

**Government of the District of Columbia  
Office of Contracting and Procurement  
for the  
District Department of Transportation**

***DDOT Procurement Manual***

As of April 2020

## MANUAL APPROVALS

The purpose of this manual is to provide procurement and program staff with guidance and direction with regards to the procurement, management, and administration of contracts to include engineering and design-related services. This manual follows the Federal Highway Administration (FHWA) procedures outlined in 23 CFR 172 for those consultant contracts that include federal funding. All procurement records for federally funded projects are available for FHWA review at any time. Any modifications of this manual require approval of the District of Columbia Office of Contracting and Procurement (OCP), District Department of Transportation (DDOT) and the Federal Highway Administration (FHWA), U.S. Department of Transportation. Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable federal and District law, regulations, and policies and procedures. This manual will be reviewed for update as needed by the Office of Contracting and Procurement to address lessons learned, evolving approaches, updates to Federal and District law, regulations, and policies provided those updates are reviewed with DDOT and such revisions made under FHWA oversight.

Recommended By:

William E. Sharp  
Chief Contracting Officer

1 June 2020  
Date

DDOT Chief Administrative Officer Concurrence:

Jeff Martin  
Chief Administrative Officer Concurrence

6/17/2020  
Date

Approved:

Jeff Martin  
Director, District Department of Transportation

6/17/2020  
Date

Approved:

Joseph C. Lawson  
DC Division Administrator for FHWA  
Effective Date: 8/18/20

8/18/20  
Date

## TABLE OF CONTENTS

<b>1</b>	<b>INTRODUCTION.....</b>	<b>5</b>
<b>2</b>	<b>VISION &amp; MISSION.....</b>	<b>6</b>
2.1	OCP FOCUS AREAS.....	6
2.2	THE CHIEF PROCUREMENT OFFICER.....	6
2.3	SYNOPSIS OF DISTRICT PROCUREMENT LAWS & REGULATIONS.....	7
<b>3</b>	<b>OVERVIEW OF THE PROCUREMENT PROCESS .....</b>	<b>12</b>
3.1	REQUIREMENTS, PROCUREMENT PLANNING & ANNUAL ACQUISITIONS PLANS .....	12
3.2	PROCUREMENT PLANNING.....	13
3.3	PREPARING THE INDEPENDENT GOVERNMENT COST ESTIMATE (IGE/IGCE) .....	17
3.4	PREPARING THE PROCUREMENT PACKAGE.....	17
3.5	THE PROCUREMENT AUTOMATED SUPPORT SYSTEM (PASS).....	19
3.6	THE ACQUISITION PLANNING TOOL (OAPT) .....	20
<b>4</b>	<b>PROCURING GOODS &amp; SERVICES.....</b>	<b>21</b>
4.1	ROLES AND RESPONSIBILITIES.....	21
4.2	METHODS OF COMPENSATION.....	22
4.3	SUBCONTRACTING REQUIREMENTS.....	23
4.4	REQUIRED FEDERAL-AID CONTRACT CLAUSES .....	26
4.5	SMALL PURCHASES (Simplified Acquisition).....	27
4.6	SOLE SOURCE .....	28
4.7	D.C. SUPPLY SCHEDULE PROCUREMENTS.....	29
4.8	AWARDING A CONTRACT VIA COMPETITIVE SEALED PROPOSALS (RFPs) .....	30
4.9	AWARDING CONTRACTS VIA INVITATION FOR BIDS (IFBs).....	37
4.10	ISSUE DELIVERY ORDERS OR TASK ORDERS .....	40
4.11	SPECIAL CONSIDERATIONS FOR ARCHITECTURAL AND ENGINEERING SERVICES.....	41
4.12	SPECIAL PROCEDURES AND CONSIDERATIONS FOR CONSTRUCTION CONTRACTING .....	48
4.13	SPECIAL CONSIDERATIONS FOR FEDERAL-AID GRANTS AND AGREEMENTS.....	51
<b>5</b>	<b>CREATING AN EMERGENCY CONTRACT.....</b>	<b>53</b>
5.1	REQUIREMENTS AND LIMITATIONS ON EMERGENCY CONTRACTS.....	53
5.2	PROCEDURES FOR CREATING AN EMERGENCY CONTRACT.....	53
<b>6</b>	<b>SECURING APPROVAL OF MILLION DOLLAR AND MULTIYEAR CONTRACT COUNCIL PACKAGES .....</b>	<b>55</b>
6.1	PLAN OF CONTRACTS.....	55
6.2	COUNCIL PACKAGE TEMPLATES .....	55
6.3	COUNCIL SUBMISSION PROCESS .....	57
<b>7</b>	<b>MAKING AN AWARD.....</b>	<b>61</b>
7.1	PROCUREMENTS UNDER THE SMALL PURCHASE THRESHOLD .....	61
7.2	PROCUREMENTS OVER THE SMALL PURCHASE THRESHOLD.....	61
<b>8</b>	<b>PROTESTS, DEBARMENTS &amp; SUSPENSIONS.....</b>	<b>62</b>
8.1	THE CONTRACT APPEALS BOARD (CAB) AND ITS JURISDICTION .....	62
8.2	MANAGING A PROTEST.....	62
8.3	FILING TIMELINE.....	63
8.4	NOTICE .....	63
8.5	AUTOMATIC STAY OF THE PROCUREMENT .....	63
8.6	THE PROTEST ADJUDICATION PROCESS .....	64
8.7	DEBARMENT, SUSPENSION & INELIGIBILITY.....	65
8.8	OTHER TYPES OF DISPUTES .....	68

<b>9</b>	<b>CONTRACT ADMINISTRATION .....</b>	<b>70</b>
9.1	ROLES AND RESPONSIBILITIES .....	70
9.2	APPOINTING THE CONTRACT ADMINISTRATOR .....	70
9.3	PROGRAM KICK-OFF CONFERENCE.....	71
9.4	CONTRACT ADMINISTRATOR RESPONSIBILITIES.....	72
9.5	INVOICE OVERSIGHT AND APPROVAL .....	73
9.6	PERFORMANCE MONITORING AND EVALUATIONS .....	74
9.7	CONSULTANT SERVICES IN MANAGEMENT SUPPORT ROLE .....	75
9.8	CONTRACT MODIFICATIONS .....	76
9.9	ERRORS AND OMISSIONS – A/E SERVICES .....	77
9.10	EXERCISING OPTIONS .....	79
9.11	AUDITING AND ACCEPTANCE OF INDIRECT COSTS.....	79
9.12	SUBCONTRACT ADMINISTRATION REQUIREMENTS .....	82
9.13	ADMINISTRATION OF ON-CALL IDIQ CONTRACT AND TASK ORDER WORK ORDERS.....	82
<b>10</b>	<b>FILE PREPARATION &amp; CONTRACT CLOSEOUT .....</b>	<b>84</b>
10.1	CONTRACT FILE PREPARATION GUIDELINES .....	84
10.2	CLOSEOUT OF CONTRACT FILES .....	85
<b>11</b>	<b>CONTRACT FILE MANAGEMENT .....</b>	<b>88</b>
11.1	RECORDS MANAGEMENT CONTRACT FILE PREPARATION GUIDELINES.....	88
11.2	FILE ROOM PROCEDURES.....	88
11.3	TRANSFER OF FILES.....	89
11.4	RETENTION AND DESTRUCTION.....	91
<b>12</b>	<b>ETHICS.....</b>	<b>92</b>
12.1	OCP CODE OF ETHICS .....	92
12.2	APPLICABLE CODE OF CONDUCT .....	92
12.3	GENERAL ETHICAL STANDARDS .....	93
12.4	CONFLICTS OF INTEREST .....	94
12.5	CONFIDENTIAL INFORMATION.....	95
12.6	DUTY TO REPORT.....	95
12.7	GIFTS .....	96
12.8	UNAUTHORIZED COMMITMENTS.....	97
12.9	POLITICAL ACTIVITIES (“LOCAL HATCH ACT”).....	97
12.10	POST-EMPLOYMENT ETHICAL OBLIGATIONS.....	98
	<b>GLOSSARY OF PROCUREMENT TERMS .....</b>	<b>100</b>

# 1 INTRODUCTION

This Procurement Procedures Manual has been designed to guide new and current Office of Contracting and Procurement (OCP) employees assigned to the District Department of Transportation (DDOT) through the procurement processes of the District of Columbia. Acquiring goods and services by District government agencies can often be a very complex, nuanced process. There are numerous laws, regulations, policies, and procedures that affect how an acquisition is conducted. Moreover, there are numerous stakeholders—such as agency program personnel, private industry, and other District and federal agencies—that may be an integral part of an acquisition. This Procurement Procedures Manual contains the information and tools necessary for procurement personnel to navigate the District’s procurement process while adhering to the highest ethical and professional standards.

All OCP staff are encouraged to familiarize themselves with this Procurement Procedures Manual and to refer to it as questions or ambiguities arise during the course of an acquisition. OCP’s charge is critical—we obtain the goods and services upon which District residents rely every day. As a team we can only meet this charge if we are equipped with the right tools and information of which this Procurement Procedures Manual is a component.

Any modifications of this manual require approval of OCP’s Chief Contracting Officer (CCO), District Department of Transportation (DDOT) and the Federal Highway Administration (FHWA), U.S. Department of Transportation. Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable federal and District law, regulations, and policies and procedures. Unless allowed by 23 CFR Section 1.9(b), federal funds shall not be paid on account of any cost incurred prior to authorization of FHWA to the DDOT to proceed with the project or part thereof involving such cost.

This manual will be reviewed for update annually by the OCP. However, OCP reserves the right to make interim updates to these procedures to address lessons learned, evolving approaches, updates to federal and District laws, regulations and policies provided those updates are reviewed with OCP and FHWA oversight.

The guiding principle of procurements under this manual shall be that as stated in the Federal Acquisition Regulation (FAR) Part 1.102(d):

(d) The role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer’s needs. In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.

## 2 VISION & MISSION

OCP's mission is to partner with vendors and District agencies to purchase quality goods and services in a timely manner and at a reasonable cost while ensuring that all purchasing actions are conducted ethically, fairly and impartially.

OCP is a contracting and procurement organization that incorporates best practices that streamline the acquisition process, provides value-added customer support, and expands opportunities for certified business enterprises (CBE) and disadvantaged business enterprises (DBE). OCP is staffed with procurement, legal and administrative professionals who have the requisite skills to serve their customers while securing the best value in goods and services for the District of Columbia.

### 2.1 OCP FOCUS AREAS

- 2.1.1 ***Streamlined Processes*** – Quality is at the core of efforts to eliminate redundant reviews and contract processing. OCP processes will be consistent as we work collaboratively with our process partners to efficiently acquire quality goods and services. The streamlining of these processes requires a heavy reliance on technology to facilitate the buying process.
- 2.1.2 ***Customer Support*** – We will work in partnership with DDOT to develop and execute effective procurement plans. We will understand DDOT's business requirements so that we can provide value-added service. Pursuant to federal and District law, OCP will help customers secure the goods and services required to meet their missions.
- 2.1.3 ***Certified Business Enterprise Opportunities*** – We will identify opportunities for certified business enterprises (CBE) for locally funded projects and disadvantaged business enterprises (DBE) and small business enterprises (SBE) for FHWA-funded projects to compete for the full range of work available.
- 2.1.4 ***Skills Alignment*** – OCP staff will have the opportunity to receive training to develop the skills and knowledge base needed to perform their jobs efficiently, effectively and ethically.

### 2.2 THE CHIEF PROCUREMENT OFFICER

- 2.2.1 Established in 1997 by the *Procurement Reform Amendment Act*, the Chief Procurement Officer (CPO) is vested the authority to conduct procurements on behalf of select District agencies, departments, and other government entities. This law was replaced in 2011 by the *Procurement Practices Reform Act of 2011 (as amended)*, which governs procurement in the District of Columbia today.
- 2.2.2 During FY16, OCP purchased over \$4.4 billion in goods and services on behalf of 76 District agencies, departments, and other government entities. OCP has grown to over 200 staff members and had an operating budget of \$23.7 million in FY16. In addition to serving as the Director of OCP, the CPO:
  - Provides the overall leadership in the implementation of procurement rules and coordination of all procurement activities of the District government, in accordance with the PPRA;
  - Develops a system of unified and simplified procurement procedures and forms;
  - Reviews, monitors and audits the procurement activities of the District;
  - Prepares, establishes and implements periodic review process for the

evaluation of contractors;

- Develops guidelines for the recruitment, learning and development, career development and performance evaluation of all procurement personnel;
- Establishes certification requirements for contracting personnel; and
- Delegates contracting authority to experienced contracting officers (CO).

2.2.3 **Office of Procurement Integrity and Compliance (OPIC)** – provides a full complement of audit and non-audit advisory services to agency leadership, staff and affected stakeholders on both pre- and post-award basis. Specifically, OPIC conducts internal audits and reports its findings to various stakeholders within the agency; serves as the primary lead for OCP in support of the Comprehensive Annual Financial Report (CAFR) and Single Audit; and performs operational assessments of procurement processes and functions for agencies and teams under the authority of the CPO. OPIC also administers the agency’s deficiency remediation, records management, and performance monitoring programs.

## 2.3 SYNOPSIS OF DISTRICT PROCUREMENT LAWS & REGULATIONS

2.3.1 This section provides an overview of procurement law in the District to include statutes applicable to federally funded projects. Non-attorneys are often, and understandably, uncertain as to where to start should they need to look up a procurement law or regulations. This section provides a very broad overview of the structure of the District’s various procurement laws. The goal of this section is to equip all staff members with a general understanding of the District’s laws, where to look for them, and what resources are at their disposal.

### 2.3.2 The Procurement Practices Reform Act

2.3.2.1 The primary law that currently governs District procurement is the *Procurement Practices Reform Act of 2010*, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351 *et seq.*) (PPRA). The PPRA is Chapter 3A in the D.C. Official Code above. In 2016, the PPRA was amended by a new statute, the *Procurement Integrity, Transparency, and Accountability Amendment Act of 2015*, effective October 8, 2016 (D.C. Law 21-158; D.C. Official Code § 2- 351 *et seq.*) (PITAA). An up-to-date, searchable PPRA is available to all OCP staff on the intranet site as well as a version that highlights the changes made by the PITAAA.

2.3.3 The PPRA defines the authority of OCP and the CPO and establishes the statutory purposes and policies for the procurement of goods, services and construction in the District of Columbia. The law’s purposes include:

- Ensuring transparency in the procurement process;
- Promoting full and open competition;
- Fostering effective and equitably broad-based competition in the District;
- Providing for increased public confidence in procurement;
- Ensuring fair and equitable treatment of all persons; and
- Promoting uniform procurement procedures District-wide.

### 2.3.4 District of Columbia Municipal Regulations (“27 DCMR”)

The *District of Columbia Municipal Regulations* (abbreviated “DCMR” or “D.C. Mun. Regs.”) are the collection of 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 DCMR is divided into titles, of which Title 27 contains the rules for contracts and procurements (abbreviated “27 DCMR”). Title 27 is comprised of numerous chapters organized by general topic. For example, Title 27, Chapter 16 covers Procurement by Competitive Sealed Proposals.

2.3.5 The CPO is authorized under the PPRA to issue rules under this title. *See* D.C. Official Code § 2-361.06(a)(1). A proposed procurement rule comes into effect after it is published in *District of Columbia Register* (abbreviated “DCR”) for a 30-day notice and comment period and subsequently approved as a final rulemaking. The rulemaking process from start to finish can take between two and six months. However, under certain circumstances the CPO may issue an Emergency and Proposed Rulemaking. Such emergency rule goes into effect immediately and expires at the end of 120 days.

### 2.3.6 Hierarchy of District Procurement Law



2.3.7 Like the PPRA, OCP has assembled a searchable Title 27 that contains all rules—including emergency rules—that are in effect. Staff may access these on the OCP intranet.

### 2.3.8 Other Applicable District Laws and Regulations

2.3.9 In addition to the PPRA, District procurements are subject to the following District law and regulations:

- **The District Anti-Deficiency Act of 2002, D.C. Official Code § 47-355.01, et seq.** This law prohibits District employees from exceeding budget appropriations or entering in to a contract without an appropriation. Note: the District is also subject to the federal anti-deficiency law.



- **District of Columbia Government Quick Payment Act of 1984, D.C. Official Code § 2-221.01, et seq.** Establishes a payment of interest penalty when the District fails to meet the required payment date for invoices under contracts at a rate of interest is 1.5% per month, for a maximum period of one year.
- **51 Percent District Resident New Hires Act of 2001, D.C. Official Code § 2-219.01 et seq.** Establishes a “First Source” requirement that 51% of new hires on contracts over \$300,000 be District residents.
- **Small and Certified Business Enterprise Development and Assistance Act of 2005, as amended, D.C. Official Code § 2-218.01 et seq.** This law increases opportunities for small and certified business enterprises (SBEs) (CBEs) to participate in the District’s contracting and procurement process by requiring:
  - District agencies to spend 50% of their expendable budgets with SBEs;
  - For locally-funded procurements, a preference of up to 12 percent or 12 points in the evaluation of a CBE’s bid or proposal;
  - For locally-funded procurements, contracts of \$250,000 or less to be awarded to qualified SBEs on the DC Supply Schedule or be set aside for qualified SBEs; and
  - For locally-funded procurements, any contract over \$250,000 to include a requirement that 35% of the total dollar amount of the contract be subcontracted to CBEs.
- **Living Wage Act of 2006, D.C. Official Code § 2-220.01 et seq.** Sets a minimum wage, adjusted annually, for District services contracts.
- **Mayor’s Order 85-85, Equal Employment Opportunity Requirements in Contracts, (Chapter 11 of the OHR Regulations, 33 DCR 4952, August 15, 1986).** Contractors are prohibited from discriminating against any employee or applicant based on categories listed in District law.

### 2.3.10 Applicable Federal Laws and Regulations

Generally, for federally funded procurements, the Federal Acquisition Regulations will provide primary guidance. Additionally, depending on the supplies or services being procured, certain federal laws and regulations apply to District procurements, including:

- **Service Contract Act of 1965, 41 U.S.C. § 6701.** Requires payment of prevailing wages as determined by the U.S. Department of Labor in service contracts.
- **Davis-Bacon Act, 40 U.S.C. § 3141.** Requires payment of prevailing wages as determined by the U.S. Department of Labor in construction contracts.

- **Federal Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)**. Requires an appropriation of funds prior to authorizing an obligation or expenditure of District funds.
- **Federal Adequacy of Appropriations Act, 41 U.S.C. § 11**. Requires sufficient funds prior to authorizing an obligation or expenditure of funds; prohibits authorizing obligations for unlimited expenditures or expenditures that cannot be quantified with certainty.
- **Office of Management and Budget, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR, Part 200 (December 26, 2014)**. Establishes requirements governing state procurements using federal grant funds.
- **Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs, 49 CFR Part 26**. Requires federal aid recipients to ensure nondiscrimination in the award and administration of DOT-assisted contracts in highway, transit, and airport financial assistance programs and create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.

2.3.11 The following is a non-exhaustive list of statutes, regulations and orders applicable to FHWA-funded projects:

- Title 23 United States Code - HIGHWAYS
- Provisions of Title 40 United States Code, Chapter 11 §§ 1101-1104- Selection of Architects and Engineers
- 23 Code of Federal Regulations (CFR), Part 172 Procurement, Management, and Administration of Engineering and Design Services
- Required Contract Provisions, 23 C.F.R. § 633
- Construction and Maintenance, 23 C.F.R. § 635
- 48 CFR, Federal Acquisition Regulation (FAR), Part 31 Cost Principles
- Guidelines for Enforcement of the Civil Rights Act of 1964, 28 C.F.R. § 50.3
- 49 Code of Federal Regulations, Section 1.48(b)
- Equal Employment Opportunity, 23 C.F.R. § 230; and 41 C.F.R. § 60.
- Non-Discrimination Assurances, 49 C.F.R. § 21.7.
- DBE Participation, 49 C.F.R. § 26.

- Non-Discrimination Assurances, 49 C.F.R. § 21.7
- 2 Code of Federal Regulations, 200
- Federal Anti-Deficiency Act, 31 U.S.C. § 1341. Requires an appropriation of funds prior to authorizing an obligation or expenditure of District funds.
- Contract Work Hours and Safety Standards 40 U.S.C. §37
- 29 C.F.R. §§ 1, 3 & 5 - Labor Standards
- FHWA Order 4470.1A, Policy for Contractor Certification of Costs in Accordance with FAR to Establish Indirect Cost Rates. FHWA Orders are available at <https://www.fhwa.dot.gov/legsregs/directives/orders/>

### 3 OVERVIEW OF THE PROCUREMENT PROCESS



#### 3.1 ACQUISITION TEAM

- 3.1.1 District members of the Acquisition Team (“Team”) must be empowered to make acquisition decisions within their areas of responsibility, including selection, negotiation, and administration of contracts consistent with this procurement manual. In particular, the contracting officer must have the authority to the maximum extent practicable and consistent with law, to determine the application of rules, regulations, and policies, on a specific contract.
- 3.1.2 The Team consists of all participants in District acquisitions including not only representatives of the technical, supply, and procurement communities but also the customers they serve, and the contractors who provide the products and services.
- 3.1.3 The role of each member of the Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer’s needs. In exercising initiative, District members of the Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the District and is not addressed in the specific statutes, regulations or laws listed in Section 2 of this manual, the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority. Contracting officers should take the lead in encouraging business process innovations and ensuring that business decisions are sound.

#### 3.2 REQUIREMENTS, PROCUREMENT PLANNING & ANNUAL ACQUISITIONS PLANS

##### 3.2.1 Identifying Requirements

The procurement process begins when a District agency identifies and assesses the need for specific goods or services—i.e., the agency’s requirement. The timely and accurate identification of a requirement is necessary for an agency to meet its legally-mandated mission and functions. During the requirements determination phase, OCP and the program agency then collaborate on a plan to procure the needed good or service.



When a need arises, it is essential that an agency consult with OCP to conduct an assessment of that need. The table below outlines the roles and responsibilities of the program agency staff and those of the contracting officer.

##### 3.2.2 Roles and Responsibilities in the Requirements Phase

<b>Contracting Officer</b>	<b>Agency Staff</b>
Assist with requirements and Statement of Work	Develop (draft) requirements and Statement of Work/Specifications
Verify Funding	Obtain Proof of Funding
Provide Templates and Sign Appropriate Justifications	Draft and Sign Appropriate Justifications
Assist with Developing the Independent Government Estimate	Develop the Independent Government Estimate
Discuss and Establish Evaluation Factors	Consider and Propose Evaluation Factors

### 3.3 PROCUREMENT PLANNING

After agency requirements are identified, the contracting officer and agency staff ascertain the appropriate procurement method based on the available sources of the good or service, the urgency of the requirement, the type of product or service, and the dollar amount of the procurement.

3.3.1 Collaboration and communication between procurement and agency are essential in the procurement planning phase. The following table outlines the respective roles and responsibilities of agency and procurement staff.



#### 3.3.2 Roles and Responsibilities in the Procurement Planning Phase

<b>Contracting Officer</b>	<b>Agency Staff</b>
Perform Supplemental Additional Market Research (as necessary)	Finalize and Provide Market Research for the Requirement
Review Requirements and the Statement of Work/ Specifications	Finalize Requirements and the Statement of Work/ Specifications
Complete and share a Milestone Plan	Identify a Contract Administrator
Engage with Vendors per Customer Needs	Provide Supplemental Information (as necessary)

### 3.3.3 Determining the Procurement Method—Preliminary Considerations

When an agency is ready to purchase a particular set of goods and services, an OCP contracting officer should meet with the agency’s program manager to determine the appropriate procurement method. The contracting officer will review the agency’s acquisition history and may require or conduct supplemental market research. The purpose of this review is to help determine the appropriate method of procurement. Questions to be addressed include:

- How much is the dollar value of the requisition?
- Is there an existing contract?
- Is there more than one vendor capable of providing the need?
- What is the delivery time frame a vendor can meet?
- Did the previous procurement require negotiations/discussions?
- Do the vendors compete based on only price and price-related factors?
- Did the previous procurement require evaluation of a vendor’s technical capabilities before making award?
- Do the vendors provide products or services that are commercially available and can be described adequately and understood by the general public?

### 3.3.4 Types of Procurement Methods

Based upon the review of the agency’s acquisition history and market research, the contracting officer will determine the most appropriate method of procurement. The most commonly used procurement methods and corresponding thresholds include:

#### 3.3.5 P-Cards or “Micro-purchasing”

3.3.5.1 This method is typically used for procurements up to \$2,500 for services and up to \$5,000 for goods. The authorized purchase card holder may contact contractors to procure the goods and services. The purchases must not exceed \$2,500 per day for services or \$5,000 for goods, or \$20,000 per month unless OCP approves an exception to these requirements.

#### 3.3.6 Simplified Acquisitions

3.3.6.1 This method applies to procurements of up to \$100,000.00.

- Purchases of \$10,000.00 or less – may be non-competitive.
- Purchases ranging from \$10,000.01 to \$100,000.00 – at least 3 verbal to written quotes are required depending on dollar amount.

#### 3.3.7 Competitive Sealed Bids (IFBs)

3.3.7.1 The required means of soliciting goods and services in excess of \$100,000.00 unless it is determined that use of competitive sealed bidding is not practicable or in the best interest of the District.

#### 3.3.8 Competitive Sealed Proposals (RFPs)

3.3.8.1 A formal solicitation required for purchases when a contracting officer determines competitive sealed bidding is not practicable or advantageous to the District.

### 3.3.9 Emergency Procurements

3.3.9.1 Emergency procurements occur when there is an imminent threat to the public health, welfare, property, or safety, or to prevent or minimize serious disruption in District services. The contracting officer must prepare a Determination and Findings (D&F) justifying limited sources that includes the following information:

- The identification of the agency;
- A statement that emergency procurement procedures will be used for the procurement;
- A description of the requirement;
- A description of the emergency;
- A description of the efforts made to ensure that proposals or bids are received from as many potential sources as possible;
- The estimated value or cost;
- A determination that the anticipated costs to the District will be fair and reasonable in light of the emergency;
- A specific citation to “section 405 of the PPRA” (D.C. Official Code § 2-354.05); and
- Any other pertinent facts that support the emergency justification.

### 3.3.10 Sole Source

3.3.10.1 A sole source procurement may be used when there is only one source for the required goods or services. The contracting officer must prepare a D&F justifying the sole source that includes the following information:

- The using agency;
- A statement that the requirement is a sole source;
- The requirement, including the estimated cost or value;
- The factors that establish the proposed vendor is the only source of the required goods or services;
- A statement that the anticipated costs to the District will be fair and reasonable;
- A specific citation to “section 404 of the PPRA” (D.C. Official Code § 2-354.04 ) for locally-funded projects or 23 CFR 172.7(a)(3)(iii)(A) for federal-aid projects;
- A specific citation to “27 DCMR § 1700”;
- A description of the market survey conducted and the results, including a

list of the potential sources contacted by the contracting officer or which expressed, in writing, an interest in the procurement (if no market survey was done, a statement of the reasons why a market survey was not conducted); and

- Any other relevant facts to support the use of a sole source procurement.

