

2007 EVALUATION OF OPTIONS

2007.1 Except as provided in §§2007.2 and 2007.3, when awarding the basic contract, the contracting officer shall evaluate offers for any options contained in a solicitation when it has been determined prior to soliciting offers that the District is likely to exercise the options.

2007.2 The contracting officer shall not evaluate offers for any option when it is determined that evaluation would not be in the best interests of the District.

2007.3 The contracting officer may determine not to evaluate options due to circumstances including, but not limited to, the following:

- (a) There is not a reasonable certainty that sufficient budget authority will be available to permit the exercise of the option; and
- (b) The option would not be exercisable at a price specified in, or reasonably determinable from, the terms of the basic contract.

2007.4 Except as provided in this section, in order to meet the requirements of the Act and this title for maximum competition, each option shall be evaluated as part of the initial competition and be exercisable at an amount specified from the terms of the basic contract.

SOURCE: Final Rulemaking published at 35 DCR 1513 (February 26, 1988).

2008 EXERCISE OF OPTIONS

2008.1 When exercising an option, the contracting officer shall provide written notice to the contractor within the time period specified in the contract.

2008.2 When a contract provides for economic price adjustment and the contractor requests a revision of the price, the contracting officer shall determine the effect of the adjustment on prices under the option before the option is exercised.

2008.3 Before exercising an option, the contracting officer shall make a written determination that the exercise will be in accordance with the terms of the option and the provisions of §2008.4.

2008.4 A contracting officer shall exercise an option only after determining the following:

- (a) That sufficient budget authority is available;
- (b) That the requirement covered by the option fulfills an existing District needs; and
- (c) That the exercise of the option will be the most advantageous method of fulfilling the District's need, when price and other factors are considered.

2008.5 The contracting officer, after considering price and other factors, shall make a determination on the basis of one (1) of the following:

- (a) A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option; Provided, that if it is anticipated that the best price available is the option price (or that this is the more advantageous offer), the contracting officer shall not use this method to test the market);
- (b) An informal analysis of prices or an examination of the market indicates that the option price is better than prices that would be available in the market or that the option would be the most advantageous offer; or
- (c) The short time between the award of the contract containing the option and the exercise of the option indicates that the option price is the lowest price obtainable or the most advantageous offer.

2008.6 When determining whether to exercise an option, the contracting officer shall take into account the District's need for continuity of operations and the potential cost of disrupting operations.

2008.7 The contract modification or other written document which notifies the contractor of the exercise of the option shall cite the option provision as authority for the action.

SOURCE: Final Rulemaking published at 35 DCR 1514 (February 26, 1988).

2099 DEFINITIONS

2099.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Director - the Director of the Department of Administrative Services.

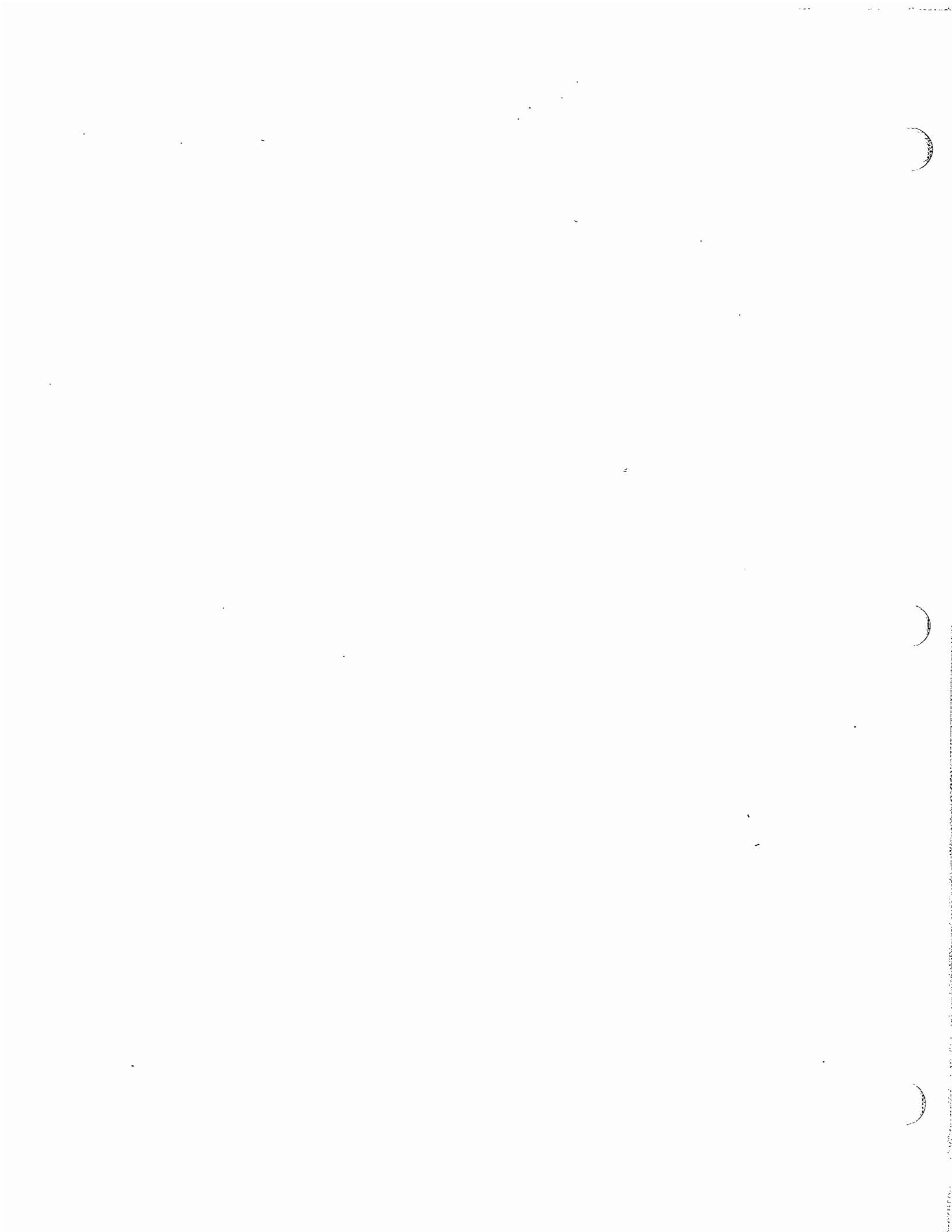
Multiyear contract - a contract for a period covering more than one (1) fiscal year but not more than five (5) fiscal years.

Nonrecurring costs - those production costs which are generally incurred on a one-time basis and include costs such as plant or equipment relocation, plant rearrangement, pre-production engineering, initial spoilage and rework, and specialized work force training.

Option - a unilateral right in a contract under which, for a specified time, the District may elect to purchase additional quantities or services called for by the contract, or may elect to extend the term of the contract.

Recurring costs - the production costs that vary with the quantity being produced, such as labor and materials.

SOURCE: Final Rulemaking published at 35 DCR 1515 (February 26, 1988).



CHAPTER 21 REQUIRED SOURCES OF SUPPLIES AND SERVICES

Secs.	
2100	Priorities for Use of Government Supply Sources
2101	Excess Personal Property
2102	Procurement of Utility Services
2103	District Term Contracts and Federal Supply Schedules
2104	Ordering from the Supply Schedules
2105	Termination of Orders
2106-2109	[Reserved]
2110	Procurement from the Blind and Severely Handicapped
2111	Procurement from Federal Prison Industries, Inc.
2112	Exceptions from Handicapped and Federal Prison Industries, Inc., Source Requirements
2113-2114	[Reserved]
2115	Procurement of Printing and Related Supplies
2116	Leasing of Motor Vehicles
2199	Definitions

2100 PRIORITIES FOR USE OF GOVERNMENT SUPPLY SOURCES

- 2100.1 Except as required by §§2102, 2115, and 2116, or as otherwise authorized by this title or law, each agency shall satisfy requirements for supplies and services from or through the sources and publications listed below in descending order of priority:
- (a) Existing agency inventories;
 - (b) Excess from other District agencies or from federal agencies;
 - (c) Existing requirements contracts;
 - (d) Existing indefinite quantity contracts, to the extent of the minimums stated in those contracts;
 - (e) Procurement lists of products and services available from the Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped;
 - (f) Federal supply schedules (to the extent that purchasing from these schedules is mandatory under §2103.4);
 - (g) D.C. Department of Corrections, Industries Division;
 - (h) Federal Prison Industries, Inc.; and

- (i) Other sources, including open and sheltered market commercial sources, and educational and non-profit institutions.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1516 (February 26, 1988).

2101 EXCESS PERSONAL PROPERTY

- 2101.1 When requirements cannot be met from existing agency inventories, each agency shall use excess personal property as its first source of supply in fulfilling its requirements and the requirements of cost-reimbursement contractors.
- 2101.2 Each agency shall ensure that all personnel make positive efforts to satisfy agency requirements by obtaining and using excess personal property (including that suitable for adaptation or substitution) before initiating contract action, including obtaining current information regarding the availability of excess personal property from the Department of Administrative Services, Materiel Management Administration.
- 2101.3 The Director shall be responsible for developing procedures to support auditing requirements for the procurement, use, and disposal of excess personal property, in accordance with chapter 44 of this title.

SOURCE: Final Rulemaking published at 35 DCR 1516 (February 26, 1988).

2102 PROCUREMENT OF UTILITY SERVICES

- 2102.1 The District shall procure utility services in accordance with the provisions of this title, except that the priorities of §2100 shall not apply.
- 2102.2 The contracting officer shall use either a requirements contract or an indefinite quantity contract for the procurement of utility services.
- 2102.3 If utility services have been procured under an indefinite quantity contract, the contracting officer shall procure all utility services covered by that contract in accordance with its terms unless the Director determines that it is in the best interests of the District to negotiate special rates or special services under a separate contract that is different from the published or unpublished current rate schedules of the utility services supplier and the existing indefinite quantity contract.

SOURCE: Final Rulemaking published at 35 DCR 1517 (February 26, 1988).

2103 DISTRICT TERM CONTRACTS AND FEDERAL SUPPLY SCHEDULES

- 2103.1 The Director shall ensure that each agency is informed of the availability of supplies and services under District term contracts and federal supply schedules, and the requirements for purchasing from each of these sources under §2100 and this section.
- 2103.2 The use of District requirements contracts shall be mandatory for all District agencies listed under the contract as using agencies.
- 2103.3 The use of District indefinite quantity contracts shall be mandatory to the extent of the minimums stated in those contracts.

- 2103.4 Except as required by §2100.1, the use of federal supply schedules shall be mandatory when the contracting officer determines that both of the following apply:
- (a) The supplies or services on the federal schedule will meet the District's minimum requirements; and
 - (b) The federal schedule price is lower than the price that can be obtained with a new contract.
- 2103.5 The contracting officer shall procure from federal supply contracts or District term contracts by placing purchase orders directly with the contractor.
- 2103.6 When supplies or services are available under a District requirements contract, a contracting officer shall not do either of the following:
- (a) Solicit bids, proposals, quotations, or otherwise test the market solely for the purpose of seeking alternative sources to the requirements contract; or
 - (b) Request formal or informal quotations from other contractors for the purpose of making price comparisons.
- 2103.7 When the requirements of the ordering agency are less than the minimum order limitation, or are in excess of the maximum order limitation provided in the applicable federal supply schedule, use of the schedule shall not be mandatory.
- SOURCE:** Final Rulemaking published at 35 DCR 1517 (February 26, 1988).
- 2104 ORDERING FROM THE SUPPLY SCHEDULES**
- 2104.1 When ordering from a single-award schedule, the contracting officer shall place orders directly with the schedule contractor at the price shown in the schedule.
- 2104.2 Except as provided in §2104.3, when ordering from a multiple-award schedule, the contracting officer shall place orders with the schedule contractor offering the lowest delivered price available.
- 2104.3 The contracting officer shall justify any order over five hundred dollars (\$500) per line item placed at other than the lowest price. Justification for ordering a higher priced item may be based on any of the following considerations:
- (a) Delivery time in terms of actual need that cannot be met by a contractor offering a lower price;
 - (b) Specific or unusual requirements, such as differences in performance characteristics;
 - (c) Compatibility with existing equipment or systems; or

- (d) Trade-in considerations that favor a higher priced item and produce the lowest net cost.

SOURCE: Final Rulemaking published at 35 DCR 1518 (February 26, 1988).

2105 TERMINATION OF ORDERS

- 2105.1 The contracting officer may terminate for default an order placed under a District term contract in accordance with chapter 37 of this title and the terms of the contract. The contracting officer may terminate for default any order placed under federal schedule contract in accordance with the terms of the contract.
- 2105.2 The Administrator, Materiel Management Administration, DAS, shall be notified in writing within ten (10) working days when a contracting officer has declared a schedule contractor in default or fraud is suspected.
- 2105.3 The contracting officer may terminate for the convenience of the District an order placed under a District term contract in accordance with chapter 37 of this title and the terms of the contract. The contracting officer may terminate for the convenience of the District an order placed under a federal supply schedule in accordance with the terms of the contract.
- 2105.4 Before the contracting officer terminates for convenience an order placed under a District term contract, the contracting officer shall attempt to enter into a no-cost termination agreement with the contractor. All disputes shall be resolved in accordance with chapter 38 of this title and the terms of the contract.
- 2105.5 Before the contracting officer terminates for convenience an order placed under a federal schedule contract, the contracting officer shall attempt to enter into a no-cost termination agreement with the contractor. All disputes shall be resolved in accordance with the terms of the federal schedule contract.

SOURCE: Final Rulemaking published at 35 DCR 1519 (February 26, 1988).

§§2106-2109: RESERVED

2110 PROCUREMENT FROM THE BLIND AND SEVERELY HANDICAPPED

- 2110.1 The contracting officer shall be responsible for implementing the procurement requirements of §6 of the Employment Opportunities Act of 1978, D.C. Law 2-128, D.C. Code §36-605 (1981).
- 2110.2 Except as provided in §2100, the contracting officer, when procuring supplies and services, shall use the procurement lists established by the Committee for the Purchase of Products and Services of the Blind and Other Severely Handicapped (the "Committee").

- 2110.3 The use of procurement lists of workshops representing the blind and other severely handicapped is mandatory for the procurement of listed supplies and services, except as provided in §2112 or where the use would be contrary to the priorities established in §2100.1.
- 2110.4 The contracting officer shall obtain supplies and services on the procurement list from the Committee or directly from a workshop authorized by the Committee.
- 2110.5 When the Committee authorizes the contracting officer to transmit orders for specific supplies or services directly to a workshop, the authorization shall be in writing and shall remain valid until it is revoked by the Committee.
- 2110.6 The contracting officer shall purchase supplies or services on the procurement list, at prices established by the Committee, from a qualified workshop if they are available within the required period.
- 2110.7 The contracting officer may procure supplies and services not included on the procurement list from a workshop under a solicitation issued by any other procurement method authorized by this title.
- 2110.8 Prior to initiating a procurement from commercial sources, the contracting officer shall document, in writing, that the supply or service is not available from a procurement list or that an exception has been granted by the Committee in accordance with §2112. The document shall be maintained in the contract file.

SOURCE: Final Rulemaking published at 35 DCR 1519 (February 26, 1988).

2111 PROCUREMENT FROM FEDERAL PRISON INDUSTRIES, INC.

- 2111.1 The contracting officer may purchase required supplies of the classes listed in the Schedule of Products made in Federal Penal and Correctional Institutions (the "FPI Schedule") at prices not to exceed current market prices, using the procedures set forth in this section.
- 2111.2 The contracting officer shall prepare orders to Federal Prison Industries, Inc. ("FPI") using the procedures stipulated in the FPI Schedule, or as otherwise specified by the Director.
- 2111.3 Before supplies on the FPI Schedule may be procured from commercial sources, the contracting officer shall obtain approval from the head of the contracting agency in accordance with the provisions of §2112.

SOURCE: Final Rulemaking published at 35 DCR 1520 (February 26, 1988).

2112 EXCEPTIONS FROM HANDICAPPED AND FEDERAL PRISON INDUSTRIES, INC., SOURCE REQUIREMENTS

- 2112.1 When procurement under §§2110 or 2111 would otherwise be required, in accordance with the priorities listed in §2100, the contracting officer may obtain an exception to those source requirements in accordance with this section.

- 2112.2 Exceptions to the handicapped source requirements under §2110 shall be granted by the Committee for the Purchase of Products and Services of the Blind and Other Severely Handicapped (the "Committee").
- 2112.3 Exceptions to the Federal Prison Industries, Inc. source requirements under §2111 shall be approved by the head of the contracting agency.
- 2112.4 Exceptions shall be granted in the following circumstances:
- (a) When the handicapped or Federal Prison Industries, Inc., sources cannot provide the supplies or services within the time required, and other sources can meet the District's requirements in a timely manner;
 - (b) When the quantity required cannot be produced or provided economically (at prices comparable to those which could be obtained by using other sources) by the handicapped or Federal Prison Industries, Inc. sources; or
 - (c) When the Committee (in the case of sources under §2110) or the head of the contracting agency (in the case of sources required under §2111) determines that an exception is justified by other appropriate circumstances.
- 2112.5 In any instance where a timely exception cannot be obtained from the Committee, the contracting officer may request approval of the exception by the Director. The Director may approve the exception in writing in accordance with criteria set forth in §2112.4.
- 2112.6 When a purchase exception is granted, the contracting officer shall issue the solicitation within thirty (30) days of the date of the exception, unless an extension is granted by the Committee or the head of the contracting agency, whichever is appropriate.
- 2112.7 When an exception is granted by the Committee, the contracting officer shall provide a copy of the solicitation to the Committee.

SOURCE: Final Rulemaking published at 35 DCR 1521 (February 26, 1988).

§§2113-2114: RESERVED

2115 PROCUREMENT OF PRINTING AND RELATED SUPPLIES

- 2115.1 Unless otherwise authorized by law, printing services and related supplies for District agencies shall be obtained from the Printing Division, Department of Administrative Services.
- 2115.2 The contracting officer shall obtain and include in the purchase order or the contract file prior written approval from the Chief of the Printing Division when obtaining

printing services and related supplies, whether directly or through contracts for other supplies or services, from sources other than the Printing Division.

- 2115.3 When commercial printing services are procured, the contracting officer shall comply with all applicable provisions of this title.

SOURCE: Final Rulemaking published at 35 DCR 1522 (February 26, 1988).

2116 LEASING OF MOTOR VEHICLES

- 2116.1 Each motor vehicle leased by and for the District shall comply with all Federal Motor Vehicle Safety Standards and applicable District motor vehicle safety regulations.

- 2116.2 Before preparing a solicitation for leasing of motor vehicles, the contracting officer shall obtain from the requesting agency written certification of the following:

- (a) That the vehicles requested are of maximum fuel efficiency and minimum body size, engine size, and equipment necessary to fulfill operational needs, and meet prescribed fuel economy standards; and
- (b) That the head of the requesting agency has certified that any requested passenger automobiles (sedans and station wagons) that are larger than compact size are essential to the agency's mission.

- 2116.3 The solicitation shall not be limited to current-year production models. However, with the prior approval of the head of the using agency, the solicitation may be limited to current models on the basis of overall economy.

- 2116.4 The contracting officer shall include the following items in each solicitation for leasing motor vehicles:

- (a) The scope of the contract;
- (b) The method of computing payments;
- (c) A listing of the number and type of vehicles required, and the equipment and accessories to be provided with each vehicle;
- (d) The responsibilities of the contractor or the District for furnishing gasoline, motor oils, antifreeze, and similar items;
- (e) A statement that the contractor shall perform all maintenance on the vehicles, unless the contracting officer determines that it will be more economical for the District to perform the work;
- (f) A statement regarding the applicability of pertinent District laws and regulations, and the responsibility of each party for compliance; and
- (g) The responsibilities of the contractor and the District for emergency repairs and services.

- 2116.5 In each solicitation and contract for leasing of motor vehicles, the contracting officer shall insert clauses, approved by the Director, pertaining to vehicle lease payments,

condition of leased vehicles, marking of leased vehicles, and other pertinent clauses approved by the Director.

SOURCE: Final Rulemaking published at 35 DCR 1522 (February 26, 1988).

2199 DEFINITIONS

2199.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Committee - the Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped.

Commercial sources - sources available in the open market or sheltered market under the Minority Contracting Act of 1976, D.C. Law 1-95, D.C. Code §1-1141 *et seq.* (1981), including educational and non-profit institutions.

Director - the Director of the Department of Administrative Services.

Excess personal property - any personal property under the control of a District agency that the agency head or a designee determines is not required for its needs and for the discharge of its responsibilities.

Leasing - the acquisition, hiring, or renting of motor vehicles other than by purchase from private or commercial sources.

Maximum order limitation - the dollar amount or unit quantity above which a contracting officer may not submit orders and a contractor may not accept orders. The limitation is generally specified in the schedule contract.

Minimum order - the dollar amount or unit quantity below which a contracting officer may not submit orders and a contractor is not obligated to accept orders. It is generally specified in each schedule contract. Orders below established minimums are generally subject to the contractor's acceptance.

Motor vehicle - an item of equipment, mounted on wheels and designed for highway or land use that derives power from a self-contained power unit or is designed to be towed by and used in conjunction with self-propelled equipment.

Multiple award schedule - a contract made with more than one (1) supplier for comparable supplies and services at varying prices for delivery within the same geographic area.

Printing - the product of duplication, binding, blank-book, and microform work (including any items requiring the process of composition, platemaking, presswork, or binding) for use by a District agency.

Procurement list - a list of supplies and services that the Committee has determined are suitable by the District.

Related supplies - supplies that are used and equipment that is usable in printing and binding operations.

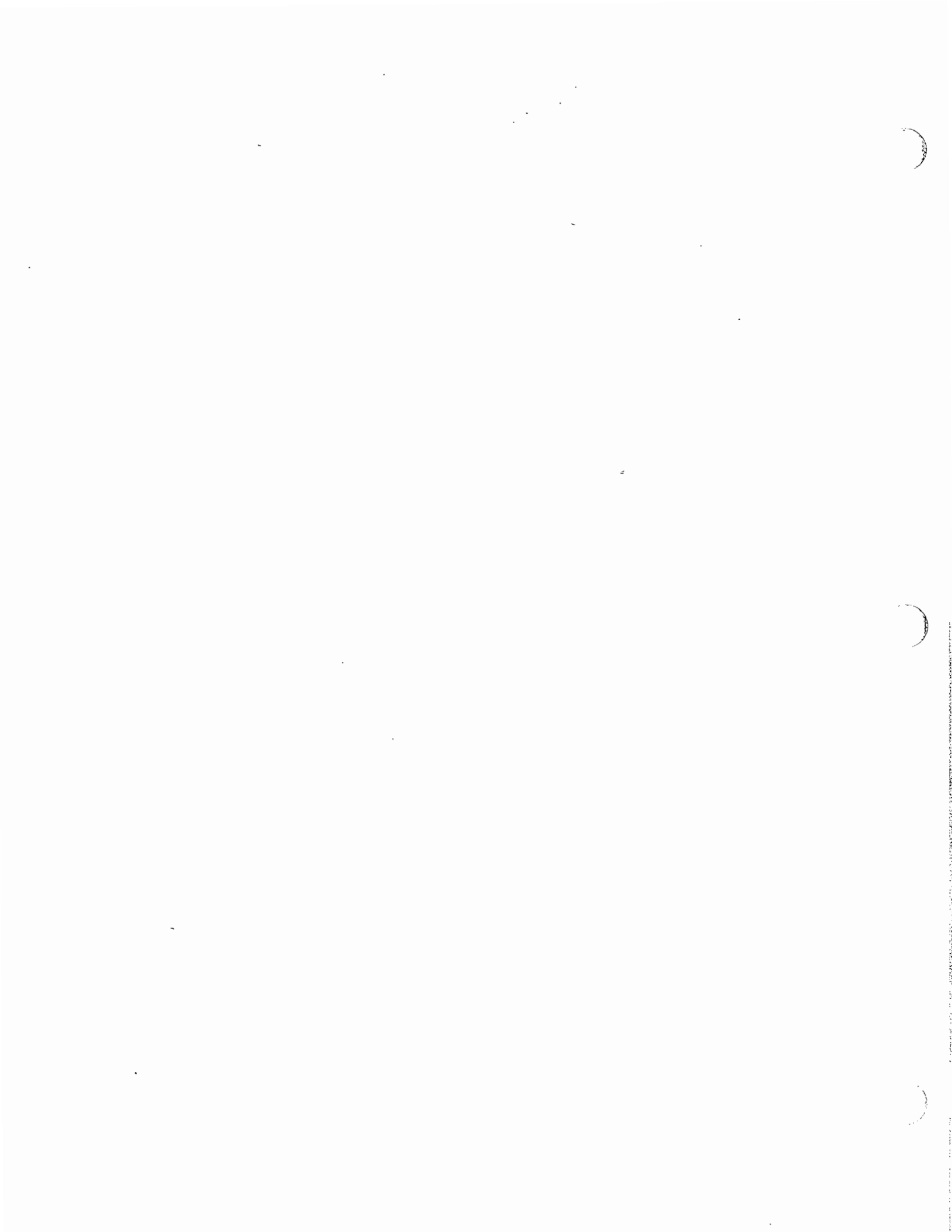
Single award schedule - a contract made with one (1) supplier at a stated price for specific items and for delivery to a geographic area defined in the schedule.

Term contract - a requirements contract or an indefinite quantity contract as defined in chapter 24 of this title.

Utility service - electricity, gas, telecommunications, water, sewerage, and steam that are available to the general public, and the provision of those services by governmental entities or private companies.

Workshop - a qualified non-profit agency for the blind or other severely handicapped approved by the Committee to produce a supply or provide a service.

SOURCE: Final Rulemaking published at 35 DCR 1523 (February 26, 1988).



CHAPTER 22 CONTRACTORS

Secs.	
2200	Responsible Prospective Contractors
2201	Special Standards of Responsibility
2202	Application of General Standards
2203	Subcontractor Responsibility
2204	Obtaining Information for Determination of Responsibility
2205	Determinations and Documentation
2206	Preaward Surveys
2207-2209	[Reserved]
2210	Debarment, Suspension, and Ineligibility
2211	List of Debarred, Suspended, and Ineligible Contractors
2212	Consequences of Debarment, Suspension, or Ineligibility
2213	Debarment
2214	Debarment Proceedings
2215	Suspension
2216	Suspension Proceedings
2217	Scope of Debarment or Suspension
2218-2219	[Reserved]
2220	Organizational Conflicts of Interest
2221	Conflicting Contractor Involvement
2222	Procedures for Avoiding Conflicts
2223-2224	[Reserved]
2225	Contractor Team Arrangements
2299	Definitions

2200 RESPONSIBLE PROSPECTIVE CONTRACTORS

- 2200.1 The contracting officer shall make purchases from and award contracts only to responsible contractors.
- 2200.2 The contracting officer shall not make a purchase or award unless the contracting officer has determined in writing that the prospective contractor is responsible, in accordance with the provisions of this chapter.
- 2200.3 In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility.
- 2200.4 To be determined responsible, a prospective contractor shall meet all of the following requirements:

- (a) Financial resources adequate to perform the contract, or the ability to obtain them;
- (b) Ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- (c) A satisfactory performance record;
- (d) A satisfactory record of integrity and business ethics;
- (e) The necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- (f) Compliance with the applicable District licensing and tax laws and regulations;
- (g) The necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
- (h) Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

2200.5 If the contracting officer determines that the price bid or offered by a prospective contractor is so low as to appear unreasonable or unrealistic, the contracting officer may determine the prospective contractor to be nonresponsible.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1525 (February 26, 1988).

2201 SPECIAL STANDARDS OF RESPONSIBILITY

2201.1 When necessary for a particular procurement or class of procurements, the contracting officer shall develop, with the assistance of appropriate specialists, special standards of responsibility.

2201.2 Special standards shall be developed when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance.

2201.3 The contracting officer shall set forth the special standards in the solicitation.

2201.4 The special standards set forth in the solicitation shall apply to all bidders or offerors.

2201.5 The contracting officer shall award food contracts only to those prospective contractors that meet the general standards set forth in §2200 and are approved in accordance with the applicable sanitation standards and procedures set forth in Title 23 of the D.C. Municipal Regulations (DCMR) and any additional requirements set forth in the solicitation.

SOURCE: Final Rulemaking published at 35 DCR 1526 (February 26, 1988).

2202 APPLICATION OF GENERAL STANDARDS

- 2202.1 As prescribed in chapter 43 of this title, the contracting officer shall investigate and determine whether the contractor is eligible to receive an award under the Walsh-Healey Act, 41 U.S.C. §§35-45, and shall not rely on the contractor's representation, if either of the following apply:
- (a) A protest of eligibility has been lodged in accordance with federal law and regulations; or
 - (b) The contracting officer has reason to doubt the validity of the representation.
- 2202.2 Except to the extent that a prospective contractor has sufficient resources, the contracting officer shall require, and the prospective contractor shall promptly provide, acceptable evidence of the prospective contractor's ability to obtain resources.
- 2202.3 Acceptable evidence of the prospective contractor's ability to obtain resources, as specified in §2200.4, shall consist of a commitment or explicit arrangement that will be in existence prior to the time of contract award to rent, purchase, or otherwise acquire the needed facilities, equipment, personnel, or other resources.
- 2202.4 A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible. The contracting officer may determine the contractor to be responsible if the circumstances of the prior deficiency were properly beyond the contractor's control or if the contractor has taken appropriate corrective action.
- 2202.5 An affiliated business shall be considered a separate entity in determining whether the business that is to perform the contract meets the applicable standards of responsibility. However, the contracting officer shall consider an affiliate's past performance and integrity when they may adversely affect the prospective contractor's responsibility.
- 2202.6 If a bid or offer of a certified minority business that would otherwise be accepted is to be rejected because of a determination of nonresponsibility, the contracting officer shall refer the matter to the Minority Business Opportunity Commission (the "MBOC"). Within ten (10) working days, the MBOC shall provide any evidence it deems appropriate relevant to the responsibility of the certified minority business. The contracting officer shall consider any evidence provided by the MBOC in deciding whether to issue a determination of nonresponsibility pursuant to §2205.2.

SOURCE: Final Rulemaking published at 35 DCR 1526 (February 26, 1988).

2203 SUBCONTRACTOR RESPONSIBILITY

- 2203.1 Except as provided in §2212.6, a prospective prime contractor shall be accountable for determining the responsibility of prospective subcontractors. The prime contractor shall use the requirements and standards for responsibility set forth in this chapter.
- 2203.2 Because the determination of a prospective subcontractor's responsibility may affect the District's determination of the prospective prime contractor's responsibility, a

prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

- 2203.3 When it is in the best interests of the District, the contracting officer may independently determine a prospective subcontractor's responsibility, using the standards and requirements for responsibility set forth in this chapter.

SOURCE: Final Rulemaking published at 35 DCR 1526 (February 26, 1988).

2204 OBTAINING INFORMATION FOR DETERMINATION OF RESPONSIBILITY

- 2204.1 Before making a determination of responsibility, the contracting officer shall possess or obtain information sufficient to satisfy the contracting officer that a prospective contractor currently meets the applicable standards and requirements for responsibility set forth in this chapter.

- 2204.2 The contracting officer shall obtain information regarding the responsibility of a prospective contractor who is the apparent low bidder or whose offer is in the competitive range. This information shall be obtained promptly after bid opening or receipt of offers.

- 2204.3 The prospective contractor shall promptly supply information requested by the contracting officer regarding the responsibility of the prospective contractor.

- 2204.4 If the prospective contractor fails to supply the information requested under §2204.3, the contracting officer shall make the determination of responsibility or nonresponsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the contracting officer shall determine the prospective contractor to be nonresponsible.

- 2204.5 The contracting officer shall use the following sources of information, as appropriate, to support determinations of responsibility or nonresponsibility:

- (a) A consolidated list (maintained pursuant to §2211.1) of debarred, suspended, and ineligible contractors maintained by the Director;
- (b) Records and experience data, including verifiable knowledge of District personnel;
- (c) Information supplied by the prospective contractor, including bid or proposal information, questionnaire replies, financial data, information on production equipment, and personnel information;
- (d) Preaward survey reports; and
- (e) Other sources, such as publications, suppliers, subcontractors, and customers of the prospective contractor, financial institutions, government agencies, and business and trade associations.

- 2204.6 Any prospective contractor who submits a bid or proposal for any contract exceeding one hundred thousand dollars (\$100,000) shall submit an affidavit indicating whether

the prospective contractor has complied with the filing requirements of District of Columbia tax laws, and whether the prospective contractor has paid taxes due to the District of Columbia or is in compliance with any payment agreement with the Department of Finance and Revenue. The affidavit shall be in a form approved by the Director of the Department of Finance and Revenue and shall acknowledge the penalty provided by law for making false statements.

2204.7 Before making an affirmative determination of responsibility for any contract exceeding one hundred thousand dollars (\$100,000), the contracting officer shall obtain certification from the Department of Finance and Revenue that the prospective contractor has complied with the filing requirements of District of Columbia tax laws, and that the prospective contractor has paid taxes due to the District of Columbia or is in compliance with any payment agreement with the Department of Finance and Revenue.

2204.8 Contracting officers and contract administrators who become aware of circumstances casting doubt on a contractor's ability to perform a contract successfully shall promptly inform the contracting officer and furnish the relevant information in writing.

SOURCE: Final Rulemaking published at 35 DCR 1528 (February 26, 1988).

2205 DETERMINATIONS AND DOCUMENTATION

2205.1 The contracting officer's execution of a contract shall constitute a determination that the prospective contractor is responsible with respect to that contract.

2205.2 When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, the contracting officer shall make, sign, and place in the contract file a determination of nonresponsibility, which shall state the basis for the determination.

2205.3 If the contracting officer determines and documents that a responsive certified minority business lacks certain elements of responsibility, the contracting officer shall comply with the provisions of §2202.6.

2205.4 Documents and reports supporting a determination of responsibility or nonresponsibility, including any preaward survey reports and any applicable information from the Minority Business Opportunity Commission, shall be included in the contract file.

2205.5 Except as provided in chapter 42 of this title (regarding the Freedom of Information Act) and §2205.6, information, including the preaward survey report, accumulated for purposes of determining the responsibility of a prospective contractor shall not be released or disclosed outside the District government.

2205.6 The contracting officer may discuss preaward survey information with the prospective contractor before determining responsibility. At any time after award, the contracting officer may discuss the findings of the preaward survey with the company surveyed.

SOURCE: Final Rulemaking published at 35 DCR 1529 (February 26, 1988).

2206 PREAWARD SURVEYS

- 2206.1 The contracting officer may require a preaward survey to assist in determining a prospective contractor's capability to perform a proposed contract.
- 2206.2 If the contemplated contract will be ten thousand dollars (\$10,000) or less, or will have a fixed price of less than one hundred thousand dollars (\$100,000) and will involve only commercial products, the contracting officer shall not request a preaward survey unless circumstances justify the cost of the survey.
- 2206.3 Before beginning a preaward survey, the contracting officer shall ascertain whether the prospective contractor is debarred, suspended, or ineligible. If the prospective contractor is debarred, suspended, or ineligible, the contracting officer shall not proceed with the preaward survey.
- 2206.4 When the prospective contractor surveyed is a certified minority business, the contracting officer shall request information and advice concerning the contractor's capability and past performance from the MBOC before making a determination regarding the contractor's responsibility or nonresponsibility.
- 2206.5 When a preaward survey discloses unsatisfactory performance, the contracting officer shall determine the extent to which the prospective contractor plans, or has taken, corrective action.
- 2206.6 The preaward survey report shall indicate any persistent pattern of need under prior contracts for costly and burdensome District assistance to the contractor (such as engineering, inspection, or testing) that were provided to protect the District's interests but not contractually required.
- 2206.7 The contracting officer shall prepare a narrative preaward survey report that documents the results of the preaward survey and provides support for both the evaluation ratings and the determination of responsibility or nonresponsibility.
- 2206.8 The preaward survey report shall, as necessary, include information concerning the contractor's technical capabilities, financial capability, quality assurance procedures, and the quality of the contractor's accounting system.
- 2206.9 The preaward survey report shall be prepared in the form prescribed by the Director.

SOURCE: Final Rulemaking published at 35 DCR 1530 (February 26, 1988).

§§2207-2209: RESERVED

2210 DEBARMENT, SUSPENSION, AND INELIGIBILITY

- 2210.1 The provisions of §§2210 through 2217 shall govern the debarment and suspension of contractors.
- 2210.2 Debarment and suspension shall be imposed only in the public interest for the District's protection and not for purposes of punishment, and shall be imposed only for the causes set forth in this chapter.
- 2210.3 The Director shall obtain lists of contractors declared ineligible under federal laws and regulations applicable to the District of Columbia, and shall notify District agencies of the ineligibility restrictions promulgated under federal authority in accordance with the provisions of §2211.
- 2210.4 Any District official making a declaration of the ineligibility of any individual or firm to contract or subcontract with the District under authority of any District statute or regulation (other than the Act or the D.C. Procurement Regulations) shall inform the Director in writing of the declaration. The notice to the Director shall cite the statutory basis for the declaration and the grounds for the declaration. The Director shall include notice of the ineligibility restrictions on the lists issued under §2211.

SOURCE: Final Rulemaking published at 35 DCR 1531 (February 26, 1988).

2211 LIST OF DEBARRED, SUSPENDED, AND INELIGIBLE CONTRACTORS

- 2211.1 The Director shall compile and maintain a current, consolidated list of all contractors that have been debarred, suspended, or declared ineligible.
- 2211.2 The Director shall revise and distribute the consolidated list quarterly to all agencies and shall provide with the list the name and telephone number of the official responsible for its maintenance and distribution.
- 2211.3 The consolidated list shall include the following:
- (a) The names and addresses of all debarred, suspended, or ineligible contractors, in alphabetical order, with cross references when more than one (1) name is involved in a single action;
 - (b) The cause for each action, and pertinent statutory or regulatory authority;
 - (c) The scope of the action;
 - (d) In the case of ineligible contractors, the name of the federal agency or other authority responsible for the action, and the name and telephone number of the point of contact for the action; and
 - (e) The termination date for each listing.

SOURCE: Final Rulemaking published at 35 DCR 1531 (February 26, 1988).

2212 CONSEQUENCES OF DEBARMENT, SUSPENSION, OR INELIGIBILITY

- 2212.1 Unless the Director determines in writing that there is a compelling reason to do otherwise, agencies shall not solicit offers from, award contracts to, or consent to subcontract with a debarred or suspended contractor.
- 2212.2 A contractor listed as ineligible shall be excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the period set forth in the applicable statute or regulation.
- 2212.3 The contracting officer may continue contracts or subcontracts in existence at the time a contractor is debarred, suspended, or declared ineligible, unless the Director determines in writing that the existing contracts or subcontracts should be terminated to protect the best interests of the District for any of the reasons set forth in §318 of the Act.
- 2212.4 If the Director decides to terminate a contract based on a contractor's suspension or debarment, the type of termination action to be taken shall be made only after review by the Corporation Counsel.
- 2212.5 The contracting officer shall not exercise an option to renew or otherwise extend a current contract with a debarred or suspended contractor, or a contract which is being performed in any part by a debarred or suspended subcontractor, unless the Director approves the action in writing, based on compelling reasons for exercise of the option or extension.
- 2212.6 In any subcontract subject to District consent, the contracting officer shall not consent to the award of a subcontract to any debarred or suspended contractor unless the Director approves the award, in writing, based on compelling reasons for the award.

SOURCE: Final Rulemaking published at 35 DCR 1532 (February 26, 1988).

2213 DEBARMENT

- 2213.1 The Director may debar a contractor for any of the following causes:
- (a) Conviction of, or civil judgment for, commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
 - (b) Conviction of, or civil judgment for, violation of any federal, state, or District antitrust statute relating to the submission of offers;
 - (c) Conviction of, or civil judgment for, commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (d) Conviction of, or civil judgment for, commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the contractor or subcontractor;

- (e) Violation of the terms of a District contract or subcontract so serious as to justify debarment, such as willful failure to perform in accordance with the terms of one (1) or more District contracts, a history of failure to perform, or unsatisfactory performance on one (1) or more District contracts;
 - (f) A false assertion of minority status as defined in the Minority Contracting Act of 1976, effective March 29, 1977 (D.C. Law 1-95, D.C. Code §1-1141 *et seq.*); or
 - (g) Any other cause of a serious or compelling nature that affects the present responsibility of the contractor or subcontractor.
- 2212.2 Debarment shall constitute debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities.
- 2212.3 The Director may extend the debarment decision to include any affiliates of the contractor by specifically naming the affiliate and giving the affiliate written notice of the proposed debarment and an opportunity to respond in accordance with the provisions of this chapter.
- 2212.4 Debarment shall be for a period commensurate with the seriousness of the cause(s), but shall not exceed three (3) years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.
- 2212.5 The Director may reduce the period or extent of debarment, upon the contractor's request supported by documentation, for the following reasons:
- (a) Newly discovered material evidence;
 - (b) Reversal of the conviction or judgment upon which debarment was based;
 - (c) *Bona fide* change in ownership or management;
 - (d) Elimination of other causes for which the debarment was imposed; or
 - (e) Other reasons that the Director deems appropriate.
- 2213.6 The Director may extend the debarment period for an additional period if the Director determines that the extension is necessary to protect the interests of the District. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment was based. The extension of debarment shall be subject to the procedures set forth in §2214.

SOURCE: Final Rulemaking published at 35 DCR 1533 (February 26, 1988).

2214 DEBARMENT PROCEEDINGS

- 2214.1 The Director shall initiate debarment proceedings by notifying the contractor and any specifically named affiliates by certified mail, return receipt requested, of the following:

- (a) The reasons for the proposed debarment in sufficient detail to put the contractor on notice of the conduct or transaction(s) upon which the proposed debarment is based;
- (b) The cause(s), set forth in §2213.1 or the Act, relied upon for the proposed debarment;
- (c) That, within thirty (30) working days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine issue of material fact;
- (d) The District's procedures governing debarment decision-making;
- (e) The potential effect of the proposed debarment; and
- (f) That, if no suspension is in effect, the District will not solicit offers from, award contracts to, renew, or otherwise extend contracts with, or consent to subcontracts with the contractor pending a debarment decision.

2214.2 In debarment actions not based upon a conviction or civil judgment, if the Director finds that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, the Director shall do the following:

- (a) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any District evidence or testimony; and
- (b) Make an electronic record of the proceedings, and make a copy or transcription of the record available at cost to the contractor upon request.

2214.3 In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment shall be established by a preponderance of the evidence.

2214.4 In actions based upon a conviction or civil judgment, or in which there is no genuine issue of material fact, the Director shall make a decision on the basis of all the information in the administrative record, including any submission made by the contractor.

2214.5 If no suspension is in effect, the decision under §2214.4 shall be made within thirty (30) working days after receipt of any information and argument submitted by the contractor, unless the Director extends this period for good cause.

2214.6 In actions in which additional proceedings are necessary to decide issues of material fact, the Director shall prepare written findings of fact. The Director shall base the debarment decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

2214.7 If the Director decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice of the debarment action by certified mail, return receipt requested. The notice shall include the following:

- (a) A reference to the notice of proposed debarment;
- (b) The specific reasons for debarment;
- (c) The period of debarment, including effective dates;
- (d) A statement advising that the debarment is effective throughout the executive branch of the District government unless the Director determines in writing, based on compelling reasons and certification by the head of a contracting agency, that continued business dealings between that agency and the contractor are justified; and
- (e) Notice to the debarred contractor of its rights to judicial or administrative review as provided in the Act.

2214.8 If debarment is not imposed, the Director shall promptly notify the contractor and any affiliates involved of the decision by certified mail, return receipt requested.

SOURCE: Final Rulemaking published at 35 DCR 1535 (February 26, 1988).

2215 SUSPENSION

2215.1 The Director may suspend a contractor upon determining that there is adequate evidence of any of the following:

- (a) Probable cause for debarment pursuant to §2213.1;
- (b) The commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
- (c) The violation of any federal, state, or District antitrust statute relating to the submission of offers;
- (d) The commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (e) The commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the contractor or subcontractor; or
- (f) Any other cause of so serious or compelling a nature that it affects the present responsibility of a contractor or subcontractor.

2215.2 Indictment for any of the causes set forth in §2215.1 shall constitute adequate evidence for suspension.

2215.3 Suspension shall constitute suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities.

2215.4 In assessing the adequacy of the evidence, the Director shall consider the amount of information available, the credibility of the information given the circumstances,

whether important allegations are corroborated, and the inferences that can reasonably be drawn. This assessment shall include an examination of basic documents, such as contracts, inspection reports, and correspondence.

2215.5 The Director may extend the suspension decision to include any affiliates of the contractor if they are specifically named and given written notice of the suspension and an opportunity to respond.

2215.6 The suspension of a contractor shall be effective throughout all agencies subject to the provisions of the DCPR unless the Director determines in writing, based on compelling reasons and certification by the head of a contracting agency, that continued business dealings between that agency and the contractor are justified.

SOURCE: Final Rulemaking published at 35 DCR 1536 (February 26, 1988).

2216 SUSPENSION PROCEEDINGS

2216.1 In actions not based on an indictment, if the Director finds that the contractor's submission in opposition to the suspension raises a genuine issue of fact material to the suspension, and if no determination has been made, on the basis of the advice of the Corporation Counsel, that substantial interests of the District in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the Director shall do the following:

- (a) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any of the District's evidence or testimony; and
- (b) Make an electronic record of the proceedings, and make a copy or transcription of the record available at cost to the contractor upon request.

2216.2 When a contractor or any specifically named affiliate is suspended, the suspended parties shall be immediately advised by certified mail, return receipt requested, of the following:

- (a) The basis for the suspension including whether the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities of a serious nature in business dealings with the District or seriously reflecting on the propriety of further District dealings with the contractor; Provided that, any irregularities shall be described in sufficient detail to place the contractor on notice without disclosing the District's evidence;
- (b) That the suspension is for a temporary period pending the completion of an investigation and other legal proceedings that may follow;
- (c) The causes, based on §2215.1 or the Act, relied upon for imposing the suspension;
- (d) The effect of the suspension;
- (e) That, within thirty (30) working days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information

and argument in opposition to the suspension, including any additional specific information that raises a genuine issue of material fact;

- (f) That additional proceedings to decide issues of material fact will be conducted unless the action is based on an indictment or a determination is made, on the basis of advice of the Corporation Counsel, that the substantial interests of the District in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced; and
- (g) That the suspended contractor has the right to judicial or administrative review as provided in the Act.

- 2216.3 In an action based on an indictment in which the contractor's submission does not raise any genuine issue of material fact, or in which additional proceedings to determine disputed material facts have been denied on the basis of the advice of the Corporation Counsel, the Director's decision shall be based on all the information in the administrative record, including any submission made by the contractor.
- 2216.4 In actions in which additional proceedings are necessary to decide issues of material fact, the Director shall prepare written findings of fact. The Director shall base the suspension decision on the facts as found, information and argument submitted by the contractor, and any other information in the administrative record.
- 2216.5 The Director's decision shall modify or terminate the suspension, or leave the suspension in force. Written notice of the Director's decision shall be sent promptly to the contractor and any affiliates involved by certified mail, return receipt requested.
- 2216.6 Suspension shall be for a temporary period pending the completion of investigation and any legal proceedings, unless the suspension is terminated sooner by the Director.
- 2216.7 If legal proceedings are not initiated within twelve (12) months after the date of the suspension notice, the suspension shall automatically terminate, unless the Corporation Counsel requests an extension, in which case the suspension may be extended for an additional six (6) months. In no event shall a suspension extend beyond eighteen (18) months, unless legal proceedings have been initiated within that period.
- 2216.8 The Director shall notify the Corporation Counsel of the automatic termination date of a suspension at least thirty (30) working days before the twelve (12) month period expires, in order to give the Corporation Counsel an opportunity to request an extension.

SOURCE: Final Rulemaking published at 35 DCR 1538 (February 26, 1988).

2217 SCOPE OF DEBARMENT OR SUSPENSION

- 2217.1 The scope of any debarment or suspension shall be based upon the conduct of the persons or contractors involved, in accordance with the provisions of this section.
- 2217.2 The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may

be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of knowledge, approval, or acquiescence.

