

# **THE DISTRICT OF COLUMBIA PROCUREMENT PRACTICES REFORM ACT AS AMENDED**

**D.C. OFFICIAL CODE  
§§ 2-351.01 to 2-362.03**

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## **OFFICE OF CONTRACTING AND PROCUREMENT (OCP)**

OCP Legal has updated Title II (Government Administration), Chapter 3A (Government Procurement) of the D.C. Official Code to include the changes made by the Procurement Integrity, Transparency, and Accountability Amendment Act of 2015 (PITAAA), effective October 8, 2016 (D.C. Law No. L21-0158).

**INTEGRATED VERSION**

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## Introductory Note

*All changes made to the Procurement Practices Reform Act by the by the Procurement Integrity, Transparency, and Accountability Amendment Act of 2015 (PITAAA), effective October 8, 2016, have been integrated into all appropriate sections infra, and are not specifically identified herein. All changes made by the PITAAA, however, have been indicated in the Redlined Version of this document.*

*Revised sections 2-352.05(c)(3); 2-352.07(a); and 2-356.06 become effective upon budgetary inclusion and should not be cited without verification from the Office of the Chief Financial Officer.*

**TITLE II – GOVERNMENT ADMINISTRATION  
CHAPTER 3A – GOVERNMENT PROCUREMENT**

**SUBCHAPTER I GENERAL PROVISIONS**

**§ 2-351.01 PURPOSES AND POLICIES**

- (a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.
- (b) In enacting this chapter, the Council supports the following statutory purposes:
  - (1) To simplify, clarify, and modernize the law governing the procurement of goods, services, and construction items by the District government;
  - (2) To foster effective and equitably broad-based competition in the District by supporting the free enterprise system and the certified business enterprise program as set forth in subchapter IX-A of Chapter 2 of this title [§ 2-218.01 *et seq.*], and its implementing rules;
  - (3) To obtain full and open competition by providing that contractors are given adequate opportunities to bid;
  - (4) To ensure the fair and equitable treatment of all persons who deal with the procurement system of the District government;
  - (5) To increase public confidence in the procedures followed in public procurement;
  - (6) To promote efficiency and eliminate duplication in the District government procurement organization and operation to reduce costs;
  - (7) To provide increased economy in procurement activities and maximize, to the fullest extent practicable, the purchasing power of the District government;
  - (8) To permit the continued development of procurement laws, policies, and practices;
  - (9) To provide for timely, effective, and efficient service to District agencies and individuals doing business with the District government;
  - (10) To promote the development of uniform procurement procedures District government-wide;

- (11) To improve the understanding of procurement laws and policies within the District government by organizations and individuals doing business with the District government; and
- (12) To promote, to the maximum extent feasible, the purchase of environmentally preferable products and services.

## **§ 2-351.02 SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE**

Unless superseded by the particular provisions of this chapter, the principles of law and equity, including subtitle I of Title 28 of the District of Columbia Official Code, and laws relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy, shall supplement the provisions of this chapter.

## **§ 2-351.03 OBLIGATION OF GOOD FAITH**

Every contract or duty within this chapter imposes an obligation of good faith in its performance or enforcement. For purposes of this chapter, the term “good faith” means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

## **§ 2-351.04 DEFINITIONS**

For the purposes of this chapter, the term:

- (1) “Affiliate” means any business in which:
  - (A) A suspended or debarred person is an officer or has a substantial financial interest and any business that has a substantial direct or indirect ownership interest in the suspended or debarred business; or
  - (B) A suspended or debarred business has a substantial direct or indirect ownership interest.
- (2) “Agency” means any agency, employee, or instrumentality of the District government.
- (2A) “Alternative technical concept” means a proposed change to an agency-supplied base design configuration, project scope, design criterion, or construction criterion that the agency determines is equal to or better than a requirement in a request for proposals.
- (3) “Architectural and engineering services” means:
  - (A) Professional services of an architectural or engineering nature:

- (i) Which are required to be performed or approved by a person licensed, registered, or certified to provide the services as described in this paragraph; or
  - (ii) Performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property.
- (B) 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, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.
- (4) “Bid bond” means 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.
- (5) “Bid price” means the dollar value of a price offering submitted in response to an Invitation for Bids.
- (6) “Bidder” means any person who submits a price offering in response to an Invitation for Bids.
- (7) “Bond” means a written instrument executed by a contractor (principal) and a second party (surety) to assure fulfillment of the contractor’s obligations to a third party (obligee or the District). If the principal’s obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee.
- (8) “Business” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted.
- (9) “Change order” means a written order signed by the contracting officer, directing the contractor to make changes which the changes clause of the contract authorizes the contracting officer to order without the consent of the contractor.
- (10) “Chief Financial Officer” or “CFO” means the Chief Financial Officer of the District of Columbia.
- (11) “Chief Procurement Officer” or “CPO” means the director of the Office of Contracting and Procurement established by § 2-352.01.