### 3.3.11 Priorities for the Use of Required Sources

The following list, for locally funded requirements, contains the sources from which a good or service may be procured. Priority must be given to sources in descending order.

3.3.11.1 Existing agency inventories;

3.3.11.2 Excess personal property from the OCP's Surplus Property Division;

3.3.11.3 Existing requirements contracts;

3.3.11.4 Existing indefinite quantity contracts (to the extent of the minimums stated in those contracts);

3.3.11.5 For contracts of \$250,000 or less, qualified small business enterprises on the District of Columbia Supply Schedules (DCSS);

3.3.11.6 For contracts of \$250,000 or less, qualified certified business enterprises (CBE) on the DCSS;

3.3.11.7 For contracts of \$250,000 or less, qualified small business enterprises;

3.3.11.8 Other sources, including federal schedules and cooperative purchasing agreements;

### 3.3.12 Certified Business Enterprise (CBE) Requirements;

The OCP contract specialist and program manager should make every effort to consider whether there is an opportunity to utilize a Small Business Enterprise (SBE) or a Certified Business Enterprise (CBE).

#### 3.3.12.1 Mandatory Set-Asides

Locally-funded contracts of \$250,000 or less must be awarded to qualified small business enterprises on the DC Supply Schedule or must be set aside for qualified small business enterprises. The DCSS is the District's multiple award schedule under which contracts may be awarded to S/CBEs providing goods and services to District government agencies. There are 16 schedule categories for commercial products and services. If the contracting officer determines in writing that there are not at least two qualified SBEs that can provide the goods or services, the contracting officer may use qualified CBEs that can provide the goods or services.

#### 3.3.12.2 Subcontracting Requirements

Any locally funded construction or non-construction contract over \$250,000 shall include a requirement that 35% of the total dollar amount of the contract be subcontracted to certified business enterprises. Subcontracting requirements can be waived if there is insufficient market capacity for the goods and services and such lack of



capacity leaves the contractor commercially incapable of achieving the subcontracting requirements. Only the Director of the Department of Small and Local Business Development can waive subcontracting requirements.

### **3.4 PREPARING THE INDEPENDENT GOVERNMENT COST ESTIMATE (IGE/IGCE)**

- 3.4.1 The Project Manager (“PM”) shall prepare an IGE of the resources required to complete the project.
- 3.4.2 The PM shall discuss the IGE with the acquisition team, seek input from the appropriate technical disciplines as outlined in the scope of work, and request resource estimates from them as necessary. The PM is responsible for determining an estimate of man-hours and costs for consultants to perform the requested services. The CO is available to provide assistance in obtaining labor rates, indirect cost rates, and direct cost rates as needed to assist in preparing the internal independent government cost estimate.
- 3.4.3 There are instances where additional effort and costs may arise from presently known and existing conditions, the effects of which are foreseeable within a reasonable limitation. These additional costs may be included in the estimate as a contingency in order to provide the best estimate of potential costs. These contingency line items are not to be used as a catch all and are not appropriate for every contract. Reasonable justification is required for their inclusion and must be provided to the CO. When incorporated, separate contingency items should be set up in the scope and an estimate associated with each major element where additional future costs may be foreseen. Management of the use of these additional line items is essential and requires careful tracking. In all cases, justification must be submitted by the consultant to the PM requesting the use of these items. Written authorization for the use of each contingency item is required by the PM before the use of the item is allowed.

### **3.5 PREPARING THE PROCUREMENT PACKAGE**

#### **3.5.1 Requirements Document**

There are two phases prior to Requirements Definition. The first is to identify and validate the needs. The PM is responsible for identifying the need. The PM translates that need to a requirement. As part of identifying the need, the acquisition team must work together to:

- Succinctly identify the problem that needs to be solved;
- Clearly state the results or outcomes required to solve the problem;
- Identify the mission-focused goals and objectives to be met; and
- Convey a clear vision of what constitutes success.

- 3.5.1.1 Identification of the need is often coupled with preliminary market analysis. At this point in the acquisition process, market analysis can be conducted to determine if the need is feasible, if possible solutions exist, and if commercial products and practices are available.
- 3.5.1.2 Second, the PM requesting specific goods or services should develop the requirements document. The requirements document is the portion of a contract that describes the work to be performed by the contractor. The format in which the requirements are documented is flexible. For example, the requirements may be a Statement of Work (SOW), Statement of Objectives (SOO), or Performance Work Statement (PWS). Use a SOW when the requirements and processes are well-established. PWS and SOO are performance-based, appropriate for focusing on stated outcomes and asking the provider to develop or determine the processes. The important point is that the requirements are known,

adequately characterized, and in a form that can be communicated in such a way that the intended outcomes are clearly understood. Whatever its final form, the defined requirements document becomes part of the Procurement Request Package, the solicitation, and awarded contract, and should include:

- Specifications or other minimum requirements or quantities;
- Period of performance;
- Delivery schedule/deliverables;
- Time and place of performance of services; and
- Quality requirements.

3.5.1.3 To this end, each requirement must be stated so that it:

- Is clear, concise, and simply stated, permitting a common interpretation and understanding of the requirement;
- Uses consistent terminology;
- Is expressed as an imperative using “shall”;
- Eliminates conditional phrases, such as “if”, “except”, or “unless.” Requirements should be definite and allow no such “escape clauses.”

3.5.1.4 Once the need has been translated into a set of requirements, the requirements must be confirmed. Each requirement is reviewed by the acquisition team to ensure that it is:

- **Accurate:** The requirement correctly characterizes the need.
- **Complete:** All necessary aspects of the requirement are addressed.
- **Traceable to the validated requirement:** Each requirement traces directly back to the need and serves as a necessary element in meeting the validated requirement.
- **Technically and financially feasible or executable:** Each requirement is achievable.
- **Consistent:** An individual requirement does not conflict with other requirements.
- **Non-redundant:** A requirement does not duplicate another requirement.
- **Unambiguous:** The requirement is not open to various interpretations.
- **Design-independent:** The requirement does not dictate the implementation of any particular solution.
- **Verifiable:** The requirement can be verified to ensure it has been achieved through the use of inspection, analysis, test, or demonstration.

3.5.1.5 In the case of a larger or complex acquisition, it may be appropriate for the OCP contracting officer to meet with the agency to:

- Finalize the procurement method;
- Layout milestones and the schedule for the procurement; and
- Discuss the SOW or assist with the development of the SOW.

3.5.1.6 Prospective contractors should not write the requirements document or be informed of the specific requirements prior to issuance of the solicitation unless the following criteria are met:

- The contractor is the sole source;
- The contractor has participated in the developmental and design work; or
- More than one contractor has been involved in preparing the SOW. The CO will determine whether any particular contractor may have a conflict of interest due to its participation.

### 3.5.1.7 Identifying Potential Contractors

3.5.2 The agency requesting the goods or services may provide OCP with a list of potential contractors that could be utilized in the provision of a requested service. However, the CO makes the final selection of a potential bidders' or offerors' list.

## 3.6 THE PROCUREMENT AUTOMATED SUPPORT SYSTEM (PASS)

### 3.6.1 Creating a PASS Requisition (RQ)

3.6.1.1 Generally, a *requisition* is what initiates the formal procurement process. Before any contract is awarded, the program personnel enter a requisition into the Procurement Automated Support System (PASS). PASS is the District-wide Procurement system. Within OCP, the system is used to track the procurement of goods and services. End-users request goods or services directly in the system. The requisitions are then electronically routed for approval, funding and processing. Any special approvals that are required are also routed to the appropriate individual for approval. End users may access the system at any time to obtain the status of their request.

3.6.1.2 Once a requisition has been processed, a purchase order (PO) is created through all requisite processing and the approval of the RQ by a CO, and after award sent to the awarded contractor. PASS requires acknowledgment of the receipt and acceptance of all goods and services purchased through the system. After receipt and acceptance are acknowledged, PASS routes the information electronically to the Office of the Chief Financial Officer (OCFO) so vendors can be paid. Vendors cannot be paid until the appropriate information is entered into PASS and a PO approved.

3.6.1.3 The agency program manager requesting the goods and services should:

- Identify whether or not there are available funds for those goods and services by checking with the OCFO for corresponding accounting attributes and object codes;
- Enter the appropriate attributes or codes into PASS to develop the requisition; and
- Attach any supporting documentation to the requisition. If documents cannot be attached electronically, they should be hand delivered to the contract specialist.

3.6.1.4 The following resources for navigating PASS are available to staff:

- Procedures on how to input requisitions into PASS are found on the Administrative Services Modernization Program website.
- Helpful hints on PASS usage are also found on the [OCP intranet](#).

3.6.1.5 Securing Approval of a Requisition in PASS

3.6.2 Each agency should develop its own internal requisition approval process in PASS. If the request is for Information Technology (IT) goods and services and greater than \$25,000, the program manager may be required to prepare a procurement information package (PIF) for review by OCTO.

### **3.7 THE ACQUISITION PLANNING TOOL (OAPT)**

3.7.1 An important topic related to determining agency requirements and procurement planning is an agency's annual *acquisition plan*. An acquisition plan identifies the size and nature of the anticipated procurement workload for the following fiscal year (procurement planning pertains to a specific requirement; acquisition planning encompasses all anticipated requirements over the course of the next fiscal year). The purpose of acquisition planning is to ensure that the District: (a) meets its needs in the most effective, economical and timely manner; (b) maintains regulatory and legal compliance; and (c) allocates proper lead time for procurements.

3.7.2 Each agency subject to the CPO's authority must submit an acquisition plan that contains its anticipated procurement needs for the coming fiscal year, with specific information on the following:

- Program-level needs;
- Anticipated multiyear procurements;
- Anticipated exercises of option periods of existing contracts;
- Expected major changes in ongoing or planned procurements;
- The guiding principles, overarching goals, and objectives of the agency's acquisitions of work, goods, and services; and
- Goals and plans for utilization of strategic sourcing.

3.7.2.1 OCP is responsible for ensuring that agencies receive clear guidance on the acquisition planning process and steps and tools needed to complete this task.

## 4 PROCURING GOODS & SERVICES

This chapter covers three key phases of the procurement process—solicitation, review and evaluation, and contract award. Each of these phases contains subtle differences depending on the size of the procurement. Small purchases, D.C. supply schedule procurements, requests for proposals and invitation for bids, are all covered in the following sections.

### 4.1 ROLES AND RESPONSIBILITIES

District of Columbia Procurement Process— Solicitation Process, Review and Evaluation, and Award Phases



#### Roles and Responsibilities in the Solicitation Process Phase

Contracting Officer	Agency Staff
Schedule pre-proposal and pre-bid conferences with customer collaboration	Participate in Pre-Proposal and Pre-Bid Conferenced
Discuss Request for Information (RFI) or Sources Sought Synopsis (SSS)	Respond to procurement concerns regarding solicitation
Issue Synopsis	Alert procurement office of the need for changes
Release Solicitation	Refer all vendor communication to the contracting officer
Keep customer informed and aligned to the procurement goal	—

**Roles and Responsibilities in  
the Review and Evaluation Phase**

<b>Contracting Officer</b>	<b>Agency Staff</b>
Review and evaluate bid, quote, or proposal	Participate in 2-step bid, complex quote, or proposal review
Keep customer involved and informed	Refer all vendor communication to the contracting officer
Evaluate: Reasonable, Responsive, and Responsible	—

**Roles and Responsibilities in the Review  
and Evaluation Phase**

<b>Contracting Officer</b>	<b>Agency Staff</b>
Pre-Award Approvals	—
Council Approval Packages	—
Notice of Public Award	—

**4.2 METHODS OF COMPENSATION**

The CO shall exercise sound judgment in selecting the appropriate contract type and method of compensation that results in reasonable contractor risk and the greatest incentive for efficient and economical performance. The method of payment to the contractor shall be set forth in the original solicitation, contract, and in any contract modification thereto. A single contract may contain different payment methods as appropriate for compensation of different elements of work. The methods of compensation are:

**4.2.1 Lump Sum (Firm-Fixed Price)**

4.2.2 The contractor performs the services stated in the contract for an agreed upon price that is not subject to any adjustment on the basis of the contractor’s cost experience in performing the contract. This method of payment is appropriate only if the extent, scope, complexity, character and duration of the work required can be established to a degree that just compensation, including a fixed fee, can be determined and evaluated by all parties at the time of negotiations or award. The use of lump sum (i.e., fixed price) is encouraged whenever feasible. This method of payment provides the maximum incentive for the

contractor to control costs and perform effectively and imposes a minimum administrative burden on the agency. Periodic payouts of lump sum agreements are allowed but the method defining payment shall be included in the contract (e.g., based on percentage of work completed or completion of key project milestones).

#### 4.2.3 Cost per Unit of Work (Unit Cost)

The contractor is paid on the basis of a negotiated rate per unit of work performed. This type of contract is appropriate when the cost per unit can be determined with reasonable accuracy, but the extent of work is indefinite. This type of contract is normally used for repetitive tasks. Rates are negotiated for specified tasks and the negotiated rates are in place for the life of the contract and may include escalation factors. The agreement should specify what is included in the rate. For example, if the contractor is allowed to charge travel expenses in addition to the negotiated rate, that fact should be included in the contract. This type of contract may include specific fixed hourly rates or daily rates for each labor classification directly engaged in the work. The agreed upon rates include the contractor's estimated costs, indirect cost (G&A) and net fee (profit). The contract shall specify a maximum amount payable which shall not be exceeded unless adjusted by a contract modification.

#### 4.2.4 Specific Rates of Compensation

The specific rates of compensation payment method provides for reimbursement on the basis of direct labor hours at specified fixed hourly rates, including direct labor costs, indirect costs, and fee or profit, plus any other direct expenses or costs, subject to an agreement of maximum amount. A specific rate contract shall only be used when it is not possible at the time of procurement to estimate accurately the extent or duration of the work or estimate costs with any reasonable degree of accuracy. The specific rates of compensation payment method shall be limited to contracts or components of contracts for specialized or support type services where the contractor is not in direct control of the number of hours worked such as, for example, construction engineering and inspection (CE&I). When using this payment method, DDOT shall manage and monitor the contractor's level of effort and classification of employees used to perform the contracted services.

#### 4.2.5 Unallowable Methods of Compensation

The following methods of compensation shall not be used:

- Cost plus a percentage of cost.
- Percentage of construction cost.

### 4.3 SUBCONTRACTING REQUIREMENTS

At the beginning of the Procurement Planning Phase the contracting officer and contract specialist must review the requirements of the procurement for possible subcontracting requirements. If the project is federally funded, the CS should forward the solicitation package to DDOT's Office of Civil Rights for establishment of a Disadvantaged Business Enterprise (DBE) goal. For locally-funded projects, if there are at least two qualified small business enterprises (SBEs) certified by DSLBD, the contracting officer may set-aside the procurement for participation only by certified SBEs.

#### 4.3.1 CBE Subcontracting Requirements for Locally-Funded projects

4.3.1.1 For locally-funded open-market procurements greater than \$250,000, the solicitation must include a 35% mandatory subcontracting requirement. This requirement, however, can be waived, either

partially or completely, by the Director of DSLBD if there is demonstrated insufficient market capacity for the goods or services that comprise the project and such lack of capacity leaves the contractor commercially incapable of achieving the subcontracting requirements at as project level. The contracting officer must submit a waiver request that includes the following:

- The number of certified business enterprises, if any, qualified to perform the elements of work that comprise the project;
- A summary of the market research or outreach conducted to analyze the relevant market; and
- The consideration given to alternate methods for acquiring the work to be subcontracted to make the work more amenable to being performed by CBEs.

4.3.1.2 The contracting officer should request the waiver prior to issuing the solicitation.

#### 4.3.2 DBE Subcontracting Requirements for Federal-aid projects

4.3.2.1 DDOT is committed to and supports the development and growth of new and existing DBEs, as defined in 49 CFR Part 26, by providing an opportunity for DBEs to compete for and participate in DDOT's contracting and procurement activities. All federally assisted solicitations and contracts shall include a DBE goal. The DBE goal must be met or exceeded, or the contractor must substantiate the good faith efforts made to meet the DBE goal. Contractors/consultants must adhere to the DBE utilization commitments as required by the solicitation and corresponding award. DDOT will monitor the use of DBEs on contracts to ensure contractors are performing commercially useful functions as outlined in the contract, as well as subcontract agreements between prime contractors/consultants and DBE firms.

4.3.2.2 Each solicitation for which a DBE contract goal has been established will require the bidders/offerors to submit the following information to the DBE Liaison Officer (DBELO) on the DDOT form, "DBE Utilization Plan":

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform to count toward meeting a goal. Each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
- The dollar amount of the participation of each DBE firm participating;
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.

At the CO/DDOT's discretion, the bidder/offeror must provide the information required by this section in accordance with the solicitation as follows:

- Under IFB procedures: no later than 5 days after bid opening as a matter of responsibility.
- Under RFP procedures: with initial proposals, during contract negotiation procedures; or no later than 5 days after the final proposal due date as a matter of responsibility.



- In a negotiated procurement, including design-build, the offeror may make a contractually binding commitment to meet the goal at the time of proposal submission or the presentation of initial proposals but provide the information required by this section before the final selection for the contract or award is made.

- 4.3.2.3 DDOT treats bidder/offerors' compliance with good faith efforts requirements as a matter of responsibility. If the bidder/offeror is unable to provide documents demonstrating that it has obtained enough DBE participation to meet the DBE contract goal (DBE Utilization Plan is required), the bidder/offeror must submit documents to demonstrate that it made adequate good faith efforts to meet the goal. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26.
- 4.3.2.3.1 All information must be complete and accurate and adequately document the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.
- 4.3.2.3.2 Use of quotas or exclusive set-asides for DBE consultants is prohibited, 49 CFR 26.43. On engineering and design related services contracts DBE participation may be achieved through one of two methods:
- 4.3.2.4 DBE Evaluation Criterion: DDOT may establish the use/participation of certified and qualified DBE subconsultant firms as an evaluation criterion of no more than ten (10) percent of the total evaluation criteria in assessing the qualifications of firms/teams to perform the solicited services. The ten (10) percent limitation applies only to non-qualifications based evaluation criterion and should not be considered as a limitation for specific DBE contract goals established by DDOT. In awarding points for a DBE participation criterion in the evaluation and selection of the most highly qualified consulting firm/team, evaluation/selection officials must consider the prime consultant's good faith efforts to engage DBEs, as demonstrated in the firm's response to the solicitation. Consulting firms which have demonstrated good faith efforts to engage DBE firms in the delivery of the solicited services shall be considered to have satisfied the DBE evaluation criterion. If, during the negotiation phase of the procurement process, work proposed to be performed by DBEs in the response to the solicitation is decreased or eliminated through negotiation of the scope of services, the prime consultant must use good faith efforts to provide for the participation of DBEs at the level indicated in its response to the solicitation. These good faith efforts should consider the use of DBEs to perform services in other areas of the project in order to obtain the level of DBE participation originally proposed. Where DBE is an evaluation criteria, failure of the most highly qualified (top-ranked) firm to make adequate good faith efforts during negotiation to provide for the proposed level of DBE participation permits the DDOT to terminate negotiations and initiate negotiations with the number two-ranked firm.
- 4.3.2.5 DBE Goal: DBE Goals are only on "project specific" procurements. If DDOT establishes a DBE participation goal on a consultant services contract, DDOT cannot disqualify a consultant for failing to meet the contract goal provided the consultant made good faith efforts to meet the participation goal. DDOT may place in the advertisement or solicitation that the prime consultant must meet the established contract DBE participation goal or demonstrate good faith efforts to meet it. The most highly qualified (top-ranked) firm would be required to demonstrate how the firm would meet the contract goal at the negotiation phase of the procurement process. If, during the negotiation phase of the procurement process, work proposed to be performed by DBEs in the response to the solicitation is decreased or eliminated through negotiation of the scope of services, the prime consultant must use good faith efforts to provide for the participation of DBEs to meet the established contract goal. The fact that the prime consultant could perform the work with its own forces does not relieve it from

making good faith efforts to meet the DBE goal. If the top-ranked firm does not meet the goal and fails to demonstrate a good faith effort, DDOT may terminate negotiations and initiate negotiations with the number two-ranked firm. Separate goals may be established for each phase of a multiphase contract.

- 4.3.2.6 DDOT, in accordance with 49 CFR Part 26.39 and Part 26.51, seeks to enhance and facilitate contracting opportunities for DBEs by establishing a race and gender-neutral Small Business Enterprise (SBE) program for federal-aid projects funded by the USDOT. DDOT's SBE program certifies for-profit businesses that meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code.
- 4.3.2.6.1 DDOT's Chief Contracting Officer, in consultation with the Equity & Inclusion Division/Small Business Inclusion Office, the Chief Engineer and appropriate Project Managers, or their respective designates, set aside an overall percentage of its annual total dollar value of USDOT-assisted contracts directly to SBEs;
- 4.3.2.6.2 DDOT's Chief Contracting Officer, in consultation with the Chief Engineer, Equity & Inclusion Division/Small Business Inclusion Office, and appropriate Project Managers, or their respective designees, will meet periodically throughout the fiscal year to determine appropriate projects for contract awards to small businesses.
- 4.3.2.6.3 SBE Contracts shall be evaluated at the beginning of each fiscal year, utilizing the forecast of projects to determine suitable projects for award under the SBE program.

#### **4.4 REQUIRED FEDERAL-AID CONTRACT CLAUSES**

- 4.4.1 All contracts and subcontracts shall include the following provisions, either by reference or by physical incorporation into the language of each contract or subcontract, as applicable:
  - 1. Administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and provide for such sanctions and remedies as may be appropriate (disputes clause);
  - 2. Notice of contracting agency requirements and regulations pertaining to reporting;
  - 3. Contracting agency requirements and regulations pertaining to copyrights and rights in data;
  - 4. Access by recipient, the subrecipient, FHWA, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;
  - 5. Retention of all required records for not less than 3 years after the contracting agency makes final payment and all other pending matters are closed;
  - 6. Standard DOT Title VI Assurances (USDOT Order 1050.2);
  - 7. Disadvantaged Business Enterprise (DBE) assurance, as specified in 49 CFR 26.13(b);

8. Prompt pay requirements, as specified in 49 CFR 26.29;
9. Determination of allowable costs in accordance with the Federal cost principles;
10. Contracting agency requirements pertaining to consultant errors and omissions;
11. Contracting agency requirements pertaining to conflicts of interest, as specified in 23 CFR 1.33 and the requirements of this part; and
12. A provision for termination for cause and termination for convenience by the contracting agency including the manner by which it will be effected and the basis for settlement.

Note: All construction subcontracts must physically include the FHWA- 1273 Form, as per 23 CFR 633.102(b)-(e).

4.4.2 All contracts and subcontracts exceeding \$100,000 shall contain, either by reference or by physical incorporation into the language of each contract, a provision for lobbying certification and disclosure, as specified in 49 CFR part 20.

#### **4.5 SMALL PURCHASES (Simplified Acquisition)**

4.5.1 The Small Purchases Procedures may be used to procure goods and services not exceeding \$100,000 for locally funded (27 DCMR § 1800) and \$250,000 for federal-aid projects (FY2018 National Defense Act). Simplified acquisition purchases are generally defined by the “RFQ” procurement method or “Requests for Quotations.”

- A. ***Purchase requisitions valued at \$10,000 or less*** -- Purchase requisitions valued at \$10,000 or less may be processed without obtaining competitive quotes.
- B. ***Purchase requisitions with a price greater than \$10,000 but not exceeding \$100,000*** – At least three verbal or written quotations are required for purchase requisitions with a price greater than \$10,000 but not exceeding \$100,000.

#### 4.5.2 Creating a Small Purchase Solicitation

##### 4.5.2.1 Receipt and Assignment

The contracting officer receives a requisition via PASS and assigns it to the appropriate contract specialist.

##### 4.5.2.2 Review and Verification

The contracting officer or assigned contract specialist, upon receiving the requisition, does the following:

- Review the requisition(s) in PASS to understand the requirements, determine if there are any deficiencies, and determine the appropriate procurement strategy;
- Review the SOW to determine if it adequately describes the required goods or services requested in the requisition. If there are any deficiencies the contracting officer or contract specialist will work with the requesting agency’s program staff to correct the SOW; and

- For orders placed using a DC Supply Schedule, verify that the required goods or services are included in the DC Supply Schedule contract to be used.

#### 4.5.3 Wage Determinations

If the request is for services greater than \$2,500.00, the contract specialist must incorporate the applicable U.S. Department of Labor (DOL) wage requirements which can be found at [www.wdol.gov](http://www.wdol.gov).

If procuring construction-related goods and services the threshold priced greater than \$2,000, Davis Bacon wage rates apply. More information on the Davis Bacon Wage Act and its requirements can be found at <https://www.dol.gov/>.

#### 4.5.4 Creation of Solicitation

4.5.4.1 The contract specialist creates a solicitation through an eSourcing event within PASS and includes the basis for the award in the solicitation.

#### 4.5.5 Evaluating a Small Purchase Quotation

The contracting officer reviews vendor quotes submitted to determine the lowest price offered and each bidder's compliance with the requirements for contracting with the District of Columbia. The CO/CS shall determine price reasonableness, apply preference points/percentages (where applicable), and document due diligence to achieve competition as follows:

- 4.5.5.1 Reasonableness: If the request is for services it may be appropriate to have the agency review the responses;
- 4.5.5.2 CBE and SBE Preferences: If the procurement is designated for an open competition or a set aside, the contracting officer will apply CBE preference points/percentages to determine the evaluated price. To determine CBE points, the contracting officer shall use the [DSLBD website](#). When the competition is among DC Supply Schedule vendors these points are not applied.
- 4.5.5.3 Due Diligence: If only one response or bid is received, the CO/CS must document due diligence in obtaining the required number of quotes.
- 4.5.5.4 Documentation: The contract specialist uploads to PASS the appropriate compliance documents for the requisition, such as:
- District and Federal Excluded Parties Lists
  - Cleans Hands Documentation;
  - Business Licenses; and
  - Other documents as appropriate for the procurement.

## 4.6 SOLE SOURCE

If an agency requests the good or service to be sole sourced then, prior to proceeding with the procurement, the contract specialist must request documents from the agency's program staff justifying the sole source.

If the sole source procurement is greater than \$10,000, the contract specialist prepares a D&F explaining and justifying the sole source. Templates and forms regarding sole source procurements and may be found at [www.ocp.dc.gov](http://www.ocp.dc.gov), under the Policy and Procedures in the OCP Library.

Prior to executing the order, the contracting officer shall publicize the District's intent to enter into sole source procurement for 10 days. The CPO must review and approve the D&F.

## 4.7 D.C. SUPPLY SCHEDULE PROCUREMENTS

The Simplified Acquisitions Procedures Section is responsible for establishing new DC Supply Schedules (DCSS) and processing applications.