2217.3 The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

2217.4 The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of knowledge, approval, or acquiescence.

SOURCE: Final Rulemaking published at 35 DCR 1540 (February 26, 1988).

§§2218-2219: **RESERVED**

2220 **ORGANIZATIONAL CONFLICTS OF INTEREST**

2220.1 The provisions of this section shall apply to all procurements. Contracting officers shall seek to avoid organizational conflicts of interest, especially when procuring the following:

- (a) Management support services;
- (b) Consultant or other professional services;
- (c) Contractor performance of or assistance in technical evaluations; and
- (d) Systems engineering and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production.

2220.2 The contracting officer shall analyze each planned procurement in order to identify and evaluate potential organizational conflicts of interest as early in the procurement process as possible and avoid, neutralize, or mitigate significant potential conflicts before contract award.

2220.3 The contracting officer shall seek to prevent the existence of conflicting roles that might bias a contractor's judgment and shall seek to prevent unfair competitive advantage.

2220.4 The contracting officer shall obtain the advice of the Corporation Counsel and the assistance of appropriate technical specialists in evaluating potential conflicts and in developing any necessary solicitation and contract clauses approved by the Director.

SOURCE: Final Rulemaking published at 35 DCR 1540 (February 26, 1988).

2221 CONFLICTING CONTRACTOR INVOLVEMENT

2221.1 A contractor that provides systems engineering and technical direction for a system, but does not have overall contractual responsibility for its development, integration, assembly and checkout, or production, shall not be awarded any of the following:

- (a) A contract to supply the system or any of its major components;
- (b) A subcontract to supply the system or any of its major components; or
- (c) A consulting contract with a supplier of the system or any of its major components.

2221.2 If a contractor prepares and furnishes complete specifications covering nondevelopmental items to be used in a competitive procurement, that contractor shall not be allowed to furnish those items, either as a prime contractor or as a subcontractor, for a reasonable period of time to include at least the duration of the initial production contract. This subsection shall not apply to the following;

- (a) Contractors that furnish, at District request, specifications or data regarding a product they provide, even though the specifications or data may have been paid for separately or in the price of the product; and
- (b) Contractors acting as industry representatives that assist District agencies prepare, refine, or coordinate specifications, regardless of source when the assistance is supervised and controlled by District representatives.

2221.3 If a single contractor drafts complete specifications for nondevelopmental equipment, the contractor shall be eliminated for a reasonable time from competition for production based on those specifications.

2221.4 If a contractor prepares, or assists in preparing, a work statement to be used in competitively procuring a system or services, or provides material leading directly, predictably, and without delay to this type of work statement, that contractor shall not supply the system or services unless one (1) or more of the following apply:

- (a) The contractor is the sole source;
- (b) The contractor has participated in the developmental and design work; or
- (c) More than one (1) contractor has been involved in preparing the work statement.

2221.5 A contract involving technical evaluation of other contractors' offers, products, or consulting services shall not be awarded to a contractor that would evaluate or advise

the District concerning its own products or activities, or those of a competitor, without proper safeguards to ensure objectivity and protect the District's interests.

SOURCE: Final Rulemaking published at 35 DCR 1541 (February 26, 1988).

2222 PROCEDURES FOR AVOIDING CONFLICTS

2222.1 When information concerning prospective contractors is necessary to identify and evaluate potential organizational conflicts of interest or to develop recommended actions, the contracting officer shall seek the information from within the District or from other readily available sources.

2222.2 Before issuing a solicitation for a contract that may involve a significant potential conflict, the contracting officer shall recommend to the head of the contracting agency a course of action for resolving the conflict.

2222.3 If the contracting officer initially decides that a particular procurement involves a significant potential organizational conflict of interest, before issuing the solicitation the contracting officer shall submit the following to the head of the contracting agency for approval:

- (a) A written analysis, including a recommended course of action for avoiding, neutralizing, or mitigating the conflict;
- (b) A draft solicitation provision; and
- (c) When appropriate, a proposed contract clause.

2222.4 The head of the contracting agency shall do the following:

- (a) Review the contracting officer's analysis and recommended course of action, including the draft provision and any proposed clause;
- (b) Consider the benefits and detriments to the District and prospective contractors; and
- (c) Approve, modify, or reject the recommendation in writing.

2222.5 After receiving a response from the head of the contracting agency, the contracting officer shall do the following:

- (a) Include an approved provision and any approved clause in the solicitation;
- (b) Consider additional information provided by prospective contractors in response to the solicitation or during negotiations; and
- (c) Before awarding the contract, resolve the potential conflict in a manner consistent with the approval or other direction by the head of the contracting agency.

2222.6 Any solicitation that may involve a significant potential organizational conflict of interest shall contain a provision which describes the following:

- (a) The nature of the potential conflict as seen by the contracting officer;
- (b) The nature of the proposed restraint upon future contractor activities; and
- (c) Depending on the nature of the procurement, whether the terms of any proposed conflicts clause and the application of the provisions of §§2220 through 2222 to the contract are subject to negotiation.

2222.7 If, as a condition of award, a contractor's eligibility for future prime contract or subcontract awards would be restricted or a contractor would have to agree to some other restraint, the solicitation shall contain a conflicts clause, approved by the Director, that specifies both the nature and duration of the proposed restraint. The contracting officer shall include the conflicts clause in the contract.

2222.8 Any restraint imposed by a conflicts clause shall be limited to a fixed term of reasonable duration which is sufficient to avoid the circumstance of unfair competitive advantage or potential bias. In each case, the restriction shall specify termination by a specific date or upon the occurrence of an identifiable event.

2222.9 The head of the contracting agency may waive any requirement of §§2220 through 2222, except a requirement subject to approval by the Director, if the head of the contracting agency determines in writing that the application of the rule of procedure in a particular situation would not be in the best interests of the District. Each request for a waiver shall be in writing, and shall describe the nature of the conflict and the justification for the waiver.

SOURCE: Final Rulemaking published at 35 DCR 1542 (February 26, 1988).

§§2223-2224: RESERVED

2225 CONTRACTOR TEAM ARRANGEMENTS

2225.1 The District may recognize the integrity and validity of contractor team arrangements when those arrangements are identified and company relationships are fully disclosed in an offer or, for an arrangement entered into after submission of an offer, before the arrangement becomes effective. The District shall not require or suggest the dissolution of contractor team arrangements unless those arrangements are in violation of any law or regulation, or are not in the best interests of the District.

2225.2 Nothing in this section shall authorize any contractor team arrangement in violation of antitrust statutes or limit the District's rights to do any of the following;

- (a) Require consent to subcontract;
- (b) Determine, on the basis of the stated contractor team arrangement, the responsibility of the prime contractor;

- (c) Provide to the prime contractor data rights owned or controlled by the District;
- (d) Pursue policies on competitive contracting, subcontracting, and component breakout after initial production, or at any other time; or
- (e) Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

SOURCE: Final Rulemaking published at 35 DCR 1544 (February 26, 1988).

2299 DEFINITIONS

2299.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Adequate evidence - information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate - An individual or firm that controls, is controlled by, or is under common control with another individual or firm.

Commercial product - a product, item, material, component, subsystem, or system that is sold or traded to the general public in the course of normal business operations at an established catalog price or market price.

Contract administrator - the individual responsible for overseeing the conduct of contract work.

Contractor team arrangement - an arrangement under which two (2) or more individuals or businesses form a partnership or joint venture to act as a potential prime contractor, or an arrangement under which a potential prime contractor agrees with one (1) or more other individuals or businesses to have them act as its subcontractors under a specified District contract or procurement program.

Conviction - a judgment of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a judgment entered upon a plea of *nolo contendere*.

Debarment - action taken by the Director to exclude a contractor from District contracting and District-approved subcontracting for a reasonable, specified period. A contractor so excluded is "debarred."

Director - the Director of the Department of Administrative Services.

Indictment - an accusation in writing found and presented by a grand jury to the court charging that a named person has committed a criminal offense, including any information or other filing by a competent prosecuting authority charging a criminal offense.

Ineligible - excluded from District contracting or subcontracting, under authority of federal statute or regulation applicable to the District (such as the Davis-Bacon Act, 40 U.S.C. §§276a-276a-7,

the Service Contract Act, 41 U.S.C. §§351-358, or the Equal Employment Opportunity Act of 1972, 5 U.S.C. §§5108, 5314 *et seq.*, and 42 U.S.C. §2000e), or excluded under authority of a District statute or regulation other than the Act or the D.C. Procurement Regulations.

Legal proceedings - any civil judicial proceeding to which the District is a party or any criminal proceeding, including appeals from these proceedings.

List of debarred, suspended, and ineligible contractors - a list compiled, maintained, and distributed by the Department of Administrative Services which contains the names of contractors debarred or suspended under the provisions of this chapter, as well as contractors declared ineligible under other statutory or regulatory authority.

Organizational conflict of interest - when the nature of the work to be performed under a proposed District contract might, without some restraint on future activities, result in an unfair competitive advantage to a contractor or impair a contractor's objectivity in performing contract work.

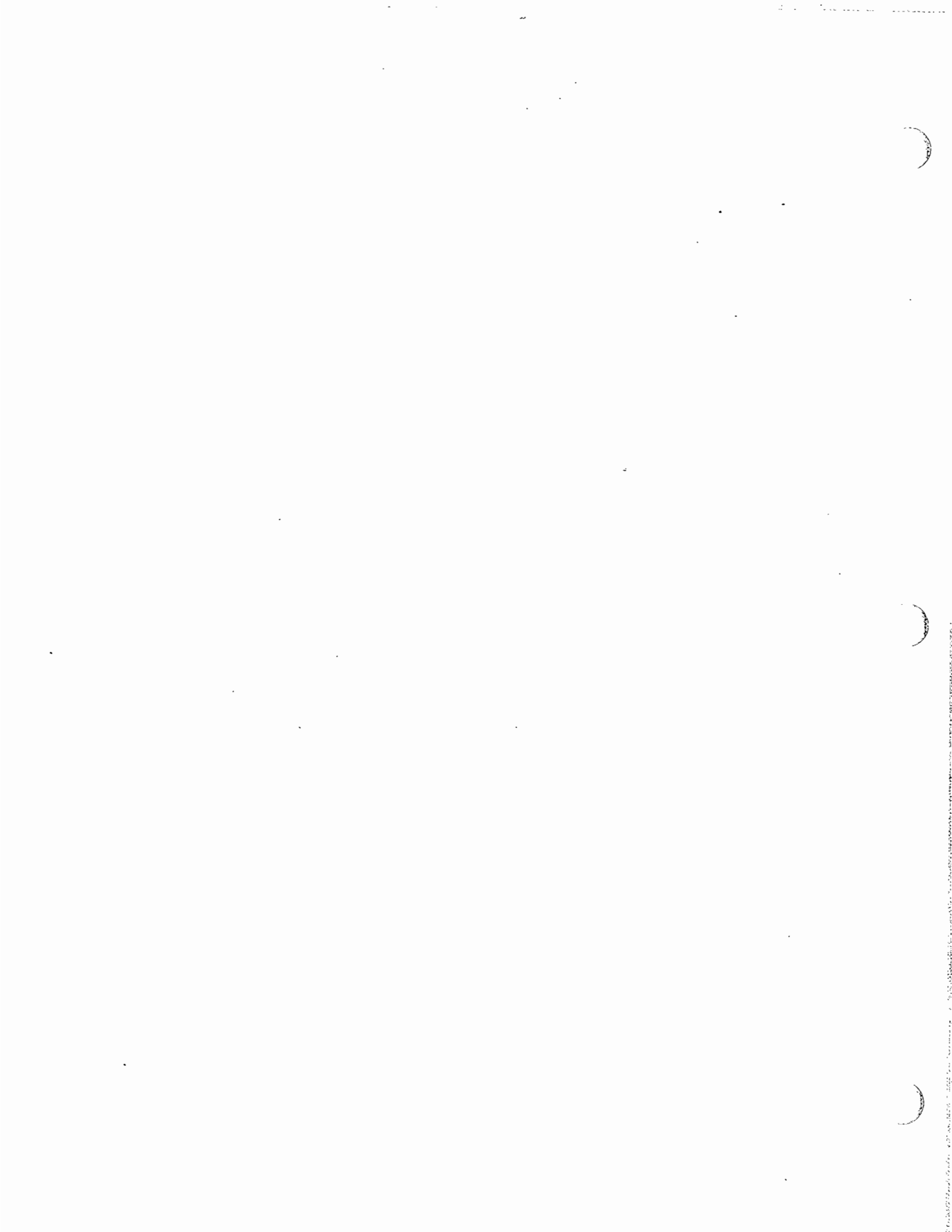
Preaward survey - a detailed review (sometimes on-site) of a contractor to ascertain information sufficient to make a determination regarding responsibility.

Suspension - action taken by the Director to disqualify a contractor temporarily from District contracting and District-approved subcontracting. A contractor so disqualified is "suspended."

Systems engineering - developmental, analytical, or other non-production activities, including determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test results, or supervising design.

Technical direction - a combination of activities including developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies.

SOURCE: Final Rulemaking published at 35 DCR 1545 (February 26, 1988).



CHAPTER 23 DELIVERY AND PERFORMANCE

Secs.	
2300	Delivery and Performance: General Provisions
2301	Delivery and Performance Schedules
2302	Implementation of Delivery and Performance Schedules
2303	Liquidated Damages
2304	Variation in Quantity: Supply Contracts
2305	Variation in Quantity: Construction Contracts
2306	[Reserved]
2307	Suspension of Work
2308	Stop Work Orders
2309	District Delay of Work
2399	Definitions

2300 DELIVERY AND PERFORMANCE: GENERAL PROVISIONS

- 2300.1 The time of delivery or performance is an essential contract element and shall be clearly stated in each solicitation.
- 2300.2 A contracting officer shall ensure that a delivery or performance schedule is realistic and meets the requirements of the procurement.
- 2300.3 Except when clearly unnecessary, a solicitation shall inform bidders or offerors of the basis on which their bids or proposals will be evaluated with respect to time of delivery or performance.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1547 (February 26, 1988).

2301 DELIVERY AND PERFORMANCE SCHEDULES

- 2301.1 When establishing a contract delivery or performance schedule for supplies or services, the contracting officer shall consider applicable factors, including the following:
- (a) Urgency of need;
 - (b) Production time;
 - (c) Market conditions;
 - (d) Transportation time;
 - (e) Industry practices;

- (f) Capabilities of certified minority businesses;
 - (g) Time for obtaining and evaluating bids or offers and awarding contracts;
 - (h) Time for contractors to comply with any condition precedent to contract performance; and
 - (i) Time for the District to perform its obligations under contract, such as furnishing government property to the contractor.
- 2301.2 When scheduling the time for completion of a construction contract, the contracting officer shall consider applicable factors, such as the following:
- (a) The nature and complexity of the project;
 - (b) The construction seasons involved;
 - (c) The required completion date;
 - (d) The availability of materials and equipment;
 - (e) The capacity of the contractor to perform; and
 - (f) The use of multiple completion dates.
- 2301.3 In any contract, different completion dates may be established for separable items of work.
- 2301.4 When multiple completion dates are used, the contracting officer shall evaluate requests for extension of time with respect to each item, and shall modify the affected completion dates when appropriate.
- 2301.5 The contracting officer may establish contract delivery or performance schedules on the basis of any of the following:
- (a) A specific calendar date or dates;
 - (b) A specific period or periods from the date of the contract;
 - (c) A specific period or periods from the date agreed upon by the parties and set forth in the contract for actual commencement of performance on the contract; or
 - (d) In contracts containing indefinite delivery provisions (such as term contracts or federal supply schedules), a specific time for delivery after receipt by the contractor of each individual order issued under the contract.
- 2301.6 When establishing dates for performance or delivery, the contracting officer shall take into account factors pertaining to the ability of the contractor to actually begin performance, such as time for receipt of notice by the contractor of the contract

award or acceptance by the District, or the time for receipt by the contractor of an executed contract.

- 2301.7 The time specified for contract performance shall not be curtailed to the prejudice of the contractor because of delay by the District in giving notice of award or acceptance.

SOURCE: Final Rulemaking published at 35 DCR 1547 (February 26, 1988).

2302 IMPLEMENTATION OF DELIVERY AND PERFORMANCE SCHEDULES

- 2302.1 The contracting officer shall mail or otherwise furnish to the contractor the executed contract, notice of award, or notice of acceptance of proposal not later than the date of the contract, or as soon thereafter as possible.
- 2302.2 If the delivery or performance schedule is based on the date of the contract, the contracting officer shall mail or otherwise furnish the executed contract or actual notice of contract execution not later than one (1) working day following the date of the contract.
- 2302.3 If procurement is by competitive sealed bids and a bid offers delivery or performance based on the date the contractor receives the contract or notice of award, the contracting officer shall evaluate the bid by adding five (5) days to account for time for delivery of the notice or executed contract.
- 2302.4 If the offered delivery or performance date computed with mailing time is later than the delivery or performance date required by the invitation for bids, the bid shall be considered nonresponsive and shall be rejected.

SOURCE: Final Rulemaking published at 35 DCR 1548 (February 26, 1988).

2303 LIQUIDATED DAMAGES

- 2303.1 In addition to the requirement for a liquidated damages clause in certain construction contracts under §507(a) of the Procurement Practices Act of 1985 (the "Act"), D.C. Code §1-1185.7, and Chapter 26 of this title, a liquidated damages clause approved by the Director may be used in a contract when the following factors apply:
- (a) The time of delivery or performance is such an important factor in the award of the contract that the District may reasonably expect to suffer damages if the delivery or performance is delinquent; or
 - (b) The extent or amount of damages would be difficult or impossible to ascertain or prove.
- 2303.2 When deciding whether to include a liquidated damages clause in a contract, the contracting officer shall consider the probable effect on pricing, competition, the costs and difficulties of contract administration, and similar matters.

- 2303.3 In order to avoid setting an unenforceable penalty, liquidated damages shall not be fixed without reference to probable actual damages. The contracting officer shall determine a reasonable rate of liquidated damages on a case by case basis.
- 2303.4 The contracting officer shall set the rate of liquidated damages based on the recommendations and justifications provided by the agency initiating the procurement request and the contracting officer's assessment of all applicable factors.
- 2303.5 The contracting officer shall document the justification of the rate of liquidated damages in the contract file.
- 2303.6 A contract may include an overall maximum dollar amount or period of time during which liquidated damages may be assessed, or both, to prevent an unreasonable assessment of liquidated damages.
- 2303.7 The contracting officer shall take all reasonable steps to mitigate liquidated damages.
- 2303.8 If a liquidated damages clause is included in a contract and a basis for termination for default exists, the contracting officer shall take appropriate action expeditiously to obtain performance by the contractor or to terminate the contract.
- 2303.9 If delivery or performance is desired after termination for default, efforts shall be made to obtain the delivery or performance from another source within a reasonable time.
- 2303.10 If a contract provides for liquidated damages for delay, the Director, on the recommendation of the contracting officer, shall be authorized to remit all or part of the damages if, in the discretion of the Director, remission would be just and equitable.

SOURCE: Final Rulemaking published at 35 DCR 1549 (February 26, 1988).

2304 VARIATION IN QUANTITY: SUPPLY CONTRACTS

- 2304.1 A fixed-price supply contract may authorize District acceptance of a variation in the quantity of items if the variation is caused by conditions of loading, shipping, packing, or by allowances in manufacturing processes.
- 2304.2 Except as provided in §2304.3, any permissible variation shall be stated as a percentage. The variation may be an increase, a decrease, or a combination of both.
- 2304.3 Contracts for subsistence items may use other applicable terms of variations in quantity.
- 2304.4 There shall be no standard or usual variation percentage.
- 2304.5 The overrun or underrun permitted in each contract shall be based upon the normal commercial practices of a particular industry for a particular item, and the

permitted percentage shall be no larger than is necessary to afford a contractor reasonable protection.

- 2304.6 The permissible variation shall not exceed plus or minus ten percent (10%), unless a different limitation is established by the contracting officer.
- 2304.7 In establishing the permissible variations, the contracting officer shall consider the quantity of items to which the percentage variation applies.
- 2304.8 Contractors shall be responsible for delivery of the specified quantity of items in a fixed-price contract, within allowable variations, if any.

SOURCE: Final Rulemaking published at 35 DCR 1550 (February 26, 1988).

2305 VARIATION IN QUANTITY: CONSTRUCTION CONTRACTS

- 2305.1 Construction contracts may authorize a variation in estimated quantities of unit-priced items.
- 2305.2 When the variation between the estimated quantity and the actual quantity of a unit-priced item is more than plus or minus fifteen percent (15%), an equitable adjustment in the contract price shall be made upon demand of either the contracting officer or the contractor. The contracting officer shall base the adjustment on the increase or decrease in the contractor's costs due to the variation in quantity.
- 2305.3 The contractor may request an extension of time if the quantity variation will increase the time necessary for completion of the contract. The contractor shall ensure that the contracting officer receives the request no later than ten (10) days after the beginning of the period of delay.
- 2305.4 Pursuant to a request in accordance with §2305.3, the contracting officer may extend the time limit based on a determination that an extension would be in the best interests of the District.

SOURCE: Final Rulemaking published at 35 DCR 1551 (February 26, 1988).

2306 [RESERVED]

2307 SUSPENSION OF WORK

- 2307.1 Suspension of work under a construction or architect-engineer contract may be ordered by the contracting officer for a reasonable period of time.
- 2307.2 If the contractor believes that the suspension is unreasonable, the contractor may submit a written claim for increases in the cost of performance due to the suspension, excluding profit, in accordance with the provisions of Chapter 38 of this title.

SOURCE: Final Rulemaking published at 35 DCR 1551 (February 26, 1988).

2308 STOP WORK ORDERS

- 2308.1 A contracting officer may issue a stop-work order, when appropriate, if work stoppage is required to protect the best interests of the District in circumstances such as advancement in the state-of-the-art production, engineering breakthroughs, or realignment of programs.
- 2308.2 A contracting officer may issue a stop-work order only if it is advisable to suspend work pending the contracting officer's decision regarding continuation of the work and a contract modification providing for the suspension is not feasible.
- 2308.3 A contracting officer shall not use a stop-work order in place of a termination notice after a decision to terminate has been made.
- 2308.4 Each stop-work order shall include the following:
- (a) A description of the work to be stopped;
 - (b) Instructions concerning the contractor's issuance of further orders for materials or services;
 - (c) Guidance to the contractor on action to be taken on any subcontracts; and
 - (d) Any applicable suggestions to the contractor for minimizing costs.
- 2308.5 Promptly after issuing the stop-work order, the contracting officer shall discuss the stop-work order with the contractor and may, if necessary, modify the order based on the discussion.
- 2308.6 As soon as feasible after a stop-work order is issued, but before its expiration, the contracting officer shall take appropriate action to do one (1) of the following:
- (a) Terminate the contract;
 - (b) Cancel the stop-work order; or
 - (c) If necessary, extend the period of the stop-work order.

SOURCE: Final Rulemaking published at 35 DCR 1552 (February 26, 1988).

2309 DISTRICT DELAY OF WORK

- 2309.1 If the District unreasonably delays the work on a contract, the contractor may submit a written claim for equitable adjustment of the contract price based on increases in the cost of performance due to the work delay, in accordance with the procedures set forth in Chapter 38 of this title.

2309.2 The contracting officer shall retain in the file a record of all negotiations leading to any equitable adjustment, along with related cost or pricing data.

SOURCE: Final Rulemaking published at 35 DCR 1553 (February 26, 1988).

2399 DEFINITIONS

2399.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

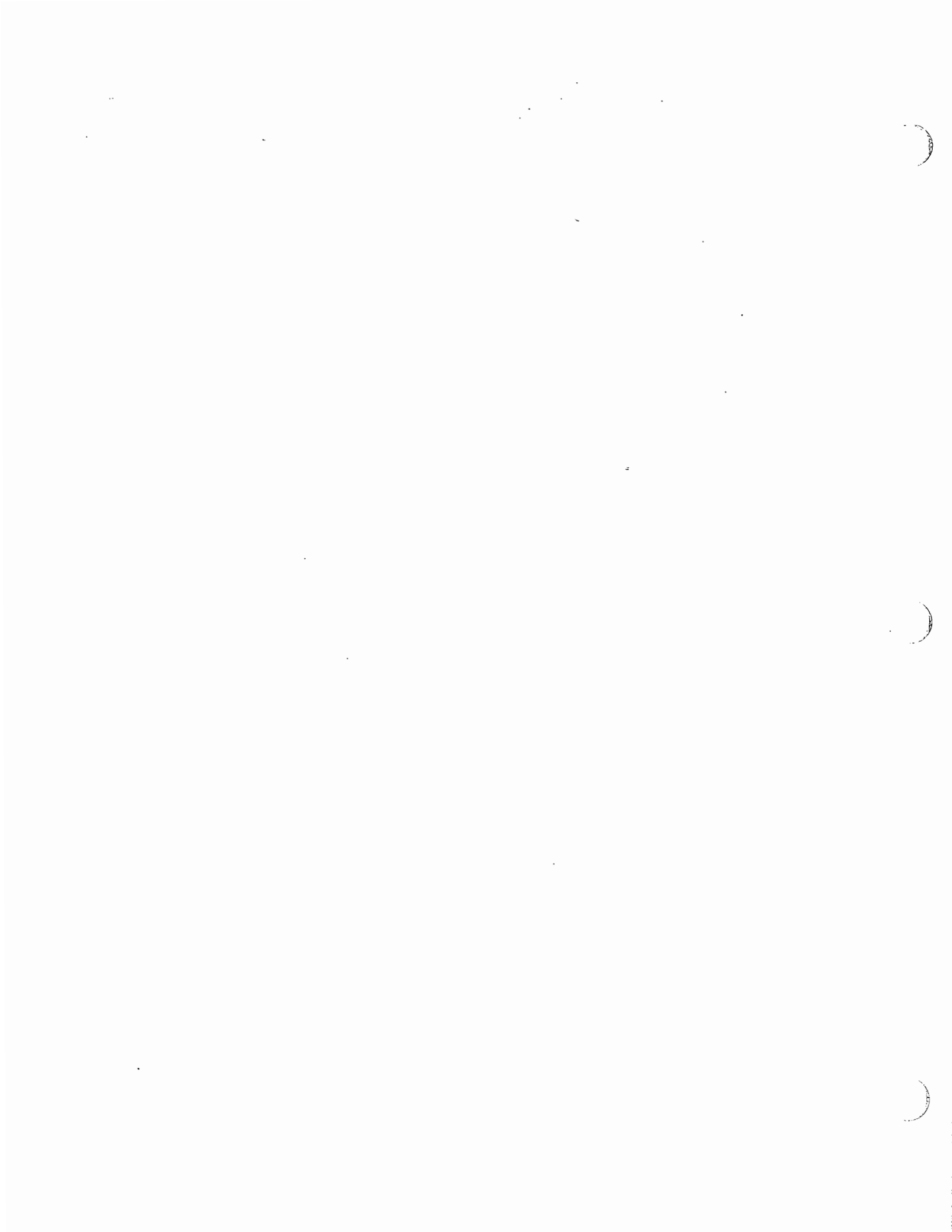
Date of contract - the date on which the contract is signed by the contracting officer.

Director - the Director of the Department of Administrative Services.

Stop-work order - a written document issued by the contracting officer advising a contractor to cease work.

Subsistence items - perishable food items.

SOURCE: Final Rulemaking published at 35 DCR 1553 (February 26, 1988).



CHAPTER 24 TYPES OF CONTRACTS

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2400 GENERAL PROVISIONS

- 2400.1 The contracting officer shall use the types of contracts described in this chapter for all types of procurement, except as otherwise provided for certain small purchases under chapter 18 of this title.
- 2400.2 In accordance with §309 of the D.C. Procurement Practices Act of 1985 (the "Act"), D.C. Code §1-1183.9, the cost-plus-a-percentage-of-cost type of contract shall not be used.
- 2400.3 The contracting officer shall select the type of contract that is most appropriate to the circumstances of each procurement, in accordance with the provisions of this chapter.
- 2400.4 In procurements by other than competitive sealed bids, the contracting officer may negotiate a contract type and price (or estimated cost and fee) that will result in

reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1554 (February 26, 1988).

2401 SELECTING CONTRACT TYPES

- 2401.1 When procurement is by competitive sealed bids, the contracting officer shall use either a firm-fixed-price contract or a fixed-price contract with economic price adjustment. The type of contract to be used shall be determined prior to solicitation, and the solicitation shall inform bidders of the type of contract that will be used.
- 2401.2 Except when procurement is by competitive sealed bids under §2401.1, the contracting officer may use any type of contract approved for use under this chapter, or combination of types, that will promote the best interests of the District.
- 2401.3 The contracting officer shall use a firm-fixed-price contract when the risk involved is minimal (or can be predicted with an acceptable degree of certainty) and when fair and reasonable prices can be established. However, if a reasonable basis for firm-fixed pricing does not exist, the contracting officer may consider other contract types, or combination of types, that will appropriately link profit to contractor performance, except as limited by §2401.1.
- 2401.4 Except as limited in §2401.1, when deciding which contract type (or combination of types) to use, the contracting officer shall give preference to contract types in the following order:
- (a) Fixed-price;
 - (b) Fixed-price incentive;
 - (c) Cost-plus-incentive-fee;
 - (d) Cost-plus-fixed-fee;
 - (e) Cost-reimbursement; and
 - (f) Other types.
- 2401.5 The contracting officer shall avoid continued use of a cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.
- 2401.6 The contracting officer shall include documentation in each contract file to show why the particular contract type was selected, except for the following procurements:
- (a) Small purchases other than cost-reimbursement contracts; and
 - (b) Repetitive purchases on a firm-fixed-price basis.

SOURCE: Final Rulemaking published at 35 DCR 1554 (February 26, 1988).

2402 FIXED-PRICE CONTRACTS

- 2402.1 Fixed-price contracts may provide for a firm price or, in appropriate cases, an adjustable price.
- 2402.2 Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price shall be subject to adjustment only by operation of contract clauses, approved by the Director, providing for equitable adjustment or other revision of the contract price under stated circumstances.
- 2402.3 A firm-fixed-price contract shall provide for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.
- 2402.4 A firm-fixed-price contract shall be used for acquiring commercial products or commercial-type products, or for acquiring other supplies or services, on the basis of reasonably definite functional or detailed specifications if the contracting officer can establish fair and reasonable prices at the outset, including the following circumstances:
- (a) When there is adequate price competition;
 - (b) When there are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis;
 - (c) When available cost or pricing information permits realistic estimates of the probable costs of performance; and
 - (d) When performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm-fixed-price contract.

SOURCE: Final Rulemaking published at 35 DCR 1555 (February 26, 1988).

2403 FIXED-PRICE CONTRACTS WITH ECONOMIC PRICE ADJUSTMENTS

- 2403.1 The contracting officer shall not use a fixed-price contract with economic price adjustment unless the contracting officer determines that it is necessary to protect the contractor and the District against significant fluctuations in labor or material costs, or to provide for contract price adjustment in the event of changes in the contractor's established prices.
- 2403.2 A fixed-price contract with economic price adjustment shall provide for upward and downward revision of the stated contract price upon the occurrence of certain contingencies that are specifically defined in the contract.
- 2403.3 An economic price adjustment may be one (1) of the following general types:
- (a) Adjustment based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items or the contract end items;

- (b) Adjustment based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance; or
 - (c) Adjustment based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.
- 2403.4 For use of economic price adjustments in procurements by competitive sealed bids, the contracting officer shall follow the procedures set forth in §1542 of chapter 15 of this title.
- 2403.5 The contracting officer may use a fixed-price contract with economic price adjustment when the following factors are applicable:
- (a) There is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance; and
 - (b) Contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract.
- 2403.6 Price adjustments based on established catalog prices shall be restricted to industry-wide contingencies. Industry-wide contingencies shall be those affecting a particular industry as a whole, and shall not depend upon circumstances within the contractor's control.
- 2403.7 Price adjustments based on labor and material costs shall be limited to contingencies beyond the contractor's control.
- 2403.8 When establishing the base level from which adjustment will be made, the contracting officer shall ensure that contingency allowances are not duplicated by inclusion in both the base price and the adjustment requested by the contractor under the economic price adjustment clause approved by the Director.
- 2403.9 In contracts that do not require submission of cost or pricing data, the contracting officer shall obtain adequate information to establish the base level from which adjustment will be made and may require verification of data submitted.

SOURCE: Final Rulemaking published at 35 DCR 1556 (February 26, 1988).

2404 FIXED-PRICE CONTRACTS WITH PROSPECTIVE PRICE REDETERMINATION

- 2404.1 The contracting officer may use a fixed-price contract with prospective price redetermination in procurements of quantity production or services for which it is possible to negotiate a fair and reasonable firm-fixed-price for an initial period, but not for subsequent periods of contract performance as provided in §2404.4.
- 2404.2 The contracting officer shall not use a fixed-price contract with prospective price redetermination unless all of the following apply:
- (a) The contracting officer has determined that the conditions for use of a firm-fixed-price contract are not present and a fixed-price incentive contract would not be more appropriate;

- (b) The contractor's accounting system is adequate for price redetermination;
- (c) The prospective pricing periods can be made to conform with the operation of the contractor's accounting system; and
- (d) There is reasonable assurance that price redetermination actions will take place promptly at the specified times.

2404.3 When the contracting officer uses a fixed-price contract with prospective price redetermination, the initial period shall be the longest period for which it is possible to negotiate a fair and reasonable firm-fixed-price. Each subsequent pricing period shall be at least twelve (12) months.

2404.4 A fixed-price contract with prospective price redetermination may provide for a ceiling price based on evaluation of the uncertainties involved in performance and their possible cost impact. The ceiling price shall provide for assumption of a reasonable proportion of the risk by the contractor and, once established, may be adjusted only by operation of provisions for an equitable adjustment or other revision of the contract price under stated circumstances.

2404.5 When a fixed-price contract with prospective price redetermination is used, the contracting officer shall include an appropriate clause approved by the Director.

SOURCE: Final Rulemaking published at 35 DCR 1557 (February 26, 1988).

2405 COST-REIMBURSEMENT CONTRACTS

2405.1 The contracting officer shall use a cost-reimbursement contract only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

2405.2 The contracting officer may use a cost-reimbursement contract only when the following circumstances apply:

- (a) The contractor's accounting system is adequate for determining costs applicable to the contract;
- (b) Appropriate District surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used; and
- (c) The contracting officer determines, in writing, that the use of a cost-reimbursement type contract is likely to be less costly than any other type, or it is impractical to obtain supplies or services of the kind or quality required without the use of this contract type.

2405.3 Each cost-reimbursement contract shall contain the following:

- (a) A clause, approved by the Director, indicating that only those costs determined by the contracting officer to be reasonable, in accordance with chapter 33 of this title, will be reimbursable; and

- (b) A clause, approved by the Director, establishing a stated price ceiling.
- 2405.4 The contracting officer may use a cost contract for facilities contracts.
- 2405.5 The contracting officer may use a cost-sharing contract when the contractor agrees to absorb a portion of the costs, in the expectation of substantial compensating benefits.
- 2405.6 The contracting officer may use a cost-plus-incentive-fee contract or cost-plus-award-fee contract in accordance with §2406.
- 2405.7 The contracting officer may use a cost-plus-fixed-fee contract when contracting for efforts that might otherwise present too great a risk to the contractor, such as when the contract is for a study and the level of effort is unknown. The contract shall include a clause, approved by the Director, setting a maximum allowable fee.
- 2405.8 A cost-plus-fixed-fee contract may be in either a completion form or term form. When using the completion form, the contracting officer shall describe the scope of work by stating a definite goal or target and specifying an end product. When using the term form, the contracting officer shall describe the scope of work in general terms and obligate the contractor to devote a specified level of effort for a stated time period.
- 2405.9 When using a cost-plus-fixed-fee contract, the completion form shall be preferred over the term form whenever the work, or specific milestones for the work, can be defined well enough to permit development of estimates within which the contractor can be expected to complete the work. The term form shall not be used unless the contractor is obligated by the contract to provide a specific level of effort within a definite time period.

SOURCE: Final Rulemaking published at 35 DCR 1558 (February 26, 1988).

2406 INCENTIVE CONTRACTS

- 2406.1 The contracting officer may use an incentive contract when a firm-fixed-price contract is not appropriate and the required supplies or services can be procured at lower costs and, in certain instances, with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance.
- 2406.2 The contracting officer may use an incentive contract when it is necessary to establish reasonable and attainable targets that are clearly understandable by the contractor, and to provide appropriate incentive arrangements designed to motivate contractor efforts and discourage contractor inefficiency and waste.
- 2406.3 When predetermined formula-type incentives on technical performance or delivery are included, increases in profit or fee shall be provided only for achievement that surpasses the targets, and decreases shall be provided for to the extent that targets are not met.
- 2406.4 The contracting officer shall apply incentive increases or decreases to performance targets rather than minimum performance requirements.

2406.5 Incentive contracts may be fixed-price incentive contracts or cost-reimbursement incentive contracts.

2406.6 Cost-reimbursement incentive contracts shall be subject to the provisions of §§2405.1, 2405.2, and 2405.3.

SOURCE: Final Rulemaking published at 35 DCR 1560 (February 26, 1988).

2407 TYPES OF INCENTIVES

2407.1 Incentive contracts shall include cost incentives which take the form of a profit or fee adjustment formula. No incentive contract shall provide for other incentives without also providing for a cost incentive.

2407.2 Except for cost-plus-award-fee contracts, incentive contracts shall include a target cost, a target profit or fee, and a profit or fee adjustment formula that (within the constraints of a price ceiling or minimum and maximum fee) provides for the following:

- (a) Actual cost that meets the target will result in the target profit or fee;
- (b) Actual cost that exceeds the target will result in downward adjustment of the target profit or fee; and
- (c) Actual cost that is below the target will result in upward adjustment of the target profit or fee.

2407.3 Technical performance incentives may be considered in connection with specific product characteristics or other specific elements of the contractor's performance.

2407.4 Technical performance incentives shall be designed to tailor profit or fee to results achieved by the contractor, compared with specified target goals. The contract shall be specific in establishing performance test criteria (such as testing conditions, instrumentation precision, and data interpretation) in order to determine the degree of attainment of performance targets.

2407.5 The contracting officer may consider delivery incentives when meeting a required delivery schedule is a significant District objective.

2407.6 The contracting officer shall specify in incentive arrangements the application of the reward-penalty structure in the event of District-caused delays or other delays beyond the control and without the fault or negligence of the contractor or a subcontractor.

SOURCE: Final Rulemaking published at 35 DCR 1560 (February 26, 1988).

2408 FIXED-PRICE INCENTIVE CONTRACTS

2408.1 A fixed-price incentive contract may be used when the following factors apply:

- (a) A firm-fixed-price contract is not suitable;

- (b) The nature of the supplies or services being procured and other circumstances of the procurement are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance;
- (c) If the contract also includes incentives on technical performance or delivery, the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work;
- (d) The contractor's accounting system is adequate for providing data for negotiating firm targets and a realistic profit adjustment formula, as well as later negotiation of final costs; and
- (e) Adequate cost or pricing information for establishing a reasonable firm target is reasonably expected to be available at the time of initial contract negotiations.

2408.2 A fixed-price incentive contract shall be used only when the contracting officer determines that this type of contract would be less costly than any other type or that it is impractical to obtain supplies or services of the kind or quality required without the use of this contract type.

2408.3 A fixed-price incentive contract with a firm target shall specify a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a profit adjustment formula. These elements shall be negotiated at the outset. The formula shall have the following results:

- (a) When the final cost is less than the target cost, application of the formula will result in a final profit greater than the target profit;
- (b) When the final cost is more than the target cost, application of the formula will result in a final profit less than the target profit, or a net loss; or
- (c) If the final negotiated cost exceeds the price ceiling, the contractor will absorb the difference as a loss.

2408.4 In a fixed-price incentive contract with a firm target, the price ceiling shall be the maximum that may be paid to the contractor, except for any adjustment under other contract clauses.

2408.5 When the contractor completes performance, the contracting officer and the contractor shall negotiate the final cost, and establish the final price by applying the formula.

SOURCE: Final Rulemaking published at 35 DCR 1561 (February 26, 1988).

2409 COST-PLUS-AWARD-FEE CONTRACTS

2409.1 A cost-plus-award-fee contract may be used when the following factors apply:

- (a) The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance, or schedule;

- (b) The likelihood of meeting the procurement objective will be enhanced by using a contract that effectively motivates the contractor toward exceptional performance and provides the District with the flexibility to evaluate both actual performance and the conditions under which it was achieved; and
 - (c) Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits.
- 2409.2 A cost-plus-award-fee contract shall provide for a fee consisting of a base amount fixed at inception of the contract and an award amount that the contractor may earn in whole or in part during performance. Each contract shall state a maximum award amount that may be paid under the contract.
- 2409.3 The amount of the award fee to be paid shall be determined by the contracting officer's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract.
- 2409.4 The award fee determination shall be made unilaterally by the contracting officer and shall not be subject to appeal or the contractor's rights under the disputes clause in the contract.
- 2409.5 A cost-plus-award-fee contract shall provide for evaluation at stated intervals during performance, so that the contractor will periodically be informed of the quality of its performance and the area in which improvement is expected.

SOURCE: Final Rulemaking published at 35 DCR 1563 (February 26, 1988).

§§2410-2414: RESERVED

2415 DEFINITE-QUANTITY CONTRACTS

- 2415.1 The contracting officer may use a definite-quantity contract when it can be determined in advance that a specific quantity of supplies or services will be required during the contract period and the supplies or services are regularly available or will be available after a short lead time.

SOURCE: Final Rulemaking published at 35 DCR 1564 (February 26, 1988).

2416 TERM CONTRACTS

- 2416.1 The contracting officer may use a term contract (either a requirements contract or an indefinite-quantity contract) when the exact quantities of supplies or services are not known at the time of contract award. Term contracts shall be subject to the provisions of this section and §2103 of chapter 21 of this title.

- 2416.2 A term contract may also specify maximum or minimum quantities that the District may order under each individual order and the maximum that the District may order during a specified period of time.
- 2416.3 The contracting officer may use a requirements contract when the contracting officer anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated District agencies will need during a definite period.
- 2416.4 Each agency designated in a requirements contract shall be required to fill all actual purchase requirements for the specific supplies or services from the requirements contract.
- 2416.5 The contracting officer shall include the following in each contract and solicitation for a requirements contract:
- (a) A realistic estimate of the total quantity that will be ordered, based on the most current information available; and
 - (b) A clause, approved by the Director, stating that the estimate is not a representation to a bidder, offeror, or contractor that the estimated quantity will actually be required or ordered, or that conditions affecting the requirements will be stable or normal.
- 2416.6 If feasible, a requirements contract shall state the maximum limit of the contractor's obligation to deliver and the District's obligation to order.
- 2416.7 For requirements contracts, the contracting officer shall execute the contract without the obligation of funds. Funds shall be obligated by each agency at the time orders are issued under the contract.
- 2416.8 The agency contracting officer executing orders under a requirements contract shall obligate funds when each individual order is issued. An agency contracting officer may order from a requirements contract within the limits of the requesting agency's budget authority for the items or services covered by the contract, but without regard to the limits of the agency's contracting authority.
- 2416.9 The contracting officer may use an indefinite-quantity contract when the contracting officer cannot predetermine, above a specified minimum, the precise quantity of supplies or services that will be required during the contract period, and the contracting officer determines that it is inadvisable to commit the District for more than a minimum quantity.
- 2416.10 An indefinite-quantity contract shall require the District to order and the contractor to furnish at least the stated minimum quantity of supplies or services. The contractor shall also be required to furnish, if and as ordered, any additional quantities, not to exceed a stated maximum.
- 2416.11 For indefinite-quantity contracts, the contracting officer shall ensure that each agency listed as a using agency on the contract obligates the amount of budget authority needed to cover the agency's minimum required order under the contract.

SOURCE: Final Rulemaking published at 35 DCR 1564 (February 26, 1988).

2417 ORDERING UNDER TERM CONTRACTS

- 2417.1 The contracting officer shall include in the schedule of requirements in each term contract the names of the agency or agencies authorized to issue orders under the contract.
- 2417.2 When determined appropriate by the contracting officer, authorization for placing oral or telegraphic orders may be included in a term contract; Provided, that the Director shall establish procedures for obligating funds and confirming all telegraphic and oral orders.
- 2417.3 Each order placed under a term contract shall contain the following information:
- (a) Date of the order;
 - (b) Contract number and an order number;
 - (c) Item number, description, quantity, and unit price;
 - (d) Delivery or performance date;
 - (e) Place of delivery or performance;
 - (f) Packaging, packing, and shipping instructions, if any;
 - (g) Accounting and appropriations data; and
 - (h) Any other pertinent information.

SOURCE: Final Rulemaking published at 35 DCR 1565 (February 26, 1988).

§§2418-2419: RESERVED

2420 TIME-AND-MATERIALS CONTRACTS

- 2420.1 A time-and-materials contract may be used only after the contracting officer determines in writing that no other type of contract is suitable, and only if the contract includes a ceiling price that the contractor exceeds at its own risk.
- 2420.2 The contracting officer shall document the contract file to justify the reasons for and the amount of any subsequent change in the ceiling price.

- 2420.3 A time-and-materials contract may be used only when it is not possible at the time of executing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.
- 2420.4 A time-and-materials contract shall include direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, profit, and materials required at cost.
- 2420.5 The contract administrator shall provide surveillance of contractor performance when a time-and-materials type contract is used.
- 2420.6 When the nature of the work to be performed requires the contractor to furnish material that it regularly sells to the general public in the normal course of its business, the contract may provide for charging material on a basis other than cost if the following factors apply:
- (a) The total estimated contract price does not exceed fifty thousand dollars (\$50,000), or the estimated price of material charged does not exceed twenty percent (20%) of the estimated contract price;
 - (b) The material to be charged is identified in the contract;
 - (c) No element of profit on material charged is included as profit in the fixed hourly labor rates; and
 - (d) The contract provides that the price to be paid for the material shall be based on an established catalog or list price in effect when material is furnished, less all applicable discounts to the District, and that in no event shall the price exceed the contractor's sales price to its most-favored customer for the same item in like quantity, or the current market price, whichever is lower.

SOURCE: Final Rulemaking published at 35 DCR 1566 (February 26, 1988).

2421 LABOR-HOUR CONTRACTS

- 2421.1 When materials are not required, the contracting officer may use a labor-hour contract, a variation of the time-and-materials contract.
- 2421.2 The use of a labor-hour contract shall be in accordance with the provisions of §2420.

SOURCE: Final Rulemaking published at 35 DCR 1567 (February 26, 1988).

§§2422-2424: RESERVED

2425 LETTER CONTRACTS

- 2425.1 A letter contract may be used only after the contracting officer determines, in writing, that no other type of contract is suitable.
- 2425.2 A letter contract shall not commit the District to a definitive contract in excess of the funds available at the time the letter contract is executed.
- 2425.3 A letter contract shall not be entered into without competition, except as provided for in chapter 17 of this title.
- 2425.4 A letter contract shall not be amended to satisfy a new requirement unless the new requirement is inseparable from the existing contract. Any amendment shall be subject to the same requirements as a new letter contract.
- 2425.5 The contracting officer may use a letter contract when the District's interests demand that the contractor be given a binding commitment so that work can start immediately and executing a definitive contract is not possible in sufficient time to meet the requirement. Each letter contract shall be as complete and definite as possible under the circumstances and shall include clauses approved and required by the Director.
- 2425.6 When a letter contract is executed, the contracting officer shall include a price ceiling for the anticipated definitive contract. The price ceiling shall not be exceeded. Each letter contract shall also include a clause, approved by the Director, indicating the maximum liability of the District under the letter contract.
- 2425.7 The maximum liability to the District shall be the estimated amount necessary to cover the contractor's requirement for funds before execution of the definitive contract. However, the District's maximum liability shall not exceed fifty percent (50%) of the overall price ceiling for the term of the definitive contract pursuant to §2425.6.
- 2425.8 In procurements by other than competitive sealed bids, a letter contract shall contain a negotiated schedule for execution of the definitive contract, including dates for submission of the contractor's price proposal, cost or pricing data (if required), a date for start of negotiations, and a target date for execution of the definitive contract.
- 2425.9 The contracting officer shall execute a definitive contract within one hundred and twenty (120) days after the date of execution of the letter contract or before completion of fifty percent (50%) of the work to be performed, whichever occurs first. The contracting officer may authorize an additional period if the additional period is approved in writing by the head of the contracting agency.
- 2425.10 In procurements by other than competitive sealed bids, if the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement regarding price or fee, the contractor shall be required to continue the work and the contracting officer may, with the approval of the head of the contracting agency, determine a reasonable price or fee, subject to review in accordance with chapter 38 and the Act.
- 2425.11 Prior to execution of a letter contract, the contracting officer shall ensure that funds are encumbered for obligation in the amount of the maximum District liability for the term of the letter contract.