- (12) “Competitive sealed proposals” means 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 which consider price, quality of the items, performance, and other relevant factors.
- (13) “Construction” means the process of building, altering, repairing, improving, or demolishing any public infrastructure facility. The term “construction” does not include the routine operation, routine repair, or routine maintenance of an existing public infrastructure facility.
- (14) “Construction management at-risk” means a project delivery method in which the purchasing agency awards a construction management services contract for a project to a single firm, based on qualifications, and under which contract the construction manager shall deliver the project within the GMP.
- (15) “Contract modification” means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract.
- (16) “Contracting officer” means the Mayor, the CPO, or the CPO’s designee vested with the authority to execute contracts on behalf of the District or otherwise bind the District in compliance with the provisions of this chapter.
- (17) “Contractor” means a person that enters into a contract with the District.
- (18) “Cooperative purchasing” means a procurement conducted by the District government with, or on behalf of, any government or public entity, including a state, county, or municipal jurisdiction or the Federal government.
- (19) “Cost-plus incentive fee contract” means a type of contract that specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula.
- (20) “Cost-reimbursement contract” means 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.
- (21) “Default Environmental Preference Standard” shall mean materials, supplies, services, or commodities that:
  - (A) Are available through the most current version of the GSA Environmental Specialty Category; or
  - (B) Meet or exceed applicable performance standards or requirements of:

- (i) The Federal Energy Management Program;
  - (ii) The Electronic Products Environmental Assessment Tool Bronze rating;
  - (iii) The U.S. Department of Energy’s ENERGY STAR program;
  - (iv) The U.S. Environmental Protection Agency’s Comprehensive Procurement Guidelines; or
  - (v) Verification of a project under the Leadership in Energy and Environmental Design green building rating systems designed by the United States Green Building Council.
- (22) “Definitive contract” means the contract executed pursuant to the letter contract commitment.
- (23) “Design-bid-build” means a project delivery method in which the purchasing agency sequentially awards separate contracts, the 1st for architectural and engineering services to design the project and the 2nd for construction of the project according to the design.
- (24) “Design-build” means a project delivery method in which the purchasing agency enters into a single contract for design and construction of an infrastructure facility.
- (25) “Design-build-finance-operate-maintain” means a project delivery method in which:
- (A) The purchasing agency enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period; and
  - (B) No District funds are appropriated to pay for any part of the services provided by the contractor during the contract period.
- (26) “Design-build-operate-maintain” means a project delivery method in which:
- (A) The purchasing agency enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period; and
  - (B) All or a portion of the funds required to pay for the services provided by the contractor during the contract period are:
    - (i) Either appropriated by the District prior to award of the contract; or

- (ii) Generated by the District through fare, toll, or user charges.
- (27) (A) “Design requirements” means the written description of the infrastructure facility or service to be procured under this chapter, including:
  - (i) Required features, functions, characteristics, qualities, and properties that are required by the District;
  - (ii) The anticipated schedule, including start, duration, and completion; and
  - (iii) Estimated budgets (as applicable to the specific procurement) for design, construction, operation and maintenance.
- (B) The written description may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the infrastructure facility or service.
- (28) “Determinations and findings” means a form of written approval and detailed explanation as a prerequisite to taking certain contract actions, including the rationale for the method of procurement, the selection of contract type, contractor selection, and the basis for contract price.
- (29) “District of Columbia Supply Schedule” or “DCSS” means the District of Columbia’s multiple award schedule or other procurement program under which contracts may be awarded to certified business enterprises, as defined in § 2-218.02(1B), providing goods, services, or construction to District government agencies.
- (30) “Environmentally Preferable Product or Service” or “EPPS” means a good or service that is less harmful to human health and the environment when compared with competing goods or services that serve the same purpose. The factors to be compared include raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.
- (31) “Evaluated bid price” means the dollar amount of a bid after bid price adjustments are made under objective measurable criteria, set forth in the Invitation for Bid, which affect the economy and effectiveness in the operation or use of the product, including the reliability, maintainability, useful life, and residual value.
- (32) “Fixed-price contract” means a contract where the price is not subject to any adjustment on the basis of the contractor’s cost experience in the performance of the contract.
- (33) “Fixed-price incentive contract” means a contract that:

- (A) Provides for adjusting profit; and
  - (B) Subject to a ceiling, establishes the final contract price by a formula based on the relationship of final negotiated price to total target cost.
- (34) “Fully allocated cost” means the total direct and indirect costs of providing a good, service, or function. The term “fully allocated cost” includes:
- (A) Direct personal services costs, including wages, salaries, and fringe benefits;
  - (B) Non-personal services costs including materials, goods, equipment, maintenance and repairs, utilities, insurance, travel, and capital and equipment depreciation cost; and
  - (C) General and administrative overhead.
- (34A) “Function closely associated with an inherently governmental function” means a function that is not an inherently governmental function, but is similar to an inherently governmental function because of the nature of the function, the manner in which the contractor performs the function, or the manner in which the government administers the contractor’s performance of the function, as determined by application of the criteria set forth under section 205a.
- (35) “Goods” means all personal property, tangible or intangible.
- (36) “Guaranteed Maximum Price” or “GMP” means an amount beyond which the District government is not obligated to compensate a contractor.
- (37) “Human care agreement” means a written agreement for the procurement of education, special education, health, human, or social services, pursuant to § 2-354.06, to be provided directly to individuals who have disabilities or are disadvantaged, displaced, elderly, indigent, mentally ill, physically ill, unemployed, or minors in the custody of the District.
- (37A) “Public infrastructure facility” includes any public structure, public building, any element of the Integrated Premium Transit System, as that term is defined in § 50-921.04(b)(2), and other public improvements of any kind to real property.
- (37B) “Inherently governmental function” means a function that is so intimately related to the public interest as to require performance by District government employees, as determined by application of the criteria set forth under section 205a.
- (38) “Invitation for Bids” means all documents, including documents attached or incorporated by reference, used for soliciting bids pursuant to § 2-354.02.

- (38A) “Labor organization” shall have the same meaning as provided in section 102(15) of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.02(15)).
- (39) “Letter contract” means a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing or delivering goods or performing services prior to the execution of a definitive contract.
- (40) “Machine-readable and searchable” means electronic text that is stored as strings of characters and that can be displayed in a variety of formats.
- (41) “Negotiation” means discussions to determine the terms and conditions of a contract or procurement.
- (42) “OCP” means the Office of Contracting and Procurement established by § 2-352.01.
- (43) “Offeror” means any person who submits a technical and price proposal in response to a Request For Proposals or a response to a Request For Qualifications.
- (44) “Operations and maintenance” means a project delivery method whereby the purchasing agency enters into a single contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility.
- (45) “Payment bond” means a bond to assure payment to all persons supplying labor or material in the performance of the work provided in the contract.
- (46) “Performance bond” means a bond to secure performance and fulfillment of the contractor’s obligations under the contract.
- (47) “Privatization contract” means a contract by which the District government enters into an agreement with a person who is not part of the District government to provide a good or service to or on behalf of the District government that is being provided by a District government agency or instrumentality.
- (48) “Procurement” means buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, or construction.
- (49) “Proposal development” means documents, drawings, and other design-related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical, and electrical systems, materials, and other elements as may be appropriate to the applicable project delivery method.
- (50) “Public notice” means the distribution or dissemination of information to interested parties using methods that are reasonably available. Methods may include publication in newspapers, electronic or paper mailing lists, and websites

designated by the District; provided, that competitive sealed bids pursuant to § 2-354.02 and competitive sealed proposals pursuant to § 2-354.03 for any solicitation in excess of \$250,000 shall include publication in a newspaper of general circulation and in trade publications considered to be appropriate by the CPO to give adequate public notice.