### 4.7.1 DCSS Solicitation Process

The contract specialist and contracting officer will work with the DSLBD to identify SBEs and CBEs that offer goods or services in product/service categories where no current DCSS contract exists to fulfill the District's needs. The DCSS solicitation process is as follows:

- 4.7.1.1 Statement of Work: The contracting officer and contract specialist (CS) consult with the procuring agency program staff to develop a SOW for needed good(s) or services.
- 4.7.1.2 Solicitation Package: The CO or CS prepares a DCSS solicitation package. This package should include current wage rates from the U.S. Department of Labor (DOL) for services and construction. Federal wage rates can be found at <http://www.wdol.gov/>.
- 4.7.1.3 Review and Approval: The CS reviews the draft DCSS solicitation package and works with the CO to ensure edits or changes needed are incorporated into the final package. Once approved, the contracting officer authorizes the final package.
- 4.7.1.4 Publication: Upon approval by the CO, the contract specialist shall publish each proposed solicitation as follows:
  - **Procurements between \$100,000 and \$250,000** – the contracting officer or contract specialist publishes the solicitation on OCP's Internet site, and may publish the solicitation using any other methods reasonably available such as newspapers or trade publications.
  - **Procurements Greater than \$250,000** – the contracting officer or contract specialist publishes the solicitation on the OCP Internet site and in a newspaper of general circulation and, if necessary, in trade publications considered to be appropriate to give adequate public notice.
  - **Shortened Timeframe** – There may be programmatic or operational reasons to shorten the timeframe for advertisement. The contracting officer or contract specialist shall prepare the D&F for a shortened advertisement period and secure the necessary approvals.

### 4.7.1.5 Announcement

The contracting officer or contract specialist completes the procurement form and forwards the request for advertisement to the solicitation e-mail address known as webpostings ([solicitations.ocp@dc.gov](mailto:solicitations.ocp@dc.gov)). The forms

should be received at least 48 hours in advance of the desired advertisement date. Forms are available on the OCP intranet website. The contracting officer or contracting specialist then sends the required information to the OCP webmaster and a copy to [solicitations.ocp@dc.gov](mailto:solicitations.ocp@dc.gov) so that the solicitation can be posted on the OCP website.

If a solicitation is cancelled after it has been issued, then the contracting officer or contract specialist prepares a D&F to cancel the solicitation and an amendment to the solicitation. The contracting officer or contract specialist secures the required approvals.

#### **4.8 AWARDING A CONTRACT VIA COMPETITIVE SEALED PROPOSALS (RFPs)**

Competitive Sealed Proposals, otherwise known as “Requests for Proposals” or “RFPs”, generally require three to eight months to complete. (Reference 27 DCMR Chapter 16 for locally-funded projects or 23 USC § 172.7(a)(1) for federal-aid A/E projects) During the annual Acquisition Planning process the contracting officer should make the agency aware of the lead time to complete the process and assure the agency provides the necessary supporting documentation. The contract specialist and contracting officer may then meet with agency’s program staff to plan the procurement and develop the procurement package.

##### **4.8.1 Preparing the RFP Package**

The contracting officer or designee prepares the RFP package via the following steps:

4.8.1.1 Milestone Plan: The contracting officer develops a milestone schedule for the procurement based on the “need date” and input from the agency program staff.

4.8.1.2 Procurement Package Assembly: The contract specialist assigns a solicitation number to the procurement and assembles a procurement package for submission to the contracting officer. The package should include the items noted below:

- Standard Contract Provisions as applicable and available at <https://ocp.dc.gov/page/required-solicitation-documents-ocp>
- Attachments to the Solicitation may include:
  - Bidder/Offeror Certification Form
  - Tax Affidavit
  - EEO Documents
  - CBE Certification
  - Certificate of Insurance (COI)
  - First Source Agreement
  - Basic Business License
- The SOW (Section C of the RFP template);
- An Independent Government Cost Estimate (ICE/IGCE);
- Proof of funds availability (*i.e.*, a requisition in PASS or a certification of funding signed by the Agency Chief Financial Officer;

- Deliverables (Section F of the RFP template);
- Proposal submission requirements (Section L of the RFP template);
- Evaluation factors (Section M of the RFP template);
- List of potential offerors suggested by the agency program staff;
- Proposed Contract Administrator Letter;
- The DSLBD waiver if a waiver was granted; and
- Information regarding a pre-proposal conference.

4.8.1.3 Determination and Findings: The contract specialist prepares a D&F for Use of Competitive Sealed Proposals for approval by the contracting officer. If the approval is conditional, the contract specialist makes all necessary changes and resubmits the package to the contracting officer. The contracting officer then reviews the procurement package for approval.

4.8.1.4 Offerors List: The contract specialist develops the list of potential offerors, which may include:

- Vendors identified by the program personnel;
- Vendors who notified the contract specialist or contracting officer of their interest in being placed on the offerors list; and
- Other vendors known to the specialist or contracting officer, or discovered through market research.

4.8.1.5 Advertisement: The solicitation must be posted on the OCP's internet site, and if the procurement is over \$250,000, must also be advertised in a newspaper of general circulation. Typically, RFPs are advertised for 21 days but the contracting officer may shorten the time frame for advertisement to no less than 14 days, by preparing the D&F for a shortened advertisement period. The contract specialist verifies that the OCP website and the local newspaper posting of the solicitation in fact occurred and takes all necessary action to ensure this was completed.

4.8.1.5.1 If a solicitation is cancelled after being posted, the contract specialist prepares a D&F cancellation of the solicitation and an amendment to the solicitation, ensures the required approvals, and posts a cancellation notice on the OCP web site.

4.8.1.6 Pre-proposal Conference: The contract specialist works with the agency program staff to plan and schedule any required pre-proposal conference and the contracting officer facilitates the conference. Information related to the pre-proposal conference should be included in the RFP upon its release or subsequently by solicitation amendment.

4.8.1.6.1 During the conference the contracting officer collects names and contact information for attendees and notifies the attendees that all questions must be submitted in writing.

4.8.1.6.2 All questions and answers from the conference are documented and the contracting officer distributes written responses to all offerors through a solicitation amendment. This amendment includes any changes in the date and time of submission of proposals and answers to offeror questions.

4.8.1.7 Solicitation Questions and Amendments

4.8.1.7.1 OCP controls this process and functions as the central repository for offeror questions and responses.

Responses to an offeror's questions must be provided to all offerors, if the response would affect how any offeror would respond to the solicitation.

4.8.1.7.2 Agency program staff in conjunction with the CS and CO prepares responses to questions. The agency tends to handle those technical questions related to the SOW or services to be provided. OCP addresses those questions directly related to the contracting process. The CS and CO should review the complete set of questions and answers before they are published. Depending on the nature of the questions, the CO may decide whether it is necessary to change the proposal due date.

#### 4.8.2 RFP Evaluation Process

4.8.2.1 To propose reasonable and meaningful evaluation criteria, PMs must understand the technical and administrative requirements of a project, decide which of those are important to the success of the project or program, and determine their relative importance. Inputs include requirements, priorities, acquisition strategy, and consideration of relevant statutes and regulations. The output is the proposed evaluation criteria that informs all stakeholders, including offerors, how the CO will assess all proposed solutions. It is critical to understand that the published evaluation criteria are the only basis allowable for making an award decision.

4.8.2.2 Coordination among the acquisition team will help determine the critical technical aspects of a project or program. OCP will determine contracting regulatory requirements and contract strategy. These inputs are critical in developing effective evaluation criteria.

#### 4.8.3 Selecting Evaluation Criteria

The acquisition team must ensure a clear linkage between the requirements and evaluation factors to maximize the accuracy and clarity of the Request for Proposal (RFP). See 27 DCMR §1613. The following are key considerations in selecting evaluation criteria.

4.8.3.1 Evaluation Factors/Subfactors. Evaluation factors and subfactors represent those specific characteristics that are tied to significant RFP requirements and objectives that impact the source selection decision or evaluation and which are expected to be differentiators between proposals or are required by statute/regulation. They are the uniform baseline against which each offeror's proposal is evaluated, allowing the District to make an informed source selection determination.

4.8.3.2 Evaluation Factor/Subfactor Weighting. The evaluation of factors and subfactors may be quantitative, qualitative, or a combination of both. The solicitation may prescribe minimum "go/no go" or "pass/fail" gates in terms of "meets or does not meet minimum requirements" as criteria that an offeror's proposal must meet before advancing in the proposal evaluation process.

4.8.3.3 Evaluation Factor/Subfactor Documentation. The evaluation factors and subfactors will be set forth in the solicitation in sufficient detail to communicate how requirements will be evaluated. The evaluation factors and subfactors will be the primary determinant of the detailed information requested in the solicitation's instructions to offerors. If subfactors are used, they are to be evaluated as detailed in the solicitation.

4.8.3.4 Relative Importance of Factors. If using the tradeoff source selection process, all factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation (see, e.g., FAR 15.304(d) or 27 DCMR §1613). For federally-funded



projects, the solicitation shall additionally state whether all evaluation factors other than cost or price, when combined, are (1) significantly more important than cost or price; (2) approximately equal to cost or price; or (3) significantly less important than cost or price (see, e.g., FAR 15.304(e)).

4.8.4 Evaluation Panel: While the solicitation is being advertised, the contracting officer will work with the agency program staff to identify an evaluation panel that will evaluate the proposals. The contracting officer makes the final decision regarding panel composition.

4.8.4.1 Composition: The evaluation panel should consist of knowledgeable, independent District employees. Subject Matter Experts (SMEs) from other jurisdictions and other parties not involved in the procurement may also be utilized; however, these additional resources may be voting members of the evaluation panel only if the resources are hired by the District for their specific technical expertise and there is no conflict of interest. The panelists should choose a chairperson, approved by the CO, who will be responsible for completing the evaluation report.

4.8.4.2 Evaluation Instructions: Prior to the commencement of the evaluation, the contracting officer should provide the panel with evaluation instructions to include source selection system training as required. This system will allow the panelists to note their individual evaluation ratings or scores, detail how a proposal meets requirements and may include significant strengths and weaknesses of each offeror, and any questions that the panelists may have regarding an offeror's proposal. The evaluation instructions will include, at a minimum, the following:

- Non-disclosure forms and conflict of interest statements, to be completed and approved by the CO before release of proposal materials;
- Evaluation factors and rating scale from the solicitation;
- A description of the process including independent technical evaluations, panel meetings, consensus meeting, and price evaluation; and
- A timetable for the completion of those evaluations.

4.8.4.3 In accordance with the scoring criteria stated in the solicitation, generally there are many ways to evaluate proposed solutions, including a variety of ways of scoring them. Ultimately, the PM and OCP personnel must identify those items or issues that are critical to the success of the acquisition. They must document these aspects in the published requirements, along with how solutions will be assessed and rated against those requirements.

#### 4.8.5 Evaluation of Technical Proposals

See 27 DCMR §1630 Proposal Evaluation. The evaluation of technical proposals by the panel occurs in two phases:

4.8.5.1 Independent Evaluations: Evaluation panel members independently evaluate technical proposals; and

4.8.5.2 Consensus Meeting: After completion of the individual evaluations, the evaluation panel meets to develop a consensus rating or score for each offeror. The contracting officer should facilitate the consensus meeting. Upon conclusion of the consensus meeting, the panel chairperson prepares a consensus report and submits it to the contracting officer.

4.8.6 Architect/Engineering (A/E) Additional Discussions.

If a requirement is for A/E services as defined in 4.9, additional discussions beyond the solicitation of, and response to, a Request for Proposals may be conducted with at least the top three highest ranking consultants for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. If discussions, which may be in the form of interviews, are held each of the top three highest ranking consultants must be afforded that opportunity. At conclusion of the discussions the submitted proposals may be reevaluated based on the process set forth in the RFP.

4.8.6.1 The need for additional discussions shall be based on the size and complexity of the requirement.

4.8.6.2 Discussions may be held via interviews, phone calls, or in-person meetings.

4.8.7 Evaluation of Price Proposals

Once the evaluation panel submits its consensus technical evaluation report, the contracting officer may distribute the price proposals to the panel (or to a separate price panel as the CO determines). The evaluation panel may assess the price proposals by answering questions such as (but not limited to):

- Are the prices offered consistent with those in previous contracts? Projects?
- Were the prices proposed for new or additional services reasonable?
- Do the proposed subcontracts seem justified?
- Are there items of work that should be added or deleted?
- What is the level of risk to the District associated with the prices proposed?

The contracting officer shall select whatever price or cost analysis techniques will ensure a fair and reasonable price. See, e.g., 27 DCMR §1642 Substantiating Offered Prices.

4.8.7.1 The panel then presents its findings and recommendations report to the CO who also performs an independent review of the proposals (i.e., the Contracting Officer's Independent Assessment or COIA). The contract specialist computes the price score based on the formula for price evaluation included in the solicitation.

4.8.7.2 Score Computations: The contract specialist computes the total overall score for each offeror including the technical scores assigned by the technical panel, price score, and preference points (as applicable to locally-funded solicitations).

### ***Important Tip:***

*Any questions or answers provided by anyone other than the contracting officer are considered informal and not to be relied upon by offerors. Offerors who solicit answers from anyone other than the contracting officer risk being eliminated from further participation in the solicitation process.*

4.8.7.3 CBE Preference Points: The contract specialist reviews the CBE certification information submitted by the offeror and verifies that the offeror is certified by checking the DSLBD website ([www.dslbd.dc.gov](http://www.dslbd.dc.gov)) to determine if the offeror should be awarded preference points. If the offeror has claimed preference but does not appear on the DSLBD website, the contract specialist should contact DSLBD to verify certification. The offeror must be certified as of the solicitation closing date to receive preference points.

#### 4.8.8 Contracting Officer's Independent Assessment (COIA)

Notwithstanding the input of an evaluation panel, the contracting officer is ultimately responsible for the evaluation of proposals and for determining the relative merits of competing proposals. The contracting officer must conduct an independent assessment of the proposals and cannot simply adopt the findings of the evaluation panel. Elements of a sound independent assessment include:

- An independent review of technical proposals
- Conversations with the technical panel's chairperson regarding the panel's initial evaluation and findings
- Reviewing the panel's final evaluation report
- Comparing the final evaluation report against the contracting officer's own review of the technical proposals.

4.8.8.1 The contracting officer must provide contemporaneous documentation of the independent assessment.

#### 4.8.9 Pre-Award Negotiations

4.8.9.1 Pre-Negotiation Memorandum: The contracting officer should prepare a pre-negotiation Business Clearance Memorandum ("BCM") including discussion questions, and obtain all necessary approvals in accordance with the Business Clearance Review and Approval Matrix. Discussion questions should relate to the significant weaknesses or deficiencies in the offeror's proposal. In accordance with 27 DCMR §1632 Selection of Negotiation Process, the BCM should also include the contracting officer's recommendation to:

- Award based on initial offers received,
- Conduct negotiations with offerors in the competitive range, or
- Negotiate with the highest ranked offeror.

4.8.9.2 Competitive Range: If an award cannot be made based on the initial offers received, or negotiations with the highest ranked offeror are not held (see 27 DCMR §1634), the CO must conduct discussions with all offerors considered in the competitive range (see 27 DCMR §1636). The CO determines in writing the competitive range including all offerors who are evaluated as most highly qualified. If all the offerors have been notified in the solicitation of the possibility that the competitive range can be limited for purposes of efficiency, the contracting officer may determine to limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

- 4.8.9.3 Contingencies: Contingencies are defined as activities that are identified as a possible result of findings while performing original work. Contingency is normally used to cover a limited amount of unforeseen costs. The contingency work may be included in the contract upon approval without the need for a contract modification. Contingency costs will be separate from the main cost of the contract. These costs will be noted in the contract separately, but are required to be negotiated and approved. A total maximum cost will be documented without the contingency costs and then an additional total maximum for the contingency amount will be negotiated specifying that this is not to be expended without written authorization as detailed in the contract. The DDOT may audit the consultant's cost records prior to authorizing the use of a contingency amount.
- 4.8.9.3.1 No contingency is allowed on lump sum contracts.
- 4.8.9.3.2 When the PM determines the use of the contingency is needed, the PM will obtain CO approval and submit a written authorization to the consultant. A copy to the approval and authorization shall be included in the official contract file.
- 4.8.9.4 Best and Final Offer: After discussions, the contracting officer will request a Best and Final Offer (BAFO). Once BAFOs are received, the evaluation panel evaluates the BAFOs following the same process as described in the previous section. The evaluation panel then submits the BAFO consensus report to the CO.
- 4.8.9.5 Score Computations After BAFOs: The contract specialist again computes the total overall score for each offeror submitting a BAFO, including the BAFO technical scores assigned by the technical panel, price score, and preference points (if applicable).
- 4.8.9.6 Contracting Officer's Final Independent Assessment: The contracting officer conducts a final independent assessment, taking into account any changes submitted by offerors in their BAFOs.
- 4.8.9.7 Pre-Award Documentation: The CS and CO should prepare the Post-Negotiation BCM and other necessary pre-award documentation, including, e.g.,
- A D&F for Contractor's Responsibility; and
  - A D&F for Price Reasonableness.
- 4.8.9.8 The contracting officer should obtain all necessary approvals in accordance with Business Clearance Review Approval Matrix.
- 4.8.10 Award
- 4.8.10.1 If the contract package is less than \$1 million, the contract specialist contacts the contractor to sign the Award/Contract Form. The contract specialist secures the contracting officer's signature on the contract and approval of the associated requisition in PASS. The awarded contract and associated documents are then uploaded to the Contract Module within PASS for publishing and posting on OCP's website.
- 4.8.10.2 The contract specialist distributes a copy of the fully executed contract to the: program manager; contract administrator; and contractor, and such other individuals as required by the circumstances, e.g., DSLBD, OCR, Davis Bacon Coordinator, etc. The contract specialist keeps an original of the fully executed contract in the contract file.

4.8.10.3 The contract specialist enters the procurement action into the PASS contract workspace if the procurement action is over one-hundred-thousand dollars (\$100,000).

4.8.10.4 If the award is over \$1 million and locally-funded, the contract specialist prepares a Council package in accordance with Chapter 2, Section 13, “Preparing a Million Dollar Package.”; if federally funded, the CS assures that the project is listed on the “Plan of Contracts” approved by Council.

## 4.9 AWARDING CONTRACTS VIA INVITATION FOR BIDS (IFBs)

### 4.9.1 Planning and CBE Subcontracting Requirements

4.9.1.1 Like an RFP, open-market procurements by an IFB greater than \$250,000, must include a 35% subcontracting requirement for CBE participation if the proposed contract is locally funded. Discussions with the agency about placing the solicitation in the set aside market or open market with a CBE subcontracting set-aside should happen during the Procurement Planning phase.

### 4.9.2 Preparing the IFB Package

The contracting officer receives the requisition and assigns an IFB to a contract specialist. A Solicitation Number is assigned by using the requisition number generated in PASS, or as otherwise generated in the procurement processing system. DDOT has IFB templates for use with federal and local funds. To the maximum extent possible, templates should be used. The procurement package is then prepared and should include:

- Standard Contract Provisions as applicable - available at <https://ocp.dc.gov/page/required-solicitation-documents-ocp>
- Attachments to the Solicitation may include:
  - Bidder/Offeror Certification Form
  - Tax Affidavit
  - EEO Documents
  - CBE Certification
  - Certificate of Insurance (COI)
  - First Source Agreement
  - Basic Business License
- Scope of Work. The contract specialist reviews the SOW (or specifications and drawings for construction) to ensure that it is:
  - **Not unduly restrictive** – Brand name or equal descriptions should be used when detailed purchase descriptions are not available. While using the brand name, the salient characteristics of the brand name product should be described. See 27 DCMR §2502 Brand Name or Equal
  - **Not redundant** – There should be no conflicting requirements.
- Funding Documents showing availability or pre-encumbrance of funds
- Independent Government Estimate
- Potential Bidders List
- Any special terms and conditions, definitive qualifications or eligibility requirements
- Bonding Requirement based on risks associated with non-performance and the type of bond(s) that might be required.

- Compliance Checklist
- All applicable justifications
- Approvals following the updated Business Clearance Review Approval Matrix

#### 4.9.3 Pre-Award Tasks

4.9.3.1 Solicitation Fee: Determine if there will be a fee for contractors to pick-up a solicitation and supporting documentation. Include that information in the advertising and posting.

4.9.3.2 Advertisement: The solicitation must be advertised on the OCP website, and if the solicitation is over \$250,000, it must also be advertised in a newspaper of general circulation. Typically, locally-funded projects are advertised for 14 days (27 DCMR § 1302.1), and federal-aid projects are advertised for 21 days (23 CFR 635.112(b)). The contracting officer can shorten the time frame for advertisement to no less than 3 days, by preparing the D&F for a shortened advertisement period. The contract specialist verifies that the OCP website and the local newspaper posting of the solicitation in fact occurred and takes any necessary action to ensure this was completed.

***Important Note***

*If a solicitation is cancelled after it has been issued, the contract specialist must:*

- 1. Prepare a D&F to cancel the solicitation; and*
- 2. Secure the required approvals.*

4.9.3.2.1 The contract specialist forwards the request for advertisement and posting to the OCP solicitation email address at [solicitations.ocp@dc.gov](mailto:solicitations.ocp@dc.gov). The forms should be provided at least 48 hours in advance of the desired advertisement date to the Customer Contact Center.

4.9.3.2.2 OCP bid room staff provides an electronic copy to the webmaster for posting on the OCP website.

4.9.3.2.3 The contract specialist checks the OCP website and the newspaper of general circulation to ensure the IFB is posted on the issue date

4.9.3.3 Document Completion: The contract specialist completes the:

- Procurement announcement form;
- Solicitation submission form; and
- The solicitation package

4.9.3.4 Pre-Bid Conference: The contracting officer may conduct a pre-bid conference or site visit if necessary. The contract specialist works with the program personnel to plan the conference and facilitate the meeting. All questions and answers from the conference are documented and the contracting officer distributes written responses to all offerors through an amendment to the solicitation. This amendment includes any changes in the date and time of submission of proposals and answers to bidder questions.

4.9.3.5 Solicitation Questions and Amendments: OCP manages this process and functions as the central repository for bidder questions and responses. Responses to a bidder's questions must be provided to all bidders, if the response would affect how any bidder would respond to the solicitation. Any questions or answers provided by anyone other than the contracting officer are considered informal and shall not be relied upon by bidders. Bidders who solicit answers from anyone other than the

contracting officer risk being eliminated from further participation in the bidding process.

4.9.3.5.1 Agency program staff and the contracting officer prepare responses to questions. The agency tends to handle those technical questions related to the SOW or services to be provided. OCP addresses those questions directly related to the contracting process.

4.9.3.5.2 The contract specialist and contracting officer should review the complete set of questions and answers before responses are published. Depending on the nature of the questions, the contracting officer decides whether it is necessary to change the bid due date.

4.9.3.5.3 Amendments and responses to questions are posted on the OCP internet site and may be sent to contractors who picked up a copy of the IFB or attended the pre-bid conference.

#### 4.9.4 Awarding an IFB

4.9.4.1 Award Criterion: The contract specialist tabulates and verifies the bids prior to evaluation. In evaluating the bids, only price or price-related factors included in the solicitation are considered. If the bid provides for multiple line items, each line item must be tabulated.

4.9.4.2 Prompt payment discounts are not to be considered in the evaluation of the bid. Any discount offered will form a part of the award and the District will take it if payment is made within the discount period specified by the bidder.

4.9.4.3 As applicable, CBE preferences should be applied to determine the apparent “low, evaluated bidder.”

4.9.4.4 If the bids are tied, the tie should be resolved by the following order of priority:

- Certified SBE;
- Any CBE other than an SBE; then
- If two remain equally eligible, award is made by drawing by lots (limited to those two bidders) or as otherwise provided by law or regulation.

4.9.4.5 Responsiveness: The contracting officer should review each bid for responsiveness to the solicitation requirements. This review should include, but not be limited to:

- Did the bidder acknowledge all the addendums?
- Did the bidder take any exceptions to any solicitation provisions? (Delivery, quantity, price, specifications, etc.?)
- If descriptive literature is required, is it included?
- If a bid sample was required, is it included?
- If a bond is required, is it included?

4.9.4.5.1 If the answers to any of the above are “no,” the contracting officer should determine if the failure to include the information is a minor informality. If so, the contracting officer proceeds. If there are exceptions that render the bid non-responsive, the contracting officer evaluates the next lowest bidder for responsiveness.

4.9.4.5.2 The contracting officer may forward the bids and any attachments to the program personnel for

technical evaluation and concurrence prior to award.

4.9.4.6 Fair and Reasonable Price: The contracting officer must determine that the price of the proposed awardee is fair and reasonable.

4.9.4.7 Responsibility: The contracting officer must determine that the proposed awardee is responsible. The contracting officer reviews responsibility information to determine if the proposed awardee can successfully perform the required services or deliver the required goods, has business integrity, and is compliant with District and applicable federal law. The contracting officer may perform such action necessary to determine a proposed awardee's responsibility, including, e.g., go to the proposed awardee's office or job site to inspect equipment, facilities, review capacity to perform or conduct a pre-award survey. Required compliance documents include:

- EEO approval from the Office of Human Rights;
- Tax compliance verifications from the Clean Hands Database; and
- First Source Employment Agreement approval from DOES.

4.9.4.8 Pre-award Documentation: The contracting officer should prepare the Business Clearance Memorandum for Competitive Sealed Bidding and other pre-award documentation, such as:

- The D&F for Contractor's Responsibility;
- The D&F for Price Reasonableness;
- If the award is not to the low bidder, a D&F to award to other than the low bidder; and
- If award is greater than \$1 million and locally funded, the CS and CO prepare the Council package in accordance with Chapter 2, Section 13, Preparing a Million Dollar Council Package.

4.9.4.9 For additional procedures, please see the IFB Desktop Procedure Guidebook (draft in development).

## **4.10 ISSUE DELIVERY ORDERS OR TASK ORDERS**

The procedures outlined below are used when buying from an existing Indefinite Delivery Indefinite Quantity ("IDIQ") or schedule-type contract. Specific procedures for construction-related task orders are provided separately. These procedures also apply to purchases from the DCSS. Particular contracts may have further prescribed ordering procedures, so the contracting officer should always check the ordering procedures specified in the contract and comply with them.

4.10.1 Assembly of Procurement Package: The contracting officer receives the procurement package and assigns it to a contract specialist. The procurement package should include:

- A SOW;
- An Independent Government Estimate;
- A requisition in PASS (pre-encumbered funds) or other acceptable CFO certification of funds;
- Evaluation factors if the task or delivery order is not being awarded on the basis of lowest



- price; and
- A list of potential offerors.