- 2425.12 For purposes of review and approval of letter contracts, in accordance with §1010 of chapter 10 of this title, and for purposes of contracting authority, the contracting officer shall use the estimated cost of the definitive contract for determining the type and level of review and approval required.

SOURCE: Final Rulemaking published at 35 DCR 1567 (February 26, 1988).

2499 DEFINITIONS

- 2499.1 When used in this chapter, the following words and terms shall have the meanings ascribed:

Commercial-type products - a product such as an item, material, component, subsystem or system, sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices.

Cost - the amount paid or charged for something. Cost does not include the contractor's profit.

Cost contract - a cost-reimbursement contract in which the contractor receives no fee.

Cost-plus-award-fee contract - a cost-reimbursement type contract that provides for a fee consisting of an amount fixed at the beginning of the contract and potential award of additional fee amounts based upon a judgmental evaluation by the contracting officer, sufficient to provide motivation for excellence in contract performance.

Cost-plus-fixed-fee contract - a cost-reimbursement type contract which provides for the payment of a fixed fee to the contractor. The fixed fee, once negotiated, does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or services to be performed under the contract.

Cost-plus-incentive-fee contract - a cost-reimbursement type contract that provides for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. After performance of the contract, the fee payable to the contractor is determined in accordance with a negotiated formula.

Cost-reimbursement contract - a contract which provides for payment of allowable costs incurred in the performance of a contract, to the extent prescribed in the contract. This type of contract establishes an estimate of total cost for the purpose of obligating funds, and establishes a ceiling which the contractor may not exceed (except at its own risk) without prior approval of, or subsequent ratification by, the contracting officer.

Cost-sharing contract - a cost-reimbursement type contract in which the contractor receives no fee and is reimbursed only for an agreed upon portion of its allowable costs.

Definite-quantity contract - a contract that provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries to be scheduled at designated locations.

Definitive contract - the contract executed pursuant to letter contract commitment.

Director - the Director of the Department of Administrative Services.

Firm-fixed-price contract - a fixed-price contract that provides for a price that is not subject to any adjustment of the basis of the contractor's cost experience in performing the contract. This type of contract places maximum risk and full responsibility for all costs and resulting profit or loss upon the contractor, and provides maximum incentive for the contractor to control cost and perform effectively.

Fixed-price contract with economic price adjustment - a fixed-price contract that provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies that are specifically defined in the contract.

Fixed-price incentive contract - a fixed-price type contract that provides for adjusting profit and establishing the final contract price by a formula based on the relationship of final negotiated total costs to total target costs. After performance of the contract, the final cost is negotiated and the final contract price is then established in accordance with the formula.

Incentive contract - a fixed-price or cost-reimbursement type contract which provides for relating the amount of profit or fee payable under the contract with the contractor's performance in order to obtain specific procurement objectives.

Indefinite-quantity contract - a contract that provides for an indefinite quantity, within written stated limits, of specific supplies or services to be furnished during a fixed period, with deliveries to be scheduled by placing orders with the contractor. The contract requires the District to order and the contractor to furnish at least a stated minimum of supplies or services.

Labor-hour contract - a contract that is a variant of the time-and-materials type contract differing only in that materials are not supplied by the contractor.

Letter contract - a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing or delivering supplies or performing services. A letter contract is always associated with a definitive contract, and a letter contract by itself cannot be the sole document used for a complete procurement.

Maximum liability - the amount, not to exceed fifty percent (50%) of the overall contract price ceiling, obligated by the letter contract over which the District cannot be liable if the letter contract is terminated.

Price - the amount the District anticipates it will pay the contractor for full performance under the terms of a contract, including costs and profit.

Price ceiling - an amount established during negotiations or at the discretion of the contracting officer which constitutes the maximum that may be paid to the contractor for performance of a contract.

Prospective price redetermination - a contract type which provides for a firm-fixed-price for an initial period of contract deliveries or performance and for a redetermination of the price for subsequent periods of performance at a stated time or times during performance.

Requirements contract - a contract that provides for the filling of all actual purchase requirements of designated District agencies for specific supplies or services during a specified contract period, with deliveries to be scheduled by placing orders with the contractor as required.

Target price - an amount established by the contracting officer during negotiations to encourage the contractor to control contract costs. The contractor's final profit varies inversely with the final cost of the contract.

Term contract - a requirements contract or an indefinite-quantity contract.

Time-and-materials contract - a type of contract that provides for the procurement of supplies or services on the basis of direct labor hours at specified fixed hourly rates (which include wages, overhead, general and administrative expenses, and profit) and material at cost.

SOURCE: Final Rulemaking published at 35 DCR 1569 (February 26, 1988).

CHAPTER 25 SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Secs.	
2500	General Provisions
2501	Selecting Specifications or Descriptions for Use
2502	Brand Name or Equal
2503	Specifications and Standards
2504	Deviations from Specifications and Standards
2505	Identification and Availability of Specifications
2506	Used or Reconditioned Material, Surplus Property, and Residual Inventory
2599	Definitions

2500 GENERAL PROVISIONS

- 2500.1 The District shall specify procurement needs in a manner designed to promote competition to the maximum extent possible.
- 2500.2 The District shall develop specifications and purchase descriptions using market research in a manner designed to promote competition to the maximum extent possible, with due regard to the nature of the supplies or services to be procured.
- 2500.3 Solicitations shall contain specifications and purchase descriptions that include restrictive provisions or conditions only to the extent necessary to satisfy the minimum needs of the District, or as authorized or required by law.
- 2500.4 Plans, drawings, specifications, standards, or purchase descriptions for procurements shall state only the District's actual minimum needs and describe the supplies or services in a manner designed to promote competition to the maximum extent possible.
- 2500.5 Specifications and purchase descriptions shall reflect the minimum needs of the District and the market available to meet those needs. Specifications and purchase descriptions may be stated in terms of the following:
- (a) Function, so that a variety of products or services may qualify;
 - (b) Performance, including specifications of the range of acceptance characteristics or the minimum acceptable standards; or
 - (c) Design requirements.
- 2500.6 Responsibility for the preparation and issuance of standard specifications shall be in accordance with §401 of the Procurement Practices Act of 1985 (the "Act"), D.C. Code §1-1184.1.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1572 (February 26, 1988).

2501 SELECTING SPECIFICATIONS OR DESCRIPTIONS FOR USE

- 2501.1 Items to be procured shall be described by citing the applicable specifications and standards or by a description containing the necessary requirements.
- 2501.2 The requesting agency shall review and select from available specifications, standards, and related documents those specifications and standards which have application to a particular procurement. The specification or standard shall be modified or tailored to state the District's minimum requirement.
- 2501.3 When authorized in accordance with this chapter, or when no applicable specification exists, the requesting agency may use a purchase description.
- 2501.4 Each purchase description shall set forth the essential physical and functional characteristics of the materials or services required.
- 2501.5 Each purchase description shall include the following characteristics, when applicable:
- (a) Common nomenclature;
 - (b) Kind of material, such as type, grade, or alternatives;
 - (c) Electrical data, if any;
 - (d) Dimensions, size, or capacity;
 - (e) Principles of operation;
 - (f) Restrictive environmental conditions;
 - (g) Intended use, such as location within an assembly and essential operating condition;
 - (h) Equipment with which the item is to be used; and
 - (i) Other pertinent information that further describes the item, materials, or service required.
- 2501.6 A purchase description shall not be written to specify a product, or a particular feature of a product, that is peculiar to a single manufacturer (thereby precluding consideration of a product manufactured by another company) unless it is determined that the particular feature is essential to the District's requirements, and that other sources' similar products lacking that particular feature would not meet the minimum requirements for the items.
- 2501.7 Purchase descriptions of services shall outline the specific services the contractor is expected to perform to the greatest degree practicable.

2501.8 When applicable, the requesting agency shall include in the purchase description requirements for adequate packaging and marking of supplies to prevent deterioration and damage during shipping, handling, and storage.

SOURCE: Final Rulemaking published at 35 DCR 1573 (February 26, 1988).

2502 BRAND NAME OR EQUAL

2502.1 The minimum acceptable purchase description shall be the identification of a requirement by use of a brand name followed by the words "or equal." This purchase description shall be used only when adequate specifications or a more detailed purchase description cannot be made available.

2502.2 When using a brand name or equal purchase description, the requesting agency shall also provide a list of salient characteristics, or the minimum acceptable features.

SOURCE: Final Rulemaking published at 35 DCR 1574 (February 26, 1988).

2503 SPECIFICATIONS AND STANDARDS

2503.1 Requesting agencies and contracting officers shall use the specifications and standards prepared and issued by the Director for supplies and services required by the District, unless otherwise authorized by law or approved in accordance with this chapter.

2503.2 Specifications and standards issued by the Director shall be used by all agencies when procuring supplies and services covered by those specifications and standards except as follows:

- (a) When the service or work to be performed or the item to be furnished is procured under emergency circumstances, as defined in the Act and chapter 17 of this title, and the use of standard specifications would cause unacceptable delay in obtaining the requirement;
- (b) When items are procured using small purchase methods;
- (c) When nationally recognized industry or technical source specifications and standards are used to procure construction or new installations of equipment; and
- (d) When the requesting agency can state its needs in a purchase description for a commercial product.

2503.3 An agency may procure commercial products whenever those products adequately satisfy the District's needs and a description of the District's need is stated in functional terms of sufficient detail.

SOURCE: Final Rulemaking published at 35 DCR 1574 (February 26, 1988).

2504 DEVIATIONS FROM SPECIFICATIONS AND STANDARDS

2504.1 When the exceptions set forth in §2503 are not applicable, and an existing specification does not meet an agency's minimum needs, the agency head may authorize deviations in accordance with this section.

- 2504.2 Each contracting officer shall be responsible for ensuring the following:
- (a) That District specifications are normally used, and requirements for exceptions and deviations are complied with;
 - (b) That written justifications for each exception and deviation are subject to prior review and approval by the agency head, and that each justification can be fully substantiated if post audit is required;
 - (c) That major or repeated deviations are not taken except as prescribed in this chapter; and
 - (d) That notification of each deviation or recommendation for change in specification is sent promptly in duplicate to the Director.
- 2504.3 Deviations reported by the contracting officer in accordance with §2504.2(d) shall not be continued except as authorized by the Director in accordance with this section.
- 2504.4 When an agency submits notification to the Director of major or repeated deviations that have been taken but makes no recommendation for change in the specification, the Director shall notify the agency whether those deviations may be continued in subsequent contracting.
- 2504.5 In cases where continued deviations are not approved by the Director, and the contracting agency has progressed to a point where it would be impracticable to amend or cancel the procurement, the procurement may be completed, but the deviation shall not be continued by the agency in subsequent procurements.
- 2504.6 When an agency has recommended changing the specifications consistent with the deviations it has taken and reported, those deviations may be continued until the recommended change is incorporated in the specifications or the agency is notified otherwise in accordance with §2504.7.
- 2504.7 When coordination with other agencies and industry does not result in acceptance of the change, the deviations shall not be continued by the agency in subsequent contracts after notification by the Director that the request for change of specifications has been denied.

SOURCE: Final Rulemaking published at 35 DCR 1575 (February 26, 1988).

2505 IDENTIFICATION AND AVAILABILITY OF SPECIFICATIONS

- 2505.1 Solicitations citing specifications set forth in the list of specifications and standards issued by the Director shall identify each specification's approval date and dates of any applicable amendments and revisions.
- 2505.2 In solicitations citing specifications and standards on the list issued by the Director, the contracting officer shall not be required to furnish cited specifications or standards except in the following circumstances:
- (a) When the product being procured will be so complex that the specifications must be furnished with the solicitation to enable prospective contractors to make a competent initial evaluation of the solicitation;

- (b) When, in the judgment of the contracting officer, it would be impractical for prospective contractors to obtain the specifications in sufficient time to respond to the solicitation; or
 - (c) When a prospective contractor who has not previously bid on the product requests a copy of the specifications.
- 2505.3 A solicitation shall not contain general identification references, such as "the issue in effect on the date of the solicitation."
- 2505.4 When a specification refers to other specifications, the reference shall meet all the following requirements:
- (a) The reference shall be restricted to documents, or appropriate portions of documents, that apply in the procurement;
 - (b) The reference shall cite the extent of their applicability; and
 - (c) The reference shall not conflict with other specifications and provisions of the solicitations.
- SOURCE:** Final Rulemaking published at 35 DCR 1576 (February 26, 1988).
- 2506 USED OR RECONDITIONED MATERIAL, SURPLUS PROPERTY, AND RESIDUAL INVENTORY**
- 2506.1 The contracting officer may procure used or reconditioned material, former government surplus property, or residual inventory conforming to the requirements of a solicitation if the contracting officer determines that it is in the best interests of the District.
- 2506.2 When the contracting officer determines that procurement of used or reconditioned material, former government surplus property, or residual inventory is acceptable, the solicitation shall clearly identify which supplies or components do not have to be new and the necessary requirements for acceptability.
- 2506.3 The contracting officer shall consider the following when determining whether used or reconditioned materials, former government surplus property, or residual inventory are acceptable:
- (a) The safety of persons or property;
 - (b) The total cost to the District, including maintenance, inspection, testing, and useful life;
 - (c) Performance requirements; and
 - (d) The availability and cost of new materials and components.
- 2506.4 When procuring former government surplus property, the contracting officer shall ensure that the prices paid for the items are reasonable considering the overall cost to the District, as determined under §2506.3(b).

2506.5 When a contract calls for material to be furnished at cost, the allowable charge for former government surplus property shall not exceed the cost at which the contractor acquired the property.

SOURCE: Final Rulemaking published at 35 DCR 1577 (February 26, 1988).

2599 DEFINITIONS

2599.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Brand name description - a purchase description that identifies a product by its brand name and model, part number, or other appropriate nomenclature by which the product is offered for sale.

Commercial product - a product, such as an item, material, component, subsystem, or system, sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices.

Market research - the process used for collecting and analyzing information about the entire available market that will satisfy the minimum agency needs to arrive at the most suitable approach for acquiring, distributing, and supporting supplies and services.

Purchase description - a description of the essential physical characteristics and functions required to meet the District's minimum needs.

Specification - a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met.

Standard - a document that establishes engineering and technical limitations and applications of items, materials, processes, methods, designs, and engineering practices. It includes any related criteria deemed essential to achieve the highest practical degree of uniformity in materials or products, or interchangeability of parts. Standards may be used in specifications, invitations for bids, requests for proposals, and contracts.

SOURCE: Final Rulemaking published at 35 DCR 1577 (February 26, 1988).

CHAPTER 26 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Secs.	
2600	General Provisions
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2603	Notice of the Scope of Construction Projects
2604	Liquidated Damages in Construction Contracts
2605	Pricing Construction Contracts
2606	Concurrent Performance of Construction Contracts
2607	Construction Contracts with Architect-Engineering Firms
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2609	Distribution of Pre-Solicitation Notices
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2620	Architect-Engineer Services
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2625	Architect-Engineer Qualifications
2626	Cost Estimate for Architect-Engineer Contracts
2627	Negotiations of Architect-Engineer Contracts
2628	Release of Information
2629	[Reserved]
2630	Liability for Design Errors or Deficiencies
2631	Design within Funding Limitations
2632	Redesign Responsibility for Design Errors or Deficiencies
2633	Architect-Engineer Performance Evaluation
2699	Definitions

2600 GENERAL PROVISIONS

- 2600.1 Contracts for construction shall be awarded in accordance with the provisions of this chapter and other applicable provisions of this title.
- 2600.2 Contracts for architect-engineer services shall be awarded in accordance with title IX of the Federal Property and Administrative Services Act of 1949, approved October

27, 1972 (86 Stat. 1278; 40 U.S.C. 541-544) and the provisions of §§2620 through 2633 of this chapter.

2600.3 In any instance where the provisions of this chapter are inconsistent with any other provision of this title, the applicable provisions of this chapter shall take precedence and control the process for the award of a construction or architect-engineer contract.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1579 (February 26, 1988).

2601 SPECIFICATIONS

2601.1 In addition to the requirements of this section, construction specifications shall conform to the requirements of chapter 25 of this title.

2601.2 Where applicable, contracting officers shall ensure that references in specifications conform to widely recognized standards for specifications promulgated by governments, industries, and technical societies.

2601.3 When "brand name or equal" descriptions are necessary, specifications shall clearly identify and describe the particular physical, functional, or other characteristics of the brand name items that are considered essential to satisfying the requirement.

SOURCE: Final Rulemaking published at 35 DCR 1579 (February 26, 1988).

2602 ESTIMATE OF CONSTRUCTION COSTS

2602.1 An estimate of construction costs shall be prepared for each proposed contract and for each proposed contract modification estimated to exceed ten thousand dollars (\$10,000).

2602.2 The estimate shall be prepared by the agency requesting the proposed contract or contract modification, or by a contractor or District employee under the direction of the contracting officer at the request of that agency.

2602.3 The agency estimate, or request for an estimate, shall be forwarded to the contracting officer with the request for preparation of the contract solicitation.

2602.4 Each estimate shall be prepared in detail, as though the District were competing for the contract.

2602.5 If two-step sealed bidding is used, the estimate shall be prepared after step one is completed, in accordance with chapter 15 of this title.

2602.6 Access to information concerning the District estimate shall be limited to District personnel or agents of the District whose official duties require knowledge of the estimate.

2602.7 The overall amount of the District estimate shall not be disclosed, except as otherwise permitted by this title.

SOURCE: Final Rulemaking published at 35 DCR 1579 (February 26, 1988).

2603 NOTICE OF THE SCOPE OF CONSTRUCTION PROJECTS

2603.1 Any pre-solicitation notices and each solicitation shall state the approximate scope of the construction requirement in terms of physical characteristics and estimated price range.

2603.2 In no event shall the notice of the scope of a project disclose the District's estimate of costs.

2603.3 Unless narrower price ranges are specified by the contracting officer, the estimated price shall be described in terms of one (1) of the following price ranges:

- (a) Less than \$10,000;
- (b) Between \$10,000 and \$100,000;
- (c) Between \$100,000 and \$250,000;
- (d) Between \$250,000 and \$500,000;
- (e) Between \$500,000 and \$1,000,000;
- (f) Between \$1,000,000 and \$5,000,000;
- (g) Between \$5,000,000 and \$10,000,000; or
- (h) More than \$10,000,000, in increments of \$5,000,000 or more, as deemed appropriate by the contracting officer.

SOURCE: Final Rulemaking published at 35 DCR 1580 (February 26, 1988).

2604 LIQUIDATED DAMAGES IN CONSTRUCTION CONTRACTS

2604.1 In accordance with §507(a) of the Act (D.C. Code, §1-1185.7), in all construction contracts estimated to exceed fifty thousand dollars (\$50,000), the contracting officer shall include a liquidated damages clause approved by the Director.

2604.2 In addition to the provisions of §2303 of this title, the provisions of this section shall apply to all liquidated damages clauses included in construction contracts.

2604.3 When liquidated damages clauses are required or used, if different completion periods for separate parts or stages of the work are specified in the contract, the contracting officer shall include a provision, approved by the Director, providing for liquidated damages for delay of or failure to perform each separate part or stage of the work compensating the District for damages incurred.

2604.4 The contracting officer shall base the minimum amount of liquidated damages on the estimated cost of inspection and superintendence for each day of delay in completion.

2604.5 Whenever the District would suffer other specific losses due to failure of the contractor to complete the work on time, the contracting officer shall also include in the contract the amount of these specific losses.

2604.6 If liquidated damages are used in a contract, the contracting officer shall include an appropriate, reasonable rate or rates of liquidated damages.

SOURCE: Final Rulemaking published at 35 DCR 1581 (February 26, 1988).

2605 PRICING CONSTRUCTION CONTRACTS

2605.1 Unless otherwise authorized under this chapter, a contracting officer shall use firm-fixed-price contracts to procure construction.

2605.2 A contract may be priced on a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work), on a unit-price basis (when a unit price is paid for a specified quantity of work units), or a combination of both methods.

2605.3 The contracting officer shall use lump-sum pricing in preference to unit pricing except when any one (1) of the following circumstances exist:

- (a) Large quantities of work (such as excavation, grading, paving, building outside utilities, or site preparation) are involved which cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency;
- (b) Estimated quantities of work required may change significantly during construction; or
- (c) Bidders would have to expend unusual effort to develop adequate estimates.

2605.4 If an economic price adjustment provision is customary in contracts for the type of work being procured, or when omission of an adjustment provision would preclude a significant number of firms from submitting bids or would result in bidders including unwarranted contingencies in proposed prices, fixed-price contracts with economic price adjustments may be used in accordance with the applicable provisions of chapters 15 and 24 of this title.

SOURCE: Final Rulemaking published at 35 DCR 1581 (February 26, 1988).

2606 CONCURRENT PERFORMANCE OF CONSTRUCTION CONTRACTS

2606.1 Because of potential labor and administrative problems, cost-plus-fixed-fee, price-incentive, or other types of contracts with cost variation or cost adjustment features shall not be permitted concurrently at the same work site with firm-fixed-price, lump-sum, or unit-price contracts without the prior written approval of the Director.

SOURCE: Final Rulemaking published at 35 DCR 1582 (February 26, 1988).

2607 CONSTRUCTION CONTRACTS WITH ARCHITECT-ENGINEERING FIRMS

2607.1 Except as provided in §2607.2, a contracting officer shall not award a contract for the construction of a project to the firm that designed the project or its subsidiaries or affiliates without the prior written approval of the Director.

- 2607.2 If a proposed construction contract will use a design build or turnkey method of construction, the contracting officer may award the construction contract to an affiliate of the architect-engineer firm that designed the project without prior approval by the Director.

SOURCE: Final Rulemaking published at 35 DCR 1582 (February 26, 1988).

2608 INSPECTION AND SITE EXAMINATION OF DATA

- 2608.1 The contracting officer shall make appropriate arrangements for prospective bidders to inspect the work site and to have the opportunity to examine data available to the District which may provide information concerning the performance of the work, such as boring samples, original boring logs, and records and plans of previous construction. The data should be assembled in a single place and made available for examination.
- 2608.2 The solicitation shall notify bidders of the time and place for the site inspection and data examination.
- 2608.3 If it is not feasible for bidders to inspect the site or examine the data on their own, the solicitation shall designate an individual who will show the site or data to the bidders.
- 2608.4 The contracting officer shall make available to all bidders in the same manner significant site information and the work performance data, including information regarding any utilities to be furnished during construction.
- 2608.5 The contracting officer shall keep a record of the identity and affiliation of each bidder's representative who inspects the site or examines the data.

SOURCE: Final Rulemaking published at 35 DCR 1583 (February 26, 1988).

2609 DISTRIBUTION OF PRE-SOLICITATION NOTICES

- 2609.1 The contracting officer may distribute pre-solicitation notices in a manner designed to reach as many prospective bidders as practicable.
- 2609.2 The contracting officer may send pre-solicitation notices to organizations that maintain, without charge to the public, display rooms for the benefit of prospective bidders, subcontractors, and material suppliers.

SOURCE: Final Rulemaking published at 35 DCR 1583 (February 26, 1988).

2610 INVITATIONS FOR BIDS

- 2610.1 An invitation for bids ("IFB") for construction shall allow a reasonable time for bidders to prepare and submit their bids, but in no event less than thirty (30) days. Each IFB shall be publicized in accordance with the provisions of the Act and chapter 13 of this title.
- 2610.2 In determining what is a reasonable time, the contracting officer shall consider the construction season and the time necessary for bidders to inspect the site, obtain

subcontract bids, examine data concerning the work, and prepare estimates based on plans and specifications.

2610.3 The contracting officer shall ensure that each IFB includes the following information, when applicable:

- (a) The appropriate wage determination as issued by the U.S. Department of Labor; or, if the IFB must be issued before the wage determination is received, a notice that the schedule for minimum wage rates to be paid under the contract will be issued as an amendment to the IFB;
- (b) The scope of the proposed construction project;
- (c) The period of performance;
- (d) Arrangements for bidders to inspect the site and examine the data concerning performance of the work;
- (e) Information concerning any facilities, such as utilities, office space, and warehouse space, to be furnished during the construction period;
- (f) Any special qualifications or experience requirements that will be considered;
- (g) Any special instructions concerning bids, alternate bids, and award;
- (h) Any instructions concerning reporting requirements; and
- (i) Any other clauses required by the Act or this title.

2610.4 The contracting officer shall provide notice of the IFB in accordance with chapter 13 of this title.

2610.5 The contracting officer shall send IFB's to prospective bidders who request them.

SOURCE: Final Rulemaking published at 35 DCR 1583 (February 26, 1988).

2611 NOTICE OF INTENT TO AWARD

2611.1 Each notice of intent to award shall include the following:

- (a) The identity of the IFB;
- (b) The prospective contractor's bid;
- (c) The award price;
- (d) A statement notifying the prospective contractor that all required performance and payment bonds must be properly executed by the prospective contractor and sureties and returned to the contracting officer by the prospective contractor within the time period specified in the IFB, or, if no time period is specified in the IFB, within ten (10) days after the bond forms are presented by the District to the prospective contractor for signature;

- (e) A statement notifying the prospective contractor that the required contract form must be properly executed by the prospective contractor and returned to the contracting officer by the prospective contractor within the time period specified in the IFB, or, if no time period is specified in the IFB, within ten (10) days after the District government contract form is presented by the District to the prospective contractor for signature; and
- (f) A statement that a notice to proceed will be issued, contingent upon the contracting officer's receipt of executed performance and payment bonds and executed contract form that is in compliance with the requirements of the IFB and this title.

2611.2 The District may, without any liability upon the District, rescind the notice of intent to award at any time prior to approval of a formal written contract signed by the prospective contractor and the contracting officer.

SOURCE: Final Rulemaking published at 35 DCR 1584 (February 26, 1988).

2612 EVALUATION OF CONTRACTOR PERFORMANCE

2612.1 The contract administrator shall evaluate contractor performance and prepare a performance report for each construction contract of ten thousand dollars (\$10,000) or more in the following circumstances:

- (a) When any element of performance was either unsatisfactory or outstanding;
- (b) When the contract was terminated for default; or
- (c) When the contract was terminated for the convenience of the District.

2612.2 The contract administrator shall prepare the evaluation performance report at the time of final acceptance of the work, at the time of contract termination, or at other times determined appropriate by the contracting officer.

2612.3 If the contract administrator concludes that a contractor's overall performance was unsatisfactory, the contracting officer shall advise the contractor in writing that a report of unsatisfactory performance is being prepared and shall state the basis for the report.

2612.4 If, after receiving the contract administrator's report, the contractor submits any written comments, the contract administrator shall include them in the report, consider them in resolving any alleged factual discrepancies, and make any appropriate changes in the report. The contracting officer shall include the performance report in the contract file.

2612.5 Before making a determination of responsibility in accordance with chapter 22 of this title, the contracting officer may consider performance reports from any agency or other entity of the District.

SOURCE: Final Rulemaking published at 35 DCR 1585 (February 26, 1988).

2613 PRE-CONSTRUCTION CONFERENCE

2613.1 The contracting officer may conduct a pre-construction conference to inform the contractor about the labor standards provisions of the contract and other pre-construction matters deemed appropriate by the contracting officer.

SOURCE: Final Rulemaking published at 35 DCR 1586 (February 26, 1988).

§§2614-2619: RESERVED**2620 ARCHITECT-ENGINEER SERVICES**

2620.1 The contracting officer shall publicize all requirements for architect-engineer services in accordance with chapter 13 of this title, and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services required at fair and reasonable prices.

2620.2 If the District accepts funding assistance for a project from a federal or other source, and a condition of assistance is that a nonprice competitive procedure for selection of architect-engineers which is in compliance with Public Law 6-85, §304(g), but that differs from the procedures specified in this section, a modified architect-engineer selection procedure, approved by the Director, may be used which is in compliance with both the Act and the assistance agreement.

2620.3 The contracting officer shall select a contractor for architect-engineer services in accordance with the provisions of this section rather than the solicitation or source selection procedures specified elsewhere in this title.

2620.4 Compliance with the provisions of §§2620 through 2633 of this chapter shall constitute a competitive procedure for the procurement of architect-engineer services.

2620.5 The contracting officer shall evaluate each potential contractor based on the following criteria:

- (a) Professional qualifications necessary for satisfactory performance of the required services;
- (b) Specialized experience and technical competence in the type of work required;
- (c) Capacity to accomplish the work in the required time;

- (d) Past performance on contracts with the District, other governmental entities, and private industry in terms of cost control, quality of work, and compliance with performance schedules; and
- (e) Acceptability under other appropriate evaluation criteria.

2620.6 When the use of design competition is approved by the head of the using agency, the contracting officer may evaluate firms on the basis of their conceptual design of the project.

2620.7 Design competition may be used in the following circumstances:

- (a) When unique situations exist involving prestigious projects, such as the design of memorials or structures of unusual national or local significance;
- (b) When sufficient time is available for the production and evaluation of conceptual designs; and
- (c) When the design competition, with its costs, will substantially benefit the project.

SOURCE: Final Rulemaking published at 35 DCR 1588 (February 26, 1988).

2621 ARCHITECT-ENGINEER EVALUATION BOARD

2621.1 When procuring architect-engineer services, the head of the contracting agency shall appoint one (1) or more permanent or ad hoc architect-engineer evaluation boards composed of members who, collectively, have experience in architecture, engineering, construction, and District and related procurement matters.

2621.2 Members of evaluation boards shall include highly qualified professional employees of the District and may include private practitioners of architecture, engineering, or related professions. The head of the contracting agency shall designate one (1) District employee member of each board as the chairperson.

2621.3 No firm shall be eligible for award of an architect-engineer contract during the period in which any of its principals or associates are participating as members of the awarding evaluation board.

SOURCE: Final Rulemaking published at 35 DCR 1588 (February 26, 1988).

2622 ARCHITECT-ENGINEER EVALUATION BOARD FUNCTIONS

2622.1 The evaluation board established pursuant to §2621 shall perform the following functions under the general direction of the contracting officer:

- (a) Review the current data files on eligible firms and responses to notice of the particular project;
- (b) Evaluate the firms in accordance with the prescribed criteria in §2620;
- (c) Hold discussions with at least three (3) of the most highly qualified firms about concepts and the relative utility of alternative methods of furnishing

the required services (but not concerning architect-engineer fees) when the prospective architect-engineer contract is estimated to exceed ten thousand dollars (\$10,000); and

- (d) Prepare a selection report for the contracting officer recommending, in order of preference, at least three (3) firms that are evaluated to be the most highly qualified to perform the required services.

2622.2 The selection report shall include a description of the discussions and evaluation conducted by the board to allow the contracting officer to review the considerations upon which the recommendations are based.

SOURCE: Final Rulemaking published at 35 DCR 1588 (February 26, 1988).

2623 ARCHITECT-ENGINEER SELECTION

2623.1 The contracting officer shall review the recommendations of the evaluation board and shall, with the advice of appropriate technical and staff representatives, make the final selection.

2623.2 The final selection shall be a listing, in order of preference, of the firms considered most highly qualified to perform the work.

2623.3 If the firm listed as the most preferred is not recommended as the most highly qualified by the evaluation board, the contracting officer shall include in the contract file a written explanation of the reason for the selection. All firms on the final selection list shall be considered "selected firms" with which the contracting officer may negotiate.

2623.4 The contracting officer shall not add firms to the selection report. If the firms recommended in the report are not deemed to be qualified or the report is considered inadequate for any reason, the contracting officer shall record the reasons and return the report through channels to the evaluation board for appropriate revision.

2623.5 The contracting officer shall promptly inform the evaluation board of the final selection.

SOURCE: Final Rulemaking published at 35 DCR 1589 (February 26, 1988).

2624 ARCHITECT-ENGINEER SELECTION PROCESS FOR SMALL PURCHASES

2624.1 When authorized by the contracting officer, the short process set forth in this section may be used as an alternative to the processes set forth in §§2622 and 2623 to select firms for contracts not estimated to exceed ten thousand dollars (\$10,000).

2624.2 When the contracting officer decides that formal action by the board is not necessary in connection with a particular selection, the following procedures shall be used:

- (a) The chairperson of the board shall perform the functions of the board in accordance with §2622;

- (b) The contracting officer shall review the report and approve it or return it to the chairperson for appropriate revision; and
- (c) Upon receipt of an approved report, the chairperson of the board shall furnish the contracting officer a copy of the report which will serve as an authorization for the contracting officer to commence negotiations.

SOURCE: Final Rulemaking published at 35 DCR 1589 (February 26, 1988).

2625 ARCHITECT-ENGINEER QUALIFICATIONS

- 2625.1 Each agency with construction contract authority shall receive and maintain data on firms that request to be considered for District architect-engineer contracts.
- 2625.2 To be considered for an architect-engineer contract, a firm shall file an appropriate architect-engineer qualification data form with the agency soliciting the services.
- 2625.3 The office maintaining the architect-engineer qualification data files shall classify each firm with respect to the following:
 - (a) Location;
 - (b) Specialized experience;
 - (c) Professional capabilities; and
 - (d) Capacity, with respect to the scope of work that the firm can undertake.
- 2625.4 The office maintaining qualifications data files shall review and update each file at least once each year. The process shall include the following:
 - (a) Encouraging firms to submit annually an updated statement of qualifications and performance report;
 - (b) Reviewing and updating each firm's classification;
 - (c) Recording any contract awards made to each firm in the preceding year;
 - (d) Ensuring that the file contains a copy of each pertinent performance evaluation report;
 - (e) If it is no longer pertinent, discarding any material that has not been updated within the precious three (3) years; and
 - (f) Posting the date of the review in the file.
- 2625.5 Evaluation boards and other appropriate District employees or agents shall have access to data files.

SOURCE: Final Rulemaking published at 35 DCR 1590 (February 26, 1988).

2626 COST ESTIMATE FOR ARCHITECT-ENGINEER CONTRACTS

- 2626.1 An independent District estimate of the cost of architect-engineer services shall be prepared by or under the direction of the contracting officer before commencing negotiations in accordance with §2627 for each proposed contract or contract modification estimated to exceed ten thousand dollars (\$10,000).
- 2626.2 The estimate shall be prepared by the agency requesting the services, or under the direction of the contracting officer at the request of that agency.
- 2626.3 The agency estimate, or request for an estimate, shall be forwarded to the contracting officer with the request for the services.
- 2626.4 Access to information concerning the District estimate shall be limited to District personnel and agents whose official duties require knowledge of the estimate. The overall amount of the District's estimate shall not be disclosed except as permitted by this title.
- 2626.5 The contracting officer may make an exception to §2626.4 during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the District estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price. The overall amount of the District's estimate shall not be disclosed.

SOURCE: Final Rulemaking published at 35 DCR 1591 (February 26, 1988).

2627 NEGOTIATIONS OF ARCHITECT-ENGINEER CONTRACTS

- 2627.1 Based upon the report submitted by the evaluation board, the contracting officer shall begin negotiations in accordance with this chapter.
- 2627.2 The contracting officer (or designee) shall first attempt to negotiate a contract with the highest rated qualified firm for the required services at a price which the contracting officer determines in writing to be fair and reasonable to the District.
- 2627.3 The contracting officer shall inform the firm that no construction contract may be awarded to the firm that designed the project, excepted as provided in §2607.2.
- 2627.4 The contracting officer shall ensure that the firm has a clear understanding of the scope of work, specifically, the essential requirements involved in providing the required services, and shall determine whether the firm will make available the necessary personnel and facilities to perform the services within the required time.
- 2627.5 During negotiations, the contracting officer shall seek advance agreement in accordance with chapter 33 of this title on any charges for computer-assisted design.
- 2627.6 The contracting officer shall limit the firm's subcontracting to firms agreed upon during negotiations or through a formal contract modification.
- 2627.7 If a mutually satisfactory contract cannot be negotiated, the contracting officer shall notify the firm that negotiations are terminated. The contracting officer shall then

initiate negotiations with the next rated qualified firm on the list. This procedure shall be continued until a mutually satisfactory contract has been negotiated.

- 2627.8 If the contracting officer is unable to negotiate a satisfactory contract with any of the selected firms, he or she shall request a listing of additional firms from the evaluation board and continue negotiations in accordance with this section until an agreement is reached.

SOURCE: Final Rulemaking published at 35 DCR 1591 (February 26, 1988).

2628 RELEASE OF INFORMATION

- 2628.1 After final selection has taken place under §2623, the contracting officer may release information identifying the highest rated architect-engineer firm with which a contract will be negotiated.

- 2628.2 If negotiations are terminated without awarding a contract to the highest rated firm, the contracting officer may release that information and state that negotiations will be undertaken with another named architect-engineer firm.

- 2628.3 When an award has been made, the contracting officer shall publicize the award in accordance with the provisions of chapter 13 of this title.

SOURCE: Final Rulemaking published at 35 DCR 1592 (February 26, 1988).

§2629: RESERVED

2630 LIABILITY FOR DESIGN ERRORS OR DEFICIENCIES

- 2630.1 The firm shall be responsible for the professional quality, technical accuracy, and coordination of all services required under its contract. The firm shall be liable for costs to the District resulting from errors or deficiencies in designs furnished under its contract.

- 2630.2 When modification of a construction contract is required because of an error or deficiency in the services provided under an architect-engineer contract, the contracting officer shall consider the extent to which the architect-engineer contractor may be liable.

- 2630.3 If the contracting officer determines that the firm is liable, and the recoverable cost will exceed the administrative cost involved or collection is otherwise in the best interests of the District, the contracting officer shall initiate procedures to collect the amount due.

- 2630.4 The contracting officer shall include in the contract file a written statement of the reasons for the decision whether to recover costs from the firm.

SOURCE: Final Rulemaking published at 35 DCR 1592 (February 26, 1988).

2631 DESIGN WITHIN FUNDING LIMITATIONS

- 2631.1 The District may require the architect-engineer contractor to design the project so that construction costs will not exceed a contractually specified dollar limit. The amount of the construction funding limitation shall be established during negotiations between the firm and the contracting officer.

- 2631.2 In negotiating the funding limitation amount, the contracting officer shall make available to the firm the information upon which the District has based its initial construction estimate and subsequently acquired information that may affect the construction costs.

- 2631.3 If the price of construction proposed in response to a District solicitation exceeds the construction specified dollar funding limit in the architect-engineer contract, the firm shall be solely responsible for redesigning the project within the funding limitation.

- 2631.4 Any redesign services required by §2631.3 shall be performed at no increase in the price of the architect-engineer contract. However, if the cost of proposed construction is affected by events beyond the firm's reasonable control (such as an increase in material cost which could not have been anticipated or an undue delay by the District in issuing a construction solicitation), the District may be obligated for any additional costs.

- 2631.5 If an architect-engineer firm's design fails to meet the contractual limitation on construction cost and the District determines that the firm should not redesign the project, the contracting officer shall place a written statement of the reasons for that determination in the contract file.

SOURCE: Final Rulemaking published at 35 DCR 1593 (February 26, 1988).

2632 REDESIGN RESPONSIBILITY FOR DESIGN ERRORS OR DEFICIENCIES

- 2632.1 The architect-engineer firm shall make necessary corrections at no cost to the District if the designs, drawings, specifications, or other items or services furnished by the firm contain any errors, deficiencies, or inadequacies.

- 2632.2 If the contracting officer does not require a firm to correct errors, the contracting officer shall include a written statement of the reasons for that decision in the contract file.

SOURCE: Final Rulemaking published at 35 DCR 1594 (February 26, 1988).

2633 ARCHITECT-ENGINEER PERFORMANCE EVALUATION

- 2633.1 The contract administrator shall prepare a performance evaluation report for contracts of more than ten thousand dollars (\$10,000) and may prepare a report for contracts of ten thousand dollars (\$10,000) or less.

- 2633.2 The contract administrator shall prepare a performance report after final acceptance of the work or after contract termination, as appropriate.
- 2633.3 If the contract administrator concludes that a firm's overall performance is unsatisfactory, the contracting officer shall advise the firm in writing that a report of unsatisfactory performance is being prepared and shall state the basis for the report.
- 2633.4 If, after receiving the contract administrator's report, the firm responds with any written comments, the contract administrator shall include them in the report, and consider them in resolving any alleged factual discrepancies, and make any appropriate changes in the report.
- 2633.5 The contracting officer shall review each performance report for accuracy and reasonableness.
- 2633.6 The contracting officer shall include the performance evaluation report in the contract file, and shall send a copy to the office responsible for maintenance of the firm's qualifications data. The office shall retain the report for at least six (6) years after the date of the report.

SOURCE: Final Rulemaking published at 35 DCR 1594 (February 26, 1988).

2699 DEFINITIONS

- 2699.1 When used in this chapter, the following words and terms shall have the meanings ascribed:

Affiliate - an individual or firm that controls, is controlled by, or is under common control with another individual or firm.

Award information - information regarding the name of the contractor and the amount of the contract award.

Contract administrator - the individual or individuals, other than the contracting officer, responsible for overseeing the progress of a contract after it is awarded. The contract administrator does not give instructions to the contractor that will alter terms, conditions, or costs of the contract.

Design competition - that part of the architect-engineer solicitation which relates to the requirement for a conceptual design only.

Firm - any individual, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

Notice of intent to award - a written notice to the apparent awardee advising of intent to award the contract contingent upon the execution of required bonds and the formal contract, and the obtaining of all necessary approvals.

Plans and specifications - drawings, text, and other descriptions of the physical or functional characteristics required for and preliminary to the construction.

SOURCE: Final Rulemaking published at 35 DCR 1594 (February 26, 1988).

CHAPTER 27 BONDS, OTHER SECURITY, AND INSURANCE

Secs.	
2700	General Provisions
2701	Bid Bonds and Other Security
2702	Noncompliance with Bid Security Requirements
2703	Performance and Payment Security
2704	Reduction of Sheltered Market Security Requirements
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2700 GENERAL PROVISIONS

2700.1 In addition to the requirements for bonds and other security under the provisions of Title V of the D.C. Procurement Practices Act of 1985 (the "Act"), D.C. Law 6-85, D.C. Code §1-1185 (1981), the Director or any contracting officer may require any of the following types of security for any solicitation or contract subject to the provisions of the Act and this title, other than a small purchase under chapter 18, regardless of the estimated amount of the contract:

- (a) Bid bonds;
- (b) Other bid or proposal security;
- (c) Construction performance and payment bonds; and
- (d) Performance or payment bonds or other security on non-construction contracts.

2700.2 The contracting officer shall determine whether security of any type would be in the best interests of the District in all contracts other than small purchases. In non-construction contracts, the contracting officer shall consider the following factors:

- (a) Whether District property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (such as in retention of salvaged material);
- (b) When a contractor sells assets to or merges with another business entity, whether the District (after recognizing the other entity as the successor in interest) needs assurance that it is financially capable;

- (c) Whether substantial progress payments are to be made before delivery of end item starts;
- (d) Whether the contract is for dismantling, demolition, or removal of improvements; or
- (e) Any other factors which might favor the use of security to protect the best interests of the District.

2700.3 A payment security shall be required only when a performance security is required and the use of the payment security is in the best interests of the District, unless the contracting officer determines in writing that either type of security would, by itself, protect the best interests of the District.

2700.4 When a security is required by the contracting officer under the Act or this chapter, the contracting officer may accept any of the following types of security:

- (a) A bond provided by a surety in accordance with §2708;
- (b) A certified check or irrevocable letter of credit issued by an insured financial institution in the equivalent amount of the security: or
- (c) United States government securities that are assigned to the District which pledge the full faith and credit of the United States.

2700.5 The contracting officer shall determine a contractor's responsibility even though security has been or can be obtained.

2700.6 A solicitation shall not bar bidders or offerors from using any of the types of surety or security permitted by this chapter, unless otherwise prohibited by law or regulation.

2700.7 When required by federal law or regulation or as a condition of federal assistance, the contracting officer shall require security, and the solicitation shall state the requirement.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1596 (February 26, 1988).

2701 BID BONDS AND OTHER SECURITY

2701.1 The contracting officer may require bid security in connection with any solicitation, regardless whether any payment or performance security will be required under the contract.

2701.2 When the District independent price estimate for a construction contract exceeds one hundred thousand dollars (\$100,000), the contracting officer shall require a bid security for the invitation for bids or request for proposals.

2701.3 When the District's independent price estimate for a construction project is less than one hundred thousand dollars (\$100,000), the contracting officer may require a bid security.

2701.4 The bid security for a construction contract shall be in an amount equal to at least five percent (5%) of the amount of the bid or price proposal. The bid security for non-construction contracts shall be in an amount set by the contracting officer.

2701.5 When a bid security is requiring the solicitation shall contain the following:

- (a) A statement that bid security is required;
- (b) Notice that the bid security will remain in effect for as long as the bid or proposal is required to remain effective; and
- (c) Sufficient information to allow bidders or offerors to determine the amount of the required bid security.

2701.6 No action shall be taken against the bid security of a bidder or offeror that is permitted to withdraw a bid or proposal prior to award due to a mistake in the bid or proposal, in accordance with the applicable provisions of chapters 15 or 16.

SOURCE: Final Rulemaking published at 35 DCR 1597 (February 26, 1988).

2702 NONCOMPLIANCE WITH BID SECURITY REQUIREMENTS

2702.1 If a bid fails to comply with the bid security requirements set forth in the solicitation, the contracting officer shall reject the bid. However, the contracting officer may accept the bid if the contracting officer determines in writing that both of the following apply:

- (a) The bid or proposal meets the criteria set forth in this section; and
- (b) Acceptance of the bid or proposal would be in the best interests of the District.

2702.2 If only one bid is received, the bid may be accepted and the contracting officer shall require the furnishing of the bid security before the contract is signed.

2702.3 If the amount of the bid security is less than required, but is equal to or greater than the difference between the bid price and the next higher acceptable bid, the bid may be accepted.

2702.4 If the amount of the bid security submitted, although less than that required by the solicitation for the maximum quantity bid upon, is sufficient for a quantity for which the bidder is otherwise eligible for award, the bid may be accepted. Any award to the bidder or offeror shall not exceed the quantity covered by the bid security.

2702.5 If the bid security becomes inadequate as a result of the correction of a mistake, the bid may be accepted if the bidder agrees to increase the bid security to the level required for the corrected bid.

2702.6 If the bid security is received late, and late receipt is waived in accordance with §1523 of this title, the bid may be accepted.

SOURCE: Final Rulemaking published at 35 DCR 1598 (February 26, 1988).

2703 PERFORMANCE AND PAYMENT SECURITY

- 2703.1 The contracting officer shall require a contractor to furnish performance and payment bonds or other security on any construction contract when the District's independent estimate of the cost of the contract exceeds one hundred thousand dollars (\$100,000), in accordance with the provisions of this section.
- 2703.2 The contracting officer may require a contractor to furnish a payment or performance bond or other security for any construction or non-construction contract, regardless of amount, when the contracting officer determines that the security is necessary or advisable to protect the interests of the District. The security shall be furnished in accordance with the provisions of this section.
- 2703.3 The amount of the performance security shall be one hundred percent (100%) of the original contract price, unless the contracting officer determines that a lesser amount or percentage would be adequate for the protection of the District. The contracting officer shall state the amount or percentage in the solicitation.
- 2703.4 The contracting officer shall require additional performance security when a contract price is increased. The increase in performance security shall equal one hundred percent (100%) of the increase in the contract price, unless the contracting officer determines that a lesser amount or percentage is adequate for the protection of the District.
- 2703.5 The contracting officer may require additional performance security by directing a contractor to increase the original sum of the existing security or to obtain an additional security.
- 2703.6 The payment security shall be in an amount of not less than fifty percent (50%) of the total amount of the contract price.
- 2703.7 When a contract price is increased, the District may require additional payment security in an amount adequate to protect suppliers of labor and material. However, in no event shall the amount of payment security fall below fifty percent (50%) of the increased contract price.
- 2703.8 When performance or payment security is required, the solicitation shall contain the following:
- (a) A statement that security is required;
 - (b) The amount of the security expressed as a fixed sum or percentage of the contract price; and
 - (c) The deadline for submitting acceptable security.
- 2703.9 In construction contracts, the contractor shall furnish all performance and payment bonds (or other securities) by the deadline for submitting bonds (or other securities) as stated in the solicitation. The bonds (or other securities) must be submitted before a notice to proceed is issued.