- (51) “Purchase Card Program” means the credit card program under which agencies are authorized to make purchases for goods or services.
- (52) “Request for Proposals” or “RFP” means all documents, whether attached or incorporated by reference, used for soliciting proposals pursuant to § 2-354.03.
- (53) “Request for Qualifications” or “RFQ” means a written document inviting prospective contractors to submit a statement of their qualifications to provide certain goods or services.
- (53A) “Restricted period” means the period of time commencing with the earliest written notice, advertisement, or solicitation of a request for proposal, invitation for bids, or any other method of soliciting a response from offerors or bidders intended to result in a contract with the District, and ending with either the execution of the final contract and its approval by the District or submission of the contract to the Council for its review when such submission is required pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51).
- (54) “Reverse auction” means an online procurement method whereby pre-qualified suppliers compete with one another to provide a good or service, typically commodities, to a buyer or group of buyers.
- (55) “Responsible” or “responsibility” means that a prospective contractor has been determined, under § 2-353.02, to have the necessary capacity to perform in accordance with the terms and conditions of the contract.
- (56) “Responsive bidder or offeror” means a person who has submitted a bid or offer which conforms in all material respects to the solicitation.
- (57) “Sanitize” means the process of removing data from a media source before the item is reused in an environment that does not provide an acceptable level of protection for the data.
- (58) “Services” means the furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. The term “services” shall not include the furnishing of time, labor, or effort pursuant to employment agreements or collective bargaining agreements.

- (59) “Sole source” means that a single source in a competitive marketplace can fulfill the specifications of a contract.
- (60) “Source selection” means the process of soliciting a bidder or offeror for the awarding of a contract and the subsequent evaluative process, based on established award criteria, delineated in the solicitation document.
- (61) “Special education services” means the services defined in 34 C.F.R. § 300.24.
- (62) “Specification” means any description of physical or functional characteristics or of the nature of a good, service, or construction item. The term “specification” includes a description of any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery.
- (63) “Statement of qualifications” means a written document, submitted to OCP by a prospective contractor wishing to obtain a District government contract, which sets forth the prospective contractor’s qualifications as requested by the CPO.
- (64) “Surety” means a business legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation.
- (65) “Surplus goods” means any goods no longer having any use to the District. The term “surplus goods” includes obsolete goods, scrap materials, and nonexpendable goods that have completed their useful life cycle.
- (66) “Surplus Property Fund” means the District of Columbia Surplus Property Sales Revolving Fund established by § 2-358.04 [repealed].
- (67) “Term contract” means a contract established for a period of time for bulk purchase of goods commonly used by the District.
- (68) “Voucher” means a written authorization to a human care agreement service provider to provide the services authorized in the agreement to an individual identified in the agreement.
- (69) “Written” or “in writing” means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored, other electronic media, and digital files.

## **§ 2-351.05 APPLICATION; EXEMPTIONS**

- (a) Except as provided in this section, this chapter, except for § 2-352.02, shall apply to all subordinate agencies, instrumentalities, and employees of the District government, independent agencies, boards, and commissions.

- (b) Only §§ 2-351.02, 2-351.03, 2-351.04, and subchapters III, IV, V, VII, IX, X, XI, and XII of this chapter shall apply to the Council. The duties of the CPO shall be exercised by the Council for the purposes of the application of those sections and subchapters to the Council. Notwithstanding § 2-352.01, the Mayor or the CPO shall not have the authority to monitor, review, or establish standards, procedures, regulations, or rules for contracts or procurements of the Council, unless authorized by the Council.
- (c) This chapter, except for § 2-352.02, shall not apply to:
- (1) The acquisition, disposition, or transfer of a real property asset or interest in a real property asset by lease, purchase, sale, or other method;
  - (2) A transaction pursuant to the subchapter I of Chapter 11 of Title 10 [§ 10-1101.01 *et seq.*];
  - (3) The District of Columbia Housing Finance Agency;
  - (4) The District of Columbia courts;
  - (5) The District Public Defender Service;
  - (6) The District of Columbia Advisory Neighborhood Commissions;
  - (7) The District of Columbia Water and Sewer Authority;
  - (8) Repealed.
  - (9) The Washington Convention and Sports Authority;
  - (10) The District of Columbia Auditor;
  - (11) The Not-for-Profit Hospital Corporation;
  - (12) A contract or agreement receiving or making grants or loans or for federal financial assistance;
  - (13) The procurement of services for the design, development, and construction of a facility on real property that has been disposed of pursuant to District law or on District-owned real property adjacent to a disposed-of property; provided, that the construction of the facility be required by a Land Disposition Agreement, or similar agreement, governing the disposition of the real property;
  - (14) The District of Columbia Retirement Board;
  - (15) The procurement of services for the demolition of an existing facility and the design, development, and construction of a facility comprised of a fire station and office space for the Fire and Emergency Medical Services Department on real



property located at Butternut Street and Georgia Avenue, N.W., at the Walter Reed Army Medical Center;