4.10.1.1 The contract specialist prepares D&Fs as required and obtains required approvals.

4.10.2 Developing a Request for Quotes: The contract specialist prepares requests for quotes (RFQ) for supplies or task order proposals (RFTOP) for services. The RFQ or RFTOP should indicate the basis for award, *i.e.*, lowest price or award based on the evaluation factors identified in the RFTOP. The contract specialist obtains supervisory review of the RFQ or RFTOP in accordance with the Business Clearance Review and Approval Matrix.

4.10.3 Milestone Plan: The CS and CO develop a milestone schedule for the procurement based on the “Need By Date” specified by the program office and coordinates the schedule with the program personnel.

4.10.4 Issuance of Solicitation: The contracting officer issues a Request for Delivery Order or Task Order Proposals.

4.10.5 Supply Schedule Procurements.

4.10.5.1 ***DC Supply Schedule*** – If the requirement is to be procured through a DC Supply Schedule, the contracting officer follows the procedures outlined in the DCSS Terms and Conditions Section 4.7, ordering procedures found on the OCP intranet. A minimum of three quotes is required for any DCSS order over \$5,000.

4.10.5.2 ***Federal Supply Schedule*** – If the requirement is to be met through a Federal Supply Schedule (FSS) or related/similar schedule, the contracting officer should follow the Basic Schedule Ordering Guidelines (e.g., [www.gsa.gov](http://www.gsa.gov)). Generally, three quotes are required. Other government-wide acquisition contracts (e.g., GWACs) may be available for use.

4.10.6 Evaluation: If the RFTOP includes evaluation factors, the contracting officer should generally follow procedures outlined for RFPs in Section 4.8 of this Manual.

4.10.7 Executing the Task Order: The contract specialist obtains the contractor’s signature on a proposed task order or delivery order. Once executed, the contract specialist also has the following responsibilities:

- To confirm that the task or delivery order, when added to existing task or delivery orders, remains within the contract ceiling and secures the contracting officer’s signature.
- To distribute a copy of the fully executed contract to the program manager and contractor (and to other designated recipients as noted above).
- To keep the original copy in the contract file.

## 4.11 SPECIAL CONSIDERATIONS FOR ARCHITECTURAL AND ENGINEERING SERVICES

Notwithstanding the specific procedures applicable to the A/E schedule, the following procedures apply to all architect and engineering services as defined by Public Law 92-582 Title IX § 901 (3). Those include:

- Professional services of an architectural or engineering nature, as defined by District law, as

applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;

- Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
- Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, or construction.

#### 4.11.1 Mandatory A/E Contract Clauses

4.11.1.1 All A/E Contracts shall substantially include a clause for:

- 1) ODCs; and
- 2) Audits and Indirect Costs that complies with section 9.10.

#### 4.11.2 A/E Schedule Source Selection Process

In accordance with 23 CFR § 172.7(a)(1), federal-aid A/E services shall be procured using a qualifications-based source selection procedure. Source selection procedures at the Schedule contract level and fair opportunity procedures at the Task Order (“TO”) level are guided by applicable federal and District regulations and laws, including 40 USC 1101-1104 (e.g., the “Brooks Act”). The District’s goal is to foster a competitive environment that gives fair opportunity to all participants and that provides transparency to Industry in the process. This section focuses on the role of the individual evaluator and the consensus process in the A/E TO process.

#### 4.11.3 Technical Evaluation Panel Member Selection

4.11.3.1 All evaluations shall be performed in the source selection system of record by Technical Evaluation Panel (“TEP”) members nominated by the agency and approved by the Contracting Officer.

#### 4.11.4 Individual Evaluations

The Technical Evaluation Panel (“TEP”) members shall first individually evaluate each SOQ in accordance with the solicitation evaluation criteria. Each TEP member shall create comments noting how each offeror meets requirements and each offeror’s strengths and weaknesses. Offerors shall be rated and scored for each factor using only the evaluation criteria in the TO solicitation. The below evaluation criteria shall be used in each A/E TO evaluation. The Contracting Officer (“CO”) may add additional evaluation criteria as allowed by federal and District law and regulation.

- Professional qualifications necessary for satisfactory performance of required services, including professional qualifications of Key Personnel;
- Specialized experience and technical competence in the types of work required;

- Capacity to accomplish the work in the required time; and
- Past performance on contracts with Governmental agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules.

4.11.4.1 The participation of qualified and certified Disadvantaged Business Enterprise (DBE) subconsultants may be used as a nominal evaluation criterion where appropriate in accordance with 49 CFR part 26 and a contracting agency's FHWA-approved DBE program. (See 23 CFR § 172.7(a)(1)(iii)(D)(2))

4.11.4.2 Prior to the initiation of individual evaluations, the CO shall provide the TEP evaluation instructions, and may provide any necessary source selection, system or evaluation training.

4.11.4.3 At the conclusion of individual evaluations, all firms are initially ranked based on the individual evaluator scoring.

#### 4.11.5 Consensus

Consensus is the process in which the individual evaluators gather to discuss their ratings and comments, and to reach a consensus on the overall score for a particular submission. A CS must attend and conduct all consensus meetings.

4.11.5.1 If a TEP member disagrees with a consensus comment or rating, that individual is permitted to provide a dissenting position.

4.11.5.2 During the consensus meeting, the TEP shall adjudicate (i.e., review and analyze) all comments created during individual evaluations and shall rate all offerors as a TEP. The consensus scoring determines the ranking of each firm.

4.11.5.3 At the conclusion of the consensus meeting, the TEP chair shall prepare a Source Selection Recommendation (“SSR”) that lists in order of preference at least three firms that are considered to be the Most Highly Qualified. (In the event that scoring is such that there are not three firms considered to be Most Highly Qualified, the TEP chair shall immediately contact the CO.) The TEP chair shall forward the SSR to the CO. The SSR shall include a description of the evaluation conducted by the TEP.

#### 4.11.6 Source Selection Decision

Upon receipt of the SSR, the CO shall review the recommendations of the TEP and shall, with the advice of appropriate technical and staff representatives, make the final selection. This final selection shall be a listing, in order of preference, of the firms considered Most Highly Qualified to perform the work. If the firm listed as the most preferred is not the firm recommended as the most highly qualified by the TEP, the CO shall provide for the contract file a written explanation of the reason for the preference. All firms on the final selection list are considered selected firms with which the contracting officer may negotiate.

4.11.6.1 The CO may consider the SOQ submissions, the TEP’s individual and consensus comments and ratings in their assessment of the TEP’s recommendation.

4.11.6.2 The CO shall not add firms to the SSR. If the firms recommended in the SSR are not deemed to be qualified or the SSR is considered inadequate for any reason, the CO shall record the reasons and

return the SSR to the TEP for appropriate revision.

4.11.6.3 The CO shall develop the Source Selection Decision (“SSD”) and notify the panel of the results as soon as practicable.

4.11.7 Preparing for an A/E TO

4.11.7.1 The Project Manager (“PM”) develops the initial draft of the requirements document.

4.11.7.1.1 The requirements document may be in the form of a Statement of Work (“SOW”), Performance Work Statement (“PWS”), or possibly a Statement of Objectives (“SOO”).

4.11.7.1.2 The Requirements Document is the part of the solicitation/contract that describes the work to be performed by the consultant. The requirements must be communicated in a clear and concise manner so that the intended outcomes are clearly understood by all potential offerors. The Requirements Document should use consistent terminology and express the imperative (“shall”). The Requirements Document becomes part of the solicitation and awarded contract, and should include:

- General Statement of Work
- Specifications or other minimum requirements or quantities;
- Period of performance;
- Delivery schedule/deliverables;
- Time and place of performance of services; and
- Quality requirements.

4.11.7.1.3 If a standardized SOW exists for the category and type of work required, the PM shall use the template as the basis for developing the Requirements Document, and add any additional tasks specific to the project. The requirements developer should be mindful of the following strategies.

4.11.7.1.4 Care should be taken to develop a scope or specific tasks at an appropriate level of detail. Broadly-based, skeletal, high-level outline, and vague requirements documents are discouraged. The PM should strive to provide a level of detail that will ensure the District receives the required services as intended and sets a reasonable expectation for performance.

4.11.7.2 The contracting officer will review the Requirements Document to ensure:

- Accuracy: The requirement correctly characterizes the need.
- Completeness: All necessary aspects of the requirement are addressed.
- Traceability to the validated requirement: Each requirement traces directly back to the need and serves as a necessary element in meeting the validated requirement.
- Technical and financial feasibility: Each requirement is achievable.
- Consistency: An individual requirement does not conflict with other requirements.
- Non-redundancy: A requirement does not duplicate another requirement.
- Unambiguousness: The requirement is not open to various interpretations.
- Design-independence: The requirement does not dictate the implementation of any particular solution.
- Verifiability: The requirement can be verified to ensure it has been achieved through the use of

inspection, analysis, test, or demonstration.

4.11.7.3 The PM should also consider whether or not interviews will add value to the evaluation and, if so, make that recommendation to the CO.

4.11.7.3.1 Generally, interviews should only be conducted in complex projects where additional information would add depth, in addition to the offeror's qualifications, in assessing the offeror's understanding of the project and associated risks. The CO will determine if interviews are needed for each requirement.

4.11.7.3.2 All individual evaluations will be completed prior to interviews.

4.11.7.3.3 A Contracting Officer or Contract Specialist ("CS") will attend and conduct all interviews.

4.11.7.4 The PM prepares the Independent Government Estimate ("IGE" or "Engineer's Estimate") reflective of the expected cost a reasonable person would pay for such services. The PM should discuss the IGE with the contracting officer, seek input from the appropriate technical disciplines as outlined in the scope of work, and request resource estimates or such other information from the contracting officer as necessary. The PM is responsible for determining an estimate of man-hours and costs for consultants to perform the requested services. The contracting officer is available to assist in obtaining labor rates, indirect cost rates, and direct cost rates as needed to support the preparation of the internal independent government cost estimate.

4.11.7.4.1 Care should be taken in developing the IGE to ensure it reasonably reflects the level of effort outlined in the SOW. The PM shall, at a minimum, consider the following in developing the IGE:

- Are the SOW tasks congruent with the level of effort assumptions built into the IGE?
- Is the IGE detailed enough to support negotiations? For example, if the level of effort for certain labor categories fluctuates over the Period of Performance ("PoP"), is that demonstrated in the IGE?

4.11.7.4.2 The CO/CS will review and approve all IGEs. The IGE shall be finalized prior to the receipt of qualifications.

4.11.7.5 Requisition: The contracting officer receives the requisition in PASS (or through the agency's automated requisitioning system) and assigns to a contract specialist. The requisition should have the following items attached electronically (except for those design documents that are too large to scan):

- A SOW
- An Independent Government Estimate
- A requisition in PASS (i.e., or otherwise pre-encumbered funds) (or through the agency's automated requisitioning system)
- Proposed evaluation factors (in addition to those detailed above).

4.11.8 Requesting and Processing an A/E TO

4.11.8.1 The PM submits a TO request in ProTrack+ (PTP). See Appendix A for instructions.

4.11.8.2 The request will identify the Category of A/E services where the preponderance of the work resides. The category containing the preponderance of the work determines which firms are eligible to compete based on the IDIQ awards.

4.11.8.3 PTP will perform checks in determining the pool of firms eligible for TO competition.

All firms selected for A/E Schedule award in a particular category will be given a chance to compete for a requirement before any firm is given a second opportunity. In order to avoid the same firms competing, this will generally be done on a randomized basis (random number generator) via PTP from the firms already awarded a Schedule contract to perform each category’s services. For each TO competition, PTP will generate at least three but not more than five firms to compete. The CO shall determine if more than three firms are needed and select such additional firms as deemed necessary, shall select firms from the intersection of two categories if the proposed work is relatively equally divided, or make such other selection of firms as determined adequate in the circumstances. See Illustration 1 below.

Illustration 1 Company Name	Opportunity #1			Opportunity #2			Opportunity #3		
	Award?	Chance Count	*In Pool?	Award?	Chance Count	*In Pool?	Award?	Chance Count	*In Pool?
Company A	No	1	Yes		1	No		1	No
Company B			Yes	No	1	Yes		1	No
Company C	Yes	1	Yes		1	No		1	No
Company D			Yes			Yes	Yes	1	Yes
Company E			Yes	No	1	Yes		1	No
Company F			Yes	Yes	1	Yes		1	No
Company G			Yes			Yes	No	1	Yes
Company H			Yes			Yes		0	Opp 4
Company I			Yes			Yes		0	Opp 4
Company J			Yes			Yes	No	1	Yes
Company K	No	1	Yes		1	No		1	No

Illustration 1 – Color Key  
 Blue: Competing in the current opportunity.  
 Grey: Previously competed for an opportunity.

Note: it does not matter whether a firm wins the award. Only opportunities to compete are tracked, not awards.

As of Requirement 3, all firms but Company H and Company I have been a selected for an opportunity to compete. Therefore, these two firms will compete for Opportunity 4. Since all firms have now been given a chance to compete, the third firm for Requirement 4 will be selected at random from all remaining firms in the category. This starts the order of selection over.

Prior to determining who is in the pool of available firms, the system will verify sufficient contract ceiling is available to accommodate the IGE. If there is not, the firm will not be included in the pool even if they would otherwise be eligible. The firm will remain in the pool until a requirement with an IGE that can be accommodated by their remaining ceiling is solicited.

4.11.8.4 The CO shall develop and send the Request for Qualifications (“RFQ”) to the firms selected to compete for the TO. (See Section 4.2)

4.11.8.4.1 If less than three responses to a RFQ are received, the Contracting Officer may award the contract by noncompetitive procedures in accordance with 23 CFR 172.7(a)(3)(iii)(C).

4.11.8.4.2 The details of each A/E TO opportunity shall be publicized at <https://wiki.ddot.dc.gov/display/aeto>.

4.11.8.5 Qualifications will be evaluated and the Most Highly Qualified firm determined. (See Section 2.0)

4.11.8.6 The CO shall determine the appropriate TO type and payment method.

4.11.8.6.1 Appropriate TO types and definitions include:

- Project-specific: A contract between the District and consultant for the performance of services and defined scope of work related to a specific project.
- Multiphase: A project-specific contract where the solicited services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.
- On-Call: A contract for the performance of services for a number of projects, under work orders issued on an as-needed or on-call basis, for an established contract period.
- Or such other method as the CO may reasonably determine necessary in the circumstances.

4.11.8.6.2 Appropriate TO payment methods include:

- Lump Sum;
- Cost Plus Fixed Fee;
- Cost per Unit of Work; or
- Specified Rates of Compensation.

4.11.8.7 The CO will send a Request for TO Proposal (“RFTOP”) to the Most Highly Qualified firm.

4.11.8.7.1 The CO shall consider the additional items below in developing the RFTOP:

- Any specific insurance provisions (as applicable).
- If the offeror has a Home Office and Field Overhead (“OH”) rate, the CO shall require the offeror to specify which OH rate will be applied to each person along with a supporting justification.

4.11.8.8 Receipt and Review of Proposal

4.11.8.8.1 The contract specialist receives and reviews the proposal for acceptability under the RFTOP, and forwards the proposals to the TEP for technical evaluation.

4.11.8.8.2 OCP also reviews the proposal terms for compliance with the IDIQ contract, such as the rates being the same as (or better than) those used in the original Schedule award.

4.11.8.8.3 The CO/CS, with the assistance of the PM, will negotiate the TO level of effort and price utilizing 4.6.10 as guidance. (See 40 USC §1104)

4.11.8.8.4 Each firm’s IDIQ award contains negotiated rates for the individuals who the offeror expected to

work on a TO during the base period. If the contractor proposes any of these individuals on a TO, the negotiation is only applied to the level of effort as the labor rates have previously been determined fair and reasonable at Schedule (or previous TO) award.

4.11.8.9 If a fair and reasonable price cannot be negotiated, the District will initiate negotiations with the next highest ranked firm.

4.11.8.10 The CO will award the TO (or cancel if no agreement has been reached).

4.11.8.10.1 If the task order is locally-funded and for more than \$1 million, go to Chapter 6 of this Manual, Prepare and Process a Million Dollar Package; if federally-funded check to see if the matter was included in the Council-approved Plan of Contracts, or the task order is within a Council-approved contract ceiling).

4.11.8.10.2 If the task order is for less than \$1 million, go to Chapter 7 of this Manual, Making an Award for guidelines to issue the task order.

4.11.8.10.3 The TO solicitation number will follow the DCKA-2017-TR-XXXX (or subsequent) nomenclature. The TO solicitation number is converted to a contract number reflective of the IDIQ contract number and a three digit sequential order number. This will look similar to DCKA-17-T-0XXX-001 in the Award module. Where, DCKA-17-T-0XX is the firm's IDIQ contract number and 001 is the TO number.

4.11.9 Additional Discussions. Additional discussions beyond the solicitation of, and response to, a Request for Qualifications (RFQ), may be conducted with at least the top three highest ranking consultants for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. If discussions are held, each of these consultants must be afforded that opportunity. At the conclusion of the discussions, the submitted qualifications may be reevaluated based on the details outlined in the RFQ.

4.11.9.1 The need for additional discussions shall be based on the size and complexity of the requirement.

4.11.9.2 Discussions may be held via interviews, phone calls, or in-person (including online) meetings.

4.11.10 Additional details can be found in the A/E Schedule Desktop Guide (draft in development).

## **4.12 SPECIAL PROCEDURES AND CONSIDERATIONS FOR CONSTRUCTION CONTRACTING**

Generally, OCP and DDOT's objective is to issue all solicitations electronically, receive all bids electronically and to maintain all contracts, contract modifications, change orders, and contract records electronically with a hard copy kept in the OCP contract file. DDOT is no longer printing hardcopies of project plans and specifications for bidders. All contract documents and project plans are available on a DTAP website <https://dtap.ddot.dc.gov/>. Due to file size limitations, the OCP solicitation website cannot host the large file sizes of typical DDOT construction plans. DDOT's DTAP website will be used to share large files; however, the OCP website is the official District site for all solicitations. All solicitations and amendments shall be posted on OCP's website at <http://app.ocp.dc.gov/RUI/information/scf/SolNumRespond.asp>.

OCP's goal is to minimize the procurement lead-time of construction projects by ensuring the project team coordinates their activities as early as possible in the acquisition lifecycle. This goal is achieved through consistent communication, the use of solicitation templates, and by facilitating the completion of multiple



stakeholder processes simultaneously.

4.12.1 This procedure outlines the high-level steps and responsibilities of the DDOT Project Team and OCP to complete an electronic contract solicitation. This procedure is to be used in conjunction with the IFB Desktop Guide available on the DDOT intranet in the “Manuals SOPs” folder.

#### 4.12.2 Construction Project Initiation

4.12.2.1 The basis of most construction projects is the completion of a 100% design. In addition, the PM develops a cost estimate to implement the project, and any special provisions (See 4.12.2.2 bullet 4) applicable to the project. Combined, these three documents are known as the Plans, Specifications, and Estimate (“PS&E”) package. The PS&E package is required to submit a procurement request for a construction project and to receive federal funding.

4.12.2.2 Before the construction project is submitted for obligation, the PM submits a procurement request to OCP. A procurement request, for construction requirements, is initiated when the following major deliverables are received by OCP:

- Construction Plans: The finalized construction plans are approved by the DDOT Chief Engineer and will be incorporated into the construction contract.
- Scope of Work: Describes the work to be executed in accordance with the construction plans.
- Estimate in the form of an Estimator file(s): For fixed unit price contracts, the estimate contains the District’s pay item schedule (contract line items) and estimated pricing for all construction inputs required to implement the design.
- Special Provisions: Provisions, specific to the project, that supplement the DDOT Standard Specifications for Highways Structures (“Gold Book”) provisions. The Gold Book is incorporated into every construction project and represents the standard specification for all construction projects.
- DBE Goal (if federally funded): Federally funded construction projects may required a DBE subcontracting goal. This goal is obtained when the PM sends the project scope of work and estimate to the DDOT Office of Civil Rights (OCR). OCR assesses the DBE capacity, based on the estimated work by North American Industry Classification System (NAICS) code, and assigns a goal for the project.
- Training Requirement: Federally funded construction contracts may have a training requirement depending on the size, complexity, and type of construction work.
- Additional Data: The PM must submit the “DDOT FHAP Construction Procurement Information for OCP” form with the request. The above items are included or embedded in this documents. In addition, it contains the project title, project completion time, liquidated damages, road user fees, wage determination, and project specific definitions.

4.12.3 Upon receipt of the procurement request, the CO/CS will prepare the solicitation package of documents as instructed in the IFB Desktop Manual. The solicitation package includes the:

- Pay Item Schedule (EBSX file),
- IFB (utilizing a template),
- Section J, and
- Section K.

4.12.3.1 The solicitation shall comply with the following Federal-Aid requirements:

- 49 CFR Part 26 (Participation by Disadvantaged Business Enterprises);
- 23 CFR 230 (OJT training);
- 23 CFR 635 (Buy America, Non-Collusion, standardized changed conditions);
- 23 CFR 633 (FHWA 1273 form);
- 41 CFR 60 (EEO Clause, Notice of Affirmative Action, EEO Construction contract specifications);
- 29 CFR 1,3,5 (Prevailing Wage),
- 49 CFR 21.7 (a) (DOT Order 1050.2);
- 28 CFR 50.3 (Title IV, DOT Order 1050.2); and
- 40 USC Chapter 37 (Contract Work Hours and Safety Standards).

Additional compliance checklists can be found on the OCP shared drive at H:\Forms and Templates, and at <https://www.fhwa.dot.gov/construction/contracts/provisions.cfm>.

4.12.3.2 The CS provides all of the solicitation package documents, except for the EBSX file, to the PM in preparation for the request for obligation.

4.12.4 Construction Project Request for Obligation

4.12.4.1 The PM completes the project obligation process in ProTrack+. The PM secures funding before the funded procurement request package arrives at OCP.

4.12.5 Solicitation Request

4.12.5.1 Upon approval of the PS&E package including the solicitation by FHWA, the PM submits a Solicitation request in PTP. The PM will upload the approved documents into the request, and it is routed through Resource Management (RM) and OCFO for funds validation.

4.12.5.2 OCP receives the request in step 4 of the PTP routing, and updates the solicitation package to include any changes from the FHWA review.

4.12.5.3 Once the solicitation package is finalized, the CS prepares and publicizes the solicitation. See the IFB Desktop Guide for detailed instructions.

4.12.6 Receipt of Bids to Award

4.12.6.1 After the public bid opening (for construction IFBs), the CS will perform the following major tasks leading up to the award:

- Tabulate all bids using the AASHTO software;

***Important Note***

***All PS&E packages being routed to FHWA for federal obligation approval must contain a completed solicitation package that is ready to be published.***

- Assess the low bid for responsiveness;
- Determine who is the low, responsive, responsible bidder;
- As applicable, obtain all pre-award approvals for the low bidder (i.e. D&Fs, Apprenticeship Program, First Source, EEO, Subcontracting, etc.)
- Transmit notice of intent to all bidders;
- Enter award amount into PTP and route for revised funding approval based on low bid;
- Request the PM create a requisition (“RK”) in PASS for the award amount and ensure a Purchase Order (PO) is created from the RK;
- Create and distribute the conformed contract to low bidder for signature;
- Upon resolution of approvals, funding, and contract signature, the CO signs the contract and the CS distributes the fully executed copy to the contractor.

#### **4.13 SPECIAL CONSIDERATIONS FOR FEDERAL-AID GRANTS AND AGREEMENTS**

Assistance is defined as the transfer of an item of value to carry out a public purpose of support or stimulation authorized by a law of the United States. The District routinely receives assistance in the form of a grant or agreement to research, enhance, or carry out a public purpose within the District. Contracting Officers shall pay particular attention to the assistance agreement to ensure all terms and conditions are followed, and ensure the award and administration are performed in accordance with Office of Management and Budget (OMB) Circular A-102, OMB Circular A-133, and 2 CFR part 225.

##### **4.13.1 Federal-Aid Requirements**

- OMB Circular A-102 Grants and Cooperative Agreements with State and Local Governments
  - This Circular establishes consistency and uniformity among federal agencies in the management of grants and cooperative agreements with state, local, and federally-recognized Indian tribal governments.
- OMB Circular A-133 Audits of States, Local Governments, and Non-Profit Organizations
  - Sets forth the standards for obtaining consistency and uniformity among federal agencies for the audit of States, local governments, and non-profit organizations expending federal awards.
- 2 CFR 225 Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)
  - This part establishes principles and standards for determining costs for federal awards carried out through grants, cost reimbursement contracts, and other agreements with state and local governments and federally-recognized Indian tribal governments

##### **4.13.2 Types of assistance**

- Grant Agreement: The principal purpose of a grant is to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring something of value. Substantial involvement is not expected between the agency and the recipient.
- Cooperative Agreement: Same purpose as a Grant, but substantial involvement is expected between the agency and the recipient.

### 4.13.3 Substantial Involvement

Substantial involvement is the basis for the distinction between a grant and a cooperative agreement.

#### 4.13.3.1 Substantial involvement includes:

- Agency direct involvement in managing the effort;
- Agency review and approval before work can proceed; and
- Agency involvement in selecting personnel.

#### 4.13.3.2 Substantial involvement does not include:

- Agency approval of recipient submissions prior to award;
- Normal federal stewardship, such as site visits, program reviews, performance reporting, and financial reporting; and
- Unanticipated agency involvement to correct deficiencies.

## 5 CREATING AN EMERGENCY CONTRACT

### 5.1 REQUIREMENTS AND LIMITATIONS ON EMERGENCY CONTRACTS

5.1.1 An emergency contract may be appropriate when:

- When there is an imminent threat to the public health, welfare, property, or safety; or
- To prevent or minimize serious disruption in agency operations.

5.1.2 Competition: The contracting officer must conduct the emergency procurement with as much competition as is practicable under the circumstances, based on the judgment and determination of the contracting officer. (See 23 CFR 172.7(a)(3)(iii)(B))

5.1.3 Advertising: Emergency procurements are exempt from the advertising requirements of 27 DCMR §1301.

5.1.4 Term: The term of an emergency contract cannot exceed 90 days; however, if the time for development of the good or service exceeds 90 days, the term may be for a period not to exceed 120 days.

5.1.5 Type of Goods or Services: An emergency procurement should be limited to only those goods or services necessary to meet the emergency.

5.1.6 Modifications: 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 goods or services are needed to fill an on-going emergency requirement until regular procurement action procedures can be completed.

5.1.7 Determination & Findings: In order to use emergency procurement authority, the contracting officer must complete a D&F in accordance with the requirements of 27 DCMR §1702.2.

- Generally, the D&F to support the emergency must be prepared at the beginning of the process.
- The contract specialist initially prepares the D&F for the emergency procurement.
- The contract specialist then forwards the D&F to the contracting officer for review and approval. The contracting officer must ensure that the D&F contains all the required information and the emergency is justified.

### 5.2 PROCEDURES FOR CREATING AN EMERGENCY CONTRACT

The procedures for emergency procurements differ based on whether the need occurs during the agency's normal business hours.