2703.10 No performance security or payment security shall be required after the contract has been executed if it was not specifically required in the contract, except when determined necessary by the contracting officer for a contract modification.

2703.11 If the contracting officer uses a letter contract to allow the contractor to proceed with work before execution of the definitive contract, the letter contract shall contain a clause, approved by the Director, that no payments shall be made under the letter contract until the required payment and performance securities have been received.

SOURCE: Final Rulemaking published at 35 DCR 1599 (February 26, 1988).

2704 REDUCTION OF SHELTERED MARKET SECURITY REQUIREMENTS

2704.1 The Director may approve the reduction of the amount of any type of security required in a solicitation designated for the sheltered market, as follows:

- (a) Up to twenty percent (20%) of the amount of each type of security required in amounts of five hundred thousand (\$500,000) or less;
- (b) Up to ten percent (10%) of the amount of each type of security required in amounts over five hundred thousand (\$500,000) but less than two million dollars (\$2,000,000); and
- (c) Up to five percent (5%) of the amount of each type of security required in amounts of two million dollars (\$2,000,000) or more.

2704.2 The types of security to be reduced and the amount of reduction of security shall be approved by the Director, based on a determination by the contracting officer that the risks to the District from the security reduction are minimal, and that the reduction of security is needed to provide for maximum competition in the sheltered market.

2704.3 The contracting officer shall give notice to prospective contractors of the security reduction in the solicitation or an amendment to the solicitation.

SOURCE: Final Rulemaking published at 35 DCR 1601 (February 26, 1988).

§§2705-2706: RESERVED

2707 SURETY BONDS AND OTHER SECURITY

2707.1 A new surety bond covering all or part of the obligation on a security previously approved may be substituted for the original security, if approved by the contracting officer.

2707.2 When a new surety bond is approved, the contracting officer shall notify the principal and surety on the original bond of the effective date of the new bond.

- 2707.3 In addition to the requirements of §505(b) of the Act, D.C. Code §1-1185.2(b) (1981), when a payment security has been provided, the contracting officer shall, upon request, furnish the name and address of the surety or sureties to any subcontractor or supplier who has furnished or been requested to furnish labor or material for a contract. In addition, general information concerning the work progress, payments, and the estimated percentage of completion may be furnished to persons who have provided labor or material and have not been paid.
- 2707.4 During contract performance of contracts requiring payment and performance security, agencies shall not withhold payments that are due to contractors or assisnees because subcontractors or suppliers have not been paid.
- 2707.5 If, after completion of the work of a contract requiring payment and performance security, the District receives written notice from the surety regarding the contractor's failure to meet its obligation to its subcontractors or suppliers, the contracting officer shall withhold final payment. However, the surety shall agree to hold the District harmless from any liability resulting from withholding the final payment. The contracting officer shall authorize final payment upon agreement between the contractor and surety or upon a judicial or other binding determination of the rights of the parties.
- 2707.6 If the amount of security exceeds the surety's underwriting limit, as established by the U.S. Department of the Treasury or a list established by the District, the security shall be acceptable only if:
- (a) The amount that exceeds the specified limit is coinsured or reinsured; and
 - (b) The amount of coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or reinsurer.

SOURCE: Final Rulemaking published at 35 DCR 1601 (February 26, 1988).

2708 SURETIES

- 2708.1 Agencies shall obtain adequate security for bonds (including coinsurance and reinsurance agreements), required or used with a contractor for supplies or services, including construction.
- 2708.2 A bond security may be obtained from a corporate or individual surety; Provided, that an individual surety shall not be used for any construction contract in excess of one hundred thousand dollars (\$100,000).
- 2708.3 Each corporate surety shall be a company authorized to do business in the District of Columbia.
- 2708.4 The contracting officer shall determine the acceptability of all individuals proposed as sureties.
- 2708.5 At least two (2) individual sureties shall be required to execute a security. The net worth of each individual surety shall equal or exceed the amount of the security.

- 2708.6 When determining the acceptability of an individual surety, the contracting officer shall consider the number and amounts of other bonds upon which a proposed individual surety is bound, and the status of the contracts for which those securities were furnished.
- 2708.7 Each individual surety shall execute an affidavit of financial responsibility on a form prescribed by the Director.
- 2708.8 In accordance with §2 of the Act of June 11, 1878, D.C. Code §1-301 (1981), no person, corporation, partnership, or other entity shall act as a surety under this chapter at any time during the period when that person, corporation, partnership, or other entity is a party to a contract with the District of Columbia.

SOURCE: Final Rulemaking published at 35 DCR 1602 (February 26, 1988).

2709 CONSENT OF SURETY

- 2709.1 If a contract is modified, the contracting officer shall obtain the consent of surety in the following circumstances:
- (a) When an additional bond is obtained from another surety;
 - (b) When no additional bond is required and the modification is beyond the scope of the original contract; or
 - (c) When no additional bond is required and the modification does not change the scope of the contract but increases or decreases the contract price by more than twenty-five percent (25%) or fifty thousand dollars (\$50,000).
- 2709.2 The contracting officer shall obtain the consent of surety for a novation agreement.
- 2709.3 The contracting officer shall obtain the consent of surety when a contract is to be awarded after the deadline set for contract award unless the written commitment of the surety extends to or beyond the date the contract is signed.

SOURCE: Final Rulemaking published at 35 DCR 1603 (February 26, 1988).

2710 INSURANCE

- 2710.1 The District shall require each contractor to obtain insurance, by purchase, for the risks to which the contractor is exposed, except when the contract specifically relieves the contractor of liability for loss of or damage to District property.
- 2710.2 The contracting officer shall have the right to disapprove the purchase of any insurance coverage not in the best interests of the District.
- 2710.3 Insurance shall be mandatory when commingling of property, the type of operation, circumstances of ownership, or conditions of the contract make it necessary for the protection of the District.

- 2710.4 When the District requires a contractor to provide insurance coverage, the policies shall contain an endorsement that any cancellation or material change in the coverage or terms and conditions of the coverage shall not be effective unless the insurer or the contractor gives prior written notice of the cancellation or change to the District in the manner required by the contract or the contracting officer.
- 2710.5 When the District requires or approves insurance to cover loss of or damage to District property, it may be provided by specific insurance policies or by inclusion of the risks in the contractor's existing policies. The policies shall disclose the District's interests in the property.
- 2710.6 The Director may establish risk-pooling arrangements. These arrangements shall be designed to use the services of the insurance industry for safety engineering and the handling of claims at minimum cost to the District. The agency responsible shall appoint a single point of contact for each arrangement.
- 2710.7 The contracting officer may specify insurance requirements under fixed-price contracts, as follows:
- (a) When the contractor is engaged principally in District work;
 - (b) When the contractor has a separate operation engaged principally in District work;
 - (c) When the District elects to assume risks for which the contractor ordinarily would obtain commercial insurance; or
 - (d) In other circumstances when insurance coverage is in the best interests of the District.
- 2710.8 Employee group insurance plans shall not be reimburseable under cost-reimbursement type contracts unless the plans have first been approved by the contracting officer and are otherwise deemed reimburseable under the terms of the contract. Whenever an approved plan is materially changed during the course of the contract, the plan shall be resubmitted for approval, and no costs shall be reimburseable unless approval of the revised plan has first been obtained.
- 2710.9 Group insurance plans under §2710.8 shall provide for the District to share in any premium refunds or credits paid or otherwise allowed to the contractor. In determining the extent of the District's share in any premium refunds or credits, any special reserves and other refunds to which the contractor may be entitled in the future shall be taken into account.

SOURCE: Final Rulemaking published at 35 DCR 1603 (February 26, 1988).

2711 REINSURANCE

- 2711.1 If reinsurance is contemplated, the contracting officer may require reinsurance agreements to be executed and submitted with the securities before making a final determination on the securities.

2711.2 When specified in the solicitation, the contracting officer may accept a security from the direct writing company in satisfaction of the total bond requirement of the contract. This shall be permissible until necessary reinsurance agreements are executed, even though the total security requirement may exceed the insurer's underwriting limitation.

2711.3 The contractor shall execute and submit necessary reinsurance agreements to the contracting officer within the time specified in the solicitation, which shall not exceed forty-five (45) calendar days after the execution of the security.

SOURCE: Final Rulemaking published at 35 DCR 1605 (February 26, 1988).

2712 LIABILITY

2712.1 The contracting officer shall require contractors to comply with applicable federal and District workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a contractor's commercial operations that it would not be practical to require the coverage.

2712.2 Each contractor shall be required to carry employer's liability coverage of at least one hundred thousand dollars (\$100,000).

2712.3 The contracting officer shall require each contractor to have bodily injury liability insurance coverage written on the comprehensive form of policy of at least five hundred thousand dollars (\$500,000) per occurrence.

2712.4 Property damage liability insurance shall be required only in special circumstances, as determined by the contracting officer.

2712.5 The contracting officer shall require automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract.

2712.6 Policies covering automobiles shall provide coverage of at least two hundred thousand dollars (\$200,000) per person and five hundred thousand dollars (\$500,000) per occurrence for bodily injury and twenty thousand dollars (\$20,000) per occurrence for property damage.

2712.7 When an aircraft is used in connection with performing a contract, the contracting officer shall require aircraft public and passenger liability insurance. Coverage shall be at least two hundred thousand dollars (\$200,000) per person and five hundred thousand dollars (\$500,000) per occurrence for bodily injury, other than passenger liability, and two hundred thousand dollars (\$200,000) per occurrence for property

damage. Coverage for passenger liability bodily injury shall be at least two hundred thousand dollars (\$200,000) multiplied by the number of seats or passengers, whichever is greater.

SOURCE: Final Rulemaking published at 35 DCR 1605 (February 26, 1988).

2799 DEFINITIONS

2799.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Attorney-in-fact - an agent, independent agent, underwriter, or any other company or individual holding a power of attorney granted by a surety.

Bid bond - a bid security in the form of a bond.

Bid security - a form of guarantee assuring that the bidder or offeror will not withdraw a bid or proposal within the period specified for acceptance and will execute a written contract and furnish required bonds or other security, including any necessary coinsurance or reinsurance agreements, within the time specified in the solicitation, unless a longer time is allowed, after receipt of the specified forms.

Bond - a written instrument executed by a bidder or contractor (the "principal"), and a second party (the "surety" or "sureties"), to assure fulfillment of the principal's obligations to a third party (the "obligee" or "District"), identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, for any loss sustained by the obligee.

Corporate surety - a corporation licensed under District insurance laws which, under its charter, has legal power to act as surety for others.

Co-surety - one (1) of two (2) or more sureties that are jointly liable for the penal sum of the bond. A limit of liability for each surety may be stated.

Consent of surety - an acknowledgment by a surety that its bond given in connection with a contract continues to apply to the contract as modified.

Direct writing company - the surety actually executing the bond or other security (as opposed to a source of reinsurance or secondary underwriter).

Executed - agreed to and signed by the parties to a transaction.

Individual surety - a natural person, as distinguished from a business entity, who is liable for the entire penal amount of the bond.

Insurance - a contract which provides that, for a stipulated consideration, the insurer undertakes to indemnify the insured party against risk of loss, damage, or liability arising from an unknown or contingent event.

Payment bond - a bond that ensures payment as required by law to all persons supplying labor or material in the performance of the work provided for in the contract.

Performance bond - a bond that secures performance and fulfillment of the contractor's obligations under the contract.

Penal sum or penal amount - the amount of money specified in a security (or a percentage of the bid price in a bid security) as the maximum payment for which the surety is obligated.

Power of attorney - the authority given to a person or corporation to act for and obligate another as specified in the instrument creating the power. In corporate suretyship, an instrument under seal which appoints an attorney-in-fact to act on behalf of a surety company in signing bonds.

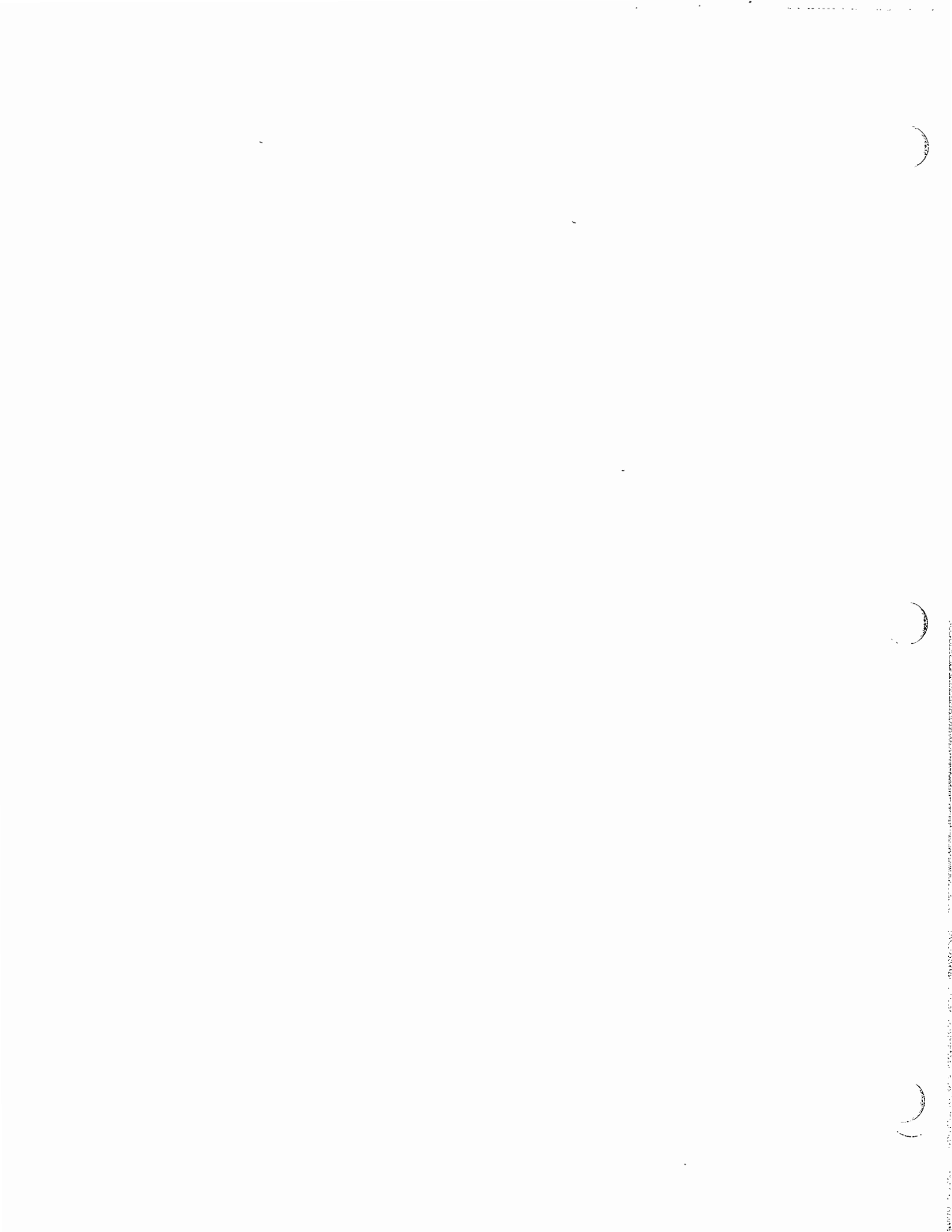
Reinsurance - a transaction which provides that a surety, for a consideration, agrees to indemnify another surety against loss which the latter may sustain under a bond which it has issued.

Risk-pooling arrangements - arrangement by which the risks of underwriting any security are shared by two or more securities.

Surety - a party legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation.

Underwriting limitation - the maximum amount for which a surety can be liable under a bond or other security.

SOURCE: Final Rulemaking published at 35 DCR 1606 (February 26, 1988).



CHAPTER 28 SUBCONTRACTING

Secs.
 2800 Consent to Subcontract
 2801 Contracting Officer's Responsibilities
 2802 Review of Requests for Consent
 2899 Definitions

2800 CONSENT TO SUBCONTRACT

- 2800.1 The contracting officer may require consent to subcontract in any instance where the contracting officer determines that it would be in the best interests of the District.
- 2800.2 The contracting officer shall require consent to subcontract in those instances where approval of subcontractors is required by the Act or this title.
- 2800.3 The contracting officer may require consent by the District to all or any part of the subcontracts to be issued under a prime contract.
- 2800.4 The contracting officer may require, as part of an invitation for bids ("IFB") or request for proposals ("RFP"), that each responding vendor include in its response a list of proposed subcontractors, a list of tasks or items which the vendor intends to subcontract, or both.
- 2800.5 In determining whether to require consent to subcontract, the contracting officer shall consider the following:
- (a) The complexity of the work to be done under subcontracts;
 - (b) The value of the subcontract(s);
 - (c) Whether the District's interests can be adequately protected without requiring consent; and
 - (d) Any other relevant factors.
- 2800.6 If the contracting officer does not require consent to subcontract, the contracting officer shall include a written justification for his or her decision in the contract file in each of the following circumstances:
- (a) The prime contract is a fixed-price incentive or fixed-price redeterminable contract and the prime contract price is estimated to exceed five hundred thousand dollars (\$500,000);
 - (b) The prime contract is a firm-fixed-price or fixed-price contract with an economic price adjustment provision and a new subcontract results from an unpriced

modification to the prime contract and the prime contract price is estimated to exceed five hundred thousand dollars (\$500,000);

- (c) The subcontract is to be a cost-reimbursement, time-and-materials, or labor-hour contract and the subcontract price is estimated to exceed two hundred thousand dollars (\$200,000);
- (d) The subcontract is to be one of several subcontracts under a prime contract with a single subcontractor for the same or related supplies or services which in the aggregate are estimated to total more than one hundred thousand dollars (\$100,000) and the prime contract price is estimated to exceed five hundred thousand dollars (\$500,000); or
- (e) Contracts for mortuary services, refuse services, or shipment and storage of personal property, and the District requires prior approval of subcontractors' facilities.

2800.7

If the contracting officer does not require consent to subcontract under a cost-reimbursement or letter-prime contract (other than facilities contract), the contracting officer shall include a written justification for his or her decision in the contract file in the following circumstances:

- (a) The subcontract is to be for fabrication, purchase, rental, installation, or other purchase of special test equipment valued at more than ten thousand dollars (\$10,000) or of any items of industrial facilities;
- (b) The subcontract will have experimental, developmental, or research work as one of its purposes;
- (c) The subcontract is to be a cost-reimbursement, time-and-materials or labor-hour subcontract; or
- (d) The subcontract is to be a fixed-price subcontract that exceeds either ten thousand dollars (\$10,000) or five percent (5%) of the total estimated cost of the prime contract.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1609 (February 26, 1988).

2801

CONTRACTING OFFICER'S RESPONSIBILITIES

2801.1

The contracting officer shall ensure that any requirements for consent to subcontract are included in the solicitation for the prime contract.

2801.2

Upon receipt of the contractor's request for consent to subcontract, the contracting officer shall do the following:

- (a) Promptly evaluate the contractor's request for consent to subcontract;
- (b) Obtain assistance in the evaluation from audit, pricing, technical, or other specialists as necessary; and

- (c) Notify the contractor in writing of consent to subcontract or the withholding of consent to subcontract, including any changes or corrections required.

2801.3 The contracting officer's consent to subcontract shall not constitute a determination of the acceptability of the subcontract terms or price or of the allowability of costs, unless the consent to subcontract specifies otherwise.

2801.4 The contracting officer shall not consent to subcontract in any of the following instances:

- (a) When the fee in a cost-reimbursement subcontract exceeds any applicable fee limitations;
- (b) When a payment under the subcontract is on a cost-plus-a-percentage-of-cost basis;
- (c) When the contracting officer is obligated to deal directly with the subcontractor;
- (d) When the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor are made binding on the District; or
- (e) When there is a repetitive or unduly protracted use of cost-reimbursement, time-and-materials, or labor-hour subcontracts.

2801.5 The contracting officer shall not refuse consent to subcontract merely because the subcontract contains a clause giving the subcontractor the right of indirect appeal to the Contract Appeals Board if the subcontractor is affected by a dispute between the District and the prime contractor.

SOURCE: Final Rulemaking published at 35 DCR 1610 (February 26, 1988).

2802 REVIEW OF REQUESTS FOR CONSENT

2802.1 When a solicitation contains a requirement for consent to subcontract, the contractor shall be required to submit a request for consent to subcontract.

2802.2 The contracting officer shall review the request for consent to subcontract and supporting data, and shall consider the following issues:

- (a) Whether the selection of the particular supplies, equipment, or services is technically justified;
- (b) Whether the contractor has complied with the prime contract requirements regarding subcontracting with certified minority businesses or District-based businesses;
- (c) Whether adequate price competition was obtained or its absence properly justified;
- (d) Whether the contractor adequately assessed and disposed of subcontractor alternate proposals, if offered;

- (e) Whether the contractor has a sound basis for selecting and determining the responsibility of the particular subcontractor;
- (f) Whether the contractor performed adequate cost or price analysis or price comparisons and obtained accurate, complete, and current cost or pricing data, including any required certification;
- (g) Whether the proposed subcontract type is appropriate for the risks involved and is consistent with current policy;
- (h) Whether adequate consideration has been obtained for any proposed subcontract that will involve the use of District-furnished facilities;
- (i) Whether the contractor has adequately and reasonably translated the prime contract technical requirements into subcontract requirements; and
- (j) Whether the subcontractor has been suspended, debarred, or is otherwise ineligible for award.

SOURCE: Final Rulemaking published at 35 DCR 1611 (February 26, 1988).

2899 DEFINITIONS

2899.1 As used in this chapter, the following terms and phrases shall have the meanings ascribed:

Consent to subcontract - the contracting officer's written consent for the prime contractor to enter into a particular subcontract.

Facilities contract - a contract under which District facilities are provided to a contractor or subcontractor by the District for use in connection with performing one (1) or more related contracts for supplies or services.

Subcontract - a contract between a prime contractor (or, in some instances, a subcontractor) and a subcontractor to furnish supplies or services for performance of a part of a prime contract or another subcontract, including, but not limited to, purchase orders, and changes and modifications to purchase orders.

Subcontractor - a supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

SOURCE: Final Rulemaking published at 35 DCR 1612 (February 26, 1988).

CHAPTER 31 PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION

Secs.	
3100	General Provisions
3101	Notice and Assistance
3102	Indemnification
3103-3104	[Reserved]
3105	Licensing and Royalty Information
3106	Patent Rights under District Contracts
3107	Patent Rights Procedures
3108-3109	[Reserved]
3110	Rights to Copyrighted Material and Proprietary Information
3111	Proprietary or Confidential Information in Bids and Proposals
3199	Definitions

3100 GENERAL PROVISIONS

- 3100.1 The District shall honor rights in patents, copyrights, and proprietary information. Contracting officers shall comply with the requirements of federal laws and regulations, in addition to the requirements of this chapter, in acquiring or using these rights.
- 3100.2 A contractor shall obtain permission from the lawful owner(s) of copyrighted materials before including all or part of any copyrighted work in any item to be delivered under a contract, unless permission is not required under the fair use or other applicable provisions of federal copyright statutes or regulations.
- 3100.3 The District shall not unreasonably restrict the commercial use, outside of the performance of the contract with the District, of inventions made while performing District contracts.
- 3100.4 The contracting officer shall not refuse to award a contract solely on the basis of a suspicion that the contractor may infringe a patent, unless the contracting officer determines that refusal is in the best interests of the District.
- 3100.5 Except as provided in §3102.3, the contracting officer shall include in all solicitations and contracts a clause, approved by the Director, which requires the contractor to indemnify the District against infringement of rights in patents, copyrights, or proprietary information.
- 3100.6 The District shall limit its demands for rights in proprietary information resulting from private developments to those reasonable for present and future use by the District.

AUTHORITY: Unless otherwise noted, the authority of this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).
SOURCE: Final Rulemaking published at 35 DCR 1614 (February 26, 1988).

3101 NOTICE AND ASSISTANCE

3101.1 The contractor shall notify the contracting officer of all claims of patent or copyright infringement or misappropriation of proprietary information that come to the contractor's attention in connection with performing a District contract.

3101.2 A contractor shall, upon request, assist the District with any evidence and information in its possession in connection with any claim or lawsuit against the District due to any alleged patent or copyright infringement or misappropriation of proprietary information arising out of or resulting from the performance of a contract.

3101.3 The contracting officer shall include a clause, approved by the Director, in each solicitation and contract requiring the contractor to report to the contracting officer each suit or claim of patent or copyright infringement or misappropriation of proprietary information. The clause shall also require the contractor, upon request, to furnish to the District all evidence and information in possession of the contractor pertaining to such suit or claim and that the contractor shall furnish evidence and information at its own expense.

SOURCE: Final Rulemaking published at 35 DCR 1614 (February 26, 1988).

3102 INDEMNIFICATION

3102.1 The contracting officer shall not include in any solicitation or contract any provision by which the District expressly agrees to indemnify the contractor against liability for patent or copyright infringement or misappropriation of proprietary information.

3102.2 The contracting officer shall ensure that each contract requiring indemnification includes an indemnity clause, approved by the Director, that provides for reimbursement of the District for any liability incurred as the result of an infringement of rights in patents, copyrights, or proprietary information.

3102.3 The contracting officer shall not require the inclusion of an indemnity clause in the following situations:

(a) When the contract is awarded using the small purchase procedures under chapter 18 of this title; or

(b) When the contract is solely for architect-engineer services.

3102.4 If it is in the best interests of the District to exempt one (1) or more specific United States patents from a patent indemnity clause, the contracting officer may grant the exemption upon written approval of the Director. The contracting officer shall include the Director's written approval in the contract file, and shall include a clause in the contract that allows for waiver of indemnity of one (1) or more specific patents.

SOURCE: Final Rulemaking published at 35 DCR 1615 (February 26, 1988).

§§3103-3104: RESERVED**3105 LICENSING AND ROYALTY INFORMATION**

- 3105.1 Except as provided in §3105.2, upon the request of the contracting officer, a contractor or a prospective contractor shall furnish to the contracting officer licensing and royalty information and reports sufficient to determine whether royalties anticipated or actually paid under District contracts are excessive, improper, or inconsistent with any District rights in particular inventions, patents, patent applications, copyrights, or proprietary information. The contracting officer shall take appropriate action to reduce or eliminate excessive or improper royalties.
- 3105.2 The contracting officer shall not require bidders to provide royalty and licensing information in sealed bids unless the contracting officer determines that the information is necessary for the proper protection of the District's interests.
- 3105.3 The contracting officer shall include a clause, approved by the Director, in each request for proposals requesting information relating to any proposed charge for royalties or need to obtain a license for use of any rights in patents, copyrights, or proprietary information.
- 3105.4 The contracting officer, when considering the approval of a subcontract in accordance with the provisions of this title, shall require and obtain the same royalty and licensing information and reports, and take the same action with respect to subcontracts in relation to royalties and licenses, as required by §3105.3 for prime contracts. Consent to subcontract does not have to be withheld pending receipt of the required information and reports.
- 3105.5 When the District is obligated to pay a royalty on a patent, copyright, or proprietary information because of a license agreement between the District and the licensor, and the contracting officer knows or has reason to believe that the licensed patent will be applicable to a prospective contract, the contracting officer shall furnish information relating to the royalty to prospective offerors. The contracting officer shall include in the solicitation a notice of the license, the number or description of the patent, copyright, or proprietary information, the royalty rate stated in the license, and any other pertinent information.
- 3105.6 When the District is obligated to pay a royalty because of a license agreement between the District and a licensor, the solicitation shall require each offeror to furnish information indicating whether it is a licensee. The solicitation clause shall be approved by the Director. Based on this information, the contracting officer may do either of the following:
- (a) Evaluate an offeror's price by adding an amount equal to the royalty; or
 - (b) Negotiate a price reduction with an offeror-licensee when the offeror is licensed under the same patent at a lower royalty rate.

- 3105.7 If, at any time, the contracting officer has reason to believe that any royalties paid, or to be paid, under an existing or prospective contract or subcontract are inconsistent with the District's rights, or are excessive or otherwise improper, contracting officer shall promptly report these matters to the Director.
- 3105.8 After consultation with the Director, the contracting officer shall act to protect the District against payment of royalties on supplies or services in the following instances:
- (a) When the District has a royalty free license with respect to the supplies or services;
 - (b) When the rate is in excess of the rate at which the District is licensed; or
 - (c) When the royalties, in whole or in part, otherwise constitute an improper charge.
- 3105.9 If the contracting officer, after consultation with the Director, determines that the District has paid or will pay royalties under an existing or prospective contract that are inconsistent with the District's rights or are excessive or otherwise improper, and if it is in the best interests of the District, the contracting officer shall obtain a refund (pursuant to a clause, approved by the Director, providing for a refund) or shall negotiate for a reduction of royalties.

SOURCE: Final Rulemaking published at 35 DCR 1616 (February 26, 1988).

3106 PATENT RIGHTS UNDER DISTRICT CONTRACTS

- 3106.1 The Director shall prescribe standard contract provisions governing patent rights under District contracts for inclusion in solicitations and contracts, in accordance with the provisions of this section.
- 3106.2 If the contract permits the contractor to retain title, and the contractor elects to retain title to an invention, the District shall have at least a nonexclusive, non-transferable, irrevocable, paid-up license to use or have used, for or on behalf of the District, any invention made in the performance of work under a District contract. The District may have additional rights to sublicense the invention if provided in the contract.
- 3106.3 The District shall have the right to receive title to any invention made in the performance of a contract unless the contract provides otherwise. If the contract extends a limited right to the contractor to acquire patent rights, the District shall have the right nevertheless to receive title to an invention in the following circumstances:
- (a) If the contractor does not disclose the invention within the time specified in the contract;
 - (b) In any instance where the contractor does not elect to retain rights or fails to elect to retain rights to the invention within the time specified in the contract;
 - (c) In any instance where the contractor has not filed a patent application within the time specified in the contract;

- (d) In any instance where the contractor decides not to continue prosecution of a patent application, pay maintenance fees, or defend in a re-examination or opposition proceeding on the patent; and
 - (e) In any instance where the contractor no longer desires to retain title.
- 3106.4 If the contract gives a limited right to the contractor to acquire patent rights, the contractor may request greater rights to an invention within the period specified in the contract. The contracting officer may grant a request for greater rights if the contracting officer determines that the grant of greater rights is in the best interests of the District. In making the determination, the contracting officer shall consider the following objectives:
- (a) Ensuring that inventions are used in a manner that will promote full and open competition and free enterprise; and
 - (b) Ensuring that the District obtains sufficient rights in District-supported inventions to meet the needs of the District and protect the public against nonuse or unreasonable use of inventions.
- 3106.5 If the contract permits the contractor to retain title to an invention and the contractor elects not to retain title, the District may, after consultation with the contractor, grant a request for retention of rights by the inventor.
- 3106.6 If a District employee is a co-inventor of an invention made under a contract and the District acquires all or part of the rights to the invention, the Director may take any of the following actions that is consistent with the best interests of the District:
- (a) Assign all or part of the District's rights to its employee while retaining for the District any rights set forth in §3106.2;
 - (b) Assign all or part of the District's rights to the contractor for reasonable consideration, after negotiation by the contracting officer of a reasonable consideration;
 - (c) If the contractor is a nonprofit organization or is a certified minority business, assign all or part of the District's rights without consideration; or
 - (d) Retain the District's rights.
- 3106.7 For purposes of this section, an invention is made in the performance of work under a District contract if it is conceived or first actually reduced to practice in the performance of work under a District contract.

SOURCE: Final Rulemaking published at 35 DCR 1617 (February 26, 1988).

3107 PATENT RIGHTS PROCEDURES

- 3107.1 The contracting officer may include clauses, approved by the Director, in a contract which require the contractor to do any or all of the following:
- (a) Provide periodic reports (but not more frequently than annually) listing all inventions required to be disclosed during the period covered by each report;

- (b) Provide a report prior to the closeout of the contract listing all inventions or stating that there were none;
- (c) Provide, upon request, the patent application filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents; and
- (d) Furnish the District an irrevocable power to inspect and make copies of the patent application file.

3107.2 The contractor shall submit to the contracting officer a document confirming all rights to which the District is entitled, and shall furnish to the contracting officer an irrevocable power to inspect and make copies of the patent application file six (6) months after filing each patent application or within six (6) months after submitting the invention disclosure if the application has been previously filed.

3107.3 If the contracting officer determines in writing that it is in the best interests of the District, the contracting officer may modify, waive, or omit any of the rights set forth in §3106.2. The modification, waiver, or omission shall be in writing and shall be accompanied by a written statement of facts justifying the determination. The statement of facts shall include the following:

- (a) A description of the extent to which the District's rights are to be modified, waived, or omitted;
- (b) The facts and justification for the modification, waiver, or omission; and
- (c) A statement explaining how the interests of the District will be better served by the modification, waiver, or omission.

3107.4 The contractor shall establish and maintain effective procedures to ensure that its patent rights obligations are met, that subject inventions are timely identified and disclosed, and that patent applications are filed when required.

3107.5 Contractors shall submit all reports required by the contracting officer in accordance with the contract.

3107.6 The contracting officer shall establish follow-up procedures to protect the District's interests and to ensure that subject inventions are identified and disclosed; that, when required, patent applications are filed; and that the District's rights are established and protected.

SOURCE: Final Rulemaking published at 35 DCR 1619 (February 26, 1988).

§§3108-3109: RESERVED**3110 RIGHTS TO COPYRIGHTED MATERIAL AND PROPRIETARY INFORMATION**

- 3110.1 The Director shall prescribe standard contract provisions governing rights to copyrighted material and proprietary information under District contracts for inclusion in solicitations and contracts, in accordance with the provisions of this section.
- 3110.2 A contracting officer may acquire title to, or obtain or limit access to, copyrighted materials, materials subject to copyright protection, and proprietary information developed under or used in the performance of contracts.
- 3110.3 When necessary for the evaluation of bids or proposals, a contracting officer may include a request for proprietary information and data in a solicitation, in accordance with the provisions of this section.
- 3110.4 In order to protect the property rights and economic interests of contractors and prospective contractors, the Director shall develop written procedures for safeguarding and limiting access to all types of proprietary information.
- 3110.5 The procedures issued by the Director shall provide limited access to proprietary information developed or used under a contract. Unless otherwise provided by the Director, access shall be limited to District employees who are directly involved with the performance of the contract or who otherwise need access in order to properly perform their duties in connection with the contract or the items or services provided under the contract.
- 3110.6 The physical security of proprietary information shall be ensured by the use of procedures designed to limit physical access, restrict copying or other forms of duplication, and limit transfer of proprietary information to unauthorized persons.

SOURCE: Final Rulemaking published at 35 DCR 1620 (February 26, 1988).

3111 PROPRIETARY OR CONFIDENTIAL INFORMATION IN BIDS AND PROPOSALS

- 3111.1 In accordance with §317(d) of the Procurement Practices Act of 1985 ("the Act"), D.C. Code §1-1183.17(d) (1981), a bidder or offeror shall designate information contained in a response to the invitation for bids or request for proposals as proprietary or confidential by specifically identifying that information in writing in the bid or proposal.
- 3111.2 A bidder or offeror including proprietary or confidential information in its bid or offer shall conspicuously display the following information on the first page of the bid or offer if the bidder or offeror does not want the proprietary or confidential information disclosed to the public for any purpose or used by the District except for evaluation purposes:

- (a) That the bid or offer includes proprietary or confidential information that shall not be disclosed outside the District government and shall not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate the bid or proposal;
 - (b) That if a contract is awarded to the bidder or offeror, the District shall have the right to duplicate, use, or disclose the proprietary or confidential information to the extent provided in the contract;
 - (c) That this restriction does not limit the District's right to use the proprietary or confidential information if it is obtained from another source without restriction; and
 - (d) That the bidder or offeror has specifically identified, by page number or otherwise, the proprietary or confidential information subject to the restriction.
- 3111.3 In addition to the requirements of §3111.2, the bidder or offeror shall conspicuously mark each separate sheet containing proprietary or confidential information with a notation to the effect that use or disclosure of proprietary or confidential information contained on the sheet is subject to the restriction set forth on the first page of the bid or offer.
- 3111.4 The bidder or offeror shall not designate as confidential or proprietary the name of the bidder or offeror, the bid or proposal price, or any information that is not actually proprietary or confidential.
- 3111.5 If, after inspection of a bid or proposal, the contracting officer or other District official determines that all or any part of the information designated as confidential or proprietary may be subject to disclosure under the D.C. Freedom of Information Act, D.C. Code §1-1521 *et seq.* (1981), the contracting officer shall notify the bidder or offeror of that determination and allow the contractor ten (10) days to respond.
- 3111.6 If the contracting officer does not agree that evidence presented by the bidder or offeror supports the confidential or proprietary designation of the information identified by the contracting officer, the contracting officer shall do one (1) of the following:
- (a) Declare the bid non-responsive or the proposal unacceptable and eliminate the bid or proposal from consideration; or
 - (b) If the contracting officer determines that it would be in the best interests of the District to consider the bid or proposal, the contracting officer may remove the confidential or proprietary designation and consider the bid or proposal.
- 3111.7 The bidder or offeror shall be notified in writing of the contracting officer's decision under §3111.6. If the bid or proposal will be considered, the notice to the contractor shall include a warning that the bidder's or offeror's designation has been removed, and the information may be subject to disclosure under the D.C. Freedom of Information Act.
- 3111.8 If the bid or proposal is eliminated under §3111.6(a), the designated information shall not be disclosed. If the bid is modified by the contracting officer to remove

any designation of information as confidential or proprietary under §3111.6(b), the bidder or offeror may appeal the contracting officer's determination to the Director after award. The Director shall consider the evidence submitted by the bidder or offeror and the findings and determination of the contracting officer, and shall render a decision upholding or overruling the contracting officer's determination, in whole or in part. The Director may conduct an informal hearing or obtain a review and recommendation by the Procurement Review Committee before making a final decision.

- 3111.9 Each solicitation shall contain a provision, approved by the Director, which indicates the right of the contractor to designate confidential or proprietary information in response to the solicitation, as well as the right of the contracting officer to challenge the designation and either eliminate the bid or proposal or remove the designation under §3111.6.

SOURCE: Final Rulemaking published at 35 DCR 1621 (February 26, 1988).

3199 DEFINITIONS

- 3199.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Confidential information - proprietary information.

Director - the Director of the Department of Administrative Services.

Invention - any device, process, design, or other discovery that is or may be patentable or otherwise protectable under Title 35 of U.S. Code.

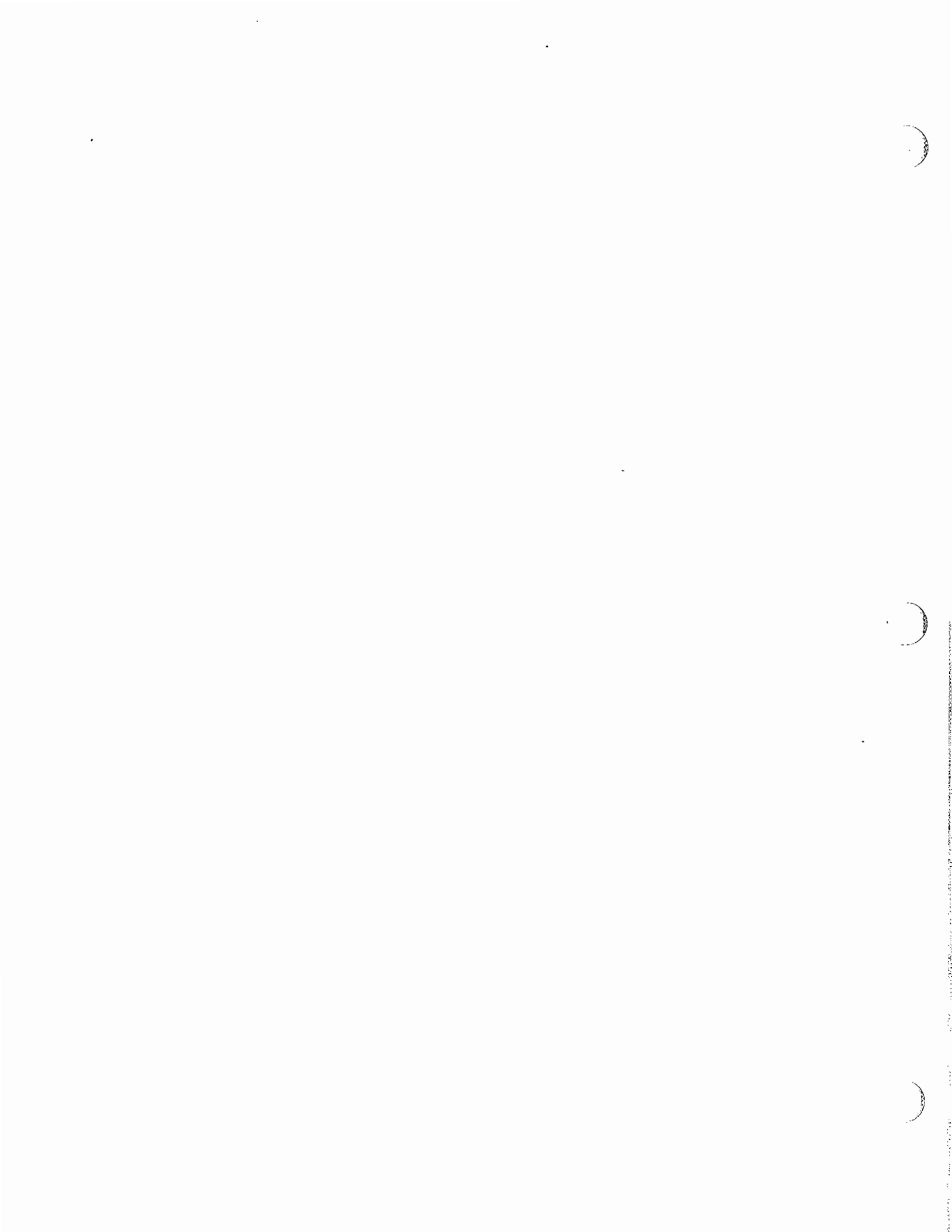
Nonprofit organization - a domestic university or an organization of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under 26 U.S.C. 501(a), or any domestic nonprofit scientific or educational institution.

Royalties - payments for the use of a patented invention, copyrighted material, or other proprietary information or data under a license granted by the owner.

Proprietary information - information, including trade secrets, data, formulas, patterns, compilations, programs, devices, methods, techniques, or processes, that has the following characteristics:

- (a) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; or
- (b) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

SOURCE: Final Rulemaking published at 35 DCR 1623 (February 26, 1988).



CHAPTER 32 CONTRACT FINANCING AND FUNDING

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3200 PROVIDING CONTRACT FINANCING

- 3200.1 Generally, private financing shall be considered the most preferable type of financing for all District contracts.
- 3200.2 Contract financing by the District shall be provided only to the extent actually needed for prompt and efficient performance, considering the availability of private financing.
- 3200.3 Contract financing shall be administered so as to aid, not impede, a procurement.
- 3200.4 The contracting officer shall avoid any undue risk of monetary loss to the District through contract financing.
- 3200.5 The contracting officer shall monitor the contractor's financial status and the contractor's use of any contract financing provided under the contract.
- 3200.6 Contract financing by the District shall be self-liquidating through contract performance.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1625 (February 26, 1988).

3201 USES OF CONTRACTING FINANCING

- 3201.1 Contract financing by the District shall be used only for financing contractor working capital, and shall not be used for the expansion of contractor-owned facilities.
- 3201.2 Except for contracts under which facilities are being procured for District ownership, contract financing by the District shall not be used for the procurement of fixed assets.
- 3201.3 Contract financing in the form of advance payments may be used by a contracting officer to assist a contractor that is a certified minority business enterprise.
- 3201.4 Contract financing in the form of progress payments may be used by a contracting officer to assist a contractor when private financing for a contract is either unavailable or insufficient.
- 3201.5 The customary progress payment rate shall be ninety percent (90%), applicable to the total costs of performing the contract. The contracting officer may authorize a customary rate of ninety-five percent (95%) for a certified minority business.
- 3201.6 Any rate higher than the rates authorized under §3201.5 shall be considered an unusual progress payment rate. The contracting officer shall only authorize progress payments at an unusual rate if both of the following apply:
- (a) The contract necessitates predelivery expenditures that are large in relation to the contract price and in relation to the contractor's working capital and credit; and

- (b) The contractor fully documents the need to supplement any private financing available.

3201.7 To encourage contractors to invest their own funds in performance despite the susceptibility of the contract to termination for the convenience of the District, the contract financing methods set forth in this section may be applied to the financing of terminations either in connection with, or independently of, financing for contract performance.

SOURCE: Final Rulemaking published at 35 DCR 1625 (February 26, 1988).

3202 NEED FOR CONTRACT FINANCING

3202.1 If a contractor or offeror meets the standards prescribed in this title for responsible prospective contractors, the contracting officer shall not treat the contractor's need for contract financing as a handicap for contract award.

3202.2 A contractor shall not be disqualified from contract financing solely because the contractor failed to indicate a need for contract financing before the contract was awarded.

SOURCE: Final Rulemaking published at 35 DCR 1626 (February 26, 1988).

§§3203-3204: RESERVED

3205 ADVANCE PAYMENTS

3205.1 The contracting officer shall not authorize the use of advance payments unless the following criteria are met:

- (a) There is a need for contract financing;
- (b) Private financing is unavailable or insufficient;
- (c) Use of progress payments would be insufficient to meet the contractor's financing needs;
- (d) The contractor can give adequate security;
- (e) The contractor is otherwise qualified as a responsible, certified minority business enterprise;
- (f) The use of advance payments would be in the best interests of the District; and
- (g) The Minority Business Opportunity Commission (the "MBOC") has recommended the use of advance payments.

- 3205.2 Before authorizing advance payments, the contracting officer shall obtain the approval of the head of the procuring agency. The request for approval shall be in the form of a written determination and findings which sets forth the contracting officer's findings on each of the criteria set forth in §3205.1 and includes a copy of the MBOC recommendation.
- 3205.3 If the request for advance payments is approved, the contracting officer shall ensure that the contractor gives adequate security and that the advance payments do not exceed the unpaid contract price.
- 3205.4 A contracting officer shall not authorize advance payments to a contractor that is also receiving a bond reduction under the same contract without the prior written approval of the Director based on a determination that the financial risk to the District would not be unreasonable and that the use of both bond reductions and advance payments would be in the best interests of the District.
- 3205.5 If a contractor requesting advance payments is also receiving advance payments under another District contract, the contracting officer shall include this information in the determination and findings, and shall consider the additional financial risk to the District when making his or her recommendation.
- 3205.6 When advance payments are made under a contract, the contracting officer shall closely monitor the performance of the contractor and the contractor's financial condition. A contractor receiving advance payments shall be subject to audit at any time, as determined by the contracting officer.
- 3205.7 The contracting officer may suspend or terminate advance payments if the contractor fails to account adequately for the use of advance funds or fails to use the funds to meet obligations related to the contract, including the following:
- (a) Failure to pay wages due to contract personnel;
 - (b) Failure to escrow withholding and payroll taxes and make required periodic tax deposits; or
 - (c) Any other failure to meet any other financial obligation under the contract for which advance payments are intended.
- 3205.8 Advance payments shall be made into a special account established at a District of Columbia banking institution approved by the Director, in accordance with procedures established by the Director and approved by the Deputy Mayor for Finance. A separate account shall be established for each contract.

SOURCE: Final Rulemaking published at 35 DCR 1626 (February 26, 1988).

3206 INTEREST ON ADVANCE PAYMENTS

- 3206.1 The contracting officer shall charge interest on the daily unliquidated balance of all advance payments at the higher of the following rates:
- (a) The published prime rate of the District banking institution in which the advance payments are deposited; or

- (b) The rate of interest in the District allowed in judgments and decrees as set forth in the D.C. Code §28-3302(c) (1981).