- (16) The procurement of goods and services directly related to the production of permanent supportive housing units for which the District has obligated funding pursuant to an agreement between any combination of the following agencies:
  - (A) District of Columbia Department of Housing and Community Development;
  - (B) District of Columbia Housing Finance Agency;
  - (C) District of Columbia Housing Authority;
  - (D) Department of Human Services;
  - (E) Department of Behavioral Health; and
  - (F) Any other agency that has entered into an agreement with any of the agencies listed in subparagraphs (A) through (E) of this paragraph directly related to the production of permanent supportive housing;
- (17) District of Columbia Health Benefit Exchange Authority;
- (18) Captive Insurance Agency; and
- (19) The Office of Public-Private Partnerships; provided that §§ 2-352.02, 2-354.15, and subchapters VII and X of this chapter shall apply.

## SUBCHAPTER II      PROCUREMENT ORGANIZATION

### § 2-352.01      OFFICE OF CONTRACTING AND PROCUREMENT; AUTHORITY

- (a)
  - (1) There is established as an independent agency the Office of Contracting and Procurement, which shall be administered by the Chief Procurement Officer. Except as otherwise provided in this chapter, OCP, through the CPO, shall have the exclusive authority to administer the provisions of this chapter.
  - (2) Repealed.
  - (3) Notwithstanding paragraph (1) of this subsection, until October 1, 2015, the following agencies, through their chief procurement officers, shall exercise the duties of the CPO for their respective agencies:
    - (A) The Department of Disability Services; and
    - (B) The Department of Behavioral Health, if a court order no longer requires the agency to be exempt from the CPO's authority.
  - (4) The CPO may delegate contracting authority to employees of an agency, including OCP, or another instrumentality.
  - (5) Agencies and instrumentalities subject to this chapter shall determine their requirements for goods and services and administering awarded contracts.
- (b) Notwithstanding subsection (a) of this section, the following agencies shall not be subject to the authority of the CPO, but shall conduct procurements in accordance with the provisions of this chapter:
  - (1) The Office of the Chief Financial Officer;
  - (1A) The Tax Revision Commission, pursuant to § 2-354.07;
  - (1B) The Office of the Attorney General;
  - (2) The University of the District of Columbia;
  - (3) The District of Columbia Housing Authority;
  - (4) The District of Columbia Public Library;
  - (5) The District of Columbia Public Schools;
  - (6) The Child and Family Services Agency, until such time as a court order no longer requires the agency to be exempt from the CPO's authority;

- (7) Repealed;
- (8) The Public Service Commission;
- (9) The Office of the People’s Counsel;
- (10) The Criminal Justice Coordinating Council; and
- (11) The Department of General Services.
- (1B) The Office of the Attorney General.
- (c) The Office of the Attorney General and the Inspector General may contract for the services of accountants, lawyers, and other experts when they determine and state in writing that good reason exists why the services should be procured independently of the Chief Procurement Officer.
- (d) Except regarding agencies exempted in section 105(c) and 201(b) and roads, bridges, other transportation systems, and facilities and structures appurtenant to roads, bridges, and other transportation systems, the Department of General Services shall have procurement authority for:
  - (1) Construction and related services under subchapter VI of this act; and
  - (2) Facilities maintenance and operation services, real estate asset management services, utility contracts, and security services, as set forth in section 1023(5) of the Department of General Services Establishment Act of 2011, effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 10-551.02(5)).
- (e) Except as otherwise provided in section 105(b), the CPO may review and monitor procurements, including for construction and related services under Title VI of this act, by any agency, instrumentality, employee, or official exempt under this chapter or authorized to procure independently of OCP.
- (f) The CPO may conduct procurements and award contracts on behalf of any agency exempt under this chapter or authorized to procure independently of OCP, when requested by the agency to do so. In conducting procurements or awarding contracts, the CPO shall comply with the requirements of this chapter.

**§ 2-352.02 CRITERIA FOR COUNCIL REVIEW OF MULTIYEAR CONTRACTS AND CONTRACTS IN EXCESS OF \$1 MILLION**

- (a) (1) Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), before the award of a multiyear contract or a contract in excess of \$1 million during a 12-

month period, the Mayor or executive independent agency or instrumentality shall submit the proposed contract to the Council for review and approval in accordance with the criteria established in this section.