5.2.1 During Normal Business Hours. During normal agency business hours, the program agency director shall notify the contracting officer of the emergency and shall provide the following information:

- The nature of the emergency;
- The estimated cost of the service or goods required;
- The vendor recommended to receive the order, or if sufficient time for limited competition, vendors capable of providing the goods or services; and
- A requisition submitted via PASS.

- 5.2.1.1 The requestor shall take special care in ensuring the emergency service is completed promptly and accurately. Any problems should be reported to the contracting officer promptly.
- 5.2.2 Outside of Normal Business Hours. If an emergency purchase must be made during other than normal business hours, the program requestor shall contact the agency director who in turn will contact the contracting officer or CPO.
- 5.2.2.1 The requestor shall take special care in ensuring the emergency service is completed promptly and accurately. Any problems should be reported to the contracting officer.
- 5.2.3 Oral Orders
- 5.2.3.1 Notwithstanding the above procedures, the contracting officer may issue oral orders or notices to proceed for emergency goods or services, so long as the contracting officer reduces the oral order to writing within three business days after issuance and funding for the goods or services is certified by the appropriate fiscal officer.

## 6 SECURING EXTERNAL AWARD APPROVALS FOR CERTAIN CONTRACTS

### 6.1 MILLION DOLLAR AND MULTIYEAR CONTRACT COUNCIL PACKAGES

All locally-funded contract actions exceeding \$1 million, and multiyear contracts funded with annual funds regardless of dollar amount, must receive approval from the Council of the District of Columbia. The procedures outlined below describe tasks for the following agencies to complete:

- OCP;
- Office of the Attorney General (OAG);
- Executive Office of the Mayor (EOM); and
- Office of Policy and Legislative Affairs.

#### 6.1.1 PLAN OF CONTRACTS

6.1.1.1 In accordance with the PPRA, Section 202(h), OCP will submit annually a capital program of FHWA aid projects (“Plan of Contracts”) for District Council approval. Council’s review and approval of the Plan of Contracts constitutes review and approval of the individual contracts that make up the annual capital program.

#### 6.1.2 COUNCIL PACKAGE TEMPLATES

6.1.2.1 The contracting officer shall select the appropriate Council Contract Summary template for the package from among the following templates:

- Standard
- Option Year Exercise (Without Material Change)
- Sole Source
- Letter Contract or Emergency
- Retroactive

6.1.2.2 The templates are included on the OCP intranet. The below chart provides guidance on the use of the templates for Council Packages:

Summary Template	Contract Types	Attachment
<b>Standard Contract</b>	<ul style="list-style-type: none"> <li>• Multiyear</li> <li>• Option Exercise where there are material changes</li> <li>• New contract with one-year base (10-day passive Council approval)</li> </ul>	<ul style="list-style-type: none"> <li>• Council Summary</li> <li>• Contract</li> <li>• Clean Hands Certification (dated within 90 days)</li> <li>• Legal Sufficiency</li> <li>• Funding Certification (dated within 90 days)</li> <li>• Legislation (as required)</li> <li>• Transmittal Letter</li> <li>• Agency Approval Request Form</li> </ul>

<p><b>Option Year Exercise (without material change)</b></p>	<ul style="list-style-type: none"> <li>• Option Year Exercises</li> </ul>	<ul style="list-style-type: none"> <li>• Council Summary</li> <li>• Transmittal Letter</li> <li>• Funding Certification (dated within 90 days)</li> <li>• Copy of modification that requires approval</li> <li>• Clean Hands Certification (dated within 90 days)</li> <li>• Agency Approval Request Form</li> </ul>
<p><b>Sole Source</b></p>	<ul style="list-style-type: none"> <li>• Sole Source Contracts</li> </ul>	<ul style="list-style-type: none"> <li>• Council Summary</li> <li>• Contract</li> <li>• Clean Hands Certification (dated within 90 days)</li> <li>• Legal Sufficiency</li> <li>• Funding Certification(dated within 90 days)</li> <li>• Legislation (as required)</li> <li>• Transmittal Letter</li> <li>• Agency Approval Request Form</li> </ul>
<p><b>Letter Contract or Emergency Contract</b></p>	<ul style="list-style-type: none"> <li>• Letter Contracts</li> <li>• Definitized contracts</li> <li>• Emergency Contracts</li> </ul>	<ul style="list-style-type: none"> <li>• Copy of letter contract</li> <li>• Copy of definitized contract</li> <li>• Council Summary</li> <li>• Clean Hands Certification (dated within 90 days)</li> <li>• Legal Sufficiency</li> <li>• Funding Certification (dated within 90 days)</li> <li>• Legislation (as required)</li> <li>• Agency Approval Request Form</li> </ul>
<p><b>Retroactive</b></p>	<ul style="list-style-type: none"> <li>• All retroactive contracts</li> </ul>	<ul style="list-style-type: none"> <li>• Contract</li> <li>• Council Summary</li> <li>• Legal Sufficiency</li> <li>• Legislation</li> <li>• Clean Hands certification (dated within 90 days)</li> <li>• Funding certification (dated within 90 days)</li> <li>• Transmittal Letter</li> <li>• Agency Approval Request Form</li> </ul>



### 6.1.3 COUNCIL SUBMISSION PROCESS

6.1.3.1 The contract specialist and contracting officer shall prepare a package in accordance with the following:

Official Council Package	Additional Documents For OAG Legal Sufficiency Review (Separate from Official Council Package)
<ol style="list-style-type: none"> <li>1. Memorandum to the Chief, Procurement Section, OAG, from the Chief Procurement Officer (do not date the memo; include a “DATE” line in the heading before the “SUBJECT” line)</li> <li>2. The Council Contract Summary</li> <li>3. Clean Hands Certification (dated within 90 days)</li> <li>4. Funding Certification</li> <li>5. Transmittal Letter to Council Chair</li> </ol>	<ol style="list-style-type: none"> <li>1. Business Clearance Memorandum and attachments/exhibits</li> <li>2. First Source Agreement</li> <li>3. Affirmative Action Program Approval</li> <li>4. If a new award:               <ul style="list-style-type: none"> <li>• Any incorporated documents and attachments to the proposed contract</li> <li>• Solicitation and amendments</li> </ul> </li> </ol>
<ol style="list-style-type: none"> <li>6. OAG Legal Sufficiency Memo</li> <li>7. Memo to the file responding to OAG Legal Sufficiency Memo (if needed)</li> <li>8. Legislation and Emergency Resolution (if the action is retroactive or multiyear)</li> <li>9. Proposed contract (signed by the contractor) and modification; or if it is a proposed option exercise, the proposed contract modification</li> </ol>	<ul style="list-style-type: none"> <li>• Newspaper advertisements</li> <li>• Proposal and Best and Final Offer of Proposed Awardee</li> <li>• Evaluation documentation</li> </ul> <ol style="list-style-type: none"> <li>5. If it is an option exercise:               <ul style="list-style-type: none"> <li>• Notice of Intent to Exercise Option</li> <li>• Copy of Option Clause in the contract</li> </ul> </li> <li>6. Excluded Parties List</li> <li>7. Responsibility Determination and Finding</li> <li>8. Any other relevant documents</li> </ol>
<p><b>Note: The Council <u>does not</u> return Contract Packages to OCP</b>  <b><u>Do not send any originals</u></b></p>	

6.1.3.2 The contracting officer must submit the package to the relevant Chief Contracting Officer (CCO) for review and approval prior to submitting the package to OCP for review and approval.

6.1.3.3 If approved, OCP submits the package to the Procurement Section of the Office of the Attorney General for a legal sufficiency review. However, if the package is an option exercise without any material changes, OCP submits the option package directly for entry into the Intranet Quorum (IQ) system. OCP will request the contracting officer or the contract specialist to provide soft copies of the documents in the Council Contract Package.

6.1.3.4 The steps for processing of the package and the timeframes are described in the following chart:

Official Council Package
<ul style="list-style-type: none"><li>• OCP approves the contract.</li><li>• OCP forwards the approved contract to the Procurement Section of the Office of the Attorney General for legal sufficiency review.</li><li>• The following documentation is submitted into the Intranet Quorum System (IQ System) that electronically delivers documentation to the Office of the City Administrator (OCA) and Mayor’s Office of Policy and Legislative Affairs (OPLA). A hard copy is also provided to the Mayor’s Office of Legislative Support:<ol style="list-style-type: none"><li>1. Agency Approval Request Form</li><li>2. Council Contract Summary</li><li>3. Transmittal letter to Council Chair</li><li>4. Funding certification</li><li>5. OAG legal sufficiency memo</li><li>6. Clean Hands Certification (dated within 90 days)</li><li>7. Multiyear contracts, tipping contracts, and retroactive approvals require legislation; 10-day passive approval contracts do not require legislation.</li></ol></li><li>• The IQ approval process takes 10 business days.</li><li>• The Office of the General Counsel, Office of the Senior Advisor, the relevant Deputy Mayor, Office of Policy and Legislative Affairs, and the Office of the City Administrator all conduct simultaneous reviews.</li><li>• The Mayor’s Chief of Staff has final approval before OPLA reviews and prepares the package for submission to the Office of the Secretary for the Mayor’s signature.</li><li>• Once the Mayor signs the package, OPLA physically delivers the contract package to the Secretary of the Council (generally on the same day). The Council Secretary’s office will time stamp the contract immediately once it is received and then will take 24 to 48 hours to review, log, copy, and circulate to the Members. This process takes longer if there is legislation in the package.</li><li>• 10-day passive approval contracts will get logged and begin the 10-day period on the next business day.</li><li>• The Council approves or disapproves the contract as follows:<ul style="list-style-type: none"><li>○ <i>For Multiyear Contracts</i>— A proposed multiyear contract funded with annual appropriations is deemed disapproved unless the Council adopts a resolution approving the multiyear contract within forty-five (45) business days of receipt by the Secretary of the Council.</li><li>○ <i>For Contracts in Excess of One Million Dollars</i>— A proposed contract with a value of one million dollars or greater in a 12-month period is deemed approved</li></ul></li></ul>

on the 10th calendar day of review if no notice to disapprove resolution is introduced during those ten (10) days. If a notice to disapprove resolution is introduced, this extends the review period from ten (10) to forty-five (45) calendar days. On the forty-fifth (45th) day of review, the contract is deemed approved if Council has not acted on the disapproval resolution.

- The approval or disapproval letter is prepared by the Council’s Office of the Legislative Services.
- The status of the Council’s actions is available on the Legislative Information Management System (LIMS). The deemed approved date will be posted on LIMS once the contract is uploaded. If a disapproval resolution is filed on a contract, the disapproval resolution and 45 day deemed approved date will be posted as well.

### 6.1.3.5 Active versus Passive Council Approval

The Council Contract Approval Requirements in the below chart, describes each type of proposed contract action and whether the action requires passive or active approval by the Council. Active Council approval only occurs at a Council legislative session.

Proposed Contract Action	Active or Passive	Act or Resolution	Deemed Approved or Disapproved; or Enacted	2/3 Vote Required
Base contract over \$1 million approved by Council and subsequent mod(s) plus proposed mod cause change in contract greater than \$1 million	Active	Act	Enacted	No
Capital-funded contract over \$1 million with term up to 5 years	Passive	n/a	10 days – deemed approved or 45-days with resolution	No
Capital-funded contract over \$1 million with a term of more than 5 years	Active	Yes	Enacted	Yes
Proposed Contract Action	Active or Passive	Legislation	Deemed Approved or Disapproved; or Enacted	2/3 Vote Required
Base 1 Year Contract over \$1 million	Passive	No	10 days – deemed approved or 45-days if notice of disapproval resolution is filed	No

Exercise 1 year option over \$1 million	Passive	No	10 days – deemed approved or 45-days if notice of disapproval resolution is filed	No
Exercise remaining option after partial exercise of option	Active	Yes	Enacted	No
Base 1 year Contract with prior Letter Contract	Passive	No	10 days – deemed approved or 45 days if notice of disapproval resolution is filed	No
Multiyear contract only funded w/ annual funds	Active	Yes	45 days - deemed disapproved unless notice of disapproval resolution is filed	No
Multiyear contract with prior Letter Contract	Active	Yes	Enacted	No
Base contract over \$1 million already approved by Council and proposed mod exceeds \$1million (no intervening modifications have increased contract value)	Passive	n/a	10 days – deemed approved or 45 days if notice of disapproval resolution is filed	No

## 6.2 FHWA PROJECTS OF DIVISION INTEREST (PoDI)

- 6.2.1 To the maximum extent practicable, the CO should take steps to involve FHWA throughout the acquisition process for PoDI projects to ensure a smooth transition through the acquisition phases (Reference Section 3 of this Procurement Manual).
- 6.2.2 Prior to the award of any construction contract for a FHWA PoDI, the CO shall notify and obtain FHWA concurrence prior to executing the award. Once approved, the CO may award the contract.

## **7 MAKING AN AWARD**

### **7.1 PROCUREMENTS UNDER THE SMALL PURCHASE THRESHOLD**

7.1.1 If the procurement is under the small purchase threshold, a Purchase Order (PO) is automatically generated when the contracting officer approves the requisition in PASS. PASS will automatically transmit the PO to the supplier, unless the contractor is set-up to receive POs via mail, in which case the contract specialist should mail a copy to the supplier.

### **7.2 PROCUREMENTS OVER THE SMALL PURCHASE THRESHOLD**

7.2.1 If the procurement is over the small purchase threshold, the contracting officer executes the contract in addition to the PO (which serves as a funding document only), and the contract specialist:

7.2.1.1 Distributes copies of the executed contract and PO to the successful offeror or bidder;

7.2.1.2 Attaches a copy of the contract to the PO in PASS so that the OCFO and the agency have access to a copy of the contract; and

7.2.1.3 Prepares and sends notice of award to successful party and notice of non-award to unsuccessful parties.

7.2.2 The contracting officer must publish all contracts in the Contracts Module of PASS, regardless of whether the procurement was conducted using the E-Sourcing Module. Notice of award for all procurements over \$100,000 and the contract itself must be posted on the OCP website.

7.2.3 The CS shall prepare materials related to the award for the CO to debrief unsuccessful offerors.

7.2.4 Contract files should be arranged in accordance with the prescribed guidelines for contract file preparation guidelines as described in Chapter 10 of this Manual.

## 8 PROTESTS, DEBARMENTS & SUSPENSIONS

### 8.1 THE CONTRACT APPEALS BOARD (CAB) AND ITS JURISDICTION

The CAB is an independent agency created pursuant to the Procurement Practices Reform Act of 2010 (PPRA), D.C. Official Code § 2-360.08 et seq. to provide an impartial, expeditious, inexpensive, and knowledgeable forum for hearing and resolving contractual disputes and protests involving the District and its contracting communities. The CAB is composed of a Chief Administrative Judge and two Associate Administrative Judges, all of whom are appointed to four-year terms by the Mayor subject to confirmation by the Council. In FY16, twenty-nine new protests and four new disputes cases were filed with the CAB.

Under D.C. Official Code §§ 2-221.04(a)(1), 2-359.07(f), and 2-360.03(a), the CAB has the exclusive jurisdiction over the following matters, which it reviews de novo (i.e., without deference to previous legal conclusions):

- 8.1.1 Protests of a Solicitation or Award – any protest of a solicitation or award of a contract addressed to the Board by any actual or prospective bidder or offeror, or the contractor who is aggrieved in connection with the solicitation or award of a contract;
- 8.1.2 Appeal of a Contracting Officer’s Final Decision – Any appeal by a contractor from a final decision by the contracting officer on a claim by a contractor, when such claim arises under or relates to a contract (including appeals of a contracting officer’s decision regarding interest penalties under the Quick Payment Act);
- 8.1.3 Claims by the District – any claim by the District against a contractor, when such claim arises under or relates to a contract;
- 8.1.4 Appeals of Debarments and Suspensions – any appeal by a contractor of a debarment or suspension action taken by the CPO; and

### 8.2 MANAGING A PROTEST

#### 8.2.1 Basis of a Protest

The primary type of case considered by the CAB is a “protest,” defined as “[a] written objection by an aggrieved party to a solicitation for bids or proposals or a written objection to a proposed or actual contract award. [a] written objection to a solicitation or award.” 27 DCMR §100.2(n). In order to have standing to file a protest with the CAB, a person must be “aggrieved” in connection with the issuance of a solicitation or the award of a contract may. An “aggrieved person” is defined under CAB Rule 100.2(a), 27 DCMR §100.2(a), as:

*An actual or prospective bidder or offeror:*

- (i) whose direct economic interest would be affected by the award of a contract or by the failure to award a contract, or*
- (ii) who is aggrieved in connection with the solicitation of a contract.*

- 8.2.2 A protest may be filed based upon alleged improprieties in the solicitation or other request by an agency for offers for a contract for a procurement that were apparent prior to bid opening or at the time set for receipt of initial proposals. A protest may also be filed on other issues surrounding the solicitation or

solicitation process, such as the cancellation of the solicitation or other request.

- 8.2.3 A protest may also allege an impropriety in the award or proposed award of a contract. For instance, a protest may rest on, among other things, allegations of improper evaluation of offers, or the improper termination or cancellation of an award.

### **8.3 FILING TIMELINE**

- 8.3.1 A protest based on issues regarding the solicitation must be filed with the CAB prior to bid opening or by the date set for receipt of proposals. For a protest based on other issues, the protest must be filed with the CAB within 10 business days after the basis of the protest is known or should have been known, whichever is earlier. A protest must be filed with the CAB and served on the contracting officer.

### **8.4 NOTICE**

- 8.4.1 The CAB sends formal notice that a protest has been filed to the OAG Procurement Section and the contracting officer. If the aggrieved party sends the protest to the contracting officer only, it is considered a misdirected protest and the contracting officer must forward the protest to the CAB within 1 business day after its receipt.
- 8.4.2 In the case of a protest alleging solicitation improprieties, the contracting officer must give immediate notice of the protest to prospective bidders or offerors who can reasonably be ascertained.
- 8.4.3 In protests other than those alleging solicitation improprieties, if a contract has not been awarded, the contracting officer must give immediate notice of the protest to all bidders or offerors who appear to have a reasonable prospect of receiving an award. If a contract has been awarded, the CO must give immediate notice of the protest to the contract awardee and all other bidders or offerors who appear to have a reasonable prospect of receiving an award if the protest is sustained.

### **8.5 AUTOMATIC STAY OF THE PROCUREMENT**

- 8.5.1 Automatic Stay. Once the CO receives formal notice that a protest has been filed, the CO is prohibited from awarding that contract while the protest is pending. This is called an “automatic stay.” If the contract has already been awarded and the CO receives notice of the protest within eleven (11) business days after contract award, the CO must send a written notice to the contractor to stop performance under the contract while the protest is pending.
- 8.5.2 Proceeding while a Protest is Pending. The only way a contract can be awarded despite a protest being filed is if the CPO makes a determination, supported by substantial evidence that the contract award may proceed due to the compelling and urgent nature of circumstances that significantly affect the District’s interests and will not permit waiting for the CAB’s decision. Under this scenario, the CO prepares a D&F to Proceed While the Protest is pending, secures appropriate signatures, and provides a copy to the OAG Procurement Section attorney assigned to the protest within 1 business day after its issuance. The attorney will file the D&F with the CAB.
- 8.5.3 Challenge to D&F. The protester may challenge this D&F before the CAB within five (5) business days of receipt of a copy of the CPO's determination. The District shall file a written response with the Board (with same day service on the protester) within two (2) business days of receipt of the protester's motion. The protester may file a reply within one (1) business day of receipt of the District's response. The

Board shall issue a decision on the protester's motion within ten (10) business days after the date the written motion is filed by the protester.

## 8.6 THE PROTEST ADJUDICATION PROCESS

The OAG will provide the CO with written instructions of responsibilities during the protest process. It is important to maintain all documentation related to the protest and to work with the OAG attorney assigned to the protest.

8.6.1 The CAB's adjudication of a protest consists of the following components:

8.6.1.1 Motions. OAG may file various motions to have the protest dismissed. OAG will provide copies of those documents to the protester and all interested parties. Those parties have 7 days after receipt of a motion to file comments with the CAB. If a dispositive motion is denied by the CAB, OAG will then file the Agency Report.

8.6.1.2 Agency Report. After consultation with the contracting officer, contract specialist, and program personnel, the OAG files an Agency Report with the CAB, usually within 20 business days after receipt of the CAB acknowledgement of the protest. OAG may request a time extension for filing the agency report. The Agency Report consists of the following:

### ***KEEP ALL DOCUMENTS!***

*The CAB may treat any factual allegations as conceded if the District fails to file an Agency Report or does not challenge a factual allegation.*

- The procurement solicitation;
- The bid or proposal submitted by the protester;
- The bid or proposal which is being considered for award, or which has resulted in an award, if any;
- Bid tabulation sheets or proposal selection reports and evaluation reports, work papers, and scoring sheets;
- The contracting agency position and defense for each ground of the protest, including the facts, legal principles, and precedents supporting its position; and
- Any other documents and exhibits that are relevant to the protest.

8.6.1.3 Discovery. The CAB may grant any party discovery. The CAB also has subpoena power.

8.6.1.4 Conference. The CAB may order a conference on the protest. The purpose of this conference is to clarify or seek agreement on various issues so that the CAB can proceed with making a decision.

8.6.1.5 Evidentiary Hearing. The CAB may order an evidentiary hearing if the CAB determines that the protest cannot be decided on the written record. The contracting officer or contracting agency staff may be asked to attend, testify under oath, and provide additional documents. At the conclusion of the hearing the CAB may order or permit additional filings.

8.6.1.6 Decision. The CAB issues a written decision of the protest to the parties within 60 business days from



the date on which the protest was filed. If the CAB sustains a contractor's protest, it can order the District to take remedial action such as:

- Terminate the contract for convenience;
- Refrain from exercising any options under the contract;
- Re-compete the contract;
- Issue a new solicitation; or
- Award a contract consistent with the law and regulations.

8.6.1.7 Motion for Reconsideration. All parties may file a motion for reconsideration with the CAB. This motion must be filed within 15 business days after receipt of the CAB's decision and a motion in opposition to reconsideration must be filed within 7 business days. Should this motion be denied, OCP or the protester may appeal a decision of the CAB to the D.C. Superior Court pursuant to D.C. Official Code §2- 360.05(a); 27 DCMR §312.

## **8.7 DEBARMENT, SUSPENSION & INELIGIBILITY**

For both locally-funded and federal-aid projects, Contracting Officers may not solicit proposals from, award contracts to, or consent to subcontracts with debarred, suspended, or ineligible persons. A "person" is any business, individual, corporation, partnership, association, or legal entity, however organized. (See 2 CFR 200.212, 2 CFR Part 180, and 2 CFR Part 1200)

Contracting officers and other District agencies are obligated to obtain and review the OCP and GSA Excluded Parties Lists before making a contract award in order to exclude debarred or suspended entities or persons from performing any part of a District contract.

### 8.7.1 Excluded Parties Lists

8.7.1.1 District Excluded Parties List. The CPO will establish, maintain, and post on OCP's web site a list of persons debarred or suspended by OCP.

8.7.1.2 GSA Excluded Parties List. The General Services Administration (GSA) compiles and maintains a consolidated list of all persons and entities debarred, suspended, proposed for debarment, or declared ineligible by federal agencies or the [Government Accountability Office](#).

8.7.1.3 Effect of Exclusion. Persons on the OCP or GSA list are excluded from receiving contracts and subcontracts with District contractors, and contracting officers may not solicit proposals or quotations from, award contracts to, or, when a contract provides for such consent, consent to subcontracts with such persons, unless the CPO determines that there is a compelling reason for the award. Persons on the OCP or GSA list may not provide goods or services to the District government.

8.7.1.3.1 The debarment, suspension, or ineligibility of a person does not, of itself, affect the rights and obligations of the parties to any valid, pre-existing contract. OCP may terminate for default a contract with a contractor that is debarred, suspended, or determined to be ineligible. Contracting officers may not add new work to the contract by supplemental agreement, by exercise of an option, or otherwise, except with the approval of the CPO.

## 8.7.2 Causes for Debarment

8.7.2.1 The CPO may debar a person, including its affiliates, for cause such as:

8.7.2.1.1 A conviction for the commission of a criminal offense incident to obtaining, or attempting to obtain, a public or private contract or subcontract or in the performance of the contract or subcontract;

8.7.2.1.2 A conviction under the PPRA or under any other District, federal, or state law for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity which currently affects the contractor's responsibility as a District government contractor;

8.7.2.1.3 A conviction under District, federal, or state antitrust laws arising out of the submission of bids or proposals;

8.7.2.1.4 A judicial determination of a violation of D.C. Official Code §§ 2-381.01-.09;

8.7.2.1.5 A false assertion of certified business enterprise status or eligibility;

8.7.2.1.6 A violation of contract provisions of a character sufficiently serious to justify debarment action, including:

8.7.2.1.7 Willful failure, without good cause, to perform in accordance with the specifications or within the time limit provided in the contract; or

8.7.2.1.8 A history record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be the basis for debarment.

8.7.2.1.9 A violation of D.C. Official Code §32-1331.01 et seq.;

8.7.2.1.10 Submission of a bid or proposal to contract with the District by a person debarred or suspended pursuant to a conviction described in sections (a)–(c) of this subsection;

8.7.2.1.11 Willful failure to cooperate in a Council or Council committee investigation;

8.7.2.1.12 Willful failure to cooperate in a District of Columbia Auditor audit or to produce books or records pursuant to an audit;

8.7.2.1.13 Willful failure to cooperate in an Inspector General audit, inspection or investigation, or to produce books or records pursuant to an audit, inspection or investigation;

8.7.2.1.14 Any other cause of a serious or compelling nature that affects the present responsibility of the contractor or subcontractor, or

8.7.2.1.15 A cause set forth in other applicable statutes, regulations, or final decision.

8.7.2.2 Anyone, including OCP employees, should report to the CPO all information that they believe would be a cause for debarment of a District contractor.

## 8.7.3 Imputing Conduct to Affiliates

8.7.3.1 The criminal, fraudulent, or improper conduct of an individual may be imputed to the firm with which

he or she was connected when an impropriety was committed. Likewise, when a firm is involved in criminal, fraudulent, or other improper conduct, any person who participated in, knew of, or had reason to know of the impropriety may be debarred.

8.7.3.2 The fraudulent, criminal or other improper conduct of one person participating in a joint venture or similar arrangement may be imputed to other participating persons if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of the person. Acceptance of the benefits derived from the conduct will be evidence of such knowledge, approval, or acquiescence.

#### 8.7.4 Mitigating Factors

8.7.4.1 The existence of any cause for debarment does not necessarily require that a person be debarred. The decision to debar is within the discretion of the CPO, and must be made in the best interest of the District. The existence or nonexistence of mitigating factors or remedial measures is not determinative whether or not a person should be debarred. If a cause for debarment exists, the person possesses the burden to demonstrate, to the satisfaction of the CPO, that debarment is not warranted or necessary.