3206.2 The interest rate for advance payments shall be adjusted for changes in the prime rate or any change in rate established under D.C. Code §28-3302(c) (1981).

3206.3 Interest shall be computed at the end of each month on the daily unliquidated balance of advance payments at the applicable daily interest rate.

3206.4 The contracting officer shall not allow interest charges for advance payments as reimbursable costs under cost-reimbursement contracts, whether the interest charge was incurred by the prime contractor or a subcontractor.

SOURCE: Final Rulemaking published at 35 DCR 1628 (February 26, 1988).

3207 APPLICATION FOR ADVANCE PAYMENTS

3207.1 An eligible contractor may apply for advance payments before or after the award of a contract.

3207.2 The contractor or prospective contractor shall submit an advance payment request to the contracting officer in writing which provides the following information:

- (a) A reference to the contract if the request concerns an existing contract, or a reference to the solicitation if the request concerns a proposed contract;
- (b) A cash flow forecast showing estimated disbursements and receipts for the period of contract performance;
- (c) The proposed total amount of advance payments;
- (d) The name and address of the bank at which the contractor expects to establish a special depository account for the advance payments;
- (e) A description of the contractor's efforts to obtain private financing;
- (f) Whether the contractor is receiving or has applied to receive advance payments under any other current District contracts or solicitations; and
- (g) Other information appropriate to an understanding of the following:
 - (1) The contractor's financial condition and need;
 - (2) The contractor's ability to perform the contract without loss to the District; and
 - (3) Financial safeguards that will be used to protect the District's interests.

SOURCE: Final Rulemaking published at 35 DCR 1628 (February 26, 1988).

3208 SECURITY, SUPERVISION, AND COVENANTS

- 3208.1 If advance payments are approved, the contracting officer shall enter into an agreement with the contractor covering bank accounts and including suitable covenants, approved by the Director, protecting the interests of the District.
- 3208.2 In the agreement required under §3208.1, the contract officer shall provide for a paramount lien in favor of the District. This lien may supplement or replace other security requirements.
- 3208.3 The lien required under §3208.2 shall cover the following:
- (a) Supplies being acquired;
 - (b) Any credit balance in the special bank account in which advance payments are deposited; and
 - (c) All property that the contractor acquires for performing the contract, except to the extent to which the District otherwise has valid title to the property.
- 3208.4 The contracting officer shall ensure that the amounts of advance payments do not exceed the contractor's financial needs, and shall closely supervise the contractor's withdrawal of funds from special bank accounts in which advance payments are deposited.

SOURCE: Final Rulemaking published at 35 DCR 1629 (February 26, 1988).

§§3209-3214: RESERVED**3215 PROGRESS PAYMENTS BASED ON COSTS**

- 3215.1 For the purpose of making progress payments and determining the limitations on progress payments, the contract price shall be as follows:
- (a) Under firm-fixed-price contracts, the contract price shall be the current contract price plus any unpriced modifications for which funds have been obligated;
 - (b) If the contract is redeterminable or subject to economic price adjustment, the contract price shall be the initial price until modified;
 - (c) Under a fixed-price incentive contract, the contract price shall be the target price plus any unpriced modifications for which funds have been obligated. However, if the contractor's properly incurred costs exceed the target price, the contracting officer may provisionally increase the price up to the ceiling or maximum price; and

- (d) Under a letter contract, the contract price shall be fifty percent (50%) of the maximum amount of the definitive contract.
- 3215.2 For the purpose of making progress payments and determining the limitation on progress payments, any portion of the contract specifically providing for reimbursement of costs only shall be excluded from the contract price.
- 3215.3 The contracting officer shall not make progress payments or increase the contract price beyond the funds obligated under the contract, as amended.
- 3215.4 Bids conditioned on progress payments when the solicitation does not provide for progress payments shall be rejected as nonresponsive.
- 3215.5 A contracting officer may provide for customary progress payments if the contractor will not be able to bill for delivery of products (or other performance milestones) for a substantial time (not less than four (4) months) after work must begin and, during the pre-delivery period, will make expenditures for contract performance that have a significant impact on the contractor's working capital.
- 3215.6 The contracting officer shall not provide for progress payments on contracts of less than one hundred thousand dollars (\$100,000), except in cases where a certified minority contractor is performing multiple contracts which total more than one hundred thousand dollars (\$100,000).
- 3215.7 A contracting officer shall not provide for progress payments if the contract items are quick turnover types for which progress payments are not a customary commercial practice, such as the following:
- (a) Subsistence;
 - (b) Clothing;
 - (c) Medical and dental supplies; or
 - (d) Standard commercial items not requiring a substantial accumulation of pre-delivery expenditures by the contractor.

SOURCE: Final Rulemaking published at 35 DCR 1630 (February 26, 1988).

3216 CONSIDERATION FOR PROGRESS PAYMENTS

- 3216.1 There shall be no requirement for a separate consideration for providing progress payments or for changing progress payment or liquidation rates, if coverage is included in the terms of the contract when awarded.
- 3216.2 Adequate new consideration shall be required when the contract, during contract performance, is amended to provide progress payments.
- 3216.3 When adequate new consideration is required pursuant to §3216.2, the contractor may provide new consideration by monetary means (such as reduction in contract

price) or nonmonetary means (such as incorporating terms in the contract amendment conferring a new benefit on the District).

3216.4 Fair and reasonable consideration shall approximate the amount by which the price would have been smaller if the provision for progress payments had been included in the initial contract.

SOURCE: Final Rulemaking published at 35 DCR 1631 (February 26, 1988).

3217 SUPERVISION OF PROGRESS PAYMENTS

3217.1 The extent of progress payments supervision, by prepayment review or periodic review, may vary, according to the contractor's experience, performance record, reliability, quality of management, and financial strength, and with the adequacy of the contractor's accounting systems and controls.

3217.2 Supervision shall be of a kind and degree sufficient to provide timely knowledge of the need for, and timely opportunity for, any actions necessary to protect the interests of the District.

3217.3 So far as is practicable, all problems relating to costs that are likely to create disagreements in future administration of the contract shall be identified and resolved at the inception of the contract, in accordance with the provisions of chapter 33 of this title.

3217.4 The contracting officer shall, before approving progress payments, determine the following:

- (a) That the contractor will be capable of liquidating any progress payments, or that the District is otherwise protected against loss by additional protective provisions in the contract; and
- (b) The contractor's accounting system and controls are adequate for proper administration of progress payments.

3217.5 When the reliability of the contractor and the adequacy of the contractor's accounting system has been established pursuant to §3217.4, the contracting officer may approve progress payment requests.

3217.6 The contracting officer may request an audit review of the contractor's request for progress payment when there is reason to question the reliability or accuracy of the contractor's certification, or if the contracting officer believes that the contract will involve a loss.

3217.7 Progress payments made under a requirements contract or an indefinite quantity contract shall be administered under each individual order as if the order constituted a separate contract. The contracting officer may treat a group of orders as a single unit for administration of progress payments if each order is subject to the same liquidation rate.

3217.8 The contracting officer shall ensure that any excess of unliquidated progress payments over the amount permitted by the liquidated rate specified in the contract is promptly corrected through one (1) or more of the following:

- (a) Increasing the liquidation rate;
- (b) Reducing the progress payment rate; or
- (c) Suspending progress payments.

SOURCE: Final Rulemaking published at 35 DCR 1631 (February 26, 1988).

3218 REVIEW OR AUDIT OF PROGRESS PAYMENTS

3218.1 In each contract providing for progress payments, the contracting officer shall include provisions, approved by the Director, giving the District the right to conduct postpayment reviews or audits at the discretion of the contracting officer, including reviews or audits to determine the following:

- (a) Whether the unliquidated progress payments are fairly supported by the value of work accomplished on the undelivered portion of the contract;
- (b) Whether the limitation on progress payments has been exceeded;
- (c) Whether the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion, or the contractor has adequate resources to complete the contract; and
- (d) Whether there is any reason to doubt the adequacy or reliability of the contractor's accounting system, controls, or payment certification.

3218.2 The contracting officer shall conduct progress payment reviews periodically, at intervals of six (6) months or less, and may conduct reviews or audits at any time or upon receipt of any request for a progress payment.

SOURCE: Final Rulemaking published at 35 DCR 1633 (February 26, 1988).

3219 SUSPENSION OR REDUCTION OF PROGRESS PAYMENTS

3219.1 In each contract that provides for progress payments, the contracting officer shall include provisions, approved by the Director, which assert the District's right to reduce or suspend progress payments, or increase the liquidation rate, as appropriate, in the following circumstances:

- (a) If the contractor fails to maintain an efficient and reliable accounting system and controls that are adequate for the proper administration of progress payments;
- (b) If the contracting officer determines that contract performance, including full liquidation of progress payments, is endangered by the contractor's financial condition or by a failure to make progress on the performance of the contract;
- (c) If the inventory allocated to the contract exceeds reasonable requirements;
- (d) If the contractor is delinquent in paying the costs of contract performance in the ordinary course of business;

- (e) If the unliquidated progress payments exceed the fair value of undelivered work under the contract; and
- (f) If the sum of the total costs incurred under a contract plus the estimated costs to complete performance are likely to exceed the contract price.

3219.2 Actions under this section shall only be taken in accordance with the contract terms and only after the following:

- (a) The contracting officer gives notice to the contractor of the intended action and provides an opportunity for discussion; and
- (b) The contracting officer evaluates the effect of the action on the contractor's operations, based on the contractor's financial condition, projected cash requirements, and the existing or available credit arrangements.

3219.3 The contracting officer shall take immediate unilateral action only if warranted by circumstances such as overpayments or unsatisfactory contract performance.

3219.4 In all cases, the contracting officer shall document the contract file with evidence supporting the contracting officer's decisions.

SOURCE: Final Rulemaking published at 35 DCR 1633 (February 26, 1988).

3220 LIQUIDATION RATES

3220.1 Progress payments shall be recouped by the District through the deduction of liquidations from payments that would otherwise be due the contractor for completed contract items.

3220.2 To determine the amount of the liquidation, the contracting officer shall apply a liquidation rate to the contract price of contract items delivered and accepted.

3220.3 Except as provided in §3220.5, the liquidation rate shall be the same as the progress payment rate established pursuant to §3215. This rate shall always be used at the beginning of a contract.

3220.4 The liquidation rate determined in accordance with §3220.3 shall apply throughout the period of contract performance unless the contracting officer adjusts the liquidation rate under the alternate method set forth in §3220.5.

3220.5 In order to permit the contractor to retain the earned profit element of the contract price for completed items in the liquidation process, the contracting officer may reduce the liquidation rate when all of the following circumstances apply:

- (a) The contractor has requested a reduction in the rate;
- (b) The rate has not been reduced in the preceding twelve (12) months;
- (c) The contract delivery schedule extends at least eighteen (18) months from the contract award date;

- (d) Data on actual costs are available for the products delivered, or, if no deliveries have been made, for a performance period of at least twelve (12) months;
- (e) The reduced liquidation rate would result in the District recouping under each invoice the full extent of the progress payments applicable to the costs allocable to that invoice;
- (f) The contractor would not be paid for more than the costs of items delivered and accepted (less allocable progress payments) and the earned profit on those items;
- (g) The unliquidated progress payments would not exceed the limit prescribed in the contract;
- (h) The parties agree on an appropriate rate; and
- (i) The contractor agrees to certify annually (or more often if requested by the contracting officer) that the alternate rate continues to meet the conditions of §§3220.5(e) through 3220.5(g). The certificate shall be accompanied by adequate supporting information.

3220.6 The contracting officer may increase the liquidation rate in the following circumstances:

- (a) If the contractor experiences a lower profit rate than the rate anticipated at the time the original liquidation rate was established;
- (b) If the target profit is changed under a fixed-price incentive contract with successive targets; or
- (c) If a redetermined price involves a change in the profit element under a contract with prospective price redetermination at stated intervals.

3220.7 Whenever the liquidation rate is changed, the contracting officer shall issue a contract modification to specify the new rate.

3220.8 If the liquidation rate is increased under §3220.6, the contracting officer shall ensure that the alternate liquidation rate is high enough to result in the recoupment by the District of the applicable progress payments on each billing.

3220.9 Any change in the liquidation rate shall be supported by documentation included in the contract file.

SOURCE: Final Rulemaking published at 35 DCR 1634 (February 26, 1988).

3221 ADJUSTMENTS FOR PRICE REDUCTION

3221.1 If a retroactive downward price adjustment occurs under a redeterminable contract that provides for progress payments, the contracting officer shall do the following:

- (a) Determine the refund due and obtain repayment from the contractor for the excess of payments made for delivered items over amounts due as recomputed at the reduced prices; and

- (b) Increase the unliquidated progress payments amount for overdeduction made from the contractor's billings for items delivered.

3221.2 The contracting officer shall increase the unliquidated progress payments amount if the contractor makes an interim or voluntary price reduction under a redeterminable or incentive contract.

SOURCE: Final Rulemaking published at 35 DCR 1636 (February 26, 1988).

3222 PROTECTION OF DISTRICT TITLE

3222.1 The contracting officer shall include a provision, approved by the Director, with the progress payment provisions in the contract which provides that the District shall receive title to all of the materials, work-in-process, finished goods, and other items of property under the contract.

3222.2 The contracting officer shall ensure that District title is not compromised by other encumbrances, liens, or hypothecations.

3222.3 The contracting officer shall require additional protective provisions, if deemed necessary, to establish and protect the District's title.

SOURCE: Final Rulemaking published at 35 DCR 1636 (February 26, 1988).

3223 RISK OF LOSS

3223.1 The contracting officer shall include a provision, approved by the Director, with the progress payment provisions of the contract which provides that, except for normal spoilage, the contractor shall bear the risk of loss, theft, destruction, or damage to property affected by the provision, unless the District has expressly assumed that risk.

3223.2 The contractor shall be obligated to repay the District the amount of unliquidated progress payments based on costs allocable to the property if the loss occurred after the contractor assumed the risk of loss.

3223.3 The contractor shall not be obligated to pay for the loss of property for which the District has assumed the risk of loss.

SOURCE: Final Rulemaking published at 35 DCR 1637 (February 26, 1988).

3224 PROGRESS PAYMENTS TO SUBCONTRACTORS

3224.1 The contracting officer shall encourage each contractor to provide progress payments to subcontractors on terms that meet the standards in §3215 for customary progress payments.

3224.2 In each contract providing for progress payments, the contracting officer shall include a provision, approved by the Director, which requires the contractor to include in the terms of each subcontract the substance of the progress payment provisions in

the prime contract, modified to indicate that the contractor (not the District) awards the subcontract and administers the progress payments.

- 3224.3 If the contractor makes progress payments to a subcontractor under a cost-reimbursement prime contract, the contracting officer shall accept the progress payments as reimbursable costs of the prime contract only under the following conditions:
- (a) When the payments are made under the standards in §3215 for customary progress payments;
 - (b) When the payments do not exceed the progress payment rate set forth in §3215;
 - (c) When the subcontractor complies with the liquidation principles set forth in §3220; and
 - (d) When the subcontract contains progress payments terms as required under §3224.2.

SOURCE: Final Rulemaking published at 35 DCR 1637 (February 26, 1988).

§§3225-3229: **RESERVED**

3230 CONTRACT DEBT DETERMINATION AND COLLECTION

- 3230.1 In addition to the provisions of chapter 38 of this title, the provisions of §§3230 through 3237 shall apply to all debts to the District arising under, or relating to, a procurement contract or subcontract, except as otherwise provided in §803 of the Act, D.C. Code §1-1188.3 (1981).
- 3230.2 In determining the amount of any contract debt, the contracting officer and the Director shall fairly consider both the District's claim and any contract claims by the contractor against the District pursuant to chapter 38 of this title.
- 3230.3 The contracting officer, or other official designated to administer the collection of contract debts and applicable interest, shall use all proper means available for collecting debts as rapidly as possible.
- 3230.4 Except in cases in which an agreement has been entered into for deferment of collections, or when bankruptcy proceedings against the contractor have been initiated, the contractor shall liquidate the debt by either of the following methods:
- (a) Cash payment in a lump sum, on demand; or

- (b) Credit against existing payments due to the contractor.

SOURCE: Final Rulemaking published at 35 DCR 1638 (February 26, 1988).

3231 DEMAND FOR PAYMENT OF CONTRACT DEBT

3231.1 The contracting officer shall make a demand for payment as soon as the amount of contract debt due has been computed.

3231.2 If the debt arises from excess costs for a default determination under chapter 37 of this title, the contracting officer shall make the demand without delay.

3231.3 The demand shall include the following:

- (a) A description of the debt, including the debt amount;
- (b) If applicable, notification that any amount not paid within thirty (30) days from the date of the demand, or from any earlier date specified in the contract, shall bear interest at the rate set forth in §3236;
- (c) A notification that the contractor may submit a proposal for deferment of collection if immediate payment is not practical or if the amount is disputed; and
- (d) Identification of the contracting officer or other official designated for determining the amount of the debt and for its collection.

SOURCE: Final Rulemaking published at 35 DCR 1638 (February 26, 1988).

3232 NEGOTIATION OF REFUND TO RESOLVE CONTRACT DEBT

3232.1 The contracting officer shall attempt to resolve expeditiously the amount of contract debt and refund through negotiations with the contractor.

3232.2 If the contracting officer and contractor agree upon a refund to the District, the contracting officer shall promptly write a memorandum to document the agreement and the contract debt.

3232.3 The memorandum shall be signed by the contracting officer for the District and the contractor.

3232.4 The contracting officer shall execute a contract modification to adjust the contract in accordance with the memorandum of agreement.

SOURCE: Final Rulemaking published at 35 DCR 1639 (February 26, 1988).

3233 SETOFF AND WITHHOLDING OF PAYMENTS

3233.1 If a disbursing officer is the responsible official for collection of a contract debt, or is notified of the debt by the contracting officer, or other officer designated to collect

the debt, and has contractor invoices on hand for payment, the disbursing officer shall make an appropriate setoff.

- 3233.2 The disbursing officer shall give the contractor written notice of the setoff, including a statement of the reasons for the setoff. The notice shall be delivered to the contractor or mailed by certified mail, return receipt requested.
- 3233.3 To the extent that the setoff reduces the debt, the explanation of the setoff shall indicate the extent to which the demand amount described in §3231 is reduced.
- 3233.4 During the thirty (30) days following the issuance of a demand pursuant to §3231, the contracting officer shall consider the advisability of withholding payments otherwise due to the contractor, based on the circumstances of each individual case.
- 3233.5 If, within thirty (30) days of the issuance of the demand, made pursuant to §3231, the contractor has neither completed payment nor requested deferment, the contracting officer may immediately withhold any contract payment due up to the amount of the debt plus interest.

SOURCE: Final Rulemaking published at 35 DCR 1639 (February 26, 1988).

3234 DEFERMENT OF COLLECTION

- 3234.1 If the contracting officer receives a written request from the contractor for a deferment of the debt collection or installment payments, the contracting officer shall promptly review the request to see if the information included in accordance with §3234.2 is adequate for action on the request.
- 3234.2 With each request for deferment of collection, the contractor shall submit the following information about the contractor:
- (a) Financial condition;
 - (b) Contract backlog;
 - (c) Projected cash receipts and requirements;
 - (d) The feasibility of immediate payment of the debt; and
 - (e) The probable effect on the contractor of immediate payment in full.
- 3234.3 The contracting officer may agree to payment of the contract debt in installments if the amount of the debt and other issues are resolved by negotiation in accordance with §3232.
- 3234.4 The contracting officer may authorize a deferment of debt collection, in accordance with this section, pending the resolution of appeals filed by the contractor under the provisions of chapter 38 of this title and §§3230 through 3233 of this chapter.
- 3234.5 The contracting officer may grant deferments pending disposition of appeal to financially weak contractors if there would be undue hardship on the contractor, and the District would be reasonably secure against loss.

3234.6 If a contractor has not appealed the debt or filed an appeal under §§904 or 905 of the Act, D.C. Code §§1-1189.4 or 1-1189.5 (1981), the contracting officer may arrange for deferred payments if the contractor is unable to pay at once in full or would be seriously impaired.

3234.7 If a contractor has appealed the debt or filed an appeal under §§904 or 905 of the Act, D.C. Code §§1-1189.4 or 1-1189.5 (1981), debt collection shall not be suspended or delayed. Until the appeal is decided, deferments shall only be granted if, within thirty (30) days after the filing, the contractor presents to the contracting officer a good and sufficient bond, or other collateral acceptable to the contracting officer, in the amount of the claim.

3234.8 Deferred payment arrangements shall be made in accordance with §3235.

SOURCE: Final Rulemaking published at 35 DCR 1640 (February 26, 1988).

3235 DEFERRED PAYMENT AGREEMENTS

3235.1 The arrangement for deferred payment shall be in the form of a written agreement providing for deferred payment of the debt. The agreement shall be signed by the contracting officer and the contractor.

3235.2 The deferred payment agreement shall include appropriate covenants and securities, in a form approved by the Director, and shall be limited to the shortest practicable maturity.

3235.3 At a minimum, the contracting officer shall include the following in the deferred payment agreement:

- (a) A description of the debt;
- (b) The date of the first demand for payment;
- (c) Notice of interest charges pursuant to §3236;
- (d) The method for making payments and the office to which the payments shall be made;
- (e) A requirement for the contractor to submit financial information requested by the District, and for reasonable access to the contractor's records and property by District representatives; and
- (f) Provisions for termination of the deferred payment arrangement and acceleration of the maturity of the debt if the contractor defaults on the deferred payment agreement or the underlying contract, or if bankruptcy or insolvency proceedings are instituted by or against the contractor.

3235.4 If the contractor's appeal of the debt is pending, the deferred payment agreement shall include a provision, approved by the Director, requiring the contractor to diligently prosecute the appeal and to pay the debt in full either when the appeal is decided or when the contractor and the District agree on the debt amount.

3235.5 If the contractor does not plan to appeal the debt or file an action under the disputes clause of the contract, the deferred payment agreement shall include a specific schedule of payments.

3235.6 The deferred payment agreement shall include a provision, approved by the Director, allowing the contractor to make prepayments without prejudice, for refund of overpayments, and for crediting of interest.

SOURCE: Final Rulemaking published at 35 DCR 1641 (February 26, 1988).

3236 CONTRACT DEBT INTEREST CHARGES AND CREDITS

3236.1 The contracting officer shall apply interest charges to any contract debt unpaid after thirty (30) days from the issuance of a demand, unless either of the following applies:

- (a) The contract specifies another due date or procedure for charging or collecting interest; or
- (b) The contract is excluded under §3236.5.

3236.2 Interest on contract debt shall be made an element of each deferred payment agreement. The interest charge shall be at the rate set forth in the D.C. Code §28-3302(c).

3236.3 The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on whichever of the following dates applies:

- (a) The date on which the designated office received payment from the contractor;
- (b) The date of issuance of a District check to the contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
- (c) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the contractor.

3236.4 An equitable interest credit shall be applied under the following circumstances:

- (a) When the amount of debt initially determined is subsequently reduced;
- (b) When the collection procedures used result in an overcollection of the debt due; or
- (c) When the contracting officer or other official designated to collect the debt determines that the District has unduly delayed payments to the contractor on the same contract at some time during the period to which the interest charge applied, unless an interest penalty was paid for the late payment.

3236.5 The following categories of contracts may be excluded from interest charges:

- (a) Small purchases;
- (b) Contracts with a state or local government or instrumentality; and

(c) Contracts without any provision for profit or fee with a nonprofit organization.

SOURCE: Final Rulemaking published at 35 DCR 1642 (February 26, 1988).

3237 COMPROMISE OF CONTRACT DEBT COLLECTIONS

3237.1 For debts under ten thousand dollars (\$10,000), excluding interest, if further collection is not practical or would cost more than the amount of recovery, the Director may compromise the debt or terminate or suspend further collection action.

3237.2 The Director shall not compromise any debt involving fraud. However, the Director may suspend collection action under this section, regardless of fraud, if the Corporation Counsel determines that the cost of collection would exceed the amount of recovery.

SOURCE: Final Rulemaking published at 35 DCR 1643 (February 26, 1988).

§§3238-3239: RESERVED

3240 CONTRACT FUNDING

3240.1 In accordance with the Antideficiency Act (31 U.S.C. §665), no contracting officer or other District employee shall make or authorize an encumbrance or expenditure in advance of appropriations or which exceeds the budget authority available under a current appropriation.

3240.2 Before executing any contract, the contracting officer shall obtain certification from an official designated by the Deputy Mayor for Finance that the amount of the contract does not exceed the amount of unencumbered budget authority as of the date on which the contract is executed.

3240.3 For purposes of this section, "unencumbered budget authority" shall mean that portion of an appropriation which has been allocated to the object of the procurement and which has not been reallocated to another purpose, committed to any other procurement, or expended.

3240.4 If the contract provides for expenditures in excess of the amount of unencumbered budget authority, the contracting officer shall not sign the contract unless the contract contains a provision, approved by the Director, which expressly provides that the portion of the contract requiring payment of any amount in excess of available budget authority is conditioned upon the appropriation or allocation of additional budget authority.

3240.5 If the contract provides for expenditures in a future fiscal year, the contracting officer shall not sign the contract unless the contract contains a provision, approved by

the Director, which expressly provides that the portion of the contract requiring expenditures in a future fiscal year is conditioned upon the appropriation of budget authority for that fiscal year.

- 3240.6 Before execution of a contract, the contracting officer shall ensure that the appropriate amount of allocated budget authority is encumbered to cover the cost of the contract.
- 3240.7 Budget authority shall be encumbered as follows:
- (a) In an amount sufficient to cover the price or target price of a fixed-price contract, or the price of that portion of the contract to be performed in the current fiscal year; or
 - (b) In an amount sufficient to cover the estimated cost and any fee of a cost-reimbursement contract, or that portion of the estimated cost and fee applicable to the current fiscal year.
- 3240.8 For contracts which extend to a fiscal year for which appropriations have not been made or allocated at the time of contract execution, the contracting officer shall ensure that the appropriate amount of allocated budget authority is encumbered when the appropriation is made.
- 3240.9 Each encumbrance shall expire at the end of the fiscal year to which it applies. The portion of any contract not performed or delivered during the fiscal year shall be handled as follows:
- (a) If the contract does not extend beyond the end of the fiscal year, that portion of the contract shall be cancelled; or
 - (b) If the contract extends to the following fiscal year, that portion of the contract shall be encumbered against appropriated budget authority in the following fiscal year or cancelled if budget authority is not available.
- 3240.10 A contractor shall not perform services or deliver supplies under a contract conditioned upon the availability of funds until the contracting officer has given written notice to the contractor that funds are available. The contracting officer shall not give notice to the contractor until the appropriate amount of budget authority has been encumbered.
- 3240.11 The District shall not accept supplies or services under a contract conditioned upon the availability of funds until the contracting officer has given written notice to the contractor that funds are available.

SOURCE: Final Rulemaking published at 35 DCR 1643 (February 26, 1988).

§§3241-3242: RESERVED

3243 LIMITATION OF COST OR FUNDS

- 3243.1 Upon learning that a partially funded contract will receive no further funds, the contracting officer shall promptly give the contractor notice of the decision not to provide funds.
- 3243.2 Under a cost-reimbursement contract, the contracting officer, upon learning that the contractor is approaching the estimated cost of the contract or the limit of the budget authority allocated and encumbered, shall promptly obtain information about funding and programming pertinent to the continuation of the contract and notify the contractor in writing of one (1) of the following:
- (a) That additional funding is available or the estimated cost has been increased in a specified amount;
 - (b) That the contract will not be further funded, and that the contractor shall submit a proposal for an adjustment of fee, if any, based on the percentage of work completed in relation to the total work called for under the contract;
 - (c) That the contract will be terminated; or
 - (d) That the District is considering whether to allot additional funds or increase the estimated cost, that the contractor is entitled by the contract terms to stop work when the funding or cost limit is reached, and that any work beyond the funding or cost limit will be at the contractor's risk.
- 3243.3 Under a cost-reimbursement contract, the contracting officer may issue a change order, a direction to replace or repair defective items or work, or a termination notice without immediately increasing the funds available.
- 3243.4 Under a cost-reimbursement contract, because a contractor is not obligated to incur costs in excess of the estimated cost in the contract, the contracting officer shall ensure availability of funds for directed actions.
- 3243.5 Under a cost-reimbursement contract, the contracting officer may direct that any increase in the estimated cost or amount allotted to a contract be used for the sole purpose of funding termination or other specified expenses.

SOURCE: Final Rulemaking published at 35 DCR 1645 (February 26, 1988).

§§3244-3249: RESERVED**3250 ASSIGNMENT OF CONTRACT PAYMENTS BY CONTRACTORS**

- 3250.1 A contractor may assign moneys due or to become due under a contract if all the following conditions are met:

- (a) The contract specifies payments aggregating one thousand dollars (\$1,000) or more;
 - (b) The assignment is made to a bank, trust company, or other financing institution; and
 - (c) The contract does not prohibit the assignment.
- 3250.2 Unless otherwise expressly permitted in the contract, an assignment shall cover all unpaid amounts payable under the contract.
- 3250.3 Unless expressly permitted in the contract, an assignment may be made only to one (1) party, except that any assignment may be made to one (1) party as agent or trustee for two (2) or more parties participating in the financing of the contract.
- 3250.4 Unless expressly permitted in the contract, an assignment of contract payments shall not be subject to further assignment.
- 3250.5 The assignee shall be required to send written notice of assignment together with a true copy of the assignment instrument to the following, in accordance with §3251.4:
- (a) The contracting officer;
 - (b) The surety on any bond applicable to the contract; and
 - (c) The disbursing officer designated in the contract to make payment.
- 3250.6 A contract may prohibit the assignment of contract payments if the contracting officer determines that the prohibition is in the best interests of the District.
- 3250.7 Under a requirements or indefinite quantity type contract that authorizes ordering and payment by multiple District agencies, amounts due based on estimated quantities may be assigned.
- 3250.8 The District may apply against payments to the assignee any liability of the contractor to the District arising independently of the assigned contract if the liability existed at the time notice of the assignment was received even though that liability had not yet matured so as to be due and payable.

SOURCE: Final Rulemaking published at 35 DCR 1646 (February 26, 1988).

3251 PROCEDURES FOR ASSIGNMENT OF CONTRACT PAYMENTS

- 3251.1 Assignments by corporations shall be executed by an authorized representative of the corporation and attested by the secretary or an assistant secretary of the corporation.
- 3251.2 If the contractor is a partnership, the assignment may be signed by one (1) partner if it is accompanied by an acknowledged certification that the signer is a general partner of the partnership who is authorized to sign the assignment on behalf of all partners.
- 3251.3 If the contractor is an individual, the assignment shall be signed by that individual, and the signature shall be acknowledged before a notary public or other person authorized to administer oaths.

- 3251.4 The assignee shall forward to each person identified in §3250.5 an original and three (3) copies of the notice of assignment, together with one (1) true copy of the instrument of assignment.
- 3251.5 In examining and processing notices of assignment and before acknowledging their receipt, the contracting officer shall ensure that the following conditions have been met:
- (a) The contract has been properly approved and executed;
 - (b) The contract is one under which claims may be assigned; and
 - (c) The assignment covers only money due or to become due under the contract.
- 3251.6 A release of an assignment shall be required whenever either of the following occurs:
- (a) There has been a further assignment or reassignment; or
 - (b) The contractor wishes to reestablish its right to receive further payments after the contractor's obligations to an assignee have been satisfied and a balance remains due under the contract.
- 3251.7 The assignee, under a further assignment or reassignment, in order to establish a right to receive payment from the District shall file the following with the persons listed in §3250.5:
- (a) Written notice of release of the contractor by the assignee;
 - (b) A copy of the release instrument;
 - (c) Written notice of the further assignment or reassignment; and
 - (d) A copy of the further assignment or reassignment instrument.
- 3251.8 If the assignee releases the contractor from an assignment of contract payments, the contractor, in order to establish a right to receive payment of the balance due under the contract, shall file a written notice of release together with a true copy of the release of assignment instrument with the persons listed in §3250.5.
- 3251.9 The recipient of a notice of release of assignment, or an official acting on behalf of that recipient, shall acknowledge receipt of the notice in writing.

SOURCE: Final Rulemaking published at 35 DCR 1647 (February 26, 1988).

3299 DEFINITIONS

- 3299.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Advance payments - payments made prior to performance of services or delivery of supplies.

Appropriate fiscal authority - the budget officer, controller, or other designated District official.

Assignment of contract payments - the transfer by a contractor to a financial institution of the contractor's right to receive payments under the contract.

Director - the Director of the Department of Administrative Services.

Disbursing officer - the District employee responsible for making payments in settlement of a debt.

Fixed assets - property used in operating a business which will not be consumed or converted into cash or its equivalent. It includes machinery, land, and buildings.

Partial payment - the reduction of any debt or demand for payment of a sum less than the whole amount originally due.

Progress payment - a payment made on the basis of services completed or supplies delivered. Progress payments are either customary or unusual. Customary progress payments are those based on rates specified in §3201.5. Unusual progress payments are those authorized at rates higher than those specified in §3201.5.

SOURCE: Final Rulemaking published at 35 DCR 1648 (February 26, 1988).



CHAPTER 33 CONTRACT COST PRINCIPLES

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3300 GENERAL PROVISIONS

- 3300.1 The cost principles and procedures set forth in this chapter shall be used when cost analysis is performed in connection with any contract or solicitation under the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85 (the "Act"), in accordance with the Act or this title.
- 3300.2 The cost principles and procedures set forth in this chapter shall be used by the contracting officer to negotiate or to determine reimbursable costs or the allowability of claims for reimbursement of costs in accordance with the clause, approved by the Director, contained in all cost-reimbursement contracts in accordance with §310(b) of the Act.
- 3300.3 In accordance with §601 of the Act, the cost principles and procedures set forth in this chapter shall be used in the following situations:
- (a) The pricing or estimation of costs in contracts based on other than competitive sealed bidding;
 - (b) The pricing or estimation of costs in change orders or contract modifications;
 - (c) Settlement of contract costs for contracts which have been terminated; and
 - (d) Allowability of costs under contract provisions which provide for reimbursement of costs.
- 3300.4 In addition to those contracts where the application of cost principles is required under the Act or this title, the contracting officer may include a clause, approved by the Director, requiring the use of cost principles and procedures set forth in

this chapter to determine the allowability of estimated or incurred costs in any contract where the contracting officer determines that the negotiation, allowance, determination, or estimation of costs may be required or necessary.

3300.5 The application of cost principles to fixed-price contracts and subcontracts shall not be construed as a requirement to negotiate agreements on individual elements of cost in arriving at agreement on the total price. The final price accepted by the parties may reflect agreement only on the total price.

3300.6 The cost principles and procedures set forth in this chapter shall not apply to the following:

- (a) The establishment of prices under contracts awarded on the basis of competitive sealed bidding;
- (b) Prices fixed by law or regulation; or
- (c) Prices based on established catalog prices or established market prices.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1650 (February 26, 1988).

3301 ADVANCE COST AGREEMENTS

3301.1 Advance cost agreements may be negotiated either before or after contract award. However, advance cost agreements shall be negotiated before a significant portion of the costs covered by the agreement have been incurred.

3301.2 Advance cost agreements shall be in writing, signed by the contracting officer and the contractor, and shall be incorporated by reference in the contract.

3301.3 The contracting officer shall not agree to a treatment of costs that is inconsistent with the cost principles set forth in this chapter, except as provided in §3302.

3301.4 Advance cost agreements may be negotiated with a contractor for a single contract, a group of contracts, or all the contracts between that contractor and the District.

3301.5 Before negotiating an advance cost agreement, the contracting officer shall do the following:

- (a) Determine if other contracting offices inside the agency or in other agencies have a significant unliquidated dollar balance in contracts with the same contractor; and
- (b) Inform the other offices or agencies identified under §3301.5(a) of the matters under consideration for negotiation and, as appropriate, invite those other offices or agencies to participate in prenegotiation discussions.

SOURCE: Final Rulemaking published at 35 DCR 1651 (February 26, 1988).

3302 DEVIATION FROM COST PRINCIPLES

- 3302.1 The contracting officer may recommend to the Director a deviation from the cost principles set forth in this chapter if the contracting officer determines in writing that the deviation would be in the best interests of the District.
- 3302.2 The contracting officer's recommendation for a deviation shall be in writing and shall set forth the reasons and justifications for the proposed deviation.
- 3302.3 A deviation shall be effective only upon written approval by the Director and incorporation in the contract.
- 3302.4 The Director shall not approve a deviation under this section unless the costs agreed to under the deviation are reasonable, lawful, allocable, and accounted for in accordance with generally accepted accounting principles.

SOURCE: Final Rulemaking published at 35 DCR 1651 (February 26, 1988).

§§3303-3304: RESERVED**3305 TOTAL COSTS**

- 3305.1 The total cost of a contract shall be the sum of the allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits.
- 3305.2 In ascertaining what constitutes a cost, the contracting officer may consider any generally accepted method of determining or estimating costs that is equitable and is consistently applied, including standard costs properly adjusted for applicable variances.
- 3305.3 Whenever a contractor is required by the District to submit a price proposal, the contractor shall estimate costs in a manner consistent with generally accepted cost accounting practices which are consistently applied, and which are consistent with the provisions of this chapter.

SOURCE: Final Rulemaking published at 35 DCR 1652 (February 26, 1988).

3306 DETERMINING ALLOWABILITY

- 3306.1 When determining whether a cost is allowable, the contracting officer shall consider the following factors:
- (a) Reasonableness;
 - (b) Allocability;

- (c) Consistency with generally accepted accounting principles and practices appropriate to the particular circumstances;
- (d) The terms of the contract;
- (e) Consistency with the limitations set forth in this chapter; and
- (f) Consistency with any applicable law.

3306.2 If a contractor's accounting practices are inconsistent with this chapter, the contracting officer shall not allow costs resulting from those practices in excess of the amount that would have resulted from using practices consistent with this chapter.

SOURCE: Final Rulemaking published at 35 DCR 1652 (February 26, 1988).

3307 DETERMINING REASONABLENESS

3307.1 The contracting officer shall determine a cost to be reasonable if it does not differ from or exceed in amount that which would be incurred by a prudent person in the conduct of a competitive business, in accordance with the provisions of this chapter.

3307.2 In determining the reasonableness of a given cost, the contracting officer shall consider the following factors:

- (a) Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;
- (b) The restraints or requirements imposed by generally accepted sound business practices, arms length bargaining, federal and District laws and regulations, and contract terms and specifications;
- (c) The action that a prudent business person would take, considering responsibilities to the owner of the business, employees, customers, the District, and the public at large;
- (d) Any significant deviations from the established practices of the contractor that may unjustifiably increase the contract costs; and
- (e) Any other relevant factors.

SOURCE: Final Rulemaking published at 35 DCR 1653 (February 26, 1988).

3308 DETERMINING ALLOCABILITY

3308.1 The contracting officer shall determine that a cost is allocable if the cost is assignable or chargeable to one (1) or core cost objectives on the basis of relative benefits received or other equitable relationship, in accordance with §3308.2.

3308.2 The contracting officer shall consider a cost allocable to a District contract if the cost meets one (1) or more of the following criteria:

- (a) The cost is incurred specifically for the contract;

- (b) The cost benefits both the contract and other work, and can be distributed to both in reasonable proportion to the benefits received; or
- (c) The cost is necessary to the overall operation of the business, although a direct relationship to any particular cost objective may not be evident.

SOURCE: Final Rulemaking published at 35 DCR 1653 (February 26, 1988).

§3309: RESERVED

3310 CREDITS

- 3310.1 The contracting officer shall credit to the District as a cost reduction, or by cash refund, the applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost which is received by or accrued to the contractor.

SOURCE: Final Rulemaking published at 35 DCR 1654 (February 26, 1988).

3311 ACCOUNTING FOR UNALLOWABLE COSTS

- 3311.1 The contracting officer shall identify and exclude from each billing, claim, and proposal costs that are expressly unallowable under this chapter or mutually agreed to be unallowable under an advance cost agreement.
- 3311.2 When costs are identified as unallowable or mutually agreed to be unallowable, all directly associated costs shall also be unallowable.
- 3311.3 Costs and directly associated costs specifically designated as unallowable as a result of a written decision by a contracting officer shall be identified when included in or used in computing any billing, claim, or proposal applicable to a District contract.
- 3311.4 The contracting officer shall require records as support for claims, billings, and proposals that are adequate to establish and maintain visibility of those costs, and directly associated costs, which have been identified as unallowable.
- 3311.5 The contracting officer shall identify unallowable costs involved in determining rates used for standard costs, indirect cost proposals, or billings at the time rates are proposed, established, revised, or adjusted.

SOURCE: Final Rulemaking published at 35 DCR 1654 (February 26, 1988).

3312 DIRECT COSTS

- 3312.1 Direct costs associated with District contracts shall be segregated from other costs and recorded in accounts identifying them with the particular contract or cost objective to the maximum extent possible.

- 3312.2 Costs specifically identified with final cost objectives that are unrelated to District contracts, including other contracts or general business objectives of the contractor, shall not be charged to a District contract directly or indirectly.
- 3312.3 Any direct cost of a minor dollar amount may be treated as an indirect cost if the accounting treatment used is consistently applied and produces substantially the same result as treating the cost as a direct cost. A minor dollar amount shall be an amount not in excess of one half percent (1/2%) of the contract price.
- 3312.4 Any cost that has been allocated to any indirect cost pool or objective shall not be allowed as a direct cost.

SOURCE: Final Rulemaking published at 35 DCR 1655 (February 26, 1988).

3313 **INDIRECT COSTS**

- 3313.1 An indirect cost shall not be allocated to a District contract if other costs incurred for the same purpose in like circumstances have been included as a direct cost of that contract or any final cost objective not related to the District contract.
- 3313.2 Indirect costs shall be accumulated into logical groupings known as "indirect cost pools."
- 3313.3 The contractor's method of allocating indirect costs shall be in accordance with generally accepted accounting principles which are consistently applied, in accordance with the provisions of this chapter.
- 3313.4 The contracting officer shall examine the contractor's method of allocating indirect costs when any of the following apply:
- (a) A substantial difference exists between the cost patterns of work performed under the contract and the contractor's other work;
 - (b) A significant change occurs in the nature of the contractor's business, extent of subcontracting, fixed asset improvement programs, inventories, volume of sales and production, manufacturing process, products, or other relevant circumstances; or
 - (c) Indirect cost groups developed for a contractor's primary location are applied to off-site locations, in which case separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objective.
- 3313.5 The contracting officer shall consider the base period for indirect cost allocation as the one in which the costs are incurred and accumulated for distribution to work performed in that period.

SOURCE: Final Rulemaking published at 35 DCR 1655 (February 26, 1988).

§3314: **RESERVED**

3315 PRE-CONTRACT COSTS

3315.1 Pre-contract costs shall include costs incurred in anticipation of, and prior to, the effective date of the contract.

3315.2 Pre-contract costs which are necessary to comply with the proposed contract delivery schedule shall be allowable to the extent that they would have been allowable if incurred after the date of the contract; Provided, that the contract shall set forth the period of time and maximum amount that will be covered as allowable pre-contract costs.

SOURCE: Final Rulemaking published at 35 DCR 1656 (February 26, 1988).

3316 BID AND PROPOSAL COSTS

3316.1 Bid and proposal costs shall include costs incurred in preparing, submitting, and supporting bids and proposals.

3316.2 Ordinary and reasonable bid and proposal costs shall be allowable as indirect costs in accordance with the cost principles set forth in this chapter.

3316.3 Bid and proposal costs shall be allowable as direct costs only to the extent that they are specifically permitted by a provision of the contract or solicitation.

3316.4 If bid and proposal costs are allowable as direct costs, the same bid and proposal costs shall not be charged as indirect costs.

SOURCE: Final Rulemaking published at 35 DCR 1656 (February 26, 1988).

§3317: RESERVED**3318 TERMINATION FOR CONVENIENCE COSTS**

3318.1 The costs of items reasonably usable on the contractor's other work shall not be allowable upon termination of a contract for the convenience of the District unless the contractor submits evidence that the items could not be retained at cost without sustaining a loss.

3318.2 Costs which cannot be discontinued immediately after the effective date of the termination may be allowed. However, any costs continuing after the effective date of the termination due to the negligent or willful failure of the contractor to discontinue the costs shall not be allowable.

3318.3 Initial costs, such as starting load and preparatory costs, shall be allowable in the following circumstances:

- (a) When starting load costs not fully absorbed because of termination are nonrecurring labor, material, and related overhead costs incurred in the early part of production and result from factors such as the following:
 - (1) Excessive spoilage due to inexperienced labor;
 - (2) Idle time and subnormal production due to testing and changing production methods;
 - (3) Training; and
 - (4) Lack of familiarity or experience with the product, materials, or manufacturing processes; and
 - (b) When costs incurred in preparing to perform the terminated contract include costs such as those incurred for initial plant rearrangement and alterations, management and personnel organization, and production planning, but not special machinery and equipment and starting load costs.
- 3318.4 When initial costs are included in the settlement proposal as direct costs, those costs shall not also be included in overhead. Initial costs attributable only to a single contract shall not be allocated to other contracts.
- 3318.5 The loss of useful value of special tooling, or special machinery and equipment, shall be allowed if the following factors apply:
- (a) The special tooling, or special machinery and equipment, is not reasonably capable of use in the other work of the contractor;
 - (b) The District's interest is protected by transfer of title to the District or by other means deemed appropriate by the contracting officer; and
 - (c) The loss of useful value for a single terminated contract is limited to that portion of the procurement cost which bears the same ratio to the total procurement cost as the terminated portion of the contract bears to the entire terminated contract and other District contracts for which the special tooling or special machinery and equipment was procured.
- 3318.6 Rental costs under an unexpired lease, less the residual value of the lease, shall be allowable when the contracting officer determines that the lease was reasonably necessary for the performance of the terminated contract. The following limitations shall apply:
- (a) The amount of rental claimed shall not exceed the reasonable use value of the property leased for the period of the contract and any further period that may be reasonable; and
 - (b) The contractor shall make all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of the lease.
- 3318.7 The contract may provide that the costs of alterations and reasonable restorations required by a lease are allowable.

3318.8 The costs of settlement of the termination (such as accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation of settlement claims to the contracting officer) shall be allowable. Indirect costs related to salary and wages incurred as a result of the preparation and presentation of settlement claims shall be allowable.

3318.9 Costs of termination and settlement of subcontracts, as well as subcontractor claims as a result of a termination, shall be allowable except as provided in §3707.

SOURCE: Final Rulemaking published at 35 DCR 1657 (February 26, 1988).

§3319: RESERVED

3320 AUTOMATIC DATA PROCESSING EQUIPMENT LEASING COSTS

3320.1 The provisions of this section shall apply to all contractor-leased automatic data processing (ADP) equipment procured under operating leases, except as components of an end item to be delivered to the District.

3320.2 The costs of leasing ADP equipment shall be allowable only to the extent that the contractor can demonstrate that the costs meet the following criteria:

- (a) The costs are reasonable and necessary for the conduct of the contractor's business in light of factors such as the contractor's requirements for ADP equipment, costs of comparable facilities, the various types of leases available, and the terms of the lease agreement;
- (b) The costs do not give rise to a material equity in the equipment, such as an option to renew or purchase at a bargain lease rate or price other than that normally given to industry at large, but represent charges only for the current use of the equipment, including incidental service costs, such as maintenance, insurance, and applicable taxes; and
- (c) The contracting officer's approval is obtained for the leasing arrangement when the total costs of leasing the ADP equipment is to be allocated to one (1) or more District contracts which require negotiating or determining costs; or the ADP equipment in a single plant or division exceeds five hundred thousand dollars (\$500,000) a year, and fifty percent (50%) or more of the total cost is allocated to one (1) or more District contracts which require negotiating or determining costs.

3320.3 If the contractor leases ADP equipment but cannot demonstrate, on the basis of facts existent at the time of the decision to lease or continue leasing and documented in accordance with this section, that leasing will result in less cost to the District over the anticipated useful life of the equipment, then leasing costs shall be allowable only up to the amount that would be allowed if the contractor purchased the equipment.