- (2) For a contract modification to exercise an option period when the exercise of the option period does not result in a material change in the terms of the underlying contract, submission of the modification to exercise the option period shall constitute submission of the contract pursuant to this section.
  - (b) (1) A proposed multiyear contract shall be deemed disapproved by the Council unless, during the 45-calendar-day review period beginning on the 1st day (excluding Saturdays, Sundays, and holidays) following its receipt by the Office of the Secretary to the Council, the Council adopts a resolution to approve the proposed multiyear contract.
  - (2) A proposed contract in excess of \$1 million during a 12-month period shall be deemed approved by the Council if one of the following occurs:
    - (A) During the 10-day period beginning on the 1st day (excluding Saturdays, Sundays, and holidays) following its receipt by the Office of the Secretary to the Council, no member of the Council introduces a resolution to approve or disapprove the proposed contract; or
    - (B) If a resolution has been introduced in accordance with subparagraph (A) of this paragraph, and the Council does not disapprove the contract during the 45- day review period beginning on the 1st day (excluding Saturdays, Sundays, and holidays) following its receipt by the Office of the Secretary to the Council.
  - (3) (A) Council approval of contracts submitted pursuant to paragraph (2) of this subsection shall expire 12 months after the award of the contract.
  - (B) (i) Council approval of a contract containing a provision that grants to the District the option of continuing or amending the contract beyond the 12-month period of Council approval shall not constitute Council approval of the exercise of the option contract.
  - (ii) To exercise an option that meets the criteria for Council review pursuant to this section, the Mayor shall submit the option contract to the Council pursuant to this section.
  - (iii) The exercise of an option that meets the criteria for Council review under this subsection without Council review of the option contract is a violation of this section and § 1-204.51.
- (c) Proposed contracts submitted pursuant to this section may be submitted electronically and shall contain a summary, including the following:

- (1) The proposed contractor, contract amount, unit and method of compensation, contract term, and type of contract, and the source selection method;
- (1A) For a contract containing option periods, the contract amount for the base period and for each option period, and if the contract amount for one or more of the option periods differs from the contract amount for the base period, an explanation of the reason or reasons for that difference;
- (1B) If the contract definitizes a letter contract or replaces a contract awarded through an emergency procurement pursuant to section 405:
  - (A) The date on which the letter contract or emergency awarded through an emergency procurement was executed;
  - (B) The number of times the letter contract or contract awarded through an emergency procurement has been extended; and
  - (C) The value of the goods and services provided to date under the letter contract or contract awarded through an emergency procurement, including under each extension of the letter contract or contract awarded through an emergency procurement.
- (2) The goods or services to be provided, the methods of delivering goods or services, and any significant program changes reflected in the proposed contract;
- (3)
  - (A) The selection process, including the number of offerors, the evaluation criteria, and the evaluation results, including price, technical or quality, and past performance components;
  - (B) If the contract was awarded on a sole-source basis, the date on which a competitive procurement for the goods or services to be provided under the contract was last conducted, the date of the resulting award, and a detailed explanation of why a competitive procurement is not feasible;
- (3A) A description of any bid protest related to the award of the contract, including whether the protest was resolved through litigation, withdrawal of the protest by the protestor, or voluntary corrective action by the District. Each such description shall include the identity of the protestor, the grounds alleged in the protest, and any deficiencies identified by the District as a result of the protest;
- (4) The background and qualifications of the proposed contractor, including its organization, financial stability, personnel, and performance on past or current government or private-sector contracts with requirements similar to those of the proposed contract;

- (4A) A summary of the subcontracting plan required under section 2346 of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.46), to include a certification by the District that the subcontracting plan meets the minimum requirements of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*), and the dollar volume of the portion of the contract to be subcontracted, expressed both in total dollars and as a percentage of the total contract amount;
- (5) Performance standards and expected outcomes of the proposed contract;
- (5A) The amount and date of any expenditure of funds by the District pursuant to the contract prior to its submission to the Council for approval;
- (6) A certification that the proposed contract is within the appropriated budget authority for the agency for the fiscal year and is consistent with the financial plan and budget adopted in accordance with §§ 47-392.01 and 47-392.02;
- (7) A certification that the proposed contract is legally sufficient, including whether the proposed contractor has any currently pending legal claims against the District;
- (8)
  - (A) A certification that Citywide Clean Hands database indicates that the proposed contractor is current with its District taxes.
  - (B) If the Citywide Clean Hands Database indicates that the proposed contractor is not current with its District taxes:
    - (i) A certification that the contractor has worked out and is current with a payment schedule approved by the District; or
    - (ii) A certification that the contract will be current with its District taxes after the District recovers any outstanding debt as provided under section 301(9);
- (8A) A certification from the proposed contractor that it is current with its federal taxes, or has worked out and is current with a payment schedule approved by the federal government;
- (9) The status of the proposed contractor as a certified local, small, or disadvantaged business enterprise, as defined in subchapter IX-A of Chapter 2 of this title;
- (10) Other aspects of the proposed contract that the CPO considers significant;