#### 8.7.5 Debarment Procedures

8.7.5.1 The CPO initiates debarment proceedings by notifying the person and any affiliates by certified mail, return receipt requested, of the following:

- Reasons for the proposed debarment in sufficient detail to put the person on notice of the conduct or transaction(s) upon which the proposed debarment is based;
- Cause(s) for the proposed debarment;
- The person may submit information or written facts in opposition to the proposed debarment within fifteen (15) calendar days;
- The District's procedures governing debarment decision-making;
- The effect of the proposed debarment;
- That a fact-finding proceeding may be conducted; and
- That the District will not solicit offers from, award contracts to renew, extend contracts with, or consent to subcontracts with the person pending a debarment decision.

#### 8.7.6 Debarment Decision

8.7.6.1 The CPO shall issue a written decision whether or not to debar the person. A debarment decision shall:

- State the relevant facts and the reasons for the action taken;
- Describe the present responsibility of the person;
- Describe whether the debarment is in the best interest of the District;
- State the period of debarment, including effective dates;
- Inform the debarred person of its rights to judicial or administrative review and applicable District statutes; and

- Be sent to the person via certified email or delivered in person with receipt return requested.

#### 8.7.7 Period of Debarment

8.7.7.1 A debarment shall not be for a period of more than 5 years. However, a person that has been debarred twice by the District may be banned permanently from contracting with the District.

#### 8.7.8 Causes for Suspension

8.7.8.1 The CPO may suspend any person, including any of its affiliates:

- For any of the causes listed in 8.7.2.1.1-8.7.2.7, 8.7.2.12, and 8.7.2.13 above; and
- If the person is charged with the commission of an offense described in 8.7.2.1.1-8.7.2.7, 8.7.2.12, and 8.7.2.13.

#### 8.7.9 Period of Suspension

8.7.9.1 Suspension shall be for a temporary period pending the completion of an investigation and any resulting judicial or administrative proceeding, unless terminated sooner by the CPO. If judicial or administrative proceedings are not initiated within one year after the date of the suspension notice, the suspension shall be terminated unless the CPO determines that it is in the best interest of the District to extend the suspension, in which case it may be extended for not more than an additional 6 months.

#### 8.7.10 Procedural Requirements for Suspension

8.7.10.1 The CPO will follow the same procedure as described in sections 8.7.5 and 8.7.6.

#### 8.7.11 Appeals to the CAB

8.7.11.1 The decision of the CPO shall be final and conclusive, unless fraudulent, or unless the debarred or suspended person appeals to the CAB within 60 days of receipt of the CPO's decision.

### **8.8 OTHER TYPES OF DISPUTES**

#### 8.8.1 Claims against the District

8.8.1.1 All claims by a contractor against the District government arising under or relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision, which must be made in writing within 120 days of receipt of the claim. Failure to issue a decision on a contract claim within the required time period shall be deemed to be a denial of the claim. A contracting officer's written decision must do the following:

- Provide a description of the claim or dispute;
- Refer to the pertinent contract terms;
- State the factual areas of agreement and disagreement; and
- State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding.

8.8.1.2 The CAB has jurisdiction to hear any appeal by a contractor from a final decision by a contracting officer on a claim by a contractor (including claims under the Quick Payment Act), when such claim arises under or relates to a contract, such as claims for equitable adjustment due to unreasonable delay of work by the District. A contractor must file an appeal of a contracting officer's final decision within 90 days

## 8.8.2 Claims by the District

8.8.2.1 All claims by the District against a contractor arising under or relating to a contract shall be decided by the contracting officer in writing, and set forth:

- The description of the claim or dispute;
- The pertinent contract terms;
- The reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
- The factual areas of agreement and disagreement;
- Notice that the written document is the contracting officer's final decision; and
- The contractor of the right to seek review by the CAB.

8.8.2.2 The CAB has jurisdiction to hear any appeal by a contractor from a final decision by a contracting officer on a claim against the contractor filed by the District, when such claim arises under or relates to a contract. The appeal must be filed with the CAB within 90 days of the decision.

## 9 CONTRACT ADMINISTRATION

This section outlines the following procurement actions:

- Managing a Contract
- Paying the Vendor
- e-Val General Instructions
- Authorizing Payment for Goods and Services Received without a Valid Written Contract
- Executing Unilateral Contract Modifications
- Executing Bilateral Modifications – Extension of Completion Date
- Executing Bilateral Modifications – Revise Scope or Other Terms
- Executing Change Orders
- Exercising an Option.
- Auditing and Acceptance of Consultant Indirect Costs



### 9.1 ROLES AND RESPONSIBILITIES

Contracting Officer	Agency Staff
Keep Informed of Performance	Monitor and Evaluate Performance
Audit Invoice Approvals	Review and Approve Invoices
Negotiate and Process Modifications	Recommend Modifications
Exercise Options	Recommend Option Exercises
Assist with Resolving Conflicts	Discuss and Document Conflicts
Closeout	Assist with Closeout

### 9.2 APPOINTING THE CONTRACT ADMINISTRATOR

9.2.1 The contracting officer shall appoint a contract administrator for every contract that exceeds \$100,000. The contracting officer must ensure that:

- The proposed contract administrator is a District employee; and

- The proposed contract administrator has successfully completed the contract administrator training or is scheduled to complete the training within 60 days of contract award.

9.2.2 The contract administrator is the DDOT employee with primary responsibility for monitoring the performance of the contractor during the period of performance. (See 23 CFR § 172.7(b)(5)) However, it is critical that the contracting officer and contract specialist be apprised of all developments, copied on status reports, and invited to key meetings as OCP plays a more active role to ensure work is adequately performed and that prime contractors are appropriately using subcontractors and meeting utilization goals. The contracting officer may delegate to the contract administrator the following aspects of contract administration:

- Drafting a clear and concise statement of work;
- Providing recommendations regarding suspension or disapproval of costs;
- Approving or rejecting contractor invoices;
- Reviewing, approving, or rejecting a contractor’s requests for progress payments or performance-based payment;
- Taking action to recover overpayments from the contractor;
- Providing production support, oversight, and status reporting, including timely reporting of potential and actual slippages in contract delivery schedules;
- Advising the contracting officer of any actual or potential labor disputes;
- Ensuring contractor compliance with contractual quality assurance requirements;
- Ensuring contractor compliance with contractual safety requirements;
- Performing surveillance to assess compliance with contractual terms for schedule, cost, and technical performance in the areas of design, development and production;
- Reporting to the contracting officer any inadequacies noted in the specifications;
- Ensuring timely submission of required reports;
- Monitoring contractor compliance with specifications or other contractual requirements; and
- Preparing evaluations of contractor performance.

9.2.3 Specific instructions will be provided by the CO in the CA Delegation Letter. Note that a contract administrator may not be delegated the responsibility to issue directives to a contractor that alter or modify the terms, conditions, or pricing as agreed to in the contract areas the contract.

9.2.4 Once selected, the contract specialist is responsible for preparing the contract administrator’s appointment letter for the CO’s signature.

### **9.3 PROGRAM KICK-OFF CONFERENCE**

9.3.1 The CO should meet with the proposed contract administrator to discuss CA responsibilities. Once a CO is confident that the proposed contract administrator understands duties and responsibilities, the CO can present the appointment letter for CA signature.

9.3.1.1 Agenda. The CS and CO will work with the CA to prepare the agenda for the kick-off conference, which shall include the following items:

- Roles and responsibilities;
- Review of Scope of Work (SOW) or specifications;
- Work plan or project schedule;

- Reporting requirements;
- Guidelines for submitting invoices;
- Channels of communication; and
- Contact information for key personnel in the program agency, OCP, the vendor and other relevant stakeholders.

9.3.1.2 Participants. The kick-off conference shall include the vendor, the CO, CS, CA, and other agency or District personnel as the CO may deem appropriate.

#### **9.4 CONTRACT ADMINISTRATOR RESPONSIBILITIES**

9.4.1 The contract administrator has the primary responsibility to monitor contractor performance during the period of performance. (See 23 CFR § 172.7(b)(5)) However, it is critical that the CO and CS be apprised of all developments, copied on status reports, and invited to key meetings as OCP plays a more active role to ensure work is adequately performed and that prime contractors are appropriately using subcontractors and meeting utilization goals. The CO may delegate to the CA the following aspects of contract administration:

- Drafting a clear and concise statement of work;
- Providing recommendations regarding suspension or disapproval of costs;
- Approving or rejecting contractor invoices;
- Reviewing, approving, or rejecting a contractor's requests for progress payments or performance-based payment;
- Taking action to recover overpayments from the contractor;
- Providing production support, oversight, and status reporting, including timely reporting of potential and actual slippages in contract delivery schedules;
- Advising the CO of any actual or potential labor disputes;
- Ensuring contractor compliance with contractual quality assurance requirements;
- Ensuring contractor compliance with contractual safety requirements;
- Performing surveillance to assess compliance with contractual terms for schedule, cost, and technical performance in the areas of design, development and production;
- Reporting to the CO any inadequacies noted in the specifications;
- Ensuring timely submission of required reports;
- Monitoring contractor compliance with specifications or other contractual requirements; and
- Preparing evaluations of vendor performance.

9.4.2 Specific instructions regarding this work should be provided by the CO. A contract administrator may not be delegated the responsibility to issue directives to a contractor that alter or modify the terms,



conditions, or pricing as agreed to in the contract areas the contract.

## **9.5 INVOICE OVERSIGHT AND APPROVAL**

9.5.1 After the notice to proceed has been issued, work may begin on the contract. Progress payments will be made according to the terms of the contract. A contractor must submit an acceptable invoice to the DDOT to receive payment.

9.5.2 Details on specific requirements for each type of contract payment method are included below. PMs are responsible for ensuring contractors are aware of the requirements. All invoices must include a signed statement by a Principal Officer of the firm, certifying that all charges are true and accurate and in accordance with the contract.

### **9.5.3 Invoicing Based on Compensation Method**

#### **9.5.3.1 Lump Sum Contracts**

- 1) Partial invoicing allowed based on terms of the contract (e.g., total percent of each contract task completed to date, milestones completed);
- 2) Show amount paid to date;
- 3) Show amount paid per task or work for the current invoice period; and
- 4) No contingency is allowed on lump sum contracts.

Note: The basis for progress payments on lump sum contracts must be specified in the contract. PMs should ensure progress payments are appropriate under the terms of the contract.

#### **9.5.3.2 Cost Plus Fixed Fee Contracts**

- 1) A completed invoice with separate section for each contingency when used;
- 2) A cost summary which includes the following:
  - a) Billing period
  - b) Total labor costs
  - c) Indirect cost and fixed fee
  - d) Total direct cost with breakdown
  - e) Cost per subconsultant
- 3) A person-hour summary report (employee name, classification, rate, # of hours);
- 4) Direct expense break down; and
- 5) Status as specified by the PM.

#### **9.5.3.3 Unit Cost Contracts**

- 1) A completed standard invoice;
- 2) Total units completed to date; and
- 3) Total units completed during current billing cycle.

#### **9.5.3.4 Specific Rate of Compensation Contracts**

- 1) Completed standard invoice;
- 2) Total man-hours completed to date per category;
- 3) Total man-hours completed per category for the billing cycle; and
- 4) Direct expense for the billing cycle.

### **9.5.4 Invoice Review**

9.5.4.1 The CA shall review invoices in accordance with their delegated duties. A CA delegation letter shall

be on file for all PMs.

9.5.4.2 The CA will review the invoice to ensure costs billed are appropriate for work accomplished during the billing period. The CA will ensure the billing is in reasonable compliance with the contract and other written authorizations and in accordance with contract documents.

9.5.4.3 If any errors are discovered that would prevent payment, the CA should contact the contractor immediately. The contractor should correct the errors and submit a revised invoice.

9.5.4.4 Once the invoice is deemed acceptable, the PM initiates a DDOT pay request. The PM recommends payment and a higher-level supervisor will approve.

#### 9.5.5 Final Payment

9.5.5.1 The final payment shall not be made until the last fiscal year of period of performance has been adjudicated.

9.5.5.2 The CO will use a risk-based approach to select projects for final audit. Criteria used in the risk assessment will include: dollar amount of contract, type of contract and experience with the contractor to include known problems or concerns about the firms performing work on the contract. If a final audit will not be performed, the DDOT/OCFO Assurance and Compliance Division (“DOACD”) will notify the CO that the final invoice can be approved. For contracts selected for a final audit, the audit report will be provided to the CO. The CO will take appropriate action based on the final audit report. Once final payment has been made or the required refund is received, the contract may be closed.

## 9.6 PERFORMANCE MONITORING AND EVALUATIONS

### 9.6.1 Use of Consultants

9.6.2 The District may utilize the A/E Schedule to perform non-inherently governmental functions related to the inspection, engineering, and management of study, design, engineer of record, and construction projects. (See 23 CFR § 172.9(d))

9.6.3 The PM may use the information collected from the consultant in combination with other sources in executing those duties delegated in the CA delegation letter.

### 9.6.4 PM Responsibilities

9.6.5 The PM shall prepare an evaluation summarizing the consultant's performance on a contract. The performance evaluation should include, but not be limited to, an assessment of the timely completion of work, adherence to contract scope and budget, and quality of the work conducted. The PM shall provide the consultant a copy of the performance evaluation and an opportunity to provide written comments to be attached to the evaluation. The PM should prepare additional interim performance evaluations based on the scope, complexity, and size of the contract as a means to provide feedback, foster communication, and achieve desired changes or improvements. Completed performance evaluations should be archived for consideration as an element of past performance in the future evaluation of the consultant to provide similar services.

9.6.6 The PM is responsible for completion of the Semi-Annual Consultant Performance Evaluation (CPE)

Report. The purpose is to provide feedback to the consultants and to address corrective measures or actions associated with a project if necessary.

- 9.6.7 PMs evaluate consultants on April 1st and October 1st each year and at the completion of a contract. The PM will evaluate and discuss interim contract performance with the consultant and submit the performance evaluation to the CO. All performance evaluations and the summary evaluation report will be noted “Confidential” and are not to be shared with any firm except for the individual performance evaluation for that particular firm. The CO will provide a semi-annual summary performance evaluation report to interested government parties upon request.
- 9.6.8 The PM in coordination with the CO will make a recommendation for corrective action for any consultant with unacceptable performance in any of the performance criteria. This recommendation will be included in the semi-annual report.
- 9.6.9 As noted in a solicitation, the CO will provide each Technical Evaluation Panel a complete performance evaluation summary for those consultants responding to specific solicitations. Upon substantial completion of a project, the PM will conduct a final performance evaluation with the consultant and prepare and submit a final performance evaluation report to the CO.

## **9.7 CONSULTANT SERVICES IN MANAGEMENT SUPPORT ROLE**

### **9.7.1 FHWA Approval of consultant services for management support roles:**

When FAHP funds participate in a consultant services contract, DDOT shall receive approval from FHWA before utilizing a consultant to act in a management support role for the DDOT. Use of consultants in management support roles does not relieve the DDOT of responsibilities associated with the use of FAHP funds (See 23 U.S.C. 302(a) and 23 U.S.C. 106(g)(4)), and should be limited to large projects or circumstances where unusual cost or time constraints exist, unique technical or managerial expertise is required, and/or an increase in DDOT staff is not a viable option.

#### **9.7.1.1 Management support roles may include, but are not limited to:**

Providing oversight of an element of a highway program, function, or service on behalf of DDOT or may involve managing or providing oversight of a project, series of projects, or the work of other consultants and consultants on behalf of DDOT.

#### **9.7.1.2 Conflicts of Interest with consultant’s services for management support roles:**

The use of consultants or subconsultants in management support roles requires appropriate conflicts of interest standards and adequate DDOT staffing to administer and monitor the management consultant contract (see 23 CFR § 172.9(d)). A consultant serving in a management support role may be precluded from providing additional services on projects, activities, or contracts under its oversight due to potential conflicts of interest.

#### **9.7.1.3 FAHP funds shall not participate in the costs of a consultant serving in a management support role where the consultant was not procured in accordance with federal and state requirements. (See 23 CFR 1.9(a))**

#### **9.7.1.4 Where benefiting more than a single Federal-aid project, allocability of consultant contract costs for services related to a management support role shall be distributed consistent with the cost principles**

applicable to the contracting agency, as specified in 2 CFR part 200, subpart E—Cost Principles.

## **9.8 CONTRACT MODIFICATIONS**

9.8.1 Contract Modifications are written agreements used to incorporate unforeseen work incidental to the scope of work in the basic agreement, task order or work order. Prior approval is required for a contract modification. The CO is responsible for ensuring the contract modification is within the original scope of the solicitation for the project.

9.8.1.1 Contract modifications are required for any amendments to the terms of the existing contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.

9.8.1.2 A contract modification shall clearly define and document the changes made to the contract, establish the method of payment for any adjustments in contract costs, and be in compliance with the terms and conditions of the contract and original procurement.

9.8.1.3 DDOT shall negotiate contract modifications following the same procedures as the negotiation of the original contract.

9.8.1.4 DDOT may add to a contract only the type of services and work included within the scope of services of the original solicitation from which a qualifications-based selection was made.

9.8.1.5 For any additional engineering and design-related services outside of the scope of work established in the original request for proposal, DDOT shall:

- Procure the services under a new solicitation;
- Perform the work itself using DDOT staff;
- Use a different, existing contract under which the services would be within the scope of work; or
- Assign a task order to an ID/IQ consultant currently under contract for the specific type of work.

9.8.1.6 Overruns in the costs of the work shall not automatically warrant an increase in the fixed fee portion of a cost plus fixed fee reimbursed contract. Permitted changes to the scope of work or duration may warrant consideration for adjustment of the fixed fee portion of cost plus fixed fee or lump sum reimbursed contracts.

### **9.8.2 Prior Approvals for Contract Modifications**

9.8.2.1 Prior authorization by the CO is required to negotiate any contract modifications to project-specific basic agreements. Prior authorization is also required to negotiate all task orders or work orders under A/E Schedule Master Agreements. These authorizations will be obtained by using the Contract Modification Request Form documentation package. Authorization from the Chief Engineer (or designee) is required prior to submittal to the CO.

### **9.8.3 Unilateral Modifications**

9.8.3.1 Unilateral modifications to the pricing of engineering and design-related services contracts without engaging in good faith negotiations with the consulting firm are contrary to applicable federal and District laws and regulations. An arbitrary reduction of fees or overall contract costs is inconsistent with qualifications-based selection procedures for negotiation of fair and reasonable compensation considering the scope, complexity, professional nature, and estimated value of the services to be rendered. Reductions to overall contract costs also create a de facto ceiling on a firm's approved indirect cost rate required to be applied to contract negotiations and payment and an arbitrary reduction of direct salary/wage rates which does not provide consideration of the reasonableness provisions of the FAR cost principles. In order to reduce expenditures associated with existing engineering and design-related services contracts, DDOT may cancel or delay a contract as permitted within the provisions of the contract, re-negotiate the terms of the contract, or terminate the project.

#### 9.8.4 Unilateral Discount Payment Terms

9.8.4.1 Unilateral discount payment terms on engineering and design-related services contracts from a consulting firm's negotiated compensation due to early payment would be in violation of federal laws and regulations applicable to engineering and design-related services contracts. Given the ability for most contracting agencies to promptly pay invoices via electronic methods, required discount payment terms would essentially provide DDOT an arbitrary discount beyond the negotiated fair and reasonable compensation. A required discount of a firm's invoiced amount, if paid within an established time frame, essentially creates an arbitrary reduction of the negotiated fair and reasonable compensation required by the Brooks Act; creates an arbitrary ceiling on the firm's approved indirect cost rate required to be applied to contract negotiation and payments; and creates an arbitrary reduction of direct salary/wage rates which does not provide consideration of the reasonableness provisions of the FAR cost principles. As such, DDOT may not require or request discount payment terms via a solicitation/request for proposal, during the subsequent evaluation and selection process, as a negotiation point, or through standardized contract documents/templates. However, if a consulting firm, in the interest of its own financial management of the contract, voluntarily offered a discount payment term in its price proposal during negotiations, DDOT could accept the discount payment terms provided the firm's offer is not a condition or qualification to be considered for the work or contract award.

### 9.9 ERRORS AND OMISSIONS – A/E SERVICES

9.9.1 The PM shall take steps to ensure errors and omissions (“E&O”) are minimized in accordance with the DDOT Design and Engineering Manual (2017) section 3.3.

9.9.2 Upon discovery of an apparent plan error or omission, the CO shall be notified and provided as much information as is available at that time. The CO shall then notify the consultant providing all information available at the time.

9.9.3 If a plan error or omission is identified and can be corrected without delay and without additional cost to the District, the PM shall be responsible for ensuring the consultant performs all work as necessary to correct errors or omissions as required under the consultant’s contract.

#### 9.9.4 Construction Phase

9.9.4.1 Upon discovery of an apparent plan error or omission, the Chief Engineer (“CE”) shall be notified and shall in turn notify the CO, providing as much information as is available at that time. The CO shall

then notify the consultant, providing all information available at the time.

9.9.4.2 If a plan error or omission is identified and can be corrected without delay and without additional cost to the District, the PM shall be responsible for ensuring the consultant performs all work as necessary to correct errors or omissions as required under the consultant's contract.

#### 9.9.5 Evaluation of Value of Errors or Omissions

9.9.5.1 The CE reserves the right to immediately make corrections and assist the CO to negotiate construction contract modifications, change orders, or supplemental agreements in the event it is determined to be an emergency and in the best interest of the District or the public.

9.9.5.2 In any event an error or omission is identified that may substantially increase a project's cost (> \$25,000 per occurrence or a cumulative total of \$50,000 per project) the PM shall investigate the plan error or omission.

9.9.5.3 The PM shall evaluate factors that may have contributed to the error or omission and evaluate impacts to the project associated with the identified factors.

9.9.5.4 Impacts to the project may include but are not limited to contract delay, additional contract cost, utility agreement modifications, construction work occurring out of sequence, and cost of work or materials that the District would have incurred even if the original design was correct.

9.9.5.5 The project team shall provide a written recommendation to the CE and CO that shall include the following elements: a proposed solution, a proposed schedule, factors contributing to the error or omission, any change in contract value, and specific costs the District may incur that are assignable and attributable to the A/E error or omission, including any subconsultant errors or omissions.

9.9.5.6 The CE may concur or modify the recommendation to the CO in making a determination request. The determination request shall be sent to the CO. The CO shall be responsible for ensuring the consultant performs any and all work as necessary to correct errors or omissions at the consultant's expense.

9.9.5.7 The amount owed the District shall be invoiced from the Office of the Chief Financial Officer (OCFO). If some or all of the increased costs due to an error or omission are owed to a third party, i.e., a contractor or another agency, the consultant may, with written approval from the CO, negotiate with and pay the contractor and/or agency directly. All work added due to an error or omission must be negotiated through the District to be certain the additional work is included in the construction contract and fully performed.

#### 9.9.6 Final Settlement

9.9.6.1 If the consultant accepts responsibility and settles for the amount owed the District, all final documents shall be forwarded to and maintained by the OCP, with copies to all involved offices, including FHWA as appropriate. The matter shall then be considered resolved.

9.9.6.2 If the consultant accepts responsibility but offers a settlement less than the determined amount owed the District, or if the A-E denies responsibility, the consultant must notify the CO, who shall forward the proposed settlement and a recommendation to the CE. The final determination recommendation of the CE shall be sent to the CO. The CO shall be responsible for ensuring the consultant performs any

and all work as necessary to correct errors or omissions at the consultant's expense. OCP shall initiate any cost recovery according to the determination. If the consultant accepts the CO's final decision and pays the requested amount, all final documents shall be forwarded to and maintained by the OCP, with copies to all involved offices, including FHWA as appropriate. The matter shall then be considered resolved.

9.9.6.3 If the consultant fails to respond and/or refuses to accept responsibility, the matter shall be turned over to OAG for consideration of further action. At such time, the CO shall prepare a memorandum to the CCO, stating the nature of the error or omission, the District's determination, the recoverable cost due the District, and that the matter has been turned over to the OAG. This memorandum is to remain with the contract file until the matter is finally resolved as noted by the OAG.

## **9.10 EXERCISING OPTIONS**

9.10.1 The acquisition team shall provide notification to the contractor in accordance with the terms and conditions of the contract.

9.10.1.1 Waiver of the notification requirement may be executed using a bilateral contract modification.

9.10.2 Before each option is exercised, the CO shall consider:

- Availability of funds;
- Whether the District has an existing and continuing need;
- Whether or not exercising the option is the most advantageous method of fulfilling the District's need, price and other factors considered;
- The contractor is not on the District and Federal excluded parties lists (See 8.7);
- The contractor's past performance on other contract actions have been considered;
- The contractor's performance on this contract has been acceptable; and
- As applicable, the contractor's labor law decisions, mitigating factors, remedial measures, and compliance have been considered.

9.10.3 Options shall be exercised using a unilateral modification.

## **9.11 AUDITING AND ACCEPTANCE OF INDIRECT COSTS**

Within the Chief Financial Officer (OCFO), the Assurance and Compliance Division (DOACD)'s mission is to provide independent and objective analysis, reviews, and assessments of DDOT's business activities, operations, financial systems, and internal controls required by Applicable Regulations. DOACD supports DDOT by conducting contract compliance reviews on professional services contracts. This includes evaluation, review, and audit of overhead rates and expenditures to ensure compliance with Applicable Regulations. In addition, DOACD conducts accounting system reviews and Certified Public Accountant (CPA) work paper reviews. Assurance and compliance work performed by this unit is completed in accordance with Applicable Regulations. This provides a systematic, disciplined approach to evaluating indirect/overhead costs, labor charging and compensations, monitor proper allowable and unallowable costs, and reconciliation of provisional billing rates to audited/approved indirect/overhead costs rates. DOACD improves the effectiveness of risk management as it relates to D.C. Code 1-204.24d(16) and 48 CFR 31 coupled with governing processes by

promoting effective internal controls.

#### 9.11.1 Applicable References:

- Title 27 of the District of Columbia Municipal Regulations (DCMR);
- Public Law 92-582;
- Federal Highway Administration FHWA Order 4470.1A;
- 48 CFR 31 Contract Cost Principles and Procedures;
- 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- 48 CFR Part 9904 Cost Accounting Standards;
- Procurement Practices Reform Act of 2010;
- 23 U.S.C. 172 Administration of Engineering and Design Related Services;
- The American Association of State Highway and Transportation Officials (AASHTO) “Uniform Audit and Accounting Guide”;
- AASHTO CPA Work Paper Review program;
- Federal Highway Administration (FHWA) policies (<http://www.fhwa.dot.gov/programadmin/consultant.cfm>);
- Applicable Government Accountability Office (GAO) decisions;
- The Government Auditing Standards (2018 Yellow Book);
- American Institute of Certified Public Accountant (AICPA) guidance; and
- The Generally Accepted Governmental Auditing Standard (GAGAS).

#### 9.11.2 Types of DOACD Reviews

9.11.2.1 ICR Desk Reviews are attestation review engagements based on a review of the overhead rate documentation type. The DOACD ensures the submitted indirect cost rates comply with all Applicable Regulations.