- 3320.4 Lease costs under a sale and leaseback arrangement shall be allowable only up to the amount that would have been allowed if the contractor retained title to the ADP equipment.
- 3320.5 Allowable leasing costs of ADP equipment leased from any division, subsidiary, or organization under a common control shall be limited to the cost of ownership excluding interest or other costs which are not allowable under this chapter.
- 3320.6 When there is an established practice of leasing the same or similar ADP equipment to unaffiliated lessees, leasing costs shall be allowable in accordance with §§3320.2, 3320.7, 3320.8 and 3320.9, except that the purchase price and costs of ownership shall be determined in accordance with the provisions of §3324.
- 3320.7 The contractor's estimate of the anticipated useful life of the ADP equipment may represent the application life (utility in a given function), technological life (utility before becoming obsolete in whole or in part), or physical life (utility before wearing out), depending upon the facts, circumstances, and the particular facilities involved.
- 3320.8 In estimating anticipated useful life, the contractor may use the application life if it can be demonstrated the ADP equipment has utility only in a given function and the duration of the function can be determined.
- 3320.9 The contractor may use the technological life to determine anticipated useful life if it can demonstrate that existing ADP equipment must be replaced because of one (1) or more of the following reasons:
- (a) Specific program objectives or contract requirements cannot be accomplished with existing ADP equipment;
 - (b) Cost reductions will produce identifiable savings in production or overhead costs;
 - (c) Increase in workload volume cannot be accomplished efficiently by modifying or augmenting existing ADP equipment; or
 - (d) A consistent pattern of capacity operation, including multiple shifts, exists on existing ADP equipment.
- 3320.10 In estimating the lease cost to the District for the anticipated useful life of the ADP equipment, the contracting officer shall compare the cumulative costs that would be allowed if the contractor owned the ADP equipment with cumulative costs that would be allowed under any of the various types of leasing arrangements available. For the purposes of this comparison, the costs of ADP equipment shall exclude interest or other unallowable costs.
- 3320.11 The contractor's justification of a leasing decision, when required by the contracting officer, shall consist of the following data:
- (a) Analysis of use of existing ADP equipment;
 - (b) The application of the criteria to allow cost of leasing ADP equipment as specified in this chapter;

- (c) Specific objectives or requirements, generally in the form of a data system study and specification;
- (d) Solicitation of proposals, based on the data system specifications, from qualified sources; and
- (e) Proposals received in response to the solicitation, the reasons for selecting the equipment chosen, and the basis of the decision to lease.

SOURCE: Final Rulemaking published at 35 DCR 1659 (February 26, 1988).

3321 DEPRECIATION AND USE ALLOWANCES

- 3321.1 Normal depreciation on a contractor's plant, equipment, and other capital facilities shall be allowable. The contracting officer shall require the contractor to demonstrate that the depreciation costs are reasonable and allocable.
- 3321.2 Depreciation shall be considered reasonable if the contractor demonstrates the following:
- (a) The methods for determining depreciation costs are consistent with those followed by businesses (other than the government) with respect to each class of property;
 - (b) The depreciation costs are reflected in the contractor's books of accounts and financial statements; and
 - (c) The depreciation costs are both used and acceptable for federal income tax purposes.
- 3321.3 The computation of depreciation or use allowances shall be based on acquisition costs. If acquisition costs are unknown, a reasonable estimate may be used.
- 3321.4 Depreciation shall be computed using any generally accepted accounting method. The method shall be consistently applied and result in equitable charges considering the use of the property.
- 3321.5 The contracting officer shall accept any method of depreciation which is accepted by the Internal Revenue Service.
- 3321.6 A use allowance shall be allowable if it is computed in accordance with an established industry or government schedule or other method mutually agreed upon by the contracting officer and the contractor.

SOURCE: Final Rulemaking published at 35 DCR 1661 (February 26, 1988).

3322 MAINTENANCE, REPAIR, SERVICE, AND WARRANTY COSTS

- 3322.1 Costs necessary for the upkeep of real or personal property, including District property, unless otherwise provided for, that do not add to the permanent value of the

property or appreciably prolong its intended life, but keep it in an efficient operating condition, shall be allowable, as follows:

- (a) Normal maintenance and repair costs shall be allowable; and
- (b) Extraordinary maintenance and repair costs shall be allowable, and these costs shall be allocated to the applicable periods for purposes of determining contract costs.

3322.2 Expenditures for plant and equipment, including rehabilitation that is capitalized and subject to depreciation, shall be allowable only on a depreciation basis.

3322.3 Service and warranty costs that include costs arising from the fulfillment of any contractual obligation to provide services (such as installation, training, correcting defects in the products, replacing defective parts, and making refunds in the case of inadequate performance) shall be allowable when consistent with the terms of the contract and when the allowance of the costs would not result in a double payment by the District for correction of defects.

SOURCE: Final Rulemaking published at 35 DCR 1662 (February 26, 1988).

3323 MANUFACTURING AND PRODUCTION ENGINEERING COSTS

3323.1 Costs incident to the following activities related to manufacturing and production engineering shall be allowable if required or approved under the contract:

- (a) Developing and deploying new or improved materials, systems, processes, methods, equipment, tools, and techniques that are or are expected to be used in producing products or services;
- (b) Developing and deploying pilot production lines;
- (c) Improving current production functions, such as plant layout, production scheduling and control, methods and job analysis, equipment capabilities and capacities, inspection techniques, and tooling analysis, including tooling design and application improvements; and
- (d) Material and manufacturing producibility analysis for production suitability and the optimization of manufacturing processes, methods, and techniques.

SOURCE: Final Rulemaking published at 35 DCR 1662 (February 26, 1988).

3324 MATERIAL COSTS

3324.1 Costs of material shall be allowable.

3324.2 In determining the cost of materials, consideration shall be given to reasonable overruns, spoilage, or defective work.

3324.3 Material costs shall include adjustments for all available discounts, refunds, rebates, and allowances.

- 3324.4 Material costs shall include adjustments for credits for proceeds the contractor received or reasonably should receive from salvage and material returned to suppliers.
- 3324.5 Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subsidiaries, or affiliates of the contractor under a common control shall be made on the basis of costs incurred in accordance with this chapter.
- 3324.6 The contracting officer may allow the transfer under §3324.5 at a price agreed to by the contracting officer if the following apply:
- (a) The price of the materials is determined to be reasonable by the contracting officer;
 - (b) The price is not higher than the transferor's current sales price to its most favored customer for a similar quantity under similar payment and delivery conditions; and
 - (c) The price is established either by established catalog price or the lowest price offer obtained through competitive sealed bidding or competitive sealed proposals with similar businesses.
- 3324.7 When materials are purchased specifically for and are identifiable solely with performance under a contract, the actual purchase cost of those materials may be charged to the contract. If material is issued from stores, any generally recognized method for pricing the material shall be acceptable if that method is consistently applied and the results are equitable.

SOURCE: Final Rulemaking published at 35 DCR 1663 (February 26, 1988).

3325 PATENT AND ROYALTY COSTS

- 3325.1 The following patent costs shall be allowable to the extent that they are incurred as a requirement of a District contract and where title or a royalty-free perpetual license is to be conveyed to the District:
- (a) Costs of preparing invention disclosures, reports, and other documents;
 - (b) Costs for searching the art to the extent necessary to make the invention disclosures; and
 - (c) Other costs in connection with the filing and prosecution of the United States patent application.
- 3325.2 General counseling services relating to patent matters, such as advice on patent laws, regulations, clauses, and employee agreements, shall be allowable.
- 3325.3 Royalties on a patent or amortization of the cost of purchasing a patent or patent rights necessary for the proper performance of the contract and applicable to contract products or processes shall be allowable unless one (1) or more of the following apply:

- (a) The District has a license or the right to a free use of the patent;
- (b) The patent has been adjudicated to be invalid or has been administratively determined to be invalid;
- (c) The patent is unenforceable; or
- (d) The patent has expired.

3325.4 In any case involving a patent formerly owned by the contractor, the contracting officer shall not allow a royalty amount in excess of the cost which would have been allowed if the contractor had retained title.

SOURCE: Final Rulemaking published at 35 DCR 1664 (February 26, 1988).

3326 LEASING COSTS OTHER THAN AUTOMATIC DATA PROCESSING EQUIPMENT

3326.1 Except as provided in §3320, leasing costs under operating leases shall be allowable to the extent that the rates are reasonable at the time of the lease decision, after consideration of the following:

- (a) Leasing costs of comparable property, if any;
- (b) Market conditions in the area;
- (c) The type, life expectancy, condition, and value of the property leased;
- (d) Alternatives available; and
- (e) Other provisions of the lease agreement.

3326.2 Leasing costs under a sale and leaseback arrangement shall be allowable only up to the amount the contractor would be allowed if the contractor retained title.

3326.3 Charges in the nature of leasing costs for property between any divisions, subsidiaries, or organization under common control shall be allowable to the extent that they do not exceed the normal costs of ownership, such as depreciation, taxes, insurances, and maintenance. No part of the costs shall duplicate any other allowed costs.

SOURCE: Final Rulemaking published at 35 DCR 1665 (February 26, 1988).

3327 SELLING COSTS

3327.1 Selling costs shall be allowable to the extent that they are reasonable and are allocable to the District contract.

3327.2 The contracting officer shall determine allocability of selling costs in the light of reasonable benefit to the District arising from activities, such as technical, consulting, demonstration, and other services, which are the application or adaptation of the contractor's products to District use for its own requirements or similar purposes.

3327.3 Sellers' or agents' compensation, fees, commissions, percentages, or brokerage fees shall be allowable only when paid to *bona fide* employees or established commercial or selling agencies maintained by the contractor for the purpose of securing business.

SOURCE: Final Rulemaking published at 35 DCR 1665 (February 26, 1988).

3328 SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT COSTS

3328.1 The cost of special tooling and special test equipment used in performing one (1) or more District contracts shall be allowable and shall be allocated to the specific District contract or contracts for which it was procured.

3328.2 The cost of items procured by the contractor before the effective date of the contract, or the replacement of those items, whether altered or adapted for use in performing the contract, and items which the contract schedule specifically excludes shall be allowable only as depreciation or amortization.

3328.3 If items are disqualified as special tooling or special test equipment because they can be made suitable for general purpose use at relatively minor cost and have a general use value commensurate with their value as special tooling or special test equipment, the cost of adapting the items for use under the contract and the cost of returning them to their prior configuration shall be allowable.

SOURCE: Final Rulemaking published at 35 DCR 1666 (February 26, 1988).

§3329: RESERVED

3330 BAD DEBTS

3330.1 Bad debts, including losses arising from uncollectable accounts receivable due from customers and other claims, and any directly associated costs, such as collection costs and legal costs, shall not be allowable.

SOURCE: Final Rulemaking published at 35 DCR 1666 (February 26, 1988).

3331 BONDING COSTS

3331.1 Bonding costs shall be allowable when required under the terms of the contract.

3331.2 Bonding costs attributable to the performance of District contracts shall be allowable when required by the contractor in the general conduct of its business to the extent that the bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

SOURCE: Final Rulemaking published at 35 DCR 1666 (February 26, 1988).

3332 INSURANCE AND INDEMNIFICATION COSTS

- 3332.1 The cost of required or approved insurance that is maintained by the contractor pursuant to the contract shall be allowable.
- 3332.2 The cost of insurance maintained by the contractor in connection with the general conduct of its business shall be allowable, in accordance with the provisions of this section.
- 3332.3 The contracting officer shall determine that the types and extent of coverage follow sound business practice, and that the rates and premiums are reasonable.
- 3332.4 Costs allowed for business interruption or other similar insurance shall exclude the cost of coverage for loss of profit.
- 3332.5 The cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets shall be allowable only when the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have a formal written policy with this assurance, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset shall not be allowable.
- 3332.6 Costs of insurance for the risk of loss of or damage to District property shall be allowable only to the extent that the contractor is liable for loss or damage to District property and to the extent that insurance does not cover loss or damage that results from willful misconduct or lack of good faith on the part of the contractor, its directors, officers, or agents.
- 3332.7 Actual losses shall not be allowable unless expressly provided for in the contract, except as follows:
- (a) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practices, shall be allowable when the contractor did not establish a self-insurance program; and
 - (b) Minor losses, such as spoilage, breakage, and disappearance of small hand tools, that occur in the ordinary course of doing business and that are not covered by insurance shall be allowable.
- 3332.8 The cost of insurance to protect the contractor against the costs of correcting its own defects in materials or workmanship shall not be allowable. However, insurance costs to cover fortuitous or casualty losses resulting from defects in materials or workmanship shall be allowable as a normal business expense.

SOURCE: Final Rulemaking published at 35 DCR 1666 (February 26, 1988).

3333 INTEREST AND OTHER FINANCIAL COSTS

- 3333.1 Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees

paid in connection with preparing prospectuses, costs of preparing and issuing stock rights, and directly associated costs shall not be allowable, except for interest assessed by state or local taxing authorities in accordance with §3335.

SOURCE: Final Rulemaking published at 35 DCR 1668 (February 26, 1988).

3334 ORGANIZATION COSTS AND OTHER BUSINESS COSTS

3334.1 Expenditures in connection with planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions, or raising capital (net worth plus long-term liabilities) shall not be allowable.

3334.2 The cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, or changes that result in alterations in the rights and interests of security holders, whether or not additional capital is raised, shall not be allowable.

3334.3 The following recurring costs shall be allowable when allocated on an equitable basis:

- (a) Registry and transfer charges resulting from changes in ownership of securities issued by the contractor;
- (b) The cost of shareholders' meetings;
- (c) The cost of normal proxy solicitations;
- (d) The cost of preparing and publishing reports to shareholders;
- (e) The cost of preparing and submitting required reports and forms to taxing and other regulatory bodies;
- (f) Incidental costs of directors' and committee meetings; and
- (g) Other similar costs.

SOURCE: Final Rulemaking published at 35 DCR 1668 (February 26, 1988).

3335 TAXES

3335.1 Except as provided in §3335.2, District, federal, state, and local taxes that are required to be and are paid or accrued in accordance with generally accepted accounting principles shall be allowable.

3335.2 The following costs shall not be allowable:

- (a) District, federal, state, and local income taxes and federal excess profit taxes;
- (b) All taxes from which the contractor could have obtained an exemption but failed to do so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;
- (c) Any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the contracting officer;

- (d) Income tax accruals designed to account for the tax effects of differences between taxable income and pre-tax income as reflected by the contractor's books of accounts and financial statements;
- (e) Taxes in connection with financing, refinancing, refunding operations, or reorganization;
- (f) Special assessments on land that represent capital improvements;
- (h) Taxes (including excise taxes) on real or personal property (or on the value, use, possession, or sale of personal property) which is used solely in connection with work other than on District contracts; and
- (h) Taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to the Internal Revenue Code.

3335.3 Any taxes, interest, or penalties that were allowed as contract costs and are refunded to the contractor shall be credited or paid to the District in the manner the District directs. However, any interest actually paid or credited to a contractor incident to a refund of tax, interest, or penalty shall be paid or credited to the District only to the extent that the interest accrued over the period during which the contractor had been reimbursed by the District for the taxes, interest, or penalties.

3335.4 Direct government charges for services, such as water or capital improvements, are not considered taxes and shall not be allowable.

SOURCE: Final Rulemaking published at 35 DCR 1669 (February 26, 1988).

3336 LOSSES ON OTHER CONTRACTS

3336.1 An excess of costs over income under any other contract, including the contractor's contributed portion under cost-sharing contracts, shall not be allowable.

SOURCE: Final Rulemaking published at 35 DCR 1670 (February 26, 1988).

§§3337-3339: RESERVED

3340 COMPENSATION FOR EMPLOYEE SERVICES

3340.1 Compensation for employee services shall include all remuneration paid or accrued, in any form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance.

3340.2 Compensation for employee services shall be allowable when the work is performed by the employee in the current year and does not represent a retroactive adjustment of a prior year's salaries or wages.

- 3340.3 The total compensation for employee services shall be reasonable for the work performed. Specific restrictions on individual compensation elements shall be observed where they are prescribed in the contract or advance cost agreement.
- 3340.4 Increases in costs for compensation for employee services shall not be allowable when the contractor introduces new or major revisions to existing compensation plans unless the contractor does the following before the changes are implemented:
- (a) Notifies the contracting officer of the changes; and
 - (b) Allows the contracting officer an opportunity to review the allowability of the changes.
- 3340.5 Costs that are not allowable under other sections of this chapter shall not be allowable solely on the basis that they constitute compensation for employee services.
- 3340.6 Compensation for employee services shall be considered reasonable to the extent that the total amount paid or accrued is commensurate with compensation paid under the contractor's established policy and the amount conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area for similar services.
- 3340.7 The contracting officer shall determine whether compensation of the following persons, and their spouses or children, is reasonable for the services performed or is a distribution of profits;
- (a) Owners of closely held corporations;
 - (b) Partners; and
 - (c) Sole proprietors.
- 3340.8 Bonuses and incentive compensation shall be allowable to the extent that the overall compensation is determined to be reasonable and the costs are paid or accrued pursuant to an agreement entered into in good faith between the contractor and the employee before the services are rendered, or pursuant to an established, consistently applied plan followed by the contractor.
- 3340.9 The contracting officer shall consider severance pay allowable where it is required by law, an employer-employee agreement, established policy that constitutes an obligation of the contractor, or circumstances of the particular employment.
- 3340.10 The contracting officer shall allow pension costs to the extent that the costs are reasonable and meet the following criteria:
- (a) The costs are funded by the time set for filing the federal income tax return, or any extension, to be considered in the current year; and
 - (b) The costs are paid pursuant to an agreement between the contractor and employees before the services are rendered and pursuant to an established plan that is consistently applied.

3340.11 The contracting officer shall allow the costs of fringe benefits to the extent that they are reasonable and required by law, by an employer-employee agreement, or as an established, consistently applied policy of the contractor.

3340.12 Legitimate costs incurred on activities designed to improve working conditions, employee morale, and employee performance shall be allowable. If a net profit is generated by these services, it shall be treated as a credit as provided in §3310 of this chapter.

SOURCE: Final Rulemaking published at 35 DCR 1670 (February 26, 1988).

3341 PERSONNEL COSTS RELATED TO LABOR-MANAGEMENT AGREEMENTS

3341.1 The costs of employee services based on a labor-management agreement shall be allowable only to the extent that the contracting officer determines that the agreement does not discriminate against the District and the personnel costs are warranted by the character and circumstances of the work performed under the contract. A labor-management agreement shall be deemed to discriminate against the District if it results in employee compensation in any form that is in excess of compensation paid for non-District work under similar circumstances.

3341.2 The contracting officer shall not disallow costs for compensation resulting from labor-management agreements unless the contractor has been permitted an opportunity to justify the costs and consideration has been given to whether unusual conditions pertain to the District contract work which imposes burdens, hardships, or hazards on the contractor's employees for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel,

SOURCE: Final Rulemaking published at 35 DCR 1672 (February 26, 1988).

3342 COSTS OF BACK PAY

3342.1 The cost of back pay resulting from violations of applicable District law, federal labor laws, or the Civil Rights Act of 1964 where the employee was underpaid shall be allowable.

3342.2 All other back pay resulting from violations of applicable District law, federal labor laws, or the Civil Rights Act of 1964 (such as when the employee was improperly discharged, discriminated against, or other circumstances for which the back pay was not additional compensation for work performed) shall not be allowable.

3342.3 The cost of back pay resulting from payments to union employees for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiations shall be allowable.

3342.4 The cost of back pay to non-union employees based on results of labor-management negotiations shall be allowable only if a formal agreement or understanding exists between management and the employees concerning the payment or an established policy or practice exists and is consistently followed by the contractor.

SOURCE: Final Rulemaking published at 35 DCR 1672 (February 26, 1988).

3343 LABOR RELATIONS COSTS

3343.1 Costs incurred in maintaining satisfactory relations between the contractor and its employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, shall be allowable.

SOURCE: Final Rulemaking published at 35 DCR 1673 (February 26, 1988).

3344 EXPERT AND CONSULTANT SERVICES COSTS

3344.1 Except as provided in §3344.2, costs of expert and consultant services shall be allowable when reasonable in relation to the services rendered and when not contingent upon recovery of costs from the District.

3344.2 In determining the allowability of expert and consultant services costs, the contracting officer shall consider the following:

- (a) The nature and scope of the services rendered in relation to the services required under the contract;
- (b) The necessity of contracting for the service, considering the contractor's capability in the particular area;
- (c) The past pattern of the contractor's incurring this type of costs, particularly in the years prior to the award of District contracts;
- (d) The impact of District contracts in the contractor's business;
- (e) Whether the proportion of District work to the contractor's total business justifies incurring the cost, particularly when the services rendered are not of a continuing nature and have little relationship to work under District contracts;
- (f) Whether the service can be performed more economically by employment rather than by contracting;
- (g) The qualifications of the individual or firm rendering the service and the customary fee charged, especially on non-government contracts; and
- (h) The adequacy of the contractual agreement for the services, including the description of the service, the estimate the time required, rate of compensation, and termination provisions.

3344.3 Fees for services rendered shall be allowable only when supported by evidence of the nature and scope of the service furnished.

SOURCE: Final Rulemaking published at 35 DCR 1673 (February 26, 1988).

3345 RECRUITMENT COSTS

3345.1 If the size of the staff recruited and maintained is in keeping with District contract workload requirements, the following costs shall be allowable:

- (a) Costs of help-wanted advertising;
- (b) Costs of operating an employment office needed to secure and maintain an adequate labor force;
- (c) Costs of operating an aptitude and educational testing program;
- (d) Travel costs of employees engaged in recruiting personnel;
- (e) Travel costs of applicants for interviews; and
- (f) Costs of employment agencies not in excess of standard commercial rates.

3345.2 Recruitment and advertising costs shall not be allowable when any of the following apply:

- (a) The advertising or recruitment is for personnel other than those required to perform obligations under a District contract;
- (b) The advertising does not describe specific positions or classes of positions;
- (c) The advertising or recruitment is excessive relative to the number and importance of the positions or to the industry practices;
- (d) The advertising includes material that is not relevant for recruitment purposes, such as extensive illustrations, the use of color, or descriptions of the company's products or capabilities; or
- (e) The advertising or recruitment is designed to hire personnel from another District contractor.

SOURCE: Final Rulemaking published at 35 DCR 1674 (February 26, 1988).

3346 RELOCATION COSTS

3346.1 -- Relocation costs incident to the permanent change of duty assignment, for an indefinite period or for a stated period of not less than twelve (12) months, of an existing employee or upon recruitment of a new employee shall not be allowable unless specifically provided for in the contract.

SOURCE: Final Rulemaking published at 35 DCR 1675 (February 26, 1988).

§§3347-3349: **RESERVED**

3350 ADVERTISING COSTS

3350.1 Advertising costs that arise from requirements of a District contract shall be allowable for the following purposes only:

- (a) Recruiting personnel required for performing contractual obligations, when considered in conjunction with all other recruitment costs under §3345;
- (b) Procuring scarce items for contract performance;
- (c) Disposing of scrap or surplus materials procured for contract performance; or
- (d) Notices or advertisements required by law or regulations.

SOURCE: Final Rulemaking published at 35 DCR 1675 (February 26, 1988).

3351 CONTINGENCIES

3351.1 The contracting officer shall not allow contingency costs except in the case of a termination.

3351.2 A contingency factor may be allowed in connection with a termination when it is applicable to a past period to give recognition to minor unsettled factors in the interest of expediting settlement.

SOURCE: Final Rulemaking published at 35 DCR 1675 (February 26, 1988).

3352 CONTRIBUTIONS AND DONATIONS

3352.1 Contributions and donations shall not be allowable.

SOURCE: Final Rulemaking published at 35 DCR 1676 (February 26, 1988).

3353 ENTERTAINMENT COSTS

3353.1 Costs of amusement, diversion, social activities, and any directly associated costs, such as tickets to shows or sport events, meals, lodging, rentals, transportation, and gratuities, shall not be allowable.

3353.2 Reasonable costs incurred for meetings or conferences, including, but not limited to, the cost of food, rental of facilities, and transportation, where the primary purpose of incurring those costs is the dissemination of technical information or the stimulation of production related to the District contract may be allowed by the contracting officer.

SOURCE: Final Rulemaking published at 35 DCR 1676 (February 26, 1988).

3354 FINES AND PENALTIES

3354.1 Fines and penalties resulting from violations of, or failure of the contractor to comply with District, federal, state, or local laws, or regulations shall not be allowable costs,

except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

SOURCE: Final Rulemaking published at 35 DCR 1676 (February 26, 1988).

3355 LOBBYING COSTS

- 3355.1 Costs associated with activities that involve attempts to influence the outcome of any District, federal, state, or local election, referendum, initiative, or similar procedure, including in-kind or cash contributions, endorsements, publicity, or similar activities, shall not be allowable.
- 3355.2 Costs associated with establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections shall not be allowable.
- 3355.3 Costs associated with any attempt to influence the introduction of District, federal, state, or local legislation, or the enactment or modification of any pending District, federal, state, or local legislation through communication with any member or employee of the Council, the Congress, or any state or local legislature, or any government official or employee in connection with a decision to sign or veto enrolled legislation shall not be allowable.
- 3355.4 Costs associated with any attempt to influence the introduction of District, federal, state or local legislation, or the enactment or modification of any pending District, federal, state, or local legislation by preparing, distributing, or using publicity or propaganda, or by urging any member of the public to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign, or letter writing or telephone campaign shall not be allowable.
- 3355.5 Costs associated with legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when those activities are carried on in support of or in preparation for an effort to engage in other activities for which costs are not allowed under this section, shall not be allowable.
- 3355.6 The costs of providing a technical and factual presentation of information on a topic directly related to the performance of a contract through hearing testimony, statements or letters to the Council or the Congress, including any committee, subdivision, member, or staff member, in response to a documented request made by or on behalf of the recipient member or legislative body shall be allowable if the information is readily obtainable and can be readily put in deliverable form.
- 3355.7 Costs for transportation, lodging, or meals in connection with the activities authorized under §3355.6 shall not be allowable unless incurred for the purpose of offering testimony at a regularly scheduled Council or congressional hearing pursuant to a written request for the presentation from the committee or subcommittee conducting the hearing.
- 3355.8 The costs of an activity specifically authorized by statute to be undertaken with funds from the contract shall be allowable.

- 3355.9 When a contractor seeks reimbursement for indirect costs, total costs for the activities set forth in this section shall be separately identified in the indirect cost rate proposal, and shall be treated as unallowable activity costs.

SOURCE: Final Rulemaking published at 35 DCR 1676 (February 26, 1988).

3356 PLANT PROTECTION COSTS

- 3356.1 The cost of items such as wages, uniforms, and equipment of personnel engaged in plant protection and the cost of depreciation on plant protection capital assets shall be allowable.

SOURCE: Final Rulemaking published at 35 DCR 1678 (February 26, 1988).

3357 TRANSPORTATION COSTS

- 3357.1 Transportation costs, such as freight, express, cartage, and postage charges relating to goods purchased, in process, or delivered, shall be allowable.

- 3357.2 When identification with the materials received cannot be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the contractor follows a consistent and equitable procedure. Outbound freight, if reimbursable under the terms of the contract, shall be treated as a direct cost.

SOURCE: Final Rulemaking published at 35 DCR 1678 (February 26, 1988).

3358 TRAVEL COSTS

- 3358.1 Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel in official company business related to the District contract shall be allowable. Allowable costs may be based on actual cost incurred, *per diem* or mileage, or a combination if the method used does not result in an unreasonable charge.

- 3358.2 Travel costs directly attributable to specific contract performance shall be allowable and may be charged to the contract as a direct cost.

- 3358.3 Travel costs incurred in the normal course of overall administration of the business shall be allowable and shall be treated as an indirect cost.

- 3358.4 The difference in cost between first-class air accommodations and less than first-class accommodations shall not be allowable.

SOURCE: Final Rulemaking published at 35 DCR 1678 (February 26, 1988).

3399 DEFINITIONS

- 3399.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Actual costs - amounts determined on the basis of costs incurred, as distinguished from forecasted costs. Actual costs include standard costs properly adjusted for applicable variances.

Advance cost agreement - an agreement between the District and a contractor concerning the treatment of special or unusual costs which are expected to be incurred.

Advertising costs - costs of advertising and directly associated costs regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media includes conventions, exhibits, free goods, samples, magazines, newspapers, trade papers, direct mail, dealer cards, window displays, outdoor advertising, and radio and television programs.

Allocate - to assign an item of cost, or a group of items of cost, to one (1) or more cost objectives.

Allowable costs - costs determined to be permissible based on reasonableness, allocability, and generally accepted accounting principles and practices appropriate to the particular circumstances.

Bona fide employee - an employee who is employed in a specific position for a specific purpose relating to promoting or securing business for the contractor.

Business unit - any segment of an organization, or an entire business organization, which is not divided into segments.

Consultant - a firm or individual with knowledge and special abilities not generally available to an agency who renders services of a purely advisory nature relating to governmental functions or agency administration and management.

Contingency costs - costs based on a possible future event or condition arising from presently known or unknown causes, the outcome of which is not determinable at the present time.

Cost objective - a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, and capitalized projects.

Council - the Council of the District of Columbia.

Deferred compensation - an award made by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one (1) or more cost accounting periods before the date of the receipt of compensation by the employee. This term does not include the amount of year end accruals for salaries, wages, or bonuses that are to be paid within a reasonable period of time after the end of a cost accounting period.

Depreciation - a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. Useful life refers to the prospective period of economic usefulness in a particular contractor's operations as distinguished from physical life, as evidenced by the actual or estimated retirement and replacement practice of the contractor.

Direct cost - any cost that can be identified specifically with a particular final cost objective or is incurred directly for a particular contract.

Directly associated cost - any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the cost not been incurred.

Director - the Director of the Department of Administrative Services.

Established commercial or selling agency - a firm whose primary products are activities designed to secure business for the contractor such as technical, consulting, or demonstration services.

Estimating costs - the process of forecasting a future result in terms of cost, based upon information available at the time.

Expert - a person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field, whose knowledge and mastery of the principles, practices, problems, methods, and techniques of his or her field or activity, or of a specialized area in the field, are clearly superior to those usually possessed by ordinarily competent persons in that activity, and whose attainment is such that he or she usually is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity.

Expressly unallowable cost - a particular item or type of cost which, under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable.

Final cost objective - a cost objective that has allocated to it both direct and indirect costs and, in the contractor's accumulation system, is one of the final accumulation points.

Fiscal year - the accounting period for which annual financial statements are regularly prepared.

Fringe benefits - allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries.

Indirect costs - any cost not directly identified with a single contract, but identified with two (2) or more final cost objectives or an intermediate cost objective.

Indirect cost pools - groupings of incurred costs identified with two (2) or more cost objectives but not identified specifically with any final cost objective.

Insurance administration expenses - the contractor's costs of administering an insurance program, which may include the cost of operating an insurance or risk management department, processing claims, actuarial fees, and service fees paid to insurance companies, trustees, or technical consultants.

Material costs - costs of items such as raw materials, parts, sub-assemblies, components, and manufacturing supplies, whether purchased or manufactured by the contractor, which may include such collateral items as inbound transportation and intransit insurance.

Normal cost - the annual cost attributable, under the actuarial cost method in use, to years subsequent to a particular valuation date.

Operating lease - the acquisition of real or personal property which is considered normal property to the operations of the contractor by lease or rental.

Organization costs - costs such as incorporation fees and costs of attorneys, accountants, brokers, promoters, organizers, management consultants, and investment counselors, including employees of the contractor.

Pension plan - a deferred compensation plan established and maintained by one (1) or more employers to provide systematically for the payment of benefits to plan participants after their retirements. The benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability, death payments, and survivorship payments to beneficiaries of deceased employees may be an integral part of a pension plan.

Pension plan participant - any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit from a pension plan which covers employees of such employer or members of such organization and who have satisfied the plan's participation requirements. Beneficiaries receiving benefits or who may be eligible to receive benefits are included in this term.

Pre-contract costs - costs incurred before the effective date of the contract directly pursuant to the negotiation and in anticipation of the contract award when those costs are necessary to comply with the proposed contract delivery schedule.

Preparatory costs - an initial cost, such as those costs incurred for initial plant rearrangement and alterations, management and personnel organization, and production planning.

Pricing - the process of establishing a reasonable amount or amounts to be paid for supplies or services.

Profit center - the smallest organizationally independent segment of a company charged by management with profit and loss responsibilities.

Proposal - any offer or other submission used as a basis for pricing a contract, contract modification, or termination settlement or for securing payments thereunder.

Rental costs - costs of renting or leasing real or personal property, except automatic data processing equipment.

Residual value - the proceeds, less removal and disposal costs, if any, realized upon disposition of a tangible capital asset. It usually is measured by the net proceeds from the sale or other disposition of the asset, or its fair market value if the asset is traded in on another asset. The estimated residual value is a current forecast of the residual value.

Selling costs - costs that arise in the marketing of the contractor's products and includes costs of sales promotions, negotiation, liaison between District representatives and the contractor's personnel, and related activities.

Service life - the period of usefulness of a tangible capital asset, or group of assets, to its current owner. The period may be expressed in units of time or output. The estimated service life of a tangible capital asset, or group of assets, is a current forecast of its service life and is the period over which depreciation cost is to be assigned.

Special test equipment - single or multi-purpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities, and plant equipment items used for general plant testing purposes.

Special tooling - jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, which are of such a

specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. It does not include material, special test equipment, facilities, general or special machine tools, or similar capital items.

Standard cost - any cost computed with the use of pre-established measures.

Tangible capital asset - an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the services it yields.

Unallowable cost - any cost which, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost-reimbursements, or settlements under a District contract to which it is allocable.

Variance - the difference between a pre-established measure and an actual measure.

SOURCE: Final Rulemaking published at 35 DCR 1679 (February 26, 1988).

CHAPTER 36 CONTRACT MODIFICATIONS

Secs.	
3600	General Provisions
3601	Types of Contract Modifications
3602	Unauthorized Contract Modifications
3603	Change Orders
3604	Equitable Adjustments
3605	Contract Modification Forms
3606	Effective Dates of Modifications
3699	Definitions

3600 GENERAL PROVISIONS

- 3600.1 Only a contracting officer acting within the scope of the contracting officer's delegated contract authority is authorized to execute a contract modification on behalf of the District. Other District personnel shall not do any of the following:
- (a) Execute contract modifications;
 - (b) Act in a manner that causes a contractor to believe that they have authority to bind the District; or
 - (c) Direct or encourage a contractor to perform work that should be the subject of a contract modification.
- 3600.2 A contract modification, including a change issued unilaterally by the District, shall be priced and a government estimate shall be prepared before signature by the parties, unless the interests of the District would be adversely affected. If a significant cost increase could result from a contract modification and time does not permit negotiation of a price, the contracting officer shall negotiate a maximum contract price increase and include that price in the modification.
- 3600.3 If an unpriced contract modification is issued, the contracting officer shall justify, in writing, the reasons for the issuance of the unpriced modification.
- 3600.4 The contracting officer shall not execute a contract modification, including a change order, that causes or will cause an increase in the funding level of the contract without having first obtained a certification of the availability of funds. The certification shall be based on the negotiated price or the negotiated maximum price.
- 3600.5 A modification to a contract may be executed without having first obtained the certification required under §3600.4 if the modification includes a clause, approved by the Director, which conditions payment upon the availability of funds.

3600.6 The Director shall review contract modifications as required in chapter 10 of this title.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1684 (February 26, 1988).

3601 TYPES OF CONTRACT MODIFICATIONS

3601.1 A contract modification may be either bilateral or unilateral.

3601.2 The contracting officer shall use a bilateral contract modification (also known as a "supplemental agreement") to do the following:

- (a) Make negotiated equitable adjustments resulting from the issuance of a change order;
- (b) Formalize a letter contract; or
- (c) Reflect other agreements of the parties to modify the terms of the contract.

3601.2 The contracting officer shall use a unilateral contract modification to do the following:

- (a) Make administrative changes, such as correction of typographical errors or appropriations information;
- (b) Issue change orders;
- (c) Make changes authorized by a provision of the contract other than a changes clause, such as an option; or
- (d) Issue a termination notice.

SOURCE: Final Rulemaking published at 35 DCR 1685 (February 26, 1988).

3602 UNAUTHORIZED CONTRACT MODIFICATIONS

3602.1 Employees and agents of the District other than duly appointed contracting officers shall not execute contract modifications or do either of the following:

- (a) Act in a manner that causes or could reasonably cause a contractor to believe that they have authority to bind the District; or
- (b) Direct or encourage a contractor to perform work, or modify the manner in which work is being performed, that should be the subject of a contract modification.

3602.2 A contractor shall be bound by the terms of the written contract and written contract modifications signed by the contracting officer. A contractor shall not rely upon any written or oral statements or directions of employees or agents of the District other than the contracting officer for authority to perform work, alter schedules or

specifications, or any other action that would normally require a written contract modification.

- 3602.3 The District shall not be responsible for any costs incurred by a contractor for any additional work or other actions by a contractor outside the scope of the written contract and written contract modifications signed by the contracting officer.

SOURCE: Final Rulemaking published at 35 DCR 1685 (February 26, 1988).

3603 CHANGE ORDERS

- 3603.1 The contracting officer shall include a changes clause, approved by the Director, in each solicitation and contract.

- 3603.2 Each changes clause shall specify the kinds of contract changes that the contracting officer may make within the scope of the contract, by written change order at any time, without notice to the sureties, if any.

- 3603.3 Each changes clause shall be specific to the type of contract being solicited or executed.

- 3603.4 Each changes clause shall include provisions for adjustments in contract price, delivery schedules, or other contract terms which are appropriate to the type of contract.

- 3603.5 The contracting officer may issue a written change order when a change can be accomplished within the provisions of the changes clause.

- 3603.6 After the contracting officer issues a change order, the contractor shall continue performance of the contract as changed. In cost-reimbursement contracts, the contractor shall not be obligated to continue performance or incur costs beyond the limits established in the contract.

SOURCE: Final Rulemaking published at 35 DCR 1686 (February 26, 1988).

3604 EQUITABLE ADJUSTMENTS

- 3604.1 After the contracting officer issues an unpriced change order, the contracting officer and the contractor shall execute a separate bilateral modification reflecting the resulting equitable adjustment in contract terms.

- 3604.2 If the contracting officer and the contractor agree in advance to an equitable adjustment in the contract price, delivery terms, or other contract terms, the contracting officer shall issue a bilateral contract modification and shall not be required to issue a change order.

- 3604.3 The contracting officer shall negotiate an equitable adjustment resulting from a change order in the shortest practicable time.

- 3604.4 If required by the Act or chapter 16 of this title, the contracting officer shall ensure that a cost analysis is made, in accordance with §308 of the Act.

3604.5 To avoid subsequent controversies that may result from a modification containing an equitable adjustment as the result of a change order, the contracting officer shall do the following:

- (a) Ensure that all elements of the equitable adjustment have been presented and resolved; and
- (b) Include in the modification a release statement, approved by the Director, in which the contractor releases the District from any liability for further equitable adjustments attributable to the facts or claims giving rise to the contractor's proposal for adjustment unless specific exceptions are expressly set forth in the release statement.

3604.6 Failure to agree to any adjustment shall be a dispute under the disputes clause in the contract and shall be resolved in accordance with the procedures set forth in the Act and chapter 38 of this title. However, nothing in this section shall excuse the contractor from proceeding with the contract as changed, except as provided otherwise in §3603.6.

SOURCE: Final Rulemaking published at 35 DCR 1686 (February 26, 1988).

3605 CONTRACT MODIFICATION FORMS

3605.1 The Director shall prescribe forms for the following contract modifications:

- (a) An amendment to a solicitation;
- (b) A change order issued under a changes clause of the contract;
- (c) Any other unilateral contract modification issued under a contract clause authorizing the modification without the consent of the contractor;
- (d) Administrative changes, such as the correction of typographical mistakes, changes in the paying office, and changes in accounting and appropriations data;
- (e) Bilateral modifications (supplemental agreements);
- (f) The removal, reinstatement, or addition of funds to a contract;
- (g) Economic price adjustments; and
- (h) Termination notices.

SOURCE: Final Rulemaking published at 35 DCR 1687 (February 26, 1988).

3606 EFFECTIVE DATES OF MODIFICATIONS

3606.1 For a solicitation amendment, change order, or administrative change, the effective date shall be the date on which the contracting officer issues the amendment, change order, or administrative change.

3606.2 For a bilateral modification (supplemental agreement), the effective date shall be the date agreed upon by the contracting officer and the contractor.

SOURCE: Final Rulemaking published at 35 DCR 1688 (February 26, 1988).

3699 DEFINITIONS

3699.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Amendment - any change to a solicitation issued by the contracting officer.

Bilateral contract modification - a contract modification that is signed by the contractor and the contracting officer.

Change order - a written order signed by the contracting officer directing the contractor to make a change that the contracting officer is authorized to order without the contractor's consent pursuant to the contract.

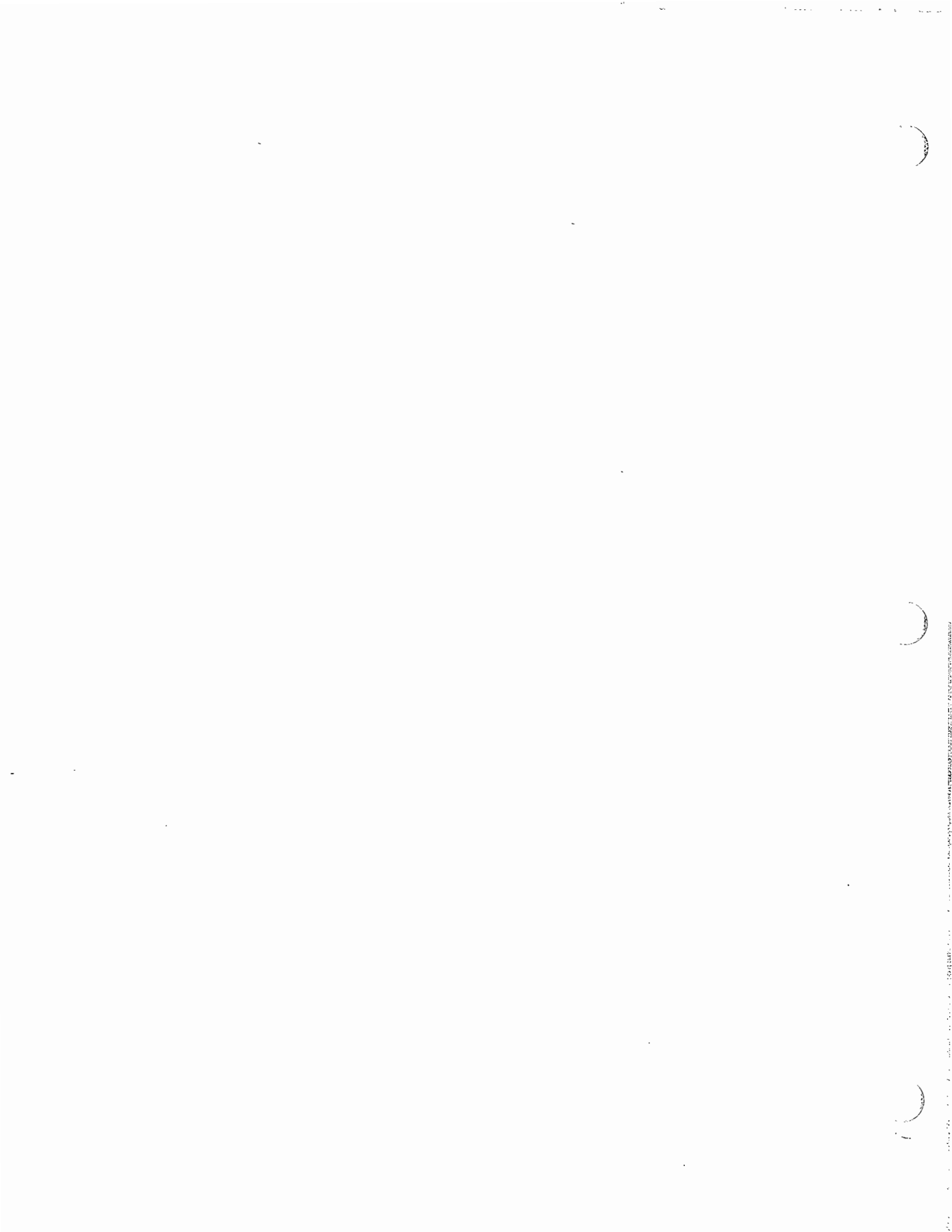
Contract modification - any written change in the terms of a contract.

Director - the Director of the Department of Administrative Services.

Supplemental agreement - a bilateral contract modification.

Unilateral modification - a contract modification that is signed only by the contracting officer.

SOURCE: Final Rulemaking published at 35 DCR 1688 (February 26, 1988).



CHAPTER 37 TERMINATION OF CONTRACTS

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3700	General Provisions
3701	Notice of Termination
3702	Notice of Termination for Convenience
3703	Settlement after Termination for Convenience
3704	Settlement Memorandum
3705	Settlement by Determination
3706	Payment after Settlement
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3708	Settlement Proposals and Settlement Agreements
3709	[Reserved]
3710	Termination for Default
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3712	Notice to Show Cause
3713	Notice of Termination for Default
3714	Excusable Failure to Perform and other Non-Termination Actions
3715	Termination of Cost-Reimbursement Contracts for Default
3716	Repurchase against Contractor's Account
3717	Surety Takeover Agreements
3799	Definitions

3700 GENERAL PROVISIONS

- 3700.1 The contracting officer may terminate a contract for the convenience of the District, in whole or in part, if the contracting officer determines that the termination is in the best interests of the District.
- 3700.2 The contracting officer may terminate a contract for default, in whole or in part, if the termination is in the best interests of the District, and the contractor does any of the following:
- (a) Fails to deliver the supplies or complete the work or services within the time specified in the contract or any modification;
 - (b) Fails to make sufficient progress on contract performance so as to endanger performance of the contract within the time specified or in the manner specified in the contract;
 - (c) Fails or refuses to go forward with the work in accordance with the directions of the contracting officer;

- (d) Expresses through word or conduct an intention not to complete the work in a timely manner; or
 - (e) Fails to perform any of the other provisions of the contract.
- 3700.3 The contracting officer may effect a no-cost settlement instead of issuing a termination notice when the following circumstances apply:
- (a) The contracting officer knows that the contractor will accept a no-cost settlement;
 - (b) District property was not furnished to the contractor; and
 - (c) There are no outstanding payments, debts due to the District, or other contractor obligations.
- 3700.4 If the same item is under contract with a business that is not certified with the Minority Business Opportunity Commission (MBOC) and a business that is certified by the MBOC, and it is necessary to terminate for convenience part of the units still to be delivered, the contracting officer shall give preference to the continuing performance of the certified minority business by terminating all or part of the contract held by the non-certified business unless the Director determines that to do so is not in the best interests of the District.
- 3700.5 Upon written consent of the contractor, the contracting officer may reinstate the terminated portion of a contract, in whole or in part, by amending the notice of termination if the contracting officer determines that the following circumstances apply:
- (a) There is a definite requirement for the terminated items; and
 - (b) Reinstatement is in the best interests of the District.
- 3700.6 When the price of the undelivered balance of a contract is less than two thousand dollars (\$2,000), the contracting officer shall not terminate the contract for convenience, but shall permit it to run to completion.
- 3700.7 When a construction contract is terminated, the contracting officer shall take action to ensure site cleanup, protection of serviceable materials, removal of hazards, and other steps necessary to leave a safe and healthful site.
- 3700.8 In each solicitation and contract, the contracting officer shall include a clause, approved by the Director, that gives notice of the District's right to terminate the contract for convenience or default. The contracting officer shall also insert a clause, approved by the Director, which gives notice of exceptions to the District's right to terminate for default when the delay or failure to perform is excusable due to causes beyond the control and without the fault or negligence of the contractor.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking publishing at 35 DCR 1689 (February 26, 1988).