- (11) A statement indicating whether the proposed contractor is currently debarred from providing services or goods to the District or federal government, the dates of the debarment, and the reasons for debarment;
  - (11A) Any determination and findings issues in relation to the contract's formation, including any determination and findings made under section 205;
  - (12) Where the contract, and any amendments or modifications, if executed, will be made available online; and
  - (13) Where the original solicitation, and any amendments or modifications, will be made available online.
- (c-1) A proposed change to the contract or amount of a contract, including the exercise of an option period, a modifications, a change orders, or any similar change that is submitted to the Council pursuant to this section and that seeks from the Council retroactive approval of an action or authorization for payment, shall include the summary required under subsection (c) and also shall include:
- (1) The period of performance associated with the proposed change, including date as of which the proposed change is to be made effective;
  - (2) The value of any work or services performed pursuant to a proposed change for which the Council has not provided approval, disaggregated by each proposed change if more than one proposed change has been aggregated for Council review;
  - (3) The aggregate dollar value of the proposed change as compared with the amount of the contract as awarded;
  - (4) The date on which the contracting officer was notified of the proposed change;
  - (5) The reason why the proposed change was sent to the Council for approval after it is intended to take effect;
  - (6) The reason for the proposed change; and
  - (7) The legal, regulatory, or contractual authority for the proposed change.
- (c-2) Any proposed change submitted to the Council for its review in accordance with subsection (c-1) shall be referred to the Inspector General who may examine the contract for possible corruption, mismanagement, waste, fraud, or abuse pursuant to Section 208(a-1)(2) of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 1-301.115a(a-1)(2)).
- (c-3) The proposed exercise of an option period pursuant to subsection (a)(2) may be submitted electronically and shall contain a summary, including the following:

- (1) The proposed contractor, contract amount, contract term and contract type;
  - (2) The identifying number of the underlying contract, including the identifiers assigned to the underlying contract by the Council for the base period of the contract and any subsequent option periods;
  - (3) A statement indicating that the contracting officer determined through the Citywide Clean Hands Database that the contractor is current with its District taxes or has worked out and is current with a payment schedule approved by the District, or that the contracting officer will offset any outstanding amount pursuant to section 301(9); and
  - (4) A statement indicating that the proposed contract is within the appropriated budget authority for the fiscal year and is consistent with the financial plan and budget adopted in accordance with D.C. Official Code §§ 47-392.01 and 47-392.02.
- (d) No proposed multiyear contract and no proposed contract in excess of \$1 million for a 12-month period shall be awarded until after the Council has reviewed and approved the proposed contract as provided in this section.
- (e) Notwithstanding subsection (a) of this section, review and approval by the Council of a definitive contract in excess of \$1 million during a 12-month period shall constitute the Council review and approval, required by § 1-204.51(b), of the definitive contract and the merged letter contract contained therein; provided, that a copy of the underlying letter contract be transmitted to the Council with the definitive contract.
- (f) Any employee or agency head who shall knowingly or willfully enter into a proposed multiyear contract or a proposed contract in excess of \$1 million without prior Council review and approval in accordance with this section shall be subject to suspension, dismissal, or other disciplinary action under the procedures set forth in subchapter XVI-A of Chapter 6 of Title 1.
- (g) (1) No contractor who knowingly or willfully performs on a contract with the District in excess of \$1 million for a 12-month period without prior Council approval shall be paid more than \$1 million for the products or services provided.
- (2) No contractor who knowingly or willfully performs on a multiyear contract with the District without prior Council approval of the multiyear contract shall be paid in more than one calendar year for the products or services provided.
- (h) Review and approval by the Council of the annual capital program of federal highway aid projects shall constitute the Council review and approval required by § 1-204.51(d)(3) of individual federal-aid highway contracts that make up the annual program.