9.11.2.2 Cognizant Agency Audits and CPA Work Paper Reviews are performed when a state performs a review and accepts an A/E firm’s indirect costs and drafts a cognizant entity review letter that has reciprocity among all other states. These reviews determine if reliance can be placed on the work of the CPA firm so that cognizant audit letters of concurrence may be issued as implemented by Section 307 of the National Highway System Designation Act. Once a cognizant letter is issued, the indirect cost rates identified in the cognizant letter must be accepted by all other states (unless the auditee has disputed the rates) rather than such states performing an independent review.

9.11.2.3 Annual Overhead Rate Reconciliations examine the annual overhead rate documentation to reconcile the provisional billing rates to the final costs incurred. The DOACD expresses an opinion as to whether such costs incurred are allocable, allowable, and reasonable in accordance with the contract and the Applicable References. In addition, the DOACD determines whether the accounting system remains adequate for subsequent cost determinations which may be required for current or future contracts. The DOACD maintains an overhead rate tracker for use by the CO/CS in analyzing proposals.

#### 9.11.3 Annual Audit Review

9.11.3.1 An annual audit review will be performed by the DOACD on all consultants and subconsultants with



active contracts or proposing to provide engineering and design related services (as defined in 23 U.S.C. §112(b)(2)(A), 23 CFR §172.3, 40 U.S.C. §1102 and District laws and regulations) for Federal-aid projects to DDOT and its sub-recipients. The review may include an examination of the accounting system and internal control structure, financial statements to determine financial capability, and the indirect cost rate(s) for compliance with federal cost principles.

#### 9.11.4 Pre-Award Audits

9.11.4.1 Pre-award audits of a cost proposal or awardee accounting system may be requested by the CO or CS on an as-needed basis taking into consideration the following criteria:

- 1) The complexity of the project;
- 2) The audit documentation received in response to the RFQ/RFP;
- 3) The recency of the awardee's documentation on file with the DOACD;
- 4) The composition of the proposed costs; and
- 5) An assessment of findings in prior audits.

9.11.4.2 If applicable, DOACD documents the pre-award audit findings and transmits to the CO for resolution and approval. Upon approval by the CO, the results of the resolution will be provided in writing by the DOACD to the consultant with a copy to the CO.

#### 9.11.5 General Guidance

9.11.5.1 The CO is responsible for approving all consultant business systems and indirect rates. The CO may delegate, if mutually acceptable, the creation of indirect rate or business system approval letters and the transmittal of letters to the CS or DOACD.

9.11.5.2 All Final Indirect Costs submissions must include a Certificate of Final Indirect Costs in accordance with FHWA Order 4470.1A.

9.11.5.3 No limitations may be placed on indirect cost rates established in accordance with applicable FAR cost principles. Consultants must use and apply the consulting firm's cognizant agency approved indirect cost rate for estimation, negotiation, administration, and payment of contracts for engineering and design related services. (See 23 U.S.C. 112(b)(2)(C)-(D) and 23 CFR 172.7(b)). Should the consulting firm choose to offer a lower indirect rate for the actual contract, this rate must be used in both the internal and consultant estimates. DDOT shall not request or start negotiations to obtain a lower indirect cost rate than was established by a cognizant agency approved audit (See, 23 U.S.C 112(b)(2)(C)-(D)). A lower indirect cost rate may be used only if offered/submitted voluntarily by a consulting firm as part of a cost proposal during contract negotiations. A consulting firm's offer of a lower indirect cost rate shall not be a condition or qualification to be considered for the work or contract award (See 23 CFR 172.7(b)).

9.11.5.4 FHWA, DDOT, and sub-recipients of federal funds may share audit information in complying with the sub-recipient's acceptance of a consultant's indirect cost rates provided that the consultant is given notice of each use and transfer. Audit information shall not be provided to other consultants or any other government agency not sharing the cost data, or to any firm or government agency for purposes other than complying with the sub-recipient's acceptance of a consultant's indirect cost rates without the written permission of the affected consultant(s).

## 9.12 SUBCONTRACT ADMINISTRATION REQUIREMENTS

9.12.1 DDOT shall administer subcontracts in accordance with District and federal laws and procedures as specified in 2 CFR part 1201, and the requirements of [23 U.S.C. 106\(g\)\(4\)](#), and [2 CFR 200.331](#). Administering subcontract awards includes providing oversight of the procurement, management, and administration of engineering and design-related consultant services by subcontract to ensure compliance with applicable federal and District laws and regulations. Nothing in these procedures shall be taken as relieving the prime contractor of its responsibility for the work performed under any consultant agreement or contract entered into by a subcontract.

9.12.2 DDOT shall ensure that subcontractors develop and sustain organizational capacity and provide the resources necessary for the procurement, management, and administration of engineering and design-related consultant services, reimbursed in whole or in part with FAHP funding as specified in [23 U.S.C. 106\(g\)\(4\)\(A\)](#). Responsibilities of the subcontract shall include the following:

9.12.2.1 If a federally funded project:

- Adopting written policies and procedures prescribed by the DDOT for the procurement, management, and administration of engineering and design-related consultant services;
- Preparing and maintaining its own written policies and procedures in accordance which meet all District and federal requirements; or
- Submitting documentation associated with each procurement and subsequent contract to DDOT for review to assess compliance with applicable federal and District laws and regulations.

9.12.2.2 District funded projects. Procuring goods and services in accordance with one of the following 27 DCMR, PPRA, and the regulations promulgated pursuant thereto.

9.12.3 Regardless of which of the above procedures are followed, the subcontract must receive the CO's prior written approval to use either of the following project delivery methods:

- Design/build, or
- A method where the same contractor or consultant is performing both management and construction services.

9.12.4 At the completion of the project, the contractor shall complete and submit to OCP and DDOT's OCR a Certification of Procurement certifying that all the procurement requirements have been met for the project and providing a list of all consultants, contractors and vendors used on the project, and the total dollar value paid to each.

## 9.13 ADMINISTRATION OF ON-CALL IDIQ CONTRACT AND TASK ORDER WORK ORDERS

Work orders are used to assign tasks under a TO contract or stand-alone contract. The contract shall contain a contract ceiling, maximum level of effort, and scope of work covering the tasks applicable to the on-call work. Each work order shall define the specific scope of work, level of effort, and price for a specific project at the prices established in the contract. The CA is responsible for ensuring the total amount of work authorized

through work orders does not exceed the contract ceiling, the work order scope falls within the contract scope, and the work order pricing is congruent with the contract terms and conditions. The CA will issue a work order to assign work to the selected consultant and a copy of the work order will be submitted to the CO.

#### 9.13.1 Contracts for On-Call type services shall:

- Specify a reasonable maximum period of performance, including the number and period of any allowable contract options, which shall not exceed 5 years (23 CFR 172.9(a)(3)(i));
- Specify a maximum total not-to-exceed contract dollar amount that may be awarded under the contract;
- Include a statement of work, requirements, specifications, or other description to define the general scope, complexity, and professional nature of the services; and
- If a multiple-award, describe the method used to distribute work under the On-Call contract as defined in the original solicitation.

#### 9.13.2 Work Order Contents

9.13.2.1 A contract for On-Call services shall include appropriate contract provisions.

9.13.2.2 Additional work: If it is determined additional work is required outside of the work order, a supplemental work order is required.

9.13.2.3 New Unit Prices: For anticipated reoccurring unit price work not in the original agreement, the PM will coordinate with the CO in order to negotiate the new unit price(s).

#### 9.13.3 On-Call Assignments

9.13.4 If multiple IDIQs or TOs are awarded to accomplish the same or similar on-call services, the CA will assign the On-Call consultant for a particular project according to reasonable methodologies:

9.13.4.1 Specific details will be included within each solicitation and will be established based on the type of services needed.

9.13.4.2 Firms on the On-Call list will be evaluated to determine the most qualified for the project being assigned as defined below:

9.13.4.2.1 The PM will establish criteria for the project that will be utilized to determine the most qualified firm from the On-Call list. The criteria shall be published in the solicitation.

9.13.4.2.2 The original submitted proposals will be retained and utilized by the CA, the assigned CO, and any SMEs needed to evaluate the firms on the On-Call list. The proposals will be used to evaluate and rank the firms to determine the most qualified firm for the project being assigned. If a determination cannot be made utilizing the original submitted qualifications then an additional SF330 specific to the project may be requested by the CO from all firms on the On-Call list. The specific qualifications will be utilized by the PM, the CO, and any subject matter experts needed to evaluate and rank the firms based on the established criteria to determine the most highly qualified firm for the project.

## 10 FILE PREPARATION & CONTRACT CLOSEOUT

### 10.1 CONTRACT FILE PREPARATION GUIDELINES

#### 10.1.1 General Rule

Section 5.1 pertains to hard copy files. Any CO maintaining complete contract files in PASS (under a CW number) is not required to create a separate hard copy file. Each contract file shall include all relevant contract documents and shall be maintained for a contract exceeding the simplified acquisition threshold. All contracts should be contained in a six-part contract file folder. For transactions with values under the simplified acquisition threshold, the contract file documents shall be maintained in single or 2-part contract file folders. All 6-part contract file folders shall contain the following:

- Contract File Cover Sheet;
- Contract File Index; and
- All relevant documents listed in the Contract File Index.

All single or 2-part contract file folders shall contain the simplified acquisition index. All contract files shall be maintained in a safe, confidential, and secure manner.

#### 10.1.2 Instructions for Completing the 6-Part Contract File Cover Sheet Label

The CO shall review the CS's work to ensure that the Contract File Cover Sheet label will be:

- Filled out by identifying all applicable information;
- Completed for each folder if more than one folder is used;
- Printed on an adhesive laser printer label; and
- Affixed to the front of each contract file folder.

#### 10.1.3 Instructions for Completing the Single or 2- Part Contract File

10.1.3.1 The small purchase cover sheet may contain optional information at the discretion of the contracting officer. This information should also be captured within the contents of the small purchase contract file.

#### 10.1.4 Instructions for Using the Contract File and Small Purchase Index

10.1.4.1 For transactions greater than \$100,000, contract file documents are maintained in a 6-part contract file folder as referenced in Parts I through VI of the Contract File Index (see Appendix 5–C). For transactions of \$100,000 or less, the contract file documents are maintained in a single- or 2-part contract file folder as noted in the simplified acquisition index (see Appendix 5–A). Each Contract File Index sheet is affixed, in numerical ascending order (i.e., 1, 2, 3, and so on), to the front of each contract file section.

#### 10.1.5 Instructions for Completing the Contract File and the Simplified Acquisition Index

10.1.5.1 The CO shall ensure that the CS completely fills out the Index. The assigned contract specialist will

validate the information by dating and initialing each entry.

10.1.5.2 If a document is not required to be included in the contract file folder, a notation of “n/a” (*i.e.*, not applicable) shall be placed at the right side, (under the date column), of the Index Sheet. The assigned contract specialist will validate the information by dating and initialing the “n/a” entry.

## 10.2 CLOSEOUT OF CONTRACT FILES

10.2.1 The contract closeout phase begins once the contractor has completed the required deliveries and the District has inspected and accepted the supplies or services or the District terminated the contract. This section outlines the components of the contract closeout phase.

10.2.2 The contract closeout process consists of the following activities:

1. Verification of contract completion;
2. Obtaining all requisite forms, reports, releases and clearances;
3. Resolving outstanding issues, if any;
4. Initiating final payment (or collection for an overpayment);
5. De-obligation of excess funds;
6. Preparing the contract completion statement; and
7. Disposing of contract file.

10.2.3 Files for contracts using simplified acquisition procedures should be considered closed when the CO receives evidence of receipt of property and final payment, unless otherwise specified by regulation.

10.2.4 All other contract files shall be closed as soon as practicable after the CO receives a contract completion statement from the CA of compliance with the requirements of Section 5.2.3. The CO shall ensure that all contractual actions required 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.

10.2.4.1 Timelines of Closures:

- ***Files for firm-fixed-price contracts*** – other than those using simplified acquisition procedures, these should be closed within 6 months after the date on which the contracting officer receives evidence of physical completion.
- ***Files for contracts requiring settlement of indirect cost rates*** – these should be closed within 36 months of the month in which the contracting officer receives evidence of physical completion.
- ***Files for all other contracts*** – should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion.

10.2.4.2 A Contract File shall not be closed if:

- The contract is in litigation or under appeal; or
- In the case of a termination, all termination actions have not been completed.

## 10.2.5 Physically Completed Contracts

10.2.5.1 A contract is physically completed when either:

10.2.5.1.1 The following elements are satisfied:

- The contractor has completed the required deliveries and the District has inspected and accepted the supplies;
- The contractor has performed all services and the District has accepted these services; and
- All option provisions, if any, have expired; or

10.2.5.1.2 The District has given the contractor a notice of complete contract termination.

10.2.5.2 Rental, use, and storage agreements are considered to be physically completed when:

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

## 10.2.6 Procedures for Closing-Out Contract Files

10.2.6.1 The CA is responsible for initiating administrative closeout of the contract after receiving evidence of its physical completion. At the outset of this process, the CA must review the contract funds status and notify the CO of any excess funds the CA might de-obligate. When complete, the administrative closeout procedures must ensure that:

- Final reports are received and accepted;
- There is no outstanding value engineering change proposal;
- Contractor has vacated government-provided space and left the space in acceptable condition;
- Government-furnished property has been returned;
- All interim or disallowed costs are settled;
- Price revision is completed;
- Subcontracts are settled by the prime contractor;
- Contractor evaluation is completed;
- Contractor's final invoice has been submitted; and
- Contract funds review is completed and excess funds de-obligated.

## 10.2.7 Post-Verification

10.2.7.1 When the actions above in Section 5.2.3 have been verified, the contracting officer must ensure that a contract completion statement (see Appendix 6-D), containing the following information, is prepared:

- Contract number;
- Last purchase order number and date;

- Last modification date and number;
- Contractor name and address;
- Contract completion date;
- Verification that all invoices have been paid;
- A statement of the status of the contract (*e.g.*, active, closed, and the like.);
- A statement of any pending claims or litigation;
- Name and signature of the contracting officer; and
- Date.

## 10.2.8 Completion of Statement

10.2.8.1 When the contract completion statement is completed, the contracting officer must ensure that:

- The signed original is placed in the official; and
- A signed copy is provided to the contract administrator.

## 10.2.9 Transfer of Closed Files to OCP Headquarters

10.2.9.1 The contracting officer shall transfer any closed files to the Records Management Unit at OCP Headquarters, to be held until disposal. The contract completion statement shall be included in any closed file prior to transfer. The contracting officer should contact the Records Management Unit at [ocprecordsmgmt@dc.gov](mailto:ocprecordsmgmt@dc.gov) to arrange for transfer of files.

## 10.2.10 Instructions on Proper Disposal of Competitive Sealed Proposals (23 CFR 172.5(c)(9))

10.2.11 Unsuccessful Cost Proposals shall be retained for 5 years per the OCP Retention Policy. This is a “specific” type of retention file and is for record of bids, bid tabs, award notices, price changes, product lists, extension/re-bid notices, usage reports, extension agreements, cancellation notices, and other backup documentation for procurement actions taken.

10.2.12 Unsuccessful Bidders Proposals - Documents of unsuccessful bidders proposals for District and federal projects includes the name and address of contractor, area under proposal, length of project, file number, District and/or federal project number, bid bond, special provisions, contract time, proposal form, schedule of prices, and disadvantaged business enterprise forms. For District projects, the retention period is set by OCP. For federal projects, the retention period is 6 years after award date then destroy in accordance with the policy set by the OCP.

# 11 CONTRACT FILE MANAGEMENT

## 11.1 RECORDS MANAGEMENT CONTRACT FILE PREPARATION GUIDELINES

### 11.1.1 General Policy Statement

The OCP is committed to establishing and maintaining records management practices that meet its business needs, accountability requirements and stakeholder expectations. The benefits of compliance with this policy will be trusted information and records that are well described, stored in known locations and accessible to staff and stakeholders when needed.

### 11.1.2 Definitions

- Records Management Unit – OCP’s Records Management Unit (RMU) is located at OCP Headquarters. The RMU collects, monitors, stores and coordinates contract files for procurement staff located at OCP Headquarters. The RMU houses closed contracts for all agencies under the purview of the Chief Procurement Officer (CPO), and files are retained until disposal. Disposal of all scheduled contract files are handled by RMU.
- Records Manager – The OCP Records Manager (RM) is the OCP official responsible for monitoring all contract files from receipt to disposal. The RM, in conjunction with the Office of Public Records in the Office of the Secretary, ensures that all regulations relating to contract files are implemented.
- Records Administrator – A Records Administrator (RA) is the OCP official chosen by the contracting officer to monitor file creation, storage and management at each deployed agency.
- Closed Contract File – A file for a contract, including all option periods, which has expired or been terminated.

## 11.2 FILE ROOM PROCEDURES

### 11.2.1 Creation and Maintenance of Information and Records

11.2.1.1 Systematic Asset Management. The RM’s primary records management system is OCP’s radio frequency identification system, known as Systematic Asset Management (SAM). Contract files shall be created as outlined in Chapter 10 of this manual. The contracting officer shall submit all contract files to the RMU or the RA, within five days of contract award.

11.2.1.2 PASS. Contract documents must be maintained in the procurement system of record (i.e., PASS).

11.2.1.3 Prohibition. Email folders, shared folders, personal drives or external storage media shall not be utilized to maintain official contract documents as they lack the functionality and security necessary to protect District business information and records over time.

### 11.2.2 Access to Information and Records

Contract files are an OCP resource to which all OCP staff may have access. Procedures for checking-in and checking-out contract files are delineated below:

11.2.2.1 Checking-in/Checking-out Files from Records Management. Hours of Operation: The RMU is open,



Monday -Friday, 9:00am – 5:30pm, unless other arrangements are made in advance. Access to the file room is restricted to OCP personnel.

- Agency staff shall not enter the OCP File Room unless accompanied by the RM or a member of the Business Resource Division.
- All files must be handled with care and returned in the same condition and order that they were received. If staff discovers misfiled documents or needs to add additional documents, notify the RM at [ocprecordsmgmt@dc.gov](mailto:ocprecordsmgmt@dc.gov).

11.2.2.2 Procedures for Checking-in/Checking-out for Headquarters Staff. For files located at OCP Headquarters, staff shall send an email to [ocprecordsmgmt@dc.gov](mailto:ocprecordsmgmt@dc.gov). The email must contain the contract number for the requested file.

- RMU will send a status email to the requester, which will either confirm that the requested file can be retrieved from the file room or state that the requested file is not available.
- If the file is available, the requester must retrieve the file within one (1) business day of receiving the confirmation email. If the requester fails to retrieve the file, the file will be re-shelved and a new request must be sent to RMU.
- After the requester retrieves the contract file, RMU will email a receipt acknowledging that the file has been checked-out.
- The requester must return the checked-out file within one week of receiving it. If an extension is needed, the requester must notify RMU.
- When the file is returned, the RMU will email the requester a confirmation.

11.2.2.3 Procedures for Check-in/Checking-out at Deployed Agencies. Staff located at deployed agencies will utilize RM's System of Record, SAM, to obtain the location of contract files. If the file is available, a request is made to the RA to obtain the file.

- The requester must retrieve the file within one (1) business day of receiving the confirmation email. If the requester fails to retrieve the file, the file will be re-shelved and a new request must be sent to RA.
- The requester must return the checked-out file within one week of receiving it. If an extension is needed, the requester must notify RA.
- When the file is returned, the RA will email the requester a confirmation.

## 11.3 TRANSFER OF FILES

Contract files checked out in OCP's system of record which are transferred between OCP staff or to another agency must be reported to RMU prior to transfer. If notification is not made, the holder of record will be held responsible for the file.

When responsibility for contract activity is transferred from one contracting officer to another contracting officer, the transferring contracting officer shall complete a contract modification, notify the RM and place a copy in the file and in the PASS contract workspace.

11.3.1 Procedures for Transfer of Files upon Resignation

11.3.1.1 Contracting Officers. Upon resignation, the contracting officer shall:

11.3.1.1.1 Prepare an inventory of all contracts on which s/he is designated as contracting officer. The inventory must contain the following information:

- Contract Number;
- User Agency;
- Description;
- Status of Contract;
- Total Number of Contract Files; and
- Vendor Name.

11.3.1.1.2 Send the inventory list to the RMU.

11.3.1.1.3 Provide the list and the contract files to the contracting officer's supervisor who shall retain the contract files until the files have been properly transferred to a new contracting officer or the RMU.

11.3.1.2 Contract Specialist. Upon resignation, the contract specialist shall:

11.3.1.2.1 Prepare an inventory of all contracts on which he or she is designated as contract specialist. The inventory list should include the following information:

- Contract Number;
- User Agency;
- Description;
- Status of Contract;
- Total Number of Contract Files; and
- Vendor Name(s).

11.3.1.2.2 Ensure all contract files are uploaded into the Contracts Compliance Module (CCM).

11.3.1.2.3 Provide the inventory list and the contract specialist's contract files to the designated CO.

11.3.1.3 Retention Responsibility. The contracting officer shall retain the contract specialist's contract files until the files have been properly transferred to either a new contract specialist or the RMU.

11.3.2 Procedures for Transfer of Files upon Termination

11.3.2.1 Contracting Officers. Upon termination of a contracting officer, the RMU shall:

11.3.2.1.1 Take possession of the contracting officer's contract files and prepare an inventory. The inventory must contain the following information:

- Contract Number;
- User Agency;

- Description;
- Status of Contract;
- Total Number of Contract Files; and
- Vendor Name.

11.3.2.1.2 Retain all contract files until the files have been properly transferred to a new contracting officer or contract specialist.

11.3.2.2 Contract Specialist. Upon termination of a contract specialist, the contracting officer shall:

11.3.2.2.1 Take possession of the contract specialist’s contract files and prepare an inventory. The inventory must contain the following information:

- Contract Number;
- User Agency;
- Description;
- Status of Contract;
- Total Number of Contract Files; and
- Vendor Name.

11.3.2.2.2 Ensure all contract files are uploaded into the Contracts Compliance Module (CCM). Provide the inventory list and the contract specialist's contract files to the designated contracting officer.

11.3.2.3 The contracting officer shall retain the contract specialist's contract files until the files have been properly transferred to either a new contract specialist or the RMU.

## **11.4 RETENTION AND DESTRUCTION**

11.4.1 All information pertaining to records retention and archiving for OCP is contained in OPR, General Records Schedule 3 (“GRS(3)”) for locally funded requirements and 2 CFR 200.333 for federal-aid requirements. Retention periods in the GRS take into account all business, legal and government requirements for the records. OCP uses a number of general and agency-specific authorities to determine retention, destruction and transfer actions for contract files. General Records Schedule 3 can be accessed at the following link: [General Records Schedule 3](#).

11.4.2 Working documents of a short-term, facilitative or transitory value may be destroyed as a ‘normal administrative practice’. Examples of such records include rough working notes, drafts not needed for future use or copies of records held for reference. Staff must utilize secure shredding bins.

11.4.3 OCP staff are responsible for closing out all contracts in accordance with the procedures set forth in Chapter 5 and transferring all closed contract files to the RMU located at OCP Headquarters, to be held until disposal.

## 12 ETHICS

### 12.1 OCP CODE OF ETHICS

12.1.1 Public employment is a public trust—each District government employee has a responsibility to the District of Columbia and its residents to place loyalty to the laws and ethical principles above private gain. Good ethical behavior and adherence to ethical standards of conduct increases the public’s confidence in the integrity of the government. OCP is committed to the values of government fairness, transparency, and impartiality. Accordingly, all OCP employees must adhere to the following OCP Code of Ethics:

12.1.2 We adhere to these principles and precepts. As public procurement officials and other officials engaged in the procurement process, we:

- Believe in the dignity and worth of service rendered by OCP, and the societal responsibilities assumed as a trusted servant;
- Are governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served;
- Believe that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable;
- Will identify and eliminate participation of any individual in situations where conflicts of interest may be involved;
- Believe that members of OCP should, at no time and under no circumstances, accept, directly or indirectly, any gifts, gratuities, or other things of value from suppliers, which might influence or appear to influence purchasing decisions;
- Will keep OCP informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of facts;
- Resist encroachment on control of personnel in order to preserve integrity as a professional manager;
- Will handle all personnel matters on a merit basis, and in compliance with applicable laws prohibiting discrimination in employment on any basis; and
- Shall seek or dispense no personal favors, and handle each administrative problem objectively and empathetically, without discrimination.

### 12.2 APPLICABLE CODE OF CONDUCT

12.2.1 The Code of Conduct applicable to District employees means those provisions contained in the following:

- The Code of Official Conduct of the Council of the District of Columbia, as adopted by the Council;

- Sections 1801 through 1802 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 1-118; D.C. Official Code § 1-618.01-.02);
- Section 2 of the Official Correspondence Regulations, effective April 7, 1977 (D.C. Law 1-118; D.C. Official Code § 2-701 *et seq.*);
- Section 416 of the Procurement Practices Reform Act of 2010, effective April 8, 2010 (D.C. Law 18-371; D.C. Official Code § 2-354.16);
- Chapter 18 of Title 6B of the District of Columbia Municipal Regulations;
- Subtitles C, D, and E of Title II of the Ethics Act, and Subtitle F of Title III of the Ethics Act for the purpose of enforcement by the Board of Ethics and Government Accountability (“BEGA”) of violations of Section 338 of the Ethics Act that are subject to the penalty provisions of Section 221 of the Ethics Act;
- Prohibition on Government Employee Engagement in Political Activity Act of 2010 (“Local Hatch Act; D.C. Official Code § 1-1171.01 *et seq.*); and
- Donations Act.

12.2.2 For purposes of paragraph F above, the “Ethics Act” is the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, D.C. Official Code § 1-1161.01 *et seq.*

12.2.3 Many of the District’s ethics provisions also have federal counterparts applicable to District employees, and the federal provisions may carry criminal penalties.

### **12.3 GENERAL ETHICAL STANDARDS**

12.3.1 District law provides that “[e]ach employee, member of a board or commission, or a public official of the District government must at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering, or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government.” D.C. Official Code § 1-618.01(a).

12.3.2 Procurement professionals must especially adhere to ethical standards, as transactions involving taxpayer dollars require the highest degree of public trust and standards of conduct. Accordingly, a government employee may not:

- Hold financial interests that conflict with performance of duty;
- Use nonpublic information improperly;
- Make unauthorized commitments;
- Use public office for private gain;
- Act impartially or give preferential treatment;

- Use government property for other than authorized activities;
- Engage in outside activities that conflict with official duties;
- Seek or negotiate for employment that conflicts with official duties; and
- Take actions creating an appearance that the employee is violating the law or these ethical standards.