3701 NOTICE OF TERMINATION

- 3701.1 The contracting officer shall terminate a contract for convenience or default by giving written notice to the contractor. The notice shall be hand-delivered, sent by telegram, or sent by certified mail, return receipt requested.
- 3701.2 When the termination notice is delivered by hand, the contracting officer shall obtain a written acknowledgement of receipt from the contractor.
- 3701.3 If the termination notice is sent by telegram, the contracting officer shall deliver or send a confirming letter to the contractor by certified mail, return receipt requested.
- 3701.4 In addition to the requirements set forth in §3702.2 (termination for convenience) and §3713.2 (termination for default), the termination notice shall state the following:
- (a) The contract number and date;
 - (b) That the contract is being terminated, either for the convenience of the District or for default under the contract clause authorizing the termination;
 - (c) The effective date of termination;
 - (d) If the termination is only partial, the extent of termination;
 - (e) Any special instructions; and
 - (f) The steps the contractor should take to minimize the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force.
- 3701.5 When the termination notice is delivered or sent to the contractor, the contracting officer shall simultaneously deliver or send a copy to the using agency or agencies and to any known assignee, guarantor, or surety of the contractor.
- 3701.6 The contracting officer may amend a termination notice to accomplish any of the following:
- (a) Correct nonsubstantive mistakes in the notice;
 - (b) Add supplemental data or instructions; or
 - (c) Rescind or modify the notice if it is determined that items terminated had been shipped or completed before the contractor's receipt of the notice.
- 3701.7 An amendment to a termination notice shall be in writing and shall be delivered or sent to the contractor in the manner set forth in this section.

SOURCE: Final Rulemaking publishing at 35 DCR 1690 (February 26, 1988).

3702 NOTICE OF TERMINATION FOR CONVENIENCE

3702.1 After receipt of notice of termination for convenience, the contractor shall immediately comply with the notice, except as otherwise directed in writing by the contracting officer.

3702.2 In addition to the requirements of §3701, the notice of termination for convenience shall require the contractor to do the following:

- (a) Stop work immediately on the terminated portion of the contract and make no further shipments and place no further orders relating to the terminated portion of the contract;
- (b) Perform any continued portion of the contract;
- (c) Stop issuing subcontracts pertaining to the terminated portion of the contract;
- (d) Terminate all subcontracts related to the terminated portion of the contract;
- (e) Promptly notify the contracting officer in writing of any legal proceedings growing out of any subcontract or other commitment related to the terminated portion of the contract or in which a lien has been or may be placed against termination inventory to be reported to the District;
- (f) Settle any outstanding liabilities and proposals arising out of the termination of subcontracts, obtaining any necessary approvals from the contracting officer;
- (g) Immediately advise the contracting officer of any special circumstances precluding the stoppage of work;
- (h) If applicable, promptly submit a request for an equitable adjustment of price for the continued portion of the contract, supported by evidence of any increase in cost;
- (i) Take necessary or directed action to protect and preserve property in the contractor's possession in which the District has or may acquire an interest and, as directed by the contracting officer, deliver the property to the District;
- (j) Dispose of termination inventory, as directed or authorized by the contracting officer; and
- (k) Promptly submit the contractor's own settlement proposal, supported by appropriate schedules, in accordance with §3708.

SOURCE: Final Rulemaking publishing at 35 DCR 1692 (February 26, 1988).

3703 SETTLEMENT AFTER TERMINATION FOR CONVENIENCE

3703.1 After issuing a notice of termination for convenience, the contracting officer shall be responsible for negotiating any settlement with the contractor. The contracting officer shall attempt to settle in one agreement all rights and liabilities of parties

involved in the terminated contract except those arising from any portion of the contract still in effect.

- 3703.2 Consistent with the notice of termination for convenience, the contracting officer shall do the following:
- (a) Direct the action required of the prime contractor;
 - (b) Examine the settlement proposal of the prime contractor and, when appropriate, the settlement proposals of subcontractors; and
 - (c) Promptly negotiate settlement with the contractor and enter into a settlement agreement.
- 3703.3 If all of the elements of the settlement cannot be agreed upon between the contractor and the contracting officer, the contracting officer shall follow the procedures set forth in §3705 for settlement by determination for those elements that cannot be settled by agreement.
- 3703.4 After a settlement agreement is completed under §3703.2(c), the contracting officer shall promptly hold a conference with the contractor to develop a definite plan for effecting the settlement.
- 3703.5 After consulting with the contractor, the contracting officer may request any of the principal subcontractors to attend the settlement conference, if appropriate.
- 3703.6 The termination settlement shall cover the following:
- (a) Any setoffs that the District has against the contractor that may be applied against the terminated contract; and
 - (b) All settlement proposals of subcontractors, except proposals that are specifically excepted from the agreement and reserved for separate settlement.
- 3703.7 If any items are excepted from the settlement agreement, the contracting officer shall do the following:
- (a) Reserve in the settlement agreement any rights or demands of the parties that are excepted from the settlement;
 - (b) Ensure that the wording of the reservation does not create any rights for the parties beyond those in existence before execution of the settlement agreement;
 - (c) Mark each applicable settlement agreement with a legend indicating that the settlement agreement contains a reservation and retain the contract file until the reservation is removed;
 - (d) Ensure that sufficient funds are retained to cover complete settlement of the reserved items; and
 - (e) At the appropriate time, prepare a separate settlement of reserved items and include it in a separate settlement agreement.

- 3703.8 Before execution of a settlement agreement, the contracting officer shall determine the accuracy of the District property account for the terminated contract. If a review discloses property for which the contractor cannot account, the contracting officer shall reserve in the settlement agreement the rights of the District regarding that property or make an appropriate deduction from the amount otherwise due the contractor.
- 3703.9 When the contracting officer cannot promptly complete settlement under a terminated contract, the contracting officer may enter into a partial settlement in the following situations:
- (a) When the issues on which the agreement has been reached are clearly severable from other issues; and
 - (b) When the partial settlement will not prejudice the District's or contractor's interest in disposing of the unsettled portion of the settlement proposal.
- 3703.10 The contracting officer responsible for negotiating the final settlement shall establish a separate case file for each termination. This file shall include memoranda and records of all actions relative to the settlement.

SOURCE: Final Rulemaking publishing at 35 DCR 1693 (February 26, 1988).

3704 SETTLEMENT MEMORANDUM

- 3704.1 At the conclusion of settlement negotiations, the contracting officer shall prepare a settlement memorandum containing the principal elements of the settlement for inclusion in the contract file.
- 3704.2 If the settlement was negotiated on the basis of individual items, the contracting officer shall specify the factors considered for each item. If the settlement was negotiated on an overall lump-sum basis, the contracting officer shall not have to evaluate each item or group of items individually, but shall support the total amount of the recommended settlement in reasonable detail.
- 3704.3 The settlement memorandum shall include explanations of matters involving differences and doubtful questions settled by agreement, and the factors considered.

SOURCE: Final Rulemaking publishing at 35 DCR 1695 (February 26, 1988).

3705 SETTLEMENT BY DETERMINATION

- 3705.1 If the contractor and the contracting officer cannot agree on a termination settlement under §3703, or if the contractor fails to submit a settlement proposal within the period required by the termination clause, the contracting officer shall issue a determination of the amount due consistent with the termination clause.
- 3705.2 If the contractor submits a settlement proposal, the contracting officer shall give the contractor notice, either by hand delivery or certified mail, return receipt requested, that the contractor may submit evidence substantiating the settlement amount in its

proposal. The notice shall state a date certain by which the evidence must be received by the contracting officer.

- 3705.3 After reviewing any evidence submitted by the contractor and other available information, the contracting officer shall determine the amount due and shall transmit a copy of the determination to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- 3705.4 The determination letter shall advise the contractor that the determination is a final decision from which the contractor may appeal under the procedures set forth in the Act, chapter 38 of this title, and the disputes clause in the contract except as specified in §3705.6. The determination shall specify the amount due to the contractor and shall explain each major item that was not allowed.
- 3705.5 The contracting officer shall retain all written evidence and other data relied upon in making a determination.
- 3705.6 The contractor may appeal any settlement by determination under the provisions of the Act, chapter 38 of this title, and the disputes clause in the contract, except when the contractor has failed to submit a settlement proposal within the time provided in the contract and has failed to request an extension of time. The filing of an appeal shall not affect the authority of the contracting officer to enter into a settlement agreement, in whole or in part, by negotiation with the contractor at any time before the appeal is decided.

SOURCE: Final Rulemaking publishing at 35 DCR 1695 (February 26, 1988).

3706 PAYMENT AFTER SETTLEMENT

- 3706.1 After execution of a settlement agreement in accordance with §3703, the contractor shall submit a voucher or invoice showing the amount agreed upon, less any portion previously paid. The contracting officer shall attach a copy of the settlement agreement to the voucher or invoice and forward the document to the appropriate office for payment.
- 3706.2 If the settlement is by determination under §3705, payment shall be effected in the following manner:
- (a) If there is no appeal within the allowed time, the contractor shall submit a voucher or invoice showing the amount determined due, less any portion previously paid; or
 - (b) If there is an appeal, the contractor shall submit a voucher or invoice showing the amount finally determined due on the appeal, less any portion previously paid.
- 3706.3 In the case of construction contracts, before forwarding the final payment voucher, the contracting officer shall ascertain whether there are any outstanding labor violations. If any violations are outstanding, the contracting officer shall determine the amount to be withheld from the final payment.

3706.4 The District shall not pay interest on the amount due under a settlement agreement or a settlement by determination. However, the District shall pay interest on amounts found due to a contractor on claims in accordance with §806 of the Act from the date the Director receives the claim.

3706.5 The total amount payable to the contractor under a settlement, before deducting disposal or other credits, exclusive of settlement costs, shall not exceed the contract price less payments otherwise made or to be made under the contract.

SOURCE: Final Rulemaking publishing at 35 DCR 1696 (February 26, 1988).

3707 TERMINATION OF SUBCONTRACTS

3707.1 Upon termination of a prime contract, the prime contractor and each subcontractor shall be responsible for the prompt settlement with their immediate subcontractors. A subcontractor shall have no contractual rights against the District upon termination of the prime contract.

3707.2 Prime contractors shall settle with subcontractors in general conformity with the policies relating to settlement of prime contracts as specified in §§3703 - 3706 of this chapter.

3707.3 The failure of a prime contractor to include an appropriate termination clause in any subcontract or the failure of the contractor to exercise the rights of the termination clause shall not affect the District's right to require the termination of the subcontract and shall not increase the obligation of the District in any way whatsoever.

3707.4 In no event shall the District be required to pay the prime contractor any amount for loss of anticipatory profits or consequential damages resulting from the termination of any subcontract.

SOURCE: Final Rulemaking publishing at 35 DCR 1697 (February 26, 1988).

3708 SETTLEMENT PROPOSALS AND SETTLEMENT AGREEMENTS

3708.1 The contractor shall submit to the contracting officer a settlement proposal for the amount claimed because of the termination for convenience.

3708.2 The contractor shall submit the settlement proposal within one (1) year from the effective date of the termination, unless the period is extended by the contracting officer.

3708.3 The settlement proposal shall cover all cost elements, including settlements with subcontractors and any proposed profit, and shall include reasonable detail supported by accounting data satisfactory to the contracting officer.

3708.4 For cost-reimbursement contracts, the termination clauses approved by the Director shall provide for settlement of costs and fee, if any. The contract clauses governing costs shall determine what costs are allowable.

3708.5 The settlement agreement may include all demands of the District and proposals of the contractor under the terminated contract. However, no amount shall be allowed for any item of cost disallowed by the contracting officer.

3708.6 If the contracting officer and contractor agree on an overall settlement of costs, agreement on each element of cost shall not be required. When appropriate, the contracting officer may compromise differences and settle doubtful costs by agreement. However, an overall settlement shall not include costs that are clearly not allowable under the terms of the contract.

SOURCE: Final Rulemaking publishing at 35 DCR 1697 (February 26, 1988).

§3709: RESERVED

3710 TERMINATION FOR DEFAULT

3710.1 Under a termination for default, the District shall not be liable for the contractor's costs on undelivered work and shall be entitled to the repayment of advance or progress payments, if any, applicable to that work.

3710.2 The default clause approved by the Director shall include a statement that the contracting officer may require the contractor to transfer title and deliver to the District completed supplies. However, the contracting officer shall not use the default clause as authority to acquire any completed supplies unless it has been ascertained that the District does not already have title under some other provision of the contract.

3710.3 Subject to the provisions of §§3710.4, 3710.5, and 3710.6, the District shall pay to the contractor the contract price for any completed supplies and the amount agreed upon by the contracting officer and contractor for any manufacturing materials acquired by the District under the default clause approved by the Director.

3710.4 Before payment is made for completed or delivered supplies, services, or materials, the contracting officer shall take one (1) or more of the following measures to protect the District from potential liability to laborers and material suppliers:

- (a) Ascertain whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all lienors' claims or whether it is feasible to obtain similar bonds to cover outstanding liens;
- (b) Require the contractor to furnish appropriate statements from laborers and material suppliers disclaiming any lien rights they may have to the supplies and materials;
- (c) Obtain appropriate agreement among the District, the contractor, and lienors ensuring release of the District from any potential liability to the contractor or lienors;
- (d) Withhold from the amount due for services, supplies, or materials any amount the contracting officer determines necessary to protect the District's interests,

but only if the measures set forth in §§3710.4(a)-(c) cannot be accomplished or are inadequate; and

- (e) Take other appropriate action considering the circumstances and the degree of the contractors's solvency.

3710.5 The contractor shall be liable to the District for any excess costs incurred in reprocur-ing supplies or materials similar to those to be obtained under the contract terminated for default, and for any other damages, whether or not repurchase is effected.

3710.6 If a contract is terminated for default or if a course of action instead of termination for default is followed under §3714, the contracting officer shall promptly ascertain and make demand for any liquidated damages to which the District is entitled under the contract. The contract clause for liquidated damages shall be approved by the Director and shall specify that these damages are in addition to any excess repurchase costs.

SOURCE: Final Rulemaking publishing at 35 DCR 1698 (February 26, 1988).

3711 TERMINATION FOR DEFAULT PROCEDURES

3711.1 When a termination for default is being considered, the contracting officer shall decide which type of termination action to take after consultation with contracting and technical personnel and legal counsel.

3711.2 Except as provided in §3715.1, when a contractor has defaulted by failure to make delivery of supplies or failure to perform the services within the specified time, no notice to the contractor of the failure or of the possibility of termination shall be required before the actual notice of termination. However, if the District has taken any action that might be construed as a waiver of the contract delivery and performance date, the contracting officer shall send a notice to the contractor setting a new date for the contractor to make delivery or complete performance. The notice shall reserve the District's rights under the default clause of the contract.

3711.3 When the contractor fails to perform provisions of the contract other than those specified in §3711.2, or fails to make sufficient progress on contract performance so as to endanger performance of the contract, the contracting officer shall give the contractor written notice specifying the failure and providing a period of not less than ten (10) days in which to cure the failure. Upon expiration of the period specified in the cure notice, the contracting officer may issue a notice of termination for default unless it is determined that the failure to perform has been cured.

3711.4 When a termination for default appears imminent, the contracting officer may provide a written notification of that fact to the surety. This notification shall not be a notice of default.

3711.5 If the contractor is a certified minority business, the contractingg officer shall forward a copy of any cure notice or show cause notice under §3712 to the Minority Business Opportunity Commission.

3711.6 The contracting officer shall consider the following factors in determining whether to terminate a contract for default:

- (a) The terms of the contract and applicable laws and regulations;
- (b) The specific failure of the contractor and the excuses for the failure, if any;
- (c) The availability of the supplies or services from other sources;
- (d) The urgency of the need for the supplies or services and the period of time required to obtain them from other sources, as compared with the time for delivery that could be obtained from the delinquent contractor;
- (e) The degree to which the contractor is essential to the District procurement program and the effect of a termination for default upon the contractor's capability as a supplier under other contracts;
- (f) The effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments; and
- (g) Any other pertinent facts and circumstances.

3711.7 In addition to the requirements set forth in §3711.6, in the case of a construction contract, promptly after issuance of the termination notice, the contracting officer shall determine the manner in which the work is to be completed and whether the materials, appliances, and plant that are on the site will be needed.

3711.8 When a contract is terminated for default, or an alternative procedure is authorized instead of default under §3714, the contracting officer shall prepare a memorandum for the contract file explaining the reasons for the action taken.

SOURCE: Final Rulemaking publishing at 35 DCR 1699 (February 26, 1988).

3712 NOTICE TO SHOW CAUSE

3712.1 When termination for default appears appropriate, the contracting officer may, if it is in the best interests of the District, notify the contractor in writing of the possibility of the termination. The show cause notice shall call the contractor's attention to the contractual liabilities if the contract is terminated for default, and request the contractor to show cause why the contract should not be terminated for default.

3712.2 The show cause notice shall give the contractor ten (10) days after receipt of the notice to present, in writing, any facts bearing on the case. The notice shall be hand delivered or sent by certified mail, return receipt requested.

3712.3 The notice may further state that failure of the contractor to present an explanation may be taken as an admission that no valid explanation exists. When appropriate, the notice may invite the contractor to discuss the matter at a conference.

3712.4 A notice to show cause may be combined with a notice to cure issued under §3711.3.

SOURCE: Final Rulemaking publishing at 35 DCR 1701 (February 26, 1988).

3713 NOTICE OF TERMINATION FOR DEFAULT

3713.1 If, after consideration of all facts and circumstances, and after compliance with the provisions of this chapter, the contracting officer determines that a termination for default is proper, the contracting officer shall issue a notice of termination.

3713.2 In addition to the requirements of §3701, a notice of termination for default shall include the following:

- (a) The acts or omissions constituting the default;
- (b) A statement that the contractor's right to proceed further under the contract, or a specified portion of the contract, is terminated;
- (c) A statement that the supplies or services terminated may be purchased against the contractor's account, and that the contractor will be held liable for any excess costs;
- (d) If the contracting officer has determined that the failure to perform is not excusable, a statement that the notice of termination constitutes a decision to that effect, and that the contractor has the right to appeal the decision under the disputes clause in the contract;
- (e) That the District reserves all rights and remedies provided by law or under the contract, in addition to charging excess costs; and
- (f) That the notice constitutes a decision that the contractor is in default as specified and that the contractor has the right to appeal the termination under the disputes clause in the contract.

3713.3 The contracting officer shall make the same distribution of the termination notice as was made of the contract.

3713.4 The contracting officer shall furnish a copy to the contractor's surety, if any, when the notice is furnished to the contractor. The contracting officer shall request the surety to advise the contracting officer if it desires to arrange for completion of the work.

3713.5 The contracting officer shall immediately notify the payment office to withhold further payments under the terminated contract, pending further notice.

SOURCE: Final Rulemaking publishing at 35 DCR 1702 (February 26, 1988).

3714 EXCUSABLE FAILURE TO PERFORM AND OTHER NON-TERMINATION ACTIONS

3714.1 If the contracting officer determines before issuing the termination notice that the failure to perform is excusable in accordance with the contract clause required under §3700.8, the contract shall not be terminated for default. If termination is in the best interests of the District, the contracting officer may terminate the contract for the convenience of the District.

- 3714.2 If the contracting officer has not been able to determine before issuance of the notice of termination whether the contactor's failure to perform is excusable, the contracting officer shall make a written decision on that point as soon as practicable after issuance of the notice of termination.
- 3714.3 When the contracting officer determines that some action other than a termination for default is in the best interests of the District, the contracting officer may take any one of the following actions:
- (a) The contracting officer may permit the contractor, the surety, or the guarantor, to continue performance of the contract under a revised delivery schedule;
 - (b) The contracting officer may permit the contractor to continue performance of the contract by means of a subcontract or other business arrangement with an acceptable third party; Provided, that the rights of the District shall be adequately preserved; or
 - (c) If the requirement for the supplies and services in the contract no longer exists, and the contractor is not liable to the District for damages, the contracting officer may execute a no-cost settlement.
- 3714.4 The contracting officer may, with the written consent of the contractor, reinstate the terminated contract by amending the notice of termination, after the contracting officer makes a written determination that the supplies or services are still required and reinstatement is in the best interests of the District.

SOURCE: Final Rulemaking publishing at 35 DCR 1703 (February 26, 1988).

3715 TERMINATION OF COST-REIMBURSEMENT CONTRACTS FOR DEFAULT

- 3715.1 The termination clause of a cost-reimbursement type contract shall require the contracting officer to provide the contractor with at least ten (10) days notice before issuance of a notice of termination for default.
- 3715.2 Settlement of a cost-reimbursement contract terminated for default shall be in accordance with the provisions of §3703, except as follows:
- (a) The costs of preparing the contractor's settlement proposal shall not be allowable; and
 - (b) The contractor shall be reimbursed for all allowable costs, and an appropriate reduction shall be made in the total fee, if any.

SOURCE: Final Rulemaking publishing at 35 DCR 1703 (February 26, 1988).

3716 REPURCHASE AGAINST CONTRACTOR'S ACCOUNT

- 3716.1 When the supplies or services under a terminated contract are still required after termination for default, the contracting officer shall repurchase the same or similar supplies or services against the contractor's account as soon as practicable.
- 3716.2 The contracting officer shall repurchase similar supplies and services at as reasonable a price as practicable, considering the quality and delivery requirements.

- 3716.3 The contracting officer may repurchase a quantity in excess of the quantity terminated for default when the excess quantity is needed. However, the costs of any items in excess of the undelivered quantity terminated for default shall not be charged against the defaulting contractor.
- 3716.4 Except as provided in §§3716.5 and 3717, the contracting officer shall use the procedures set forth in chapter 15 or chapter 16 of this title, whichever is applicable, to repurchase the terminated supplies or services, or any additional requirements needed.
- 3716.5 Except as provided in §3717, if the supplies or services are required immediately, the contracting officer may reprocur the required supplies or the services on an emergency basis in accordance with the provisions of chapter 17 of this title. The period of performance for any services reprocured shall not exceed the limits specified in chapter 17 of this title.
- 3716.6 If repurchase is made at a price greater than the price of the supplies or services terminated, the contracting officer shall, after completion and final payment of the repurchase contract, make a written demand on the contractor for the total amount of the excess, giving consideration to any increases or decreases in other costs, such as transportation or discounts.

SOURCE: Final Rulemaking publishing at 35 DCR 1704 (February 26, 1988).

3717 SURETY TAKEOVER AGREEMENTS

- 3817.1 The contracting officer shall carefully consider proposals by the surety concerning completion of the work. The contracting officer shall take action on the basis of the District's interests, including the possible effect of the action upon the District's rights against the surety.
- 3717.2 If the surety offers to complete the contract work, the contracting officer shall accept the offer unless the contracting officer has reason to believe that the persons or firms proposed by the surety to complete the work are not competent or qualified and the interests of the District would be substantially prejudiced.
- 3717.3 If the surety conditions its offer of completion upon the execution by the District of a "takeover" agreement fixing the surety's rights to payment from unpaid prior earnings (retained percentage and unpaid progress estimates), the contracting officer may, at any time after the effective date of the termination, enter into a written agreement with the surety.
- 3717.4 The takeover agreement shall provide for the surety to complete the work according to all the terms and conditions of the contract and for the District to pay the surety the balance of the contract price, less any setoffs or assessed damages, but not in excess of the surety's costs and expenses, in the manner provided by the contract subject to the following conditions set forth in §§3717.5 through 3717.8.
- 3717.5 Under a takeover agreement, any unpaid earnings of the defaulting contractor, including retained percentages and progress estimates for work accomplished before

termination, shall be subject to debts and assessed damages due the District by the contractor.

- 3717.6 The takeover agreement shall not waive or release the District's right to liquidated damages for delays in completion of the work, except to the extent that they are excusable under the contract.
- 3717.7 If the contract proceeds have been assigned to a financing institution, the surety may not be paid from unpaid earnings under a takeover agreement, unless the assignee consents to the payment in writing.
- 3717.8 Under a takeover agreement, the surety shall not be paid any amount in excess of its total expenditures necessarily made in completing the work and discharging its liabilities under the payment bond of the defaulting contractor.
- 3717.9 The contracting officer shall make payments to the surety to reimburse it for discharging its liabilities under the payment bond of the defaulting contractor only on the basis of one (1) of the following:
- (a) Mutual agreement between the District, the defaulting contractor, and the surety; or
 - (b) Order of a court of competent jurisdiction.

SOURCE: Final Rulemaking publishing at 35 DCR 1705 (February 26, 1988).

3799 DEFINITIONS

- 3799.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Completed supplies - supplies that are completely manufactured and ready for delivery.

Cure notice - a notice in writing in which the contracting officer specifies a contractor's failure to perform some provision of the contract or failure to make sufficient progress on contract performance so as to endanger performance of the contract. The notice includes a period of time in which the contractor will be allowed to cure the failure.

Director - the Director of the Department of Administrative Services.

District property account - an accounting of property owned by the District.

Effective date of termination - the date on which the notice of termination requires the contractor to stop performance under the contract. If the termination notice is received by the contractor subsequent to the date fixed for termination, then the effective date of termination is the date the notice is received by the contractor.

Other work - any current or scheduled work of the contractor, whether governmental or commercial, other than work related to the terminated contract.

Partial termination - the termination of a part, but not all, of the work that has not been completed and accepted under a contract.

Settlement agreement - a written agreement in the form of a modification to a contract settling all or a severable portion of a settlement proposal.

Settlement proposal - a proposal for effecting settlement of a contract terminated, in whole or in part, submitted by a contractor or subcontractor.

Show cause notice - a notice in which the contracting officer notifies the contractor in writing of the possibility of a termination for default. The notice calls the contractor's attention to the contractual liabilities if the contract is terminated for default, and requests the contractor to show cause why the contract should not be terminated for default.

Terminated portion of the contract - the portion of a terminated contract that relates to work or end items not completed and accepted before the effective date of termination and is that portion of the contract which the contractor is not to continue to perform. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of or payment for individual items of work before termination.

Termination for default - the exercise of the District's contractual right to terminate, completely or partially, a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.

SOURCE: Final Rulemaking publishing at 35 DCR 1706 (February 26, 1988).

CHAPTER 38 PROTESTS, CLAIMS, AND DISPUTES

Secs.	
3800	Protests
3801	Contract Disputes
3802	District Claims Against Contractors
3803	Claims Against the District
3804	Claims Filed with the Director
3805	Informal Hearings on Claims
3806	Decision of the Director
3899	Definitions

3800 PROTESTS

- 3800.1 In accordance with the provisions of §903 of the District of Columbia Procurement Practices Act of 1985 (the "Act"), D.C. Code §1-1189.3, all protests shall be filed with the District of Columbia Contract Appeals Board (which has original jurisdiction to decide all protests of solicitations or awards), in accordance with chapter 1 of this title.
- 3800.2 Each solicitation issued by the District shall inform prospective bidders or offerors that protests must be filed in accordance with the provisions of §908 of the Act, D.C. Code §1-1189.8 (1981) and the rules of the Contract Appeals Board set forth in chapter 3 of this title.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1708 (February 26, 1988).

3801 CONTRACT DISPUTES

- 3801.1 District agencies shall attempt to resolve all disputes arising under or relating to contracts by mutual agreement after informal discussions between the contractor and the contracting officer.
- 3801.2 Each District contract shall contain a disputes clause, approved by the Director, that provides for resolution of disputes in accordance with the provisions of this chapter.
- 3801.3 Any dispute arising under or relating to a contract which is not resolved by informal discussions between the contracting officer and the contractor pursuant to §3800.1 may be treated as a claim and pursued under the appropriate provisions of the Act and this chapter.
- 3801.4 Claims by the District against a contractor shall be filed with the Director in accordance with §803 of the Act, D.C. Code §1-1188.3 (1981) and §3802 of this chapter.

3801.5 Claims by a contractor against the District shall be filed initially in accordance with the provisions of §3803 of this chapter.

SOURCE: Final Rulemaking published at 35 DCR 1708 (February 26, 1988).

3802 DISTRICT CLAIMS AGAINST CONTRACTORS

3802.1 If the contracting officer is unable to resolve a dispute arising under or relating to a contract with a contractor, and the dispute involves a claim by the District against the contractor, the contracting officer shall file a written claim with the Director.

3802.2 The requirement for filing a claim under this section shall not apply to any penalty or forfeiture under §803(a)(3) of the Act, D.C. Code §1-1188.3(a)(3) (1981) or to any situation where the contracting officer has specific authority under the Act or this title to delay, suspend, or withhold contract payments. An aggrieved contractor may initiate a claim against the District in these situations in accordance with §3803 of this chapter.

3802.3 A claim filed with the Director by a contracting officer shall be in writing and shall include the following:

- (a) A description of the claim and the amount in dispute;
- (b) A copy of the contract and pertinent plans, specifications, modifications, supplemental agreements, addenda, change orders, other exhibits, correspondence between the District and the contractor, and any other data material to the claim;
- (c) A brief description of the status of performance of the contract and the contracting officer's efforts to resolve the dispute prior to filing the claim; and
- (d) The contracting officer's recommendation for action by the Director.

3802.4 At the same time the claim is filed, the contracting officer shall deliver or mail by certified mail, return receipt requested, to the contractor a copy of the claim filed with the Director.

3802.5 The contracting officer shall submit the complete contract file to the Director within ten (10) calendar days after filing the claim.

SOURCE: Final Rulemaking published at 35 DCR 1708 (February 26, 1988).

3803 CLAIMS AGAINST THE DISTRICT

3803.1 Contractors shall attempt to resolve all disputes by discussion and agreement with the contracting officer before filing a written claim.

3803.2 If a contractor is unable to resolve a dispute arising under or relating to a contract through informal discussions, the contractor may file a written claim with the contracting officer in accordance with this section.

- 3803.3 The contractor's claim shall be in writing, shall be delivered in person or mailed by certified mail, return receipt requested, to the contracting officer, and shall contain at least the following:
- (a) A description of the claim and the amount in dispute;
 - (b) Any data or other information in support of the claim;
 - (c) A brief description of the contractor's efforts to resolve the dispute prior to filing the claim; and
 - (d) The contractor's request for relief or other action by the contracting officer.
- 3803.4 The contracting officer may meet with the contractor in a further attempt to resolve the claim by agreement.
- 3803.5 If the claim is not resolved by mutual agreement, the contracting officer shall issue a written decision on the claim within sixty (60) calendar days after the receipt of the claim. The contracting officer's written decision shall do the following:
- (a) Grant or deny the contractor's claim, in whole or in part;
 - (b) Give the reasons for the contracting officer's decision;
 - (c) Inform the contractor of the right to seek further redress by requesting an informal hearing and decision by the Director;
 - (d) Include the information specified in §3806.7(a), (b), (c), and (e); and
 - (e) Specifically indicate that the written document is the contracting officer's final decision.
- 3803.6 The contracting officer's decision shall be delivered or mailed by certified mail, return receipt requested, to the contractor, and a copy shall be maintained in the contract file.

SOURCE: Final Rulemaking published at 35 DCR 1709 (February 26, 1988).

3804 CLAIMS FILED WITH THE DIRECTOR

- 3804.1 If a contractor's claim against the District is not resolved to the satisfaction of the contractor under §3803, the contractor may file the claim with the Director within sixty (60) calendar days after either of the following:
- (a) The receipt of the contracting officer's written decision; or
 - (b) Ten (10) calendar days after the expiration of the time for a decision by the contracting officer under §3803.5.
- 3804.2 The contractor's claim shall be in writing, shall be delivered in person or mailed by certified mail, return receipt requested, to the Director, and shall contain at least the following:

- (a) A description of the claim and the amount in dispute;
- (b) Any data or other information in support of the claim;
- (c) A copy of the contracting officer's written decision or a statement that no written decision was received; and
- (e) The contractor's request for relief.

SOURCE: Final Rulemaking published at 35 DCR 1710 (February 26, 1988).

3805 INFORMAL HEARINGS ON CLAIMS

- 3805.1 An informal hearing shall be conducted in accordance with this section on all claims filed with the Director pursuant to §§3802 or 3803.
- 3805.2 The Director may conduct the informal hearing or may appoint a Claims Officer to conduct the hearing. The Claims Officer shall be an employee of the Department of Administrative Services.
- 3805.5 The hearing shall be conducted as soon as practicable after the claim is received. In any event, the informal hearing shall be held in sufficient time to meet the deadline for a final determination on the claim under §3807.
- 3805.6 The Director shall give the contractor and the contracting officer at least fifteen (15) calendar days notice of the time and place scheduled for the informal hearing. The notice shall be in writing by certified mail, return receipt requested.
- 3805.7 The contractor may be accompanied or represented at the informal hearing by legal counsel or other person chosen by the contractor.
- 3805.6 The Director or claims officer shall close the informal hearing to the public during any portion of the hearing that proprietary information is presented or discussed, upon request of the contractor,
- 3805.7 The Director or Claims Officer may continue the informal hearing to a later date and time at the request of either party for cause or because of the excessive length of the hearing.

SOURCE: Final Rulemaking published at 35 DCR 1711 (February 26, 1988).

3806 DECISION OF THE DIRECTOR

- 3806.1 If, because of the amount or complexity of the claim, the Director deems it to be in the best interests of the District, the Director may require informal, non-binding mediation between the parties before issuing a final decision. The Director shall appoint one (1) or more individuals who have not participated substantially in the matter in dispute to act as mediators to assist in resolving the claim.
- 3806.2 If a Claims Officer conducts the hearing, the Claims Officer shall make a written recommendation to the Director.

- 3806.3 The final decision of the Director shall be based upon the contract file, other documents filed by the parties, and the testimony and evidence presented at the hearing, in accordance with applicable laws and regulations.
- 3806.4 The final decision of the Director shall be issued within the applicable deadline set forth in §805 of the Act, D.C. Code §1-1188.5 (1981), except as provided in §3806.5. These deadlines shall also apply to decisions on claims filed by the District. For purpose of §805 of the Act and this section, the time periods set forth in the Act shall be deemed to be calendar days.
- 3806.5 In accordance with §§805(b) and (c) of the Act, D.C. Code §1-1188.5 (1981), the Director may extend the statutory deadline for issuing a final decision on a claim by issuing a written notice of extension based on either of the following:
- (a) The consent of both parties to an extension of the deadline for a specific period; or
 - (b) A determination by the Director that additional time is required due to compelling reasons stated in writing in the notice.
- 3806.6 When the statutory deadline is extended by the Director under §3806.5(b), the contractor may file an appeal with the Contract Appeals Board based on presumption of denial of the claim if a decision has not been issued within sixty (60) calendar days after the expiration of the applicable statutory deadline under §3806.4.
- 3806.7 The final written decision of the Director shall include the following:
- (a) A description of the claim or dispute;
 - (b) Reference to the pertinent contract terms;
 - (c) A statement of the factual areas of agreement and disagreement;
 - (d) A determination granting or denying the claim, in whole or in part, with the reasons for the determination;
 - (e) If all or any part of the claim is determined to be valid, a determination of the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted; and
 - (f) A notice that the contractor may appeal the decision to the Contract Appeals Board.
- 3806.8 The Director shall deliver or mail (by certified mail, return receipt requested) a copy of the final decision to the contractor, and shall provide a copy to the contracting officer for inclusion in the contract file.

SOURCE: Final Rulemaking published at 35 DCR 1712 (February 26, 1988).

3899 DEFINITIONS

3899.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Claim - a written demand or written assertion by the District or a contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

Director - the Director of the Department of Administrative Services.

Proprietary information - information, including a formula, patterns, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

SOURCE: Final Rulemaking published at 35 DCR 1713 (February 26, 1988).

CHAPTER 40 QUALITY ASSURANCE

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4000 CONTRACTING OFFICER RESPONSIBILITIES

- 4000.1 The contracting officer shall ensure that the supplies, services, or construction procured under each District contract conform to the quality and quantity requirements of the contract, including inspection, acceptance, warranty, and any other measures associated with quality assurance.
- 4000.2 The contracting officer shall be responsible for the following;
- (a) Ensuring that each contract includes inspection and other quality requirements, including warranty clauses when appropriate, which are necessary to protect the District's interests;

- (b) Ensuring that contract quality assurance is conducted by the District before acceptance, except as otherwise provided in this chapter, by or under the direction of District personnel;
- (c) Ensuring that no contract precludes the District from performing inspection;
- (d) Ensuring that nonconforming supplies, services, or construction are rejected, except as otherwise provided in this chapter;
- (e) Ensuring that the quality assurance and acceptance services of the using agency are used when this will be effective, economical, or otherwise in the best interests of the District;
- (f) Obtaining any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies, services, or construction from the agency responsible for the technical requirements; and
- (g) Including in solicitations and contracts the necessary requirements for the contractor's control of quality for the supplies, services, or construction to be procured.

AUTHORITY: Unless otherwise noted, the authority of this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981)

SOURCE: Final Rulemaking published at 35 DCR 1714 (February 26, 1988).

4001 CONTRACT ADMINISTRATOR RESPONSIBILITIES

4001.1 The using agency, or the individual(s) responsible for contract administration in the case of a term contract, shall do the following:

- (a) Develop and apply efficient procedures for performing District contract quality assurance actions under the contract in accordance with the written directions of the contracting officer;
- (b) Perform all actions necessary to verify whether the supplies, services, or construction conform to contract quality requirements;
- (c) Implement any specific written instructions from the contracting officer;
- (d) Report to the contracting officer any defects observed in design or technical requirements, including contract quality requirements; and
- (e) Recommend any changes necessary to the contract, specifications, instructions, or other requirements that will provide more effective operations or eliminate unnecessary costs.

4001.2 The using agency shall maintain, as part of the performance records of the contract, suitable records reflecting the following:

- (a) Contract quality assurance actions, including, when appropriate, the number of observations made and the number and type of defects; and

- (b) Decisions regarding the acceptability of the products as well as actions to correct defects.

SOURCE: Final Rulemaking published at 35 DCR 1715 (February 26, 1988).

4002 CONTRACTOR RESPONSIBILITIES

- 4002.1 The contractor shall be responsible for carryins out its obligations under the contract by doing the following:
 - (a) Controlling the quality of supplies, services, or construction;
 - (b) Ensuring that vendors or suppliers of raw materials, parts, components, and subassemblies have an acceptance quality control system;
 - (c) Tendering to the District for acceptance only those supplies, services, or construction that conform to contract requirements; and
 - (d) Maintaining substantiating evidence, when required by the contract, that the supplies, services, or construction conform to contract quality requirements, and furnishing that information to the District, upon request.
- 4002.2 The contracting officer may require the contractor to provide and maintain an inspection system or program for the control of quality that is acceptable to the District.
- 4002.3 The control of quality by the contractor may relate to, but is not limited to, the following:
 - (a) Manufacturing processes, to ensure that the product produced to and meets the contract's technical requirements;
 - (b) Drawings, specifications, and engineering changes, to ensure that manufacturing methods and operations meet the contract's technical requirements;
 - (c) Testing and examination, to ensure that practices and equipment provide the means for optimum evaluation of the characteristics subject to inspection;
 - (d) Reliability and maintainability assessment, including life, endurance, and continued readiness;
 - (e) Fabrication and delivery of products, to ensure that only conforming products are tendered to the District;
 - (f) Technical documentation, including drawings, specifications, handbooks, manuals, and other technical publications;
 - (g) Preservation, packaging, packing, and marking; and
 - (h) Procedures and processes for services and construction to ensure that services and construction meet contract performance requirements.

4002.4 The contractor shall be responsible for performing all inspections and tests required by the contract except those specifically reserved for performance by the District.

SOURCE: Final Rulemaking published at 35 DCR 1715 (February 26, 1988).

§4003: RESERVED

4004 CONTRACT QUALITY REQUIREMENTS

4004.1 The type and extent of contract quality requirements needed in each solicitation or contract under §4000.2(a) shall depend on the particular procurement and may range from inspection at time of acceptance to a requirement for the contractor's implementation of a comprehensive program for controlling quality.

4004.2 A solicitation or contract may provide for alternative, but substantially equivalent, inspection methods to obtain broader competition and reduce costs.

4004.3 The contracting officer may authorize alternative quality control or inspection methods recommended by the contractor when in the best interests of the District and approved by the agency responsible for the technical requirements.

4004.4 Except as otherwise specified by the contract, required contractor testing may be performed in the contractor's, or a subcontractor's, testing facility or in any other testing facility acceptable to the contracting officer.

4004.5 Except as provided in §4004.6, when supplies, services, or construction are procured by small purchase procedures pursuant to chapter 18 of this title, the District shall rely on the contractor to accomplish all inspection and testing needed to ensure compliance with contract quality requirements before the supplies, services, or construction are tendered to the District.

4004.6 The District shall not rely on inspection by the contractor if the contracting officer determines that the District has a need to test the supplies, services, or construction in advance of their tender for acceptance, or determines that there is a need to review the adequacy of the contractor's internal work processes. In making the determination, the contracting officer shall consider the following:

- (a) The nature of the supplies, services, or construction being procured and their intended use;
- (b) The potential losses in the event of defects;
- (c) The likelihood of uncontested replacements or correction of defective work; and

(d) The cost of a detailed inspection by the District.

4004.7 With respect to supplies, services or construction other than small purchase procurements, the contracting officer shall include in each solicitation and contract a standard clause, approved by the Director, setting forth inspection guidelines that requires the contractor to do the following:

- (a) Provide and maintain an inspection system that is acceptable to the District;
- (b) Give the District the right to make inspections and tests while work is in progress; and
- (c) Keep complete records of its inspection work which are available to the District upon request.

4004.8 The contracting officer shall determine the extent of contract quality requirements, including contractor inspection, required under each contract.

SOURCE: Final Rulemaking published at 35 DCR 1717 (February 26, 1988).

§4005: RESERVED

4006 DISTRICT CONTRACT QUALITY ASSURANCE

4006.1 District contract quality assurance shall be performed at times and at places necessary to determine that the supplies, services, or construction conform to contract requirements.

4006.2 Each contract shall designate the place or places where the District reserves the right to perform quality assurance.

4006.3 If the contract provides for performance of District quality assurance at the source, the place or places of performance shall not be changed without the authorization of the contracting officer.

4006.4 If a contract provides for delivery and acceptance at destination, and the District inspects the supplies at a place other than the destination, the supplies shall not be reinspected at the destination but shall be examined for quantity, damage in transit, and possible substitution or fraud.

4006.5 District inspection shall be performed by or under the direction or supervision of District government personnel.

4006.6 The individual responsible for the District inspection shall document the inspection on an inspection or receiving report form, approved by the Director, or on a commercial shipping document or packing list.

SOURCE: Final Rulemaking published at 35 DCR 1718 (February 26, 1988).

4007 CONTRACT QUALITY ASSURANCE AT SOURCE

4007.1 The District shall perform contract quality assurance, including inspection, at the source in the following circumstances:

- (a) Performance at any other place would require uneconomical disassembly or destructive testing;
- (b) Considerable loss would result from the manufacture and shipment of unacceptable supplies, or from the delay in making necessary corrections;
- (c) Specially required instruments, gauges, or facilities are available only at the source;
- (d) Performance at any other place would destroy or require the replacement of costly special packing and packaging;
- (e) District inspection during contract performance is essential; or
- (f) The contracting officer determines that source inspection is in the best interests of the District.

SOURCE: Final Rulemaking published at 35 DCR 1719 (February 26, 1988).

4008 CONTRACT QUALITY ASSURANCE AT DESTINATION

4008.1 District contract quality assurance that can be performed at destination shall be limited to inspection of the supplies or services.

4008.2 Inspection shall be performed at destination under the following circumstances:

- (a) Supplies are purchased off-the-shelf and require no technical inspection;
- (b) Necessary testing equipment is located only at destination;
- (c) The supplies are perishable;
- (d) The contract is for services performed at the destination; or
- (e) The contracting officer determines that inspection at destination is in the best interests of the District.

SOURCE: Final Rulemaking published at 35 DCR 1719 (February 26, 1988).

4009 CONTRACT QUALITY ASSURANCE FOR SMALL PURCHASES

- 4009.1 In determining the type and extent of District contract quality assurance to be required for small purchases, the contracting officer shall consider the criticality of application of the supplies or services, the amount of possible losses, and the likelihood of uncontested replacement of defective work.
- 4009.2 Except as provided in §4009.5, when the circumstances set forth in §4004.6 exist, the District shall inspect shall purchases at destination only for type and kind, quantity, damage, operability, and may inspect for preservation, packaging, packing, and marking, if applicable.
- 4009.3 Except as provided in §4004.6, detailed District inspection may be limited to those characteristics that are special or likely to cause harm to personnel or property.
- 4009.4 Except as provided in §4004.6, when repetitive purchases of the same item are made from the same manufacturer with a history of defect-free work, District inspection may be reduced to a periodic check of purchases.
- 4009.5 In special situations such as those specified in §4007, the contracting officer may require more detailed quality assurance.

SOURCE: Final Rulemaking published at 35 DCR 1720 (February 26, 1988).

4010 CONTRACT QUALITY ASSURANCE OF SUBCONTRACTS

- 4010.1 District contract quality assurance on subcontracted supplies, services, or construction shall be performed only when required in the best interests of the District.
- 4010.2 District contract quality assurance on subcontracted supplies, services, or construction shall not relieve the prime contractor of any responsibilities under the contract.
- 4010.3 The contracting officer shall perform quality assurance at the subcontract level in the following circumstances:
- (a) The item is to be shipped from the subcontractor's plant directly to the District, and inspection at source is required;
 - (b) The conditions for quality assurance at the source under §4007 are applicable;
 - (c) The contract specifies that certain quality assurance functions, which can be performed only at the subcontractor's plant, are to be performed by the District;
or
 - (d) It is otherwise required by the contract or determined by the contracting officer to be in the best interests of the District.
- 4010.4 All written statements and contract terms and conditions relating to District quality assurance actions at the subcontract level shall be worded so as not to do any of the following:

- (a) Affect the contractual relationship between the prime contractor and the District, or between the prime contractor and the subcontractor;
- (b) Establish a contractual relationship between the District and the subcontractor;
or
- (c) Constitute a waiver of the District's right to accept or reject the supplies, services, or construction.

SOURCE: Final Rulemaking published at 35 DCR 1720 (February 26, 1988).

§§4011-4012: RESERVED

4013 NONCONFORMING SUPPLIES, SERVICES, OR CONSTRUCTION

- 4013.1 Except as provided in §§4013.5 and 4013.6, the contracting officer shall reject supplies, services, or construction which do not conform in all respects to contract requirements.
- 4013.2 The contractor shall be given an opportunity to correct or replace nonconforming supplies, services, or construction when the correction or replacement can be accomplished within the required delivery or performance schedule.
- 4013.3 Unless the contract specifies otherwise, correction or replacement shall be done without additional cost to the District.
- 4013.4 In situations not covered by §4013.2, the contracting officer shall reject the supplies, services, or construction when the nonconformance adversely affects safety, health, reliability, durability, performance, or any other basic objective of the specification.
- 4013.5 In situations not covered by §4013.2, nonconforming supplies, services, or construction may be accepted by the contracting officer if the contracting officer determines that acceptance is in the best interests of the District.
- 4013.6 In situations not covered by §4013.2, the contracting officer shall consider the following when making a determination whether nonconforming items will be accepted:
 - (a) Advice of the using agency technical personnel that the material is safe to use and will perform its intended purpose;
 - (b) Information regarding the nature and extent of the nonconformance;
 - (c) A request from the contractor for acceptance of the supplies, services, or construction, if feasible;

- (d) A recommendation by the contract administrator for acceptance or rejection, with supporting rationale; and
- (e) The contract adjustment considered appropriate, including any adjustment offered by the contractor.

- 4013.7 The contract administrator shall furnish the data required in §4013.6 to the contracting officer in writing. When it is in the best interests of the District, the data may be furnished verbally and later confirmed in writing.
- 4013.8 Before making a decision to accept nonconforming items, the contracting officer shall obtain the written concurrence of the head of the using agency, or the agency head's designee.
- 4013.9 The contracting officer shall discourage the repeated tender of nonconforming items by appropriate action, including rejection of nonconforming items, when appropriate, and documentation of the contractor's performance record.
- 4013.10 Except when the nonconformity is minor, each contract under which nonconforming items are accepted shall be modified by the contracting officer to provide for an equitable price reduction or other consideration.
- 4013.11 When the contracting officer rejects nonconforming supplies, services, or construction, the contracting officer shall issue a notice of rejection in writing and include the reasons for rejection. The notice of rejection shall be issued to the contractor within five (5) working days of the rejection.

SOURCE: Final Rulemaking published at 35 DCR 1721 (February 26, 1988).

§§4014-4017: RESERVED

4018 ACCEPTANCE

- 4018.1 Acceptance shall constitute acknowledgement that the supplies, services, or construction conform to the applicable contract quality and quantity requirements, except as provided in this section and subject to other terms and conditions of the contract.
- 4018.2 Acceptance may take place before delivery, at the time of delivery, or after delivery, depending on the terms and conditions of the contract.
- 4018.3 Supplies, services, or construction shall not be accepted before completion of District contract quality assurance actions.

4018.4 Acceptance shall be evidenced by execution of an acceptance certificate on an inspection or receiving report form or on a commercial shipping document or packing list.

SOURCE: Final Rulemaking published at 35 DCR 1723 (February 26, 1988).

4019 RESPONSIBILITY FOR ACCEPTANCE

4019.1 Acceptance of supplies, services, or construction shall be the responsibility of the contracting officer.

4019.2 When the contracting officer assigns the responsibility for acceptance to another District employee, acceptance by that employee shall be binding on the District.

SOURCE: Final Rulemaking published at 35 DCR 1723 (February 26, 1988).

4020 PLACE OF ACCEPTANCE

4020.1 Each contract shall specify the place of acceptance.

4020.2 Contracts that provide for District contract quality assurance at the source shall provide for acceptance at the source.

4020.3 Contracts that provide for District contract quality assurance at destination shall provide for acceptance at destination.

4020.4 Supplies accepted at a place other than destination shall not be reinspected at destination for acceptance purposes, but shall be examined at destination for quantity, damage in transit, and possible substitution or fraud.

SOURCE: Final Rulemaking published at 35 DCR 1723 (February 26, 1988).

4021 CERTIFICATE OF CONFORMANCE

4021.1 A certificate of conformance may be used instead of source inspection, whether the contract calls for acceptance at the source or at destination, at the discretion of the contracting officer, if the following conditions apply:

(a) Acceptance on the basis of a contractor's certificate of conformance is in the best interests of the District; and

(b) Either small losses would be incurred in the event of a defect; or, based on the contractor's reputation or past performance, it is likely that the supplies or services furnished will be acceptable and any defective work would be replaced, corrected, or repaid without contest.

4021.2 Even if a certificate of conformance is used pursuant to §4021.1, the District's right to inspect supplies, services, and construction under the inspection provisions of the contract shall not be prejudiced.

SOURCE: Final Rulemaking published at 35 DCR 1724 (February 26, 1988).

4022 TRANSFER OF TITLE AND RISK OF LOSS

- 4022.1 Title to supplies and construction shall pass to the District upon formal acceptance, regardless of when or where the District takes physical possession, unless the contract specifically provides for earlier passage of title.
- 4022.2 Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the contractor until, and shall pass to the District upon either of the following:
- (a) Delivery of the supplies to a carrier if transportation is f.o.b. origin; or
 - (b) Acceptance by the District or delivery of the supplies to the District at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.
- 4022.3 The provisions of §4022.2 shall not apply to supplies that so fail to conform to contract requirements as to give the District a right of rejection.
- 4022.4 The risk of loss of or damage to nonconforming supplies shall remain with the contractor until cure or acceptance. After cure or acceptance, the provisions of §4022.2 shall apply.
- 4022.5 The contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the District acting within the scope of their employment.
- 4022.6 The risk of loss or damage to construction shall remain with the contractor until formal acceptance of the construction by the District.
- 4022.7 If any of a construction project is excepted from normal acceptance by the District due to defects or failure to conform to the requirements and specifications of the contract, or is subject to contingent acceptance pending cure of defects, the risk of loss or damage to the construction shall remain with the contractor until the defects are cured and the contingency is removed or the construction is formally accepted by the District.

SOURCE: Final Rulemaking published at 35 DCR 1724 (February 26, 1988).

§§4023-4025: RESERVED**4026 WARRANTIES**

- 4026.1 The contracting officer shall ensure that each warranty in a District contract clearly delineates the rights and obligations of the contractor and the District for defective items and services and fosters quality performance.

- 4026.2 A warranty shall provide the following:
- (a) A contractual right for the correction of defects, notwithstanding any other requirement of the contract pertaining to acceptance of the supplies or service by the District; and
 - (b) A stated period of time or use, or the occurrence of a specified event, after acceptance by the District within which the District may assert a contractual right for the correction of defects.

- 4026.3 The contracting officer shall ensure that the benefits to be derived from a warranty are commensurate with the cost of the warranty to the District.

SOURCE: Final Rulemaking published at 35 DCR 1725 (February 26, 1988).

4027 CRITERIA FOR USE OF WARRANTIES

- 4027.1 The contracting officer shall determine whether a warranty is appropriate for each specific procurement. If a warranty is appropriate, the contracting officer shall use a warranty clause, approved by the Director, that is consistent with the contractor's performance obligations under the contract.

- 4027.2 In determining whether a warranty is appropriate for a specific procurement, the contracting officer shall consider the following factors:

- (a) The nature and use of the supplies, services, or construction such as complexity and function, degree of development, state of the art, end use, difficulty in detecting defects before acceptance, and potential harm to the District if the item is defective;
- (b) Costs arising from the contractor's charge for accepting the deferred liability created by the warranty and the District's administration and enforcement of the warranty;
- (c) The District's ability to enforce the warranty, and the assurance that an adequate administrative system for reporting defects exists or will be established;
- (d) Whether there is the practice in the trade of customarily warranting the supply, service, or construction, and whether the cost of the supply, service, or construction will therefore be the same whether a warranty is included;
- (e) The possible reduction of the District's quality assurance requirements where the warranty provides adequate assurance of a satisfactory product; and
- (f) Any other factors that the contracting officer deems appropriate for the specific procurement.

SOURCE: Final Rulemaking published at 35 DCR 1726 (February 26, 1988).

4028 USE OF WARRANTIES

- 4028.1 The contracting officer shall not include a warranty in a cost-reimbursement contract unless approved by the head of the contracting agency.

- 4028.2 A warranty clause shall not limit the District's rights under an inspection clause in relation to latent defects, fraud, or gross mistakes that amount to fraud.
- 4028.3 A warranty clause shall provide that the warranty applies notwithstanding inspection and acceptance, or other clauses or terms of the contract.
- 4028.4 The Director shall prescribe procedures for the use of warranties in contracts.
- SOURCE:** Final Rulemaking published at 35 DCR 1726 (February 26, 1988).

4029 WARRANTY TERMS AND CONDITIONS

- 4029.1 To facilitate the pricing and enforcement of warranties, the contracting officer shall ensure that each warranty clearly states the following:
- (a) The exact nature of the item and its components and the characteristics that the contractor warrants;
 - (b) The extent of the contractor's warranty, including all of the contractor's obligations to the District for breach of warranty;
 - (c) The specific remedies available to the District; and
 - (d) The scope and duration of the warranty.
- 4029.2 The contractor's obligations under a warranty shall extend to all defects discovered during the warranty period, but shall not include any damage caused solely by the District.
- 4029.3 When the contracting officer determines that a warranty for the entire item is not in the best interests of the District, the contracting officer may require a warranty for a particular aspect of the item that may require special protection, such as installation, components, accessories, subassemblies, preservation, packaging, or packing.
- 4029.4 A warranty shall provide, at a minimum, that the District may obtain an equitable adjustment of the contract or direct the contractor to repair or replace the defective item at the contractor's expense.
- 4029.5 If it is not practical to require the contractor to make a repair or provide a replacement, or, because of the nature of the item, the repair or replacement does not afford an appropriate remedy to the District, the warranty may provide an alternative, such as allowing the District to do either of the following:
- (a) Retain the defective item and reduce the contract price by an amount equitable under the circumstances; or
 - (b) Arrange for the repair or replacement of the defective item by the District, or by another source, at the contractor's expense.
- 4029.6 The contracting officer shall clearly specify the duration of the warranty after consideration of the following factors:

- (a) The estimated useful life of the item;
- (b) The nature of the item including storage or shelf-like; and
- (c) Trade practice.

4029.7 The duration of the warranty shall not extend the contractor's liability for patent defects beyond a reasonable time after acceptance by the District.

4029.8 If the District specifies the design of the end item and its measurements, tolerances, materials, tests, or inspection requirements, the contractor's obligations for correction of defects shall be limited to defects in material and workmanship or failure to conform to specifications. If the District does not specify the design, the warranty shall extend to the usefulness of the design.

4029.9 Each warranty shall specify a reasonable time for furnishing notice to the contractor regarding the discovery of defects. The contracting officer shall consider the following factors when establishing the notice period:

- (a) The time necessary for the District to discover the defects;
- (b) The time reasonably required for the District to take necessary administrative steps and make a timely report of discovery of the defects to the contractor; and
- (c) The time required to discover and report defective replacements.

4029.10 The packaging and preservation requirements of a contract shall require the contractor to stamp or mark the supplies delivered or otherwise furnish notice with the supplies of the existence of the warranty.

SOURCE: Final Rulemaking published at 35 DCR 1727 (February 26, 1988).

4030 FIXED-PRICE INCENTIVE CONTRACT WARRANTIES

4030.1 If a fixed-price incentive contract contains a warranty, the contracting officer shall consider the estimated cost of the warranty to the contractor in establishing the incentive target price and the ceiling price of the contract.

4030.2 The contracting officer shall consider all costs incurred, or estimated to be incurred, by the contractor in complying with the warranty when establishing the total final price.

4030.3 Contractor compliance with the warranty after the establishment of the total final price shall be at no additional cost to the District.

SOURCE: Final Rulemaking published at 35 DCR 1729 (February 26, 1988).

§§4031-4032: RESERVED

4033 CONTRACTOR LIABILITY FOR LOSS OF OR DAMAGE TO DISTRICT PROPERTY

- 4033.1 The provisions of this section shall apply to contractor liability for loss of or damage to District property that occurs after acceptance as a result of defects or deficiencies in the supplies delivered or services performed.
- 4033.2 Except as provided in §§4033.4 and 4033.5, the District shall act as a self-insurer by relieving contractors, as specified in this section, of liability for loss of or damage to property of the District that occurs after acceptance of supplies delivered or services performed under a contract as a result of defects or deficiencies in the supplies or services. However, the District shall not relieve the contractor of liability for loss of or damage to the contract end item itself, except for high-value items.
- 4033.3 Except as provided in §§4033.4 and 4033.5, in contracts requiring delivery of high-value items, the District shall relieve contractors of contractual liability for loss of or damage to those items. However, the relief shall not limit the District's rights arising under the contract to do the following:
- (a) Have any defective item or its components corrected, repaired, or replaced when the defect or deficiency is discovered before the loss of or damage to high-value items occurs; or
 - (b) Obtain equitable relief when the defect or deficiency is discovered after such loss or damage occurs.
- 4033.4 The District shall not provide the contractual relief specified in §§4033.2 and 4033.3 when contractor liability can be preserved without increasing the contract price.
- 4033.5 Subject to the specific terms of the limitation of liability clause included in the contract, the relief provided under §§4033.2 and 4033.3 shall not apply, as follows:
- (a) To the extent that contractor liability is expressly provided for under a contract clause approved by the Director;
 - (b) When a defect or deficiency in, or the District's acceptance of, the supplies, services, or construction results from willful misconduct or lack of good faith on the part of the contractor or its agent; or
 - (c) To the extent that any contractor insurance, or self-insurance reserve, covers liability for loss or damage suffered by the District through purchase or use of the supplies delivered or services performed under the contract.
- 4033.6 For items being priced at or based on catalog or market prices, the contracting officer shall not provide relief to contractors unless they can obtain a reduction from the catalog or market price which reflects the reduced contractor liability. The contracting officer shall include a clause, approved by the Director, to inform bidders and offerors of the provisions of this subsection.

SOURCE: Final Rulemaking published at 35 DCR 1729 (February 26, 1988).

4099 DEFINITIONS

4099.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed;

Acceptance - the act of an authorized representative of the District by which the District, for itself or as agent of another, assumes ownership of existing identified supplies tendered or approves specific services rendered or construction completed as partial or complete performance of the contract.

Certificate of conformance - a document used by a contractor to certify that supplies conform to the specifications of the contract. The certificate may be used instead of source inspection.

Contract administrator - an individual authorized by the contracting officer to perform all actions necessary to verify whether supplies, services, or construction conform to contract quality requirements.

Contract quality requirements - the technical requirements in the contract relating to the quality of the product or service and those contract clauses prescribing inspection, and other quality controls incumbent on the contractor, to assure that the supply, service, or construction conforms to the contractual requirements.

Complex items - includes those items having quality characteristics, not wholly visible in the end item, for which contractual performance must be established progressively through precise measurements, tests, and controls applied during purchasing, manufacturing, performance, assembly, and functional operation either as an individual item or in conjunction with other items.

Correction - the elimination of a defect.

Criticality - a critical application of an item is one in which the failure of the item could injure persons or jeopardize a vital agency mission.

Destination - the point designated in the contract at which the end product is received.

Director - the Director of the Department of Administrative Services.

District quality assurance - the various functions, including inspection, performed by the District to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity.

F.O.B. - freight on board.

High-value item - a contract end item that has a high unit cost, exceeding one hundred thousand dollars (\$100,000) per unit, such as a communications system or computer system that is designated by the contracting officer as a high-value item.

Inspection - examining and testing supplies, services, or construction to determine whether they conform to contract requirements. This includes, when appropriate, examination and testing of raw materials, components, and intermediate assemblies.

Off-the-shelf item - an item produced and placed in stock by a contractor, or stocked by a distributor, before receiving orders or contracts for its sale.

Source - the point designated in the contract from which the end product is shipped.

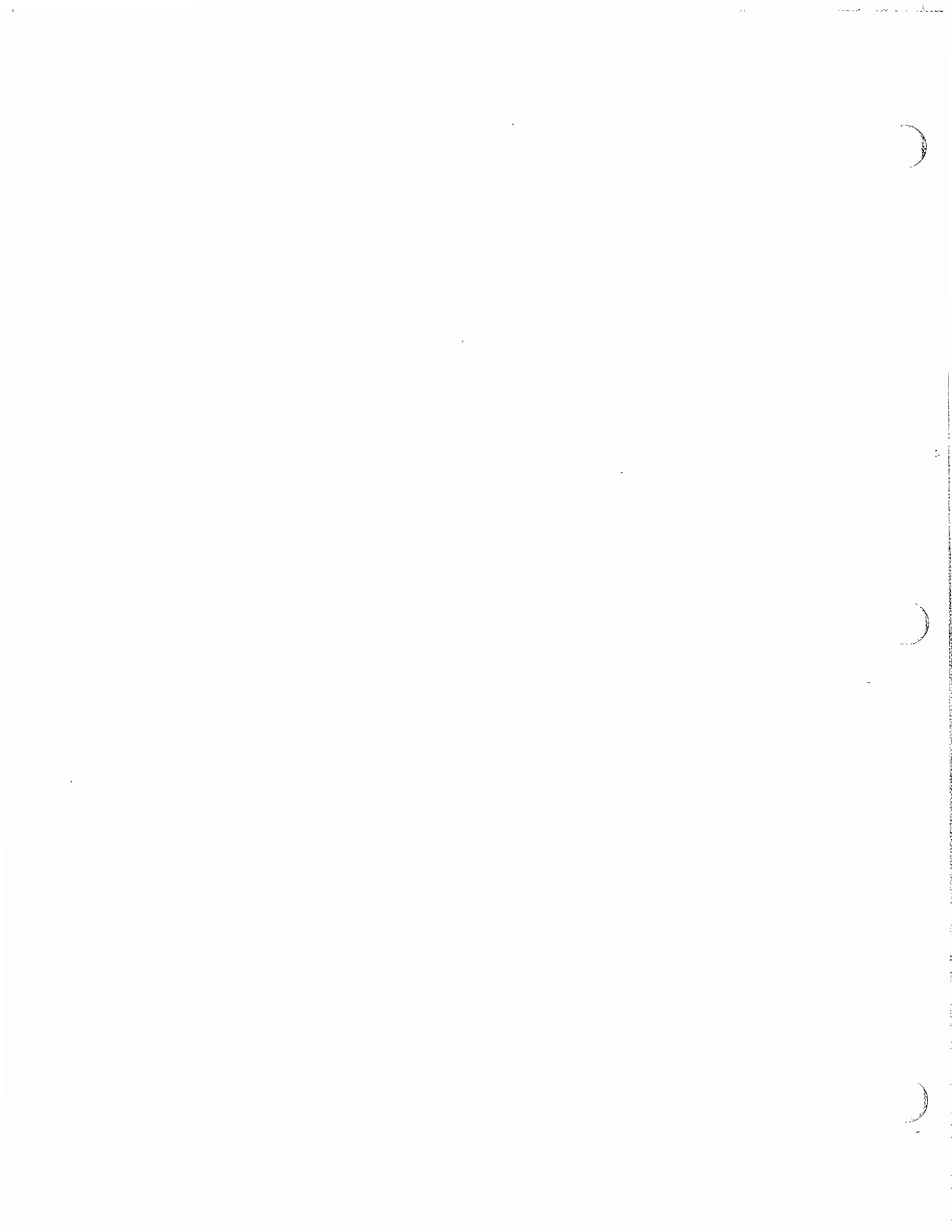
Subcontractor - any supplier, distributor, vendor, or firm which furnishes supplies, services, or construction to or for a prime contractor or another subcontractor.

Term contract - a requirements contract or an indefinite quantity contract.

Testing - the element of inspection that determines the properties or elements, including functional operation of supplies or their components, by the application of established scientific principles and procedures.

Warranty - a promise or affirmation given by a contractor to the District regarding the nature, usefulness, or condition of the supplies, services, or construction furnished under a contract.

SOURCE: Final Rulemaking published at 35 DCR 1730 (February 26, 1988).



CHAPTER 41 USE OF DISTRICT PROPERTY AND SOURCES BY CONTRACTORS

Secs.	
4100	Contractor Use of District Supply Sources
4101	Contractor Use of District Vehicles and Related Services
4102	Use of District Property and Facilities
4103	Facilities Contracts
4104	Provision of Material for Performing Contracts
4105	[Reserved]
4106	Contractor Responsibility for District Property
4107	Property Control Systems
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4109	Contractor Liability for District Property
4110	District Records: General Provisions
4111	Contents of Property Control Records
4112	Inventories
4113	Care, Maintenance, and Use of District Property
4114	Property Use Procedures
4199	Definitions

4100 CONTRACTOR USE OF DISTRICT SUPPLY SOURCES

4100.1 When it is in the best interests of the District, and if supplies or services required in the performance of a District contract are available from District supply sources, contracting officers may authorize contractors to use these sources in performing the following types of contracts:

- (a) Cost-reimbursement; or
- (b) Other types of contracts when the contracting officer determines that a substantial dollar portion of the contract is of a cost-reimbursement nature, or that the contract cost can be reduced by authorizing the use of District sources by the contractor.

4100.2 Before issuing an authorization to a contractor to use District supply sources, the contracting officer shall prepare and place in the contract file a written finding supporting issuance of the authorization.

4100.3 The authorization to a contractor to use District supply sources shall include, but not be limited to, consideration of the following factors:

- (a) The administrative cost of placing orders with District supply sources and the program impact of delay factors, if any;

- (b) The lower cost of items available through District supply sources;
 - (c) The suitability of items available through District supply sources;
 - (d) Delivery factors, such as cost and time; and
 - (e) The recommendations of the contractor.
- 4100.4 The contracting officer shall issue authorizations to subcontractors to use District supply sources through, and with the approval of, the contractor.
- 4100.5 The contracting officer may include in the authorization to use District supply sources any limitations or conditions deemed necessary, such as the following:
- (a) A limitation on the authority to purchase from District supply sources to any overhead supplies, but not production supplies;
 - (b) A limitation on the authority for use of District sources to a specific dollar amount;
 - (c) A restriction on the authorization to use certain facilities or to specific contracts; or
 - (d) A specific provision setting forth whether vesting of title will differ from other property acquired or otherwise furnished by the contractor for use under the contract.
- 4100.6 The contracting officer shall include a provision, approved by the Director, in all contracts that authorize the use by the contractor of District sources of supply and shall indicate any limitations on the authority.
- 4100.7 After issuing the authorization, the contracting officer shall be responsible for ensuring that the contractor complies with the terms of the authorization and that supplies and services obtained from District supply sources are properly accounted for and properly used.
- 4100.8 When ordering from District supply sources, contractors shall follow all applicable rules, regulations, procedures, and contract terms.
- 4100.9 Contractors placing orders with District supply sources shall comply with the requirements of the contracting officer's authorization and order only those items required for performance of the contract.
- 4100.10 Title to property acquired by the contractor under the contracting officer's authorization may vest in either the District or the contractor, as provided in the contract. If the contract is silent on the vesting of title, title shall vest in the District.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981)

SOURCE: Final Rulemaking published at 35 DCR 1733 (February 26, 1988).

4101 CONTRACTOR USE OF DISTRICT VEHICLES AND RELATED SERVICES

- 4101.1 When it is in the best interests of the District, the contracting officer may authorize contractors in writing to obtain District-owned or leased vehicles and related services (including fuel and lubricants, vehicle inspection, maintenance, repair, and vehicle storage), in accordance with the provisions of this section.
- 4101.2 The contracting officer may provide contractors with motor vehicles and related services only when all of the following are applicable:
- (a) The number of vehicles and related services required for use by contractor personnel is predictable and expected to remain fairly constant;
 - (b) The proposed contract or contracts will bear the entire cost of the vehicle program;
 - (c) The vehicles will not be used on any contract other than that for which the vehicles were provided, unless approved by the head of the contracting agency;
 - (d) Prospective contractors do not have or would not be expected to have an existing and continuing capability for providing the vehicles from their own resources; and
 - (e) Substantial savings are expected.
- 4101.3 District contractors shall not be authorized to obtain District vehicles and related services for use in performance of any contract other than a cost-reimbursement contract unless specifically approved in writing by the Director.
- 4101.4 Vehicles and related services obtained by a contractor under this section shall be used only in connection with the performance of one (1) or more specific District contracts.
- 4101.5 Before authorizing a contractor to obtain District vehicles and related services, the contracting officer shall do the following:
- (a) Determine whether the authorization will accomplish the District's contractual objectives and reduce costs;
 - (b) Obtain evidence that the contractor has in effect motor vehicle liability insurance covering bodily injury and property damage, with limits of liability as required or approved by the Director, protecting the contractor and the District against third-party claims arising from the ownership, maintenance, or use of a District vehicle;
 - (c) Arrange for periodic checks to ensure that contractors are using vehicles and related services in accordance with the terms of the authorization;
 - (d) Ensure that the contractor establishes and enforces penalties for employees who use or authorize the use of District vehicles and related services for purposes other than the performance of District contracts;

(e) Obtain a written statement from the contractor that the contractor will assume, without the right of reimbursement from the District, the cost or expense and liability of any use of District vehicles and services not related to the performance of the contract; and

(f) Consider any recommendations of the contractor.

SOURCE: Final Rulemaking published at 35 DCR 1734 (February 26, 1988).

4102 USE OF DISTRICT PROPERTY AND FACILITIES

4102.1 Except as provided otherwise in this chapter, each contractor and subcontractor shall furnish all property necessary to perform District contracts.

4102.2 If a contractor or subcontractor is permitted to use or otherwise possess District property, the contracting officer shall do the following:

(a) Eliminate to the maximum practical extent any competitive advantage that might arise from using District property;

(b) Require contractors (or subcontractors) to use the District property to the maximum practical extent in performing District contracts;

(c) Permit the property to be used only when authorized;

(d) Charge appropriate rentals when the property is authorized for use on other than a rent-free basis;

(e) Require contractors and subcontractors to be responsible and accountable for keeping records of District property in their possession or control;

(f) Require contractors and subcontractors to review and provide justification for retaining District property not currently in use; and

(g) Ensure maximum practical reutilization of contractor inventory by the District.

4102.3 Contractors and subcontractors shall furnish all facilities required for performing District contracts except as follows:

(a) When, as a result of the prospective contractor's written statement asserting inability or unwillingness to obtain facilities, the Director determines that the contract cannot be fulfilled by any other practical means; or

(b) When the Director determines that it is in the best interests of the District to provide the facility.

4102.4 Competitive solicitations shall not include any offer by the District to provide District facilities unless adequate price competition cannot otherwise be obtained.

4102.5 Facilities may be provided to a contractor or subcontractor under a contract, other than a facilities contract, in any of the following situations:

- (a) The actual or estimated cumulative acquisition cost of the facilities provided at one place or general location does not exceed one hundred thousand dollars (\$100,000);
- (b) The contract is for construction; or
- (c) The contract is for work within an establishment operated by the District.

4102.6 When a facilities contract is not used, the District's interests shall be protected by using a District property clause approved by the Director.

SOURCE: Final Rulemaking published at 35 DCR 1736 (February 26, 1988).

4103 FACILITIES CONTRACTS

4103.1 Facilities shall be provided to a contractor or subcontractor only under a facilities contract using appropriate contract clauses prescribed by the Director.

4103.2 All facilities provided by the District for use by a contractor at a single place or general location shall be governed by a single facilities contract, unless the Director determines that it is impractical.

4103.3 No fee shall be allowed under a facilities contract.

SOURCE: Final Rulemaking published at 35 DCR 1737 (February 26, 1988).

4104 PROVISION OF MATERIAL FOR PERFORMING CONTRACTS

4104.1 Except as provided otherwise in this section, each contractor and subcontractor shall furnish all material for performing District contracts.

4104.2 The contracting officer may provide material to a contractor or subcontractor when necessary to achieve significant economy, standardization, expedited production, or when it is otherwise determined to be in the best interests of the District.

4104.3 The solicitation shall specify material that the District will furnish in sufficient detail to enable offerors to evaluate it accurately.

4104.4 The contracting officer shall include a District property clause, approved by the Director, in all solicitations when the District will provide material to the contractor or subcontractor.

SOURCE: Final Rulemaking published at 35 DCR 1738 (February 26, 1988).

§4105: RESERVED

4106 CONTRACTOR RESPONSIBILITY FOR DISTRICT PROPERTY

- 4106.1 The contractor shall be directly responsible and accountable for all District property in accordance with the provisions of the contract, including all District property in the possession or control of a subcontractor.
- 4106.2 The contractor shall maintain and make available all property control records required under this chapter and account for all District property until relieved of the responsibility by the contracting officer under the terms of the contract or this section.
- 4106.3 The contractor shall assume responsibility for the control of District property upon the occurrence of the following events:
- (a) Delivery of District furnished property into the contractor's custody or control;
 - (b) Delivery to the contractor, when property is purchased by the contractor and the contract calls for reimbursement by the District. This requirement shall not alter or modify contractual requirements relating to passage of title;
 - (c) Approval of the contractor's claim for reimbursement by the District or upon issuance for use in contract performance, whichever is earlier, of property withdrawn from contractor-owned stores and charged directly to the contracts; or
 - (d) Acceptance of title by the District when title is acquired pursuant to specific contract clauses or as a result of change orders or contract termination.
- 4106.4 Property to which the District has acquired a lien or title solely as a result of advance, progress, or partial payments shall not be subject to the requirements of §§4106 and 4107.
- 4106.5 The contractor shall require subcontractors provided with District property under the prime contract to comply with the requirements of §§4106 and 4107. Procedures for ensuring subcontractor compliance shall be included in the contractor's property control system.
- 4106.6 Unless the contract or contracting officer provides otherwise, the contractor shall be relieved of property control responsibility for District property by the occurrence of any of the following:
- (a) Reasonable and proper consumption of property in the performance of the contract as determined by the contracting officer;
 - (b) Retention by the contractor, with the approval of the contracting officer, of property for which the District has received adequate consideration;
 - (c) The authorized sale of property, provided the proceeds are received by or credited to the District;
 - (d) Shipment from the contractor's plant, under District instructions, except when shipment is to a subcontractor or other location of the contractor; or

- (e) A written determination by the contracting officer of the contractor's liability for any property that is lost, damaged, destroyed, or consumed in excess of that normally anticipated in a manufacturing or processing operation, which is followed by reimbursement of the District of any amount required in the determination. If the property is rendered unserviceable by damage, the property shall be properly disposed of, and the determination shall refer to the documents evidencing disposal.

4106.7 Non-profit organizations shall be relieved of responsibility for District property when title to the property is transferred to the contractor.

SOURCE: Final Rulemaking published at 35 DCR 1738 (February 26, 1988).

4107 PROPERTY CONTROL SYSTEMS

4107.1 The contractor shall establish and maintain a system to control, protect, preserve, and maintain all District property.

4107.2 The property control system shall be in writing unless the contracting officer determines that maintaining a written system is unnecessary.

4107.3 The property control system shall be reviewed and, if satisfactory, approved by the contracting officer.

4107.4 When the contracting officer finds any portion of the contractor's property control system to be inadequate, the contractor shall be required to take any necessary corrective action before the system can be approved.

4107.5 When District property is found to be in the possession or control of the contractor, although not provided under any contract, the contractor shall promptly record the property and furnish to the contracting officer all known circumstances and data pertaining to its receipt and a statement about whether it is needed for the performance of the contract.

4107.6 When unrecorded District property is found in the possession or control of the contractor, both the cause of the discrepancy and actions taken or needed to prevent recurrence shall be determined and reported to the contracting officer.

4107.7 The contractor shall promptly report to the contracting officer all District property it receives in excess of the amounts needed to complete full performance under the contracts providing it or authorizing its use.

4107.8 The contractor shall furnish written receipts for all or specified classes of District property only when the contracting officer deems it essential for maintaining acceptable property controls.

4107.9 When overages, shortages, or damages are discovered upon receipt of District property, the contractor shall provide a statement of the condition and apparent causes

to the contracting officer. Only the quantity of property actually received shall be recorded on the official records.

SOURCE: Final Rulemaking published at 35 DCR 1740 (February 26, 1988).

§4108: RESERVED

4109 CONTRACTOR LIABILITY FOR DISTRICT PROPERTY

- 4109.1 Contractors shall be responsible and liable for District property in their possession, unless otherwise specified in the contract.
- 4109.2 When the District provides District property directly to a subcontractor, the provisions of this section shall apply to the subcontractor.
- 4109.3 Subcontractors shall be liable for loss of or damage to District property furnished through a prime contractor.
- 4109.4 A prime contractor that provides District property to a subcontractor shall not be relieved of any responsibility to the District that the prime contractor may have under the terms of the prime contract.
- 4109.5 The contracting officer shall include in each contract authorizing the use by the contractor of District property a clause, approved by the Director, establishing the general liability of contractors that use District property.
- 4109.6 Subject to the terms of the contract and the circumstances surrounding the particular case, the contractor shall be liable for shortages, loss, damages, or destruction of District property. The contractor shall also be liable when the use or consumption of District property unreasonably exceeds the allowances provided for by the contract.
- 4109.7 The contractor shall investigate and report to the contracting officer all cases of loss, damage, or destruction of District property in its possession or control as soon as the facts become known, or when requested by the contracting officer. A report shall also be furnished when completed and accepted products or end items are lost, damaged, or destroyed while in the contractor's possession or control.
- 4109.8 The contractor shall require any of its subcontractors possessing or controlling District property accountable under the contract to investigate and report all instances of loss, damage, or destruction of District property.

SOURCE: Final Rulemaking published at 35 DCR 1741 (February 26, 1988).

4110 DISTRICT RECORDS: GENERAL PROVISIONS

- 4110.1 The contractor's property control records shall constitute the District's official property records unless an exception has been authorized by the Director.
- 4110.2 The contractor shall establish and maintain adequate control records for all District property, including property provided to, and in the possession or control of, a subcontractor.
- 4110.3 The property control records specified in §§4110 and 4111 shall be the minimum required by the District.
- 4110.4 Unless the contracting officer directs otherwise, when a subcontractor has an approved property control system for District property provided under its own prime contracts, the contractor shall use the records created and maintained under that system.
- 4110.5 The contractor's property control system shall provide financial accounts for District-owned property in the contractor's possession or control.
- 4110.6 The property control system shall be subject to internal control standards and shall be supported by property records for all property.
- 4110.7 The records shall be safeguarded from tampering or destruction and shall be accessible to authorized District personnel.
- 4110.8 The contractor shall maintain separate property records for each contract. However, the contractor may maintain a consolidated property record if it provides the required information and is specifically authorized by the contracting officer.
- 4110.9 The contractor's property control system shall contain a system or technique to locate any item of District property within a reasonable period of time.

SOURCE: Final Rulemaking published at 35 DCR 1741 (February 26, 1988).

4111 CONTENTS OF PROPERTY CONTROL RECORDS

- 4111.1 Official District property records shall identify all District property and provide a complete, current, auditable record of all transactions.
- 4111.2 The contractor's property control records shall provide the following basic information for every item of District property in the contractor's possession regardless of value:
- (a) The name, description, and commodity code;
 - (b) Quantity received, issued, and on hand;
 - (c) Unit price;
 - (d) Contract number;

- (e) Location;
- (f) Disposition; and
- (g) Posting reference and date of transaction.

- 4111.3 Costs incurred by the contractor or the District for new construction including erection, installation, or assembly of District real property in possession of the contractor shall be capitalized in the official District property records and financial accounts maintained by the contractor for the District.
- 4111.4 Costs incurred for additions, expansions, extensions, conversions, alterations, and improvements, including applicable portions of capital maintenance, that increase the value, life, utility, capability, or serviceability of District real property shall be capitalized.
- 4111.5 Costs incurred for portable buildings or facilities specifically constructed for tests that involve destruction of the facility shall not be capitalized in the District real property records or financial accounts.
- 4111.6 Costs incurred for maintenance, repair, or rearrangement to maintain the District's real property in good physical condition, utility, capacity, or serviceability shall be charged to expense, and the real property records shall not be affected.
- 4111.7 When District-owned real property is sold, transferred, donated, destroyed by fire or other cause, abandoned in place, or condemned, the contracting officer shall ensure that the District's financial accounts are reduced by the presently recorded cost and the real property records annotated with a supporting statement, including pertinent facts.

SOURCE: Final Rulemaking published at 35 DCR 1742 (February 26, 1988).

4112 INVENTORIES

- 4112.1 Immediately upon termination or completion of a contract providing for use of District property by the contractor shall perform, and cause each subcontractor to perform, a physical inventory that is adequate for disposal purposes of all District property applicable to the contract.
- 4112.2 The requirement for physical inventory at the completion of a contract may be waived by the contracting officer when the property is authorized for use under a follow-on contract and the following factors apply:
- (a) Experience has established the adequacy of property controls and an acceptable degree of inventory discrepancies;
 - (b) The contractor provides a written statement indicating that record balances have been transferred instead of preparing a formal inventory list; and
 - (c) The contractor provides a written statement accepting responsibility and accountability for any balances under the terms of the follow-on contract.

- 4112.3 The contractor shall, as a minimum, submit the following to the contracting officer promptly after completing the physical inventory:
- (a) A listing that identifies all discrepancies disclosed by a physical inventory; and
 - (b) A signed statement that physical inventory of all or certain classes of District property was completed on a given date, and that the official property records were found to be in agreement except for the discrepancies reported.

4112.4 When requested by the contracting officer, the contractor's reports of the results of physical inventory shall be prepared on a quantitative and monetary basis and segregated by categories of property.

SOURCE: Final Rulemaking published at 35 DCR 1743 (February 26, 1988).

4113 CARE, MAINTENANCE, AND USE OF DISTRICT PROPERTY

4113.1 The contractor shall be responsible for the proper care, maintenance, and use of District property in its possession or control from the time of receipt until properly relieved of responsibility, in accordance with sound industrial practice and the terms of the contract and this chapter.

4113.2 The removal of District property to storage, or its contemplated transfer, shall not relieve the contractor of the responsibilities set forth in this section.

4113.3 The contractor shall be responsible for a preventive maintenance program which includes the following:

- (a) Inspection of buildings at periodic intervals to ensure detection of deterioration and the need for repairs;
- (b) Inspection of equipment at periodic intervals to ensure detection of maladjustment, wear, or impending breakdown;
- (c) Regular lubrication of bearings and moving parts in accordance with a lubrication plan;
- (d) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration;
- (e) Removal of sludge, chips, and cutting oils from equipment that will not be used for a period of time; and
- (f) Taking necessary precautions to prevent deterioration caused by contamination, corrosion, and other substances.

4113.4 The contractor's maintenance program shall provide for disclosing and reporting to the contracting officer the need for major repair, replacement, and other capital rehabilitation work for District property in its possession or control.

4113.5 The contractor shall keep records of maintenance actions performed and any deficiencies in District property discovered as a result of inspections.

SOURCE: Final Rulemaking published at 35 DCR 1744 (February 26, 1988).

4114 PROPERTY USE PROCEDURES

4114.1 The contractor shall establish a written procedure to ensure that District property will be used only for those purposes authorized in the contract and that required approvals are obtained.

4114.2 The contractor's property control records shall provide a basis for determining and allocating rental charges.

4114.3 The property use procedures required by §4114.1 shall include the following:

- (a) Establishment of a minimum level of use below which an analysis of need shall be made and retention justified;
- (b) Provision for recording authorized and actual use consistent with the established use levels;
- (c) A requirement for periodic analyses of needs for District property utilization based upon known requirements; and
- (d) Provision for prompt reporting to the contracting officer of all property for which retention is not justified.

4114.4 The contractor's or subcontractor's authority to purchase, retain, or dispose of contractor inventory shall be subject to the contract provisions and to any District restrictions on the disposition of property that is hazardous to public health, safety, or welfare.

SOURCE: Final Rulemaking published at 35 DCR 1745 (February 26, 1988).

4199 DEFINITIONS

4199.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

District-furnished property - property in the possession of or directly acquired by the District and subsequently made available to the contractor.

District-owned property - all property owned by or leased to the District or acquired by the District under the terms of the contract, including District-furnished property.

District supply sources - sources available to the District from which a contractor or subcontractor may obtain supplies for use in certain contracts.

Facilities - property used for production, maintenance, research, development, or testing. The term includes plant equipment and real property, but does not include material. When used in a facilities contract, the term includes all property provided under the contract.

Facilities contract - a contract under which District facilities are provided to a contractor or subcontractor by the District for use in connection with performing one (1) or more related contracts for supplies or services.

Material - property that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. The term includes assemblies, components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract.

Non-profit organization - any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, and no part of the earnings of which inures to the benefit of any private shareholder or individual.

Personal property - property of any kind or interest in property except real property and records of the District government.

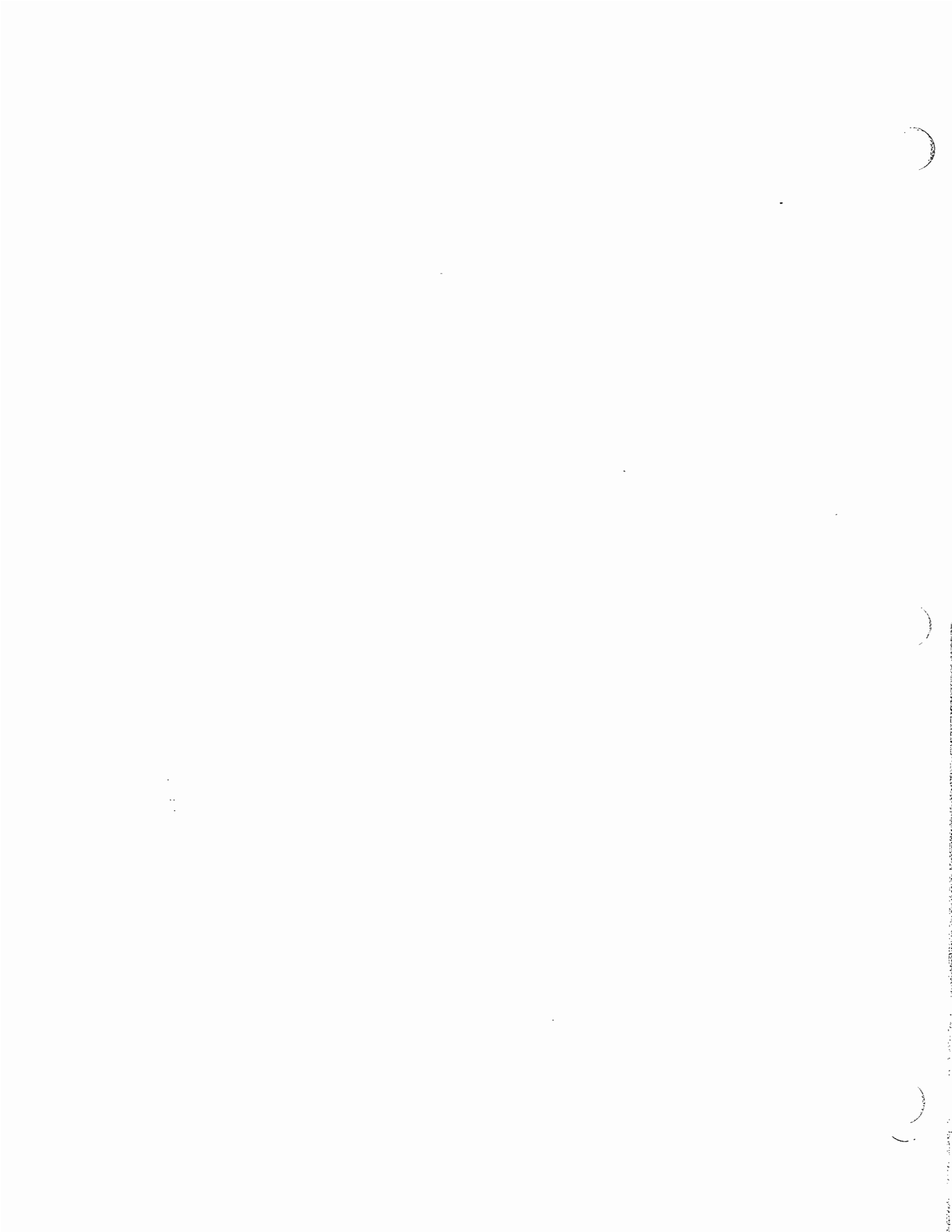
Plant equipment - personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose.

Preventive maintenance - maintenance performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences.

Property - all property, both real and personal, including facilities and material.

Real property - land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. The term does not include foundations and other work necessary for installing plant equipment.

SOURCE: Final Rulemaking published at 35 DCR 1746 (February 26, 1988).



CHAPTER 42 FREEDOM OF INFORMATION AND PRIVACY

Secs.	
4200	Freedom of Information Requests
4201	Proprietary and Confidential Information
4202	Privacy and Disclosure
4299	Definitions

4200 FREEDOM OF INFORMATION REQUESTS

4200.1 The contracting officer shall direct any request for records which specifically cites the D.C. Freedom of Information Act (the "FOIA"), D.C. Code §1-1551 *et seq.* (1981), to the agency head or to the information officer designated by the agency head under §401 of chapter 4 of Title 1 of the *D.C. Municipal Regulations (DCMR)*.

4200.2 If a request for records contains no reference to the FOIA, and if the contracting officer is unsure whether the requested records can be released, the contracting officer shall forward the request to the agency information officer or agency head.

4200.3 The contracting officer shall comply with requests from the information officer to provide documents for review.

AUTHORITY: Unless otherwise noted, the authority of this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981)

SOURCE: Final Rulemaking publishing at 35 DCR 1748 (February 26, 1988).

4201 PROPRIETARY AND CONFIDENTIAL INFORMATION

4201.1 No District employee shall disclose proprietary or confidential information which has been properly designated as such in accordance with the provisions of chapter 31 of this title to any person other than District employees who need access to the information as part of their duties in connection with the procurement process.

4201.2 The restriction in §4201.1 shall apply even if the proprietary or confidential information has been incorporated into a contract with the District.

SOURCE: Final Rulemaking publishing at 35 DCR 1748 (February 26, 1988).

4202 PRIVACY AND DISCLOSURE

4202.1 If a contractor collects, retains, or has in its possession any document, record, or other information obtained in the performance of a District contract which document, record, or information may be exempt from disclosure under the FOIA, the contractor shall not disclose the document, record, or other information to any person other than an authorized District employee or agent.

4202.2 If a contractor collects, retains, or has in its possession any document, record, or other information obtained in the performance of a District contract the disclosure of which is prohibited by any District or federal law or regulation, the contractor shall not disclose the document, record, or other information to any person other than an authorized District employee or agent.

4202.3 If a contractor is not sure whether a document, record, or other information may be disclosed, the contractor shall refer the matter to the contracting officer for appropriate action.

4202.4 The contracting officer shall include in each solicitation and contract a clause, approved by the Director, which notifies the bidder, offeror, or contractor of the provisions of this section.

SOURCE: Final Rulemaking publishing at 35 DCR 1748 (February 26, 1988).

4299 DEFINITIONS

4299.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Director - the Director of the Department of Administrative Services.

Person - any business entity, individual, union, committee, club, or other organization or group of individuals.

Records - all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Mayor and District agencies which pertain to procurement.

SOURCE: Final Rulemaking publishing at 35 DCR 1749 (February 26, 1988).

CHAPTER 45 PROCUREMENT TRAINING

Secs.	
4500	General Provisions
4501	Agency Procurement Training Plans
4502	Non-District Training Sources
4599	Definitions

4500 GENERAL PROVISIONS

- 4500.1 The Director shall establish and conduct classes, workshops, and other training programs based on District procurement law, rules, and procedures in accordance with §1101 of the D.C. Procurement Practices Act of 1985 (the "Act").
- 4500.2 The Director may designate the size and enrollment of procurement training courses, and may target specific programs to particular groups of employees or non-employees, including the following:
- (a) Programs open to District procurement personnel;
 - (b) Programs open to all District employees;
 - (c) Programs for non-employees; or
 - (d) Programs open to all employees and non-employees.
- 4500.3 The Director may establish a tuition or program fee for non-employee participants in programs open to the public. Any fee shall be based on the costs of providing materials and instruction.
- 4500.4 The Director shall provide the head of each agency with notice of scheduled training programs for employees.
- 4500.5 The Director shall provide notice to the public of all programs open to non-employees by publication of a notice of program offerings in the D.C. Procurement Digest, posting of program notices on public bulletin boards, and in any other manner the Director may deem appropriate.
- 4500.6 District training programs and training requirements shall be designed to ensure that persons who have authority to contractually bind the District have the necessary experience, training, and technical knowledge to make sound decisions.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1750 (February 26, 1988).

4501 AGENCY PROCUREMENT TRAINING PLANS

- 4501.1 The head of each agency shall annually prepare an agency training plan which describes the existing level of procurement training of agency employees and the need for additional procurement training for agency personnel, including non-procurement personnel.
- 4501.2 The agency training plan shall be submitted to the Director on or before October 1 of each year.
- 4501.3 The Director shall use the agency training plans to determine the level of need for procurement training programs for District personnel and the particular needs of each agency for procurement training.
- 4501.4 All contracting officers, except those exempted in writing by the Mayor, shall be required to participate in the procurement training program established by the Director or in other training programs approved by the Director. This requirement shall apply to agency heads who are appointed as contracting officers.

SOURCE: Final Rulemaking published at 35 DCR 1750 (February 26, 1988).

4502 NON-DISTRICT TRAINING SOURCES

- 4502.1 District procurement personnel may attend training programs provided by any of the following subject to the prior approval of the program by the Director:
- (a) The federal government;
 - (b) The government of any of the fifty (50) states;
 - (c) A foreign government or international organization;
 - (d) An educational, research, technical, or professional institution, foundation, or organization; or
 - (e) A business, commercial or industrial firm, corporation, partnership, sole proprietorship, or other organization.

SOURCE: Final Rulemaking published at 35 DCR 1751 (February 26, 1988).

4599 DEFINITIONS

- 4599.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed;

Director - the Director of the Department of Administrative Services.

SOURCE: Final Rulemaking published at 35 DCR 1751 (February 26, 1988).

CROSS REFERENCE TABLES

OLD DCRR SECTION	NEW DCMR SECTION	OLD DCRR SECTION	NEW DCMR SECTION
CHAPTER 1		CHAPTER 1 <i>(Continued)</i>	
§1.2(a)	§100.1	§6.6	§103.4
§1.3(a)	§100.2	§6.8	§103.5
§1.3(b)	§100.3	§6.9(a)	§103.6
§1.3(c)	§100.4	§6.9(b)	§103.7
§1.3(d)	§100.5	§7.1	§104.1
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