12.3.3 Additionally, employees involved in the procurement lifecycle should:

- Maintain a level of behavior and performance that promotes efficiency of the District’s services and conforms to ethical principles;
- Refrain from divulging any official government information to any unauthorized person(s) or otherwise make use of or permit others to make use of information not available to the general public;
- Refrain from engaging in financial transactions using nonpublic government information or allow the improper use of such information to further any private interest; and
- Never solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee’s agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

## 12.4 CONFLICTS OF INTEREST

There are two types of conflicts of interest the acquisition team should avoid: actual conflicts and apparent conflicts, each of which are discussed below. (See 2 CFR § 200.112 and 23 CFR § 1.33)

### 12.4.1 Actual Conflicts of Interest

An employee may not use his or her official position, title, or in the performance of official duties, personally and substantially participate in or attempt to influence any particular matter the employee knows is likely to have a direct and predictable effect on the employee’s financial interests or those of a person closely affiliated with the employee. See D.C. Official Code § 1-1162.23(a).

### 12.4.2 Apparent Conflicts of Interest

Apparent conflicts are examined under the “impartiality rule.” An apparent conflict of interest arises when a reasonable person with knowledge of the relevant facts could question an employee’s impartiality in working for the government on a particular matter involving:

- Members of an employee’s household, relatives, or friends;
- People with whom the employee does business
- Organizations in which the employee is an officer or an active participant
- Family members’ employers, or
- The employee’s former employee, if the employee is new to the government.

### 12.4.3 Disclosure and Remedial Steps

An employee should immediately disclose any conflict of interest, or apparent conflict of interest, to his or her supervisor and to OCP's ethics advisor. Appropriate remedial steps may include:

- Recusal of the employee from the matter;
- Reassignment; or
- Divestment.

#### 12.4.4 NEPA Conflict of Interest

##### 12.4.4.1 Conflicts of Interest for Engineering and Design-Related Services

###### 12.4.4.1.1 In accordance with the FHWA Procurement, Management, and Administration of Engineering and Design Related Services - Questions and Answers VIII guidance:

“A contract may be awarded for final design services to a consulting engineering firm, prime or sub-consultant, which provided services during the environmental review and preliminary design engineering phase of the project provided a NEPA decision document has been issued or if the NEPA process is still underway, appropriate provisions are included in the solicitation and contract to indicate that the contracting agency is not obligated to proceed with final design for any alternative, that all reasonable alternatives will be evaluated and given appropriate consideration, and that the firm may not proceed with final design until the relevant NEPA decision documents have been issued.”

###### 12.4.4.2 Conflicts of Interest for Design Build Contracts concerning the NEPA process:

- 1) In accordance with 23 CFR 636.116, if the NEPA process has been completed prior to issuing the RFP, the contracting agency may allow a consultant or subconsultant who prepared the NEPA document to submit a proposal in response to the RFP.
- 2) If the NEPA process has not been completed prior to issuing the RFP, the contracting agency may allow a subconsultant to the preparer of the NEPA document to participate as an offeror or join a team submitting a proposal in response to the RFP only if the contracting agency releases such subconsultant from further responsibilities with respect to the preparation of the NEPA document.

## 12.5 CONFIDENTIAL INFORMATION

The laws and regulations of the District of Columbia prohibit disclosure of a bidder or offeror's confidential or proprietary information to any person other than a District employee who needs access to the information in connection with the procurement process. Examples of confidential information are:

- Cost or price estimates
- Source selection plans
- Company's proprietary information
- Competitive range determinations
- Rankings

## 12.6 DUTY TO REPORT

## 12.6.1 Reporting Obligations

District employees shall immediately and directly report credible violations of the District's Code of Conduct to the District of Columbia Office of Government Ethics within BEGA, the District of Columbia Office of the Inspector General ("OIG"), or both.

### 12.6.1.1 Contact information for BEGA is:

Board of Ethics and Government Accountability  
441 4th Street, NW, Suite 830S Washington, DC 20001  
E-mail: [bega@dc.gov](mailto:bega@dc.gov) Hotline: (202) 535-1002

### 12.6.1.2 Contact information for OIG is:

Office of the Inspector General 717 14th Street, NW, 5th Floor Washington, DC 20005  
E-mail: [hotline.oig@dc.gov](mailto:hotline.oig@dc.gov)  
Hotline: (800) 521-1639 or (202) 724-8477

12.6.1.3 Failure to report such conduct could result in disciplinary actions, including possible termination.

## 12.6.2 Protection against Retaliation

12.6.2.1 A supervisor may not retaliate or threaten to retaliate against an employee because of the employee's protected disclosure or because of an employee's refusal to comply with an illegal order. D.C. Official Code § 1-615.53. Employees who feel they have been retaliated against may appeal their discipline to the D.C. Superior Court. D.C. Official Code § 1-615.54. If an employee is covered by the Comprehensive Merit Personnel and the negative job action falls within the jurisdiction of the Office of Employee Appeals, the employee may appeal to the OEA; or, if the employee is a union member, he or she may appeal the job action under the terms of his or her collective bargaining agreement.

12.6.2.2 Additionally, the District's whistleblower statute provides a complete defense for any prohibited personnel actions if improper retaliation is found. D.C. Official Code § 1-615.54(c). A supervisor or manager found to have improperly retaliated against a whistleblower may be fined and/or subject to disciplinary action, including dismissal.

## 12.6.3 Financial Disclosures

12.6.3.1 Financial disclosures are required annually from employees who advise, make decisions or participate substantially in the areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, policy-making, regulation or auditing, or act in areas of responsibility that may create a conflict of interest of appearance of a conflict of interest. The Chief Procurement Office designates which OCP employees must file either a public or confidential financial disclosure statement

## 12.7 GIFTS

12.7.1 Pursuant to 6B DCMR §§ 1803.2, 1803.4(b), employees shall not, directly or indirectly, solicit or accept a gift: from a prohibited source, which is any person or entity who:



- Is seeking official action by the employee’s agency;
- Does business or seeks to do business with the employee’s agency;
- Conducts activities regulated by the employee’s agency;
- Has interests that may be substantially affected by performance or nonperformance of the employee’s official duties; or
- Is an organization in which the majority of its members are described in the items above.

12.7.2 Employees shall not, directly or indirectly, solicit or accept a gift from anyone (prohibited source or otherwise) that is given because of the employee’s official title or duties. That is, a gift is considered to be given because of the employee’s position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee held the status, authority or duties associated with his position. This prohibition includes gifts accepted or solicited indirectly:

- With the employee’s knowledge or acquiescence to a family member because of that person’s relationship to the employee; or
- To another person or entity, such as a charity, on the basis of designation, recommendation, or other specification by the employee.

12.7.3 It is a federal crime to accept any compensation from a source other than the District government for performing your job or providing services as a District government employee. You, therefore, are prohibited from accepting money, a gift (i.e., tickets to a sporting event, jewelry, perfume, etc.), stocks or bonds, promise of a future job, or anything else of value (whether or not a prohibited source). See 18 U.S.C. § 209

## **12.8 UNAUTHORIZED COMMITMENTS**

12.8.1 No District employee shall authorize payment for the value of goods or services received without a valid written contract. This provision shall not apply to a payment required by court order, a final decision of the Contract Appeals Board, a settlement, or ratification approved by the CPO.

- Any District employee entering in to an oral agreement with a vendor without a valid written contract is subject to termination.
- If any supervisor directs a District employee to enter into an oral agreement without a valid written contract, the supervisor shall be terminated.

See D.C. Official Code § 2-359.01.

## **12.9 POLITICAL ACTIVITIES (“LOCAL HATCH ACT”)**

12.9.1 Participation by District employees in political activity is governed by the Local Hatch Act. “Political activity” is an activity that is directed toward the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative or referendum.

12.9.2 When engaging in District campaigns or elections, D.C. government employees cannot knowingly solicit, accept, or receive a political contribution from any person (except if the employee has filed as a candidate for political office). D.C. Official Code §1-1171.02

12.9.3 All D.C. government employees are prohibited from engaging in any political activity while:

- On duty;
- In any room or building occupied in the discharge of official duties in the D.C. government, including any agency or instrumentality thereof;
- Wearing a uniform or official insignia identifying the office or position of the employee; or
- Using any vehicle owned or leased by the District, including an agency or instrumentality thereof.

See D.C. Official Code §1-1171.03(a).

12.9.4 Government employees may always:

- Take an active part in political management or in political campaigns (but DON'T fundraise for District campaigns);
- Contribute financially to any political activity;
- Attend any political event, rally, or other activity; and
- Voice support for or endorse a candidate, but only in your private capacity (First Amendment).

See D.C. Official Code §1-1171.02(a)

## 12.10 POST-EMPLOYMENT ETHICAL OBLIGATIONS

### 12.10.1 Permanent Prohibition—Personally and Substantially Participation

12.10.1.1 A former government employee who participated personally and substantially in a particular government matter involving a specific party:

- Shall be permanently prohibited from knowingly acting as an attorney, agent, or representative in any formal or informal appearance before an agency, and
- Shall be permanently prohibited from making any oral or written communication to an agency with the intent to influence that agency on behalf of another person.

See 6B DCMR §§ 1811.3, 1811.4, 1811.8, and 1811.9

### 12.10.2 Two-Year Prohibition—Official Responsibility

### ***Important Note:***

*The fundraising restriction applies in the social media world as well. You cannot fundraise through Twitter, Facebook, or other personal social media pages, for a candidate in a District regulated campaign or election. This includes providing links to the contribution pages of any of those entities' websites.*

12.10.2.1 A former government employee who previously had official responsibility for a matter shall be prohibited for two years from knowingly acting as an attorney, agent, or representative in any formal or informal matter before an agency.

- A matter for which the former government employee had official responsibility is any matter that was actually pending under the former employee's responsibility within a period of one (1) year before the termination of such responsibility.
- The two-year period shall be measured from the date when the former employee's responsibility for a particular matter ends

See 6B DCMR §§ 1811.5, 1811.6, and 1811.7

### 12.10.3 One-Year Prohibition—Transactions with Former Agency

12.10.3.1 A former government employee is prohibited for one year from having any transactions with the former agency intended to influence the agency, in connection with any particular government matter pending before the agency as to a particular matter pending before the agency or in which it has a direct and substantial interest, whether or not such matter involves a specific party. This restriction shall apply without regard to whether the former employee had participated in, or had responsibility for, the particular matter, and shall include matters that first arise after the employee leaves government service.

See 6B DCMR §§ 1811.10, 1811.11, and 1811.1; 18 U.S.C. § 207

## GLOSSARY OF PROCUREMENT TERMS

**Acceptance:** The act of accepting any offer. To be binding, acceptance must be:

- Definite;
- Communicated; and
- Unconditional (acceptance that is conditional upon a change in the offer is actually a counteroffer, in which case acceptance to the original offer is not binding).

**Acquisition Plan:** The acquisition plan is an administrative tool in which agency program offices report their upcoming formal contract actions. It is designed to assist the program and procurement offices in planning effective and efficient accomplishments of an assigned procurement.

**Acquisition Planning:** The process by which the efforts of all personnel responsible for procurement are coordinated and integrated through a comprehensive plan for fulfilling an agency's need in a timely manner and at a reasonable price. It includes developing an overall acquisition strategy for managing the acquisition plan.

**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 Payments:** Payments made prior to performance of services or delivery of supplies.

**Agency Head:** The director or chief official, regardless of actual title, of any District agency, office, department, or other entity of the District.

**Allowable Costs:** Costs determined to be permissible based on reasonableness, allocability, and generally accepted accounting principles and practices appropriate to the particular circumstances.

**Amendment:** Any change to a solicitation issued by a contracting officer.

**Appropriate Fiscal Officer:** The budget officer, controller, or other designated District financial authority official.

**Approved Rate:** A certified overhead rate that has been audited by the DOACD and approved by the Contracting Officer. An overhead rate is an actual or provisional overhead cost for a given period divided by the actual or budgeted measure of production activity (direct labor cost, or labor hours).

**Architectural & Engineering (A/E) Contracts:** Contracts that are used for professional services that are specialized in nature and require a qualifications-based selection procurement procedures complying with 40 U.S.C. 1101–1104, commonly referred to as the Brooks Act. A/E work requires the oversight of those licensed by a state to practice the professions of architecture, engineering, surveying and/or certain other specialized services.

**Assignment of Contract:** The transfer by a contractor to a financial institution of the Payments contractor's right to receive payments under the contract.

**Audit:** A formal examination in accordance with professional standards of a consultant's accounting systems, incurred cost records and other cost presentations to test the reasonableness, allowability, and allocability of

costs in accordance with the Federal cost principles as specified in 48 CFR Part 31.

**Award Information:** Information regarding the name of the contractor and the amount of the contract award.

**Bid Bond:** A form of security assuring that the bidder will not withdraw a bid within the period specified for acceptance and will execute a written contract within the time specified in the bid.

**Bid Samples:** A sample to be furnished by a bidder to show the characteristics of the product offered in a bid.

**Bid Security:** A form of guarantee assuring that the bidder will not withdraw a bid within the period specified for acceptance and will execute a written contract and furnish required bonds or other security, including any necessary coinsurance agreements, within the time specified in the solicitation, unless a longer time is allowed, after receipt of the specified forms.

**Bilateral Modification:** A contract modification that is signed by the contractor and the contracting officer.

**Blanket Purchase:** A pre-contractual agreement with a vendor which allows an agency to make small purchases by issuing a purchase order for each individual purchase.

**Board:** The Contract Appeals Board.

**Bond:** A written instrument executed by a 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, of any loss sustained by the obligee.

**Brand Name:** A purchase description that identifies a product by its brand name description and model, part number, or other appropriate nomenclature by which the product is offered for sale.

**Certified Business:** Vendors who have been certified (CBE) by the DC Department of Small and Local Business Development.

**Change-of-Name:** 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.

**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.

**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.

**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.

**Code of Federal Regulation (CFR):** The codification of the general and permanent rules and regulations (sometimes called administrative law) published in the Federal Register by the executive departments and agencies of the federal government of the United States. The CFR is divided into 50 titles that represent broad

areas subject to federal regulation.

**Cognizant Agency:** Any governmental agency that has performed an audit in accordance with generally accepted government auditing standards to test compliance with the requirements of the federal cost principles (as specified in 48 CFR Part 31) and issued an audit report of the consultant's indirect cost rate, or any agency that has conducted a review of an audit report and related work papers prepared by a certified public accountant and issued a letter of concurrence with the audited indirect cost rate(s). A cognizant agency may be:

- A. A federal agency,
- B. A state transportation agency of the state where the consultant's accounting and financial records are located, or
- C. A state transportation agency to which cognizance for the particular indirect cost rate(s) of a consulting firm has been delegated or transferred in writing by the state transportation agency identified in Paragraph B of this definition.

**Commercial Off-The-Shelf (COTS):** An item produced and placed in stock by a contractor, or stocked by a distributor, before receiving orders or contracts for its sale. COTS items require no unique District modification to meet the needs of the District.

**Competition:** A procurement strategy where more than one contractor that is capable of performing the contract is solicited to submit an offer for supplies and services. The successful offeror is selected on the basis of criteria established by the agency's contracting office and the program office for which the work is to be performed.

**Competitive Sealed Bidding (IFB):** A method of contracting that, through an "Invitation for Bids", solicits the submission of competitive bids, followed by a public opening of the bids. A contract is then awarded to the responsible bidder who submitted the lowest priced responsive bid. See 27 DCMR Chapter 15.

**Competitive Sealed Proposals (RFP):** A process which includes the submission of written technical and price proposals from one or more offerors and a written evaluation of each proposal in accordance with evaluation criteria set forth in the Request for Proposals. These criteria consider price, quality of the items, past performance, and other relevant factors. See 27 DCMR Chapter 16.

**Competitive Range:** See 27 DCMR 1637. The CO determines the competitive range on the basis of cost or price and other factors, in accordance with the evaluation criteria stated in the RFP, and shall include all of the most highly rated proposals. If all of the offerors have been notified in the solicitation of the possibility that the competitive range can be limited for purposes of efficiency, the contracting officer may determine to limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

**Contract:** A mutually binding agreement between the District and a contractor, which must be in writing unless otherwise authorized by the PPR, including agreements in which a party other than the District is obligated to pay the contractor. Contracts do not include grants.

**Contractor:** A person that enters into a contract with the District. The person may take the form of a corporation, a partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted. For A/E consultants, the individual or firm providing engineering

and design-related services as a part to the contract with a recipient or sub-recipient of federal assistance as defined in 2 CFR 200.86 or 2 CFR 200.93, respectively.

**Contract Administration:** All services associated with the oversight of the contractor's performance.

**Contract Award:** Occurs when the contracting officer and the contractor have signed the contract.

**Correction:** The elimination of a defect.

**Cost:** The amount paid or charged for something. Cost does not include the contractor's profit.

**Cost or Pricing Data:** All facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projects, they do include the data forming the 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 significance bearing on cost.

**Cost-Plus-Award-Fee Contract:** A cost-reimbursement type contract which 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 type of contract that specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula.

**Cost-Reimbursement Contract:** A contract under which the District reimburses the contractor for those contract costs, within a stated ceiling, which are recognized as allowable and allocated in accordance with cost principles, and a fee, if any.

**Council:** The Council of the District of Columbia.

**Cure Notice:** A notice in writing in which the CO 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.

**Debarment:** Action taken by the CPO to exclude a contractor from District contracting and District-approved subcontracting for a reasonable, specified period. A contractor so excluded is debarred.

**Deficiency:** A material failure of a proposal to meet a District requirement or a combination of significant weaknesses in a proposal that increase the risk of unsuccessful contract performance to an unacceptable level.

**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 a letter contract commitment.

**Deliverable:** A report or product that must be delivered to the District by the contractor to satisfy contractual requirements.

**Descriptive Literature:** Information (such as cuts, illustrations, drawings and brochures) which shows the characteristics or construction of a product or explains its operation.

**Destination:** The point designated in the contract at which the end product is received.

**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.

**Direct Cost:** Any cost that can be identified specifically with a particular final cost objective or is incurred directly for a particular contract.

**Direct Labor:** Labor required to complete a product or service. This includes fabrication, assembly, inspection and test for constructing an end product.

**Direct Materials:** Includes raw materials, purchase parts and subcontracted items required to manufacture and assemble completed products. A direct material cost is the cost of material used in making the product.

**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.

**Dispute:** A disagreement between the contractor and the District regarding the rights of the parties under a contract.

**District of Columbia Supply Schedules:** A series of schedules and identified vendors compiled by OCP's Supply Schedule Office commonly used for goods and services available to District government agencies at specified negotiated prices on single and multiple awards.

**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.

**Emergency Procurement:** A procurement action initiated and processed when there is an imminent threat to the public health, welfare, property or safety, or to prevent or minimize serious disruption in agency operations.

**Encumbrance:** The reserving of funds for obligation at the time the contract was signed by a warranted contracting officer.



**Engineering and Design Related Services:** Engineering and design related services are:

- A. Program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or architectural related services with respect to a highway construction project subject to 23 USC 112(a) as defined in 23 USC 112(b)(2)(A); and
- B. Professional services of an architectural or engineering nature, as defined by state law, which are required to or may logically or justifiably be performed or approved by a person licensed, registered, or certified to provide the services with respect to a highway construction project subject to 23 USC 112(a) and as defined in 40 USC 1102(2), which may include studies, investigations, surveys, evaluations, consultations, environmental services, planning, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services.

**Estimating Costs:** The process of forecasting a future result in terms of cost, based upon information available at the time.

**Excluded Parties List:** A list compiled, maintained, and distributed by the OCP which contains the names of persons debarred or suspended by the District, as well as contractors declared ineligible under other statutory or regulatory authority.

**Executed:** Agreed to and signed by the parties to a transaction.

**FAHP (Federal-Aid Highway Program):** The FAHP is an umbrella term used to refer to most of the federal programs that provide highway funds to the various U.S. States. When used in a budgetary context, FAHP specifically refers to highway programs financed by contract authority out of the Highway Account of the Highway Trust Fund (HTF).

**Federal Cost Principles:** The principles contained in 48 CFR part 31 of the Federal Acquisition Regulation for determination of allowable costs of commercial, for-profit entities.

**Firm-Fixed Price Contract:** A contract where the price is not subject to any adjustment on 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.

**Fiscal Year:** The accounting period for which annual financial statements are regularly prepared.

**Fixed-Price Contract with Economic Price:** A fixed-price type contract that provides for the upward and downward revision of the stated contract price upon the occurrence Adjustment 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 subject to a ceiling, establishes the final contract price by a formula based on the relationship of final negotiated price to total target cost. After performance of the contract, the final cost is negotiated and the final contract price is then established in accordance with the formula.

**Fringe Benefits:** Allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries.

**Government Furnished Property:** Equipment and facilities furnished by the District to a contractor, or acquired by a contractor at the District's expense for use during the performance of a contract.

**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.

**Indirect Cost Rate:** The percentage of 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.

**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.

**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.

**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.

**Interested Party:** An actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract, or who is aggrieved in connection with the solicitation of a contract.

**Invitation for Bids (IFBs):** A solicitation used to request price offers for goods, services and construction under competitive sealed bidding procedures.

**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.

**Lowest Evaluated Bid Price:** The lowest bid price after considering all price related factors.

**Market Analysis:** The process of analyzing prices and trends in the competitive marketplace to compare product availability and offered prices with market alternatives and establishes the reasonableness of offered prices. The market analysis is one of the elements of the price analysis.

**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 FedBizOps) or solicitations for information or planning purposes.

**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 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 contract. Orders below established minimums are generally subject to the contractor's acceptance.

**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.

**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.

**Multi-Year Contract:** A locally-funded contract for a period longer than twelve months.

**Notice of Intent to Award:** A written notice to the apparent awardee advising of intent to award the contract contingent upon the execution of any required bonds and the formal contract, and obtaining all necessary approvals.

**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 rights and obligations of a contractor under a contract to a new contractor.

**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.

**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.

**Partial Payment:** The reduction of any debt or demand for payment of a sum less than the whole amount originally due to the contractor.

**Partial Termination:** The termination of a part, but not all, of the work that has not been completed and accepted under a contract.

**Payment Bond:** A bond to assure payment 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.

**Post-Execution:** After signature by the contracting officer on a contract, change order, or modification.

**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.

**Pre-Award Survey:** A detailed review (sometimes on-site) of contractor to ascertain information sufficient to make a determination regarding responsibility.

**Price:** Cost plus any fee or profit applicable to the contract type.

**Price Analysis:** The process of examining and evaluating a proposed price by comparing it with other offered prices, or prices previously paid for similar goods or services without evaluating its separate cost elements and proposed 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.

**Procurement:** Buying, purchasing, renting, leasing, or otherwise acquiring goods, services, or construction.

**Profit:** The amount realized by a contractor after the cost of performance (both direct and indirect) is deducted from the amount to be paid under the terms of the contract.

**Progress Payment:** A payment made on the basis of services completed or supplies delivered.

**Proposal:** Any offer or other submission used as a basis for pricing a contract, contract modification, or termination settlement or for securing payments thereunder.

**Proprietary Information:** Information, including trade secrets, data, formulas, patterns, compilations, programs, devices, methods, techniques, or processes, which have the following characteristics:

- 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
- It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**Prospective Price Determination:** 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 or subsequent period of performance at a stated time or times during performance.

**Protest:** A complaint about a solicitation of a contract brought by an actual or prospective bidder or offeror who is aggrieved in connection with the solicitation or award.

**Purchase Order:** An offer by the District to buy certain supplies, services, or other items from commercial sources, upon specified terms and conditions.

**Request for Information (RFI):** A request for information is used when the District does not presently intend to award a contract, but needs to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to requests for information notices are not offers and cannot be accepted by the District to form a binding contract.

**Request for Quotation (RFQ):** A solicitation document used in simplified acquisitions to communicate District requirements to prospective contractors.

**Request for Proposal (RFP):** A solicitation document used in a competitive sealed proposal method of procurement, to communicate the District's requirements to prospective offerors, when the use of competitive sealed bidding is not practical, and the award will be based on both price and non-price evaluation factors specified in the solicitation.

**Responsive Bidder:** A bidder, who has submitted a bid that conforms in all material respects to the invitation for bids.

**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 request the contractor to show cause why the contract should not be terminated for default.

**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.

**Small Purchase:** A procurement of supplies, services, or other items in an aggregate amount not exceeding the small purchase authority limitations.

**State Transportation Agency:** The department or agency maintained in conformity with 23 U.S.C. 302 and charged with the responsibility for highway construction (as defined in 23 U.S.C. 101); and that is authorized by the laws of the State to make final decisions in all matters relating to, and to enter into, all contracts and agreements for projects and activities to fulfill the duties imposed by Title 23 United States Code, Title 23 code of Federal Regulations, and other applicable Federal laws and regulations.

**Statewide Transportation Improvement Program (STIP):** A statewide prioritized program of federally funded transportation projects or phases of projects. The STIP is a six year program and must be updated at least once every four years. The STIP must be consistent with the Statewide Comprehensive Plan and Metropolitan Planning Organization ("MPO") Transportation Improvement Programs ("TIPs"). All federally funded projects and/or categories of projects are required to be included in the STIP in order to be eligible for federal funds pursuant to Title 23 and Title 49, Chapter 53 of the United States Code.

**Surety:** A party legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation.

**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.

**Subcontracting Plan:** A written plan submitted by a prime contractor and approved by a contracting officer, that describes goals and actions the contractor plans to take to use small and other certified business enterprises in performing the contract.

**Subcontractor:** A person that furnishes supplies or services to or for a prime contractor or another subcontractor.

**Supplemental Agreement:** A bilateral contract modification.

**Suspension:** Action taken by the Director to disqualify a contractor temporarily from contracting with the

District and subcontracting with District contractors. A contractor so disqualified is suspended.

**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.

**Technical Evaluation 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 material, labor, processes, special tooling, facilities, and associated factors set forth in a proposal.

**Term Contract:** A requirements contract or an indefinite-quantity contract.

**Terminated Portion:** The portion of a terminated contract that relates to work or end of the Contract 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.

**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.

**Trade Discount:** A price allowance or deduction, usually as a percentage, allowed to different classes of customers.

**Two-Step Sealed Bidding:** A method of contracting designed to obtain the benefits of competitive sealed bidding when adequate specifications are not available at the beginning of the solicitation process. See 27 DCMR 1552, et seq.

**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.

**Unauthorized Commitment:** The placing of an order orally or in writing for supplies or services by a District employee who does not have a contracting officer warrant authorizing them to enter into a contract on behalf of the District; and also include orders placed by COs which exceed their authorized purchasing limit.

**Unilateral Modification:** A contract modification that is signed only by the contracting officer which effects a contract change directed by the District.

**United States Code (USC):** A consolidation and codification by subject matter of the general and permanent laws of the United States; is prepared and published by a unit of the United States House of Representatives.

**United States Code of Federal Regulation Title 23 Chapter 1 Subchapter B Part 172 (23 CFR 172):**  
United States Code of Federal Regulation for the Administration of Engineering and Design Related Service Contracts

**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.

**Vendor:** Any entity that is paid for goods or services provided to the District Department of Transportation.

**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.