### **§ 2-352.03 OFFICE OF CONTRACTING AND PROCUREMENT**

- (a) The agency head of the Office of Contracting and Procurement shall be the Chief Procurement Officer.
- (b) The CPO shall be appointed by the Mayor with the advice and consent of the Council pursuant to § 1-523.01.
- (c) On April 8, 2011, the incumbent CPO shall continue to serve as the CPO. If the incumbent CPO is unable to serve as the CPO, until a new CPO is appointed by the Mayor pursuant to § 1-523.01, the highest ranking employee of OCP shall serve as acting CPO.
- (d) The CPO shall have not less than 5 years of senior-level experience in procurement and shall have demonstrated, through knowledge and experience, the ability to administer a public procurement system of the size and complexity of the program established by this chapter.
- (e) The CPO shall serve for one 5-year term and may be reappointed pursuant to subsection (b) of this section.
- (f) The CPO shall not be removed from office before the expiration of the 5-year term except for cause, subject to the right of appeal as provided in subchapter VI of Chapter 6 of Title 1. [§ 1-606.01 *et seq.*].

### **§ 2-352.04 DUTIES OF THE CHIEF PROCUREMENT OFFICER**

- (a) The Chief Procurement Officer shall be the chief procurement official of the District.
- (b) The CPO shall have the following authority and responsibility:
  - (1) To serve as the central procurement and contracting officer for the District;
  - (2) To identify gaps, omissions, or inconsistencies in procurement laws, rules, and policies, or in laws, rules and policies affecting procurement-related activities, and to recommend changes to laws, rules, and procedures;
  - (3) To provide overall leadership in the implementation of procurement rules, coordinate all procurement activities of the District government in accordance with the provisions of this chapter, and develop a system of unified and simplified procurement procedures and forms.
  - (4) To prepare and issue standard specifications for goods, services, and construction required by the District government;

- (5) To establish a standardization program for goods and services when it is determined to be in the best interests of the District;
- (6) To review, monitor, and audit the procurement activities of the District;
- (7) To prepare, establish, and implement a periodic review process for the evaluation of contractors who provide goods or services to the District;
- (8) To identify and assess trends and developments in the field of government contracting, including identifying best practices and innovation opportunities for the District;
- (9) To operate and maintain an electronic procurement system;
- (10) To sell, trade, or otherwise dispose of surplus goods belonging to the District government;
- (11) To establish procedures for the inspection, testing, and acceptance of goods, services, and construction;
- (12) To develop guidelines for the recruitment, training, career development, and performance evaluation of all procurement personnel;
- (13) To staff OCP with procurement professionals, including attorneys, dedicated to the formation and administration of contracts on behalf of the entities covered by this chapter;
- (14) To create and maintain a transparent Internet site, accessible to the public, providing information on solicitations, contracts, and related laws, rules, and policies;
- (15) To promote to the purchase of environmentally preferable products and services; and
- (16) To establish certification requirements for contracting personnel.

## **§ 2-352.05      PRIVATIZATION CONTRACTS**

- (a) A privatization contract shall meet the following requirements:
  - (1) Except as provided in subsection (d) of this section, a privatization contract shall not cause the displacement of District government employees including by layoff, demotion, involuntary transfer to a new class, involuntary transfer to a new location requiring a change of residence, or time base reductions. For the purposes of this paragraph, the term “displacement” does not include changes in shifts or days off, nor does it include reassignment to other positions within the same class and general location.

- (2) The privatization contract shall provide the District with an economic advantage, as demonstrated by the determination and findings issued pursuant to subsection (b) of this section.
  - (3) The economic advantage of the privatization contract shall not be outweighed by the public's interest in having a particular function performed directly by District employees, as demonstrated in the determination and findings issued pursuant to subsection (b) of this section.
  - (4) The privatization contract shall be awarded through a publicized, competitive procurement process pursuant to Title IV of this act.
  - (5) The privatization contract shall include specific provisions establishing the minimum qualifications for the employees of the contractor who will perform the work under the contract and an affirmation by the contractor that the contractor's hiring practices meet applicable District standards.
- (b) Before issuing a solicitation for a privatization contract the Mayor, instrumentality, or independent agency head shall:
- (1) Issue a draft determination and findings demonstrating that the cost of having the contracted-for service provided by a contractor will be at least 5% less than if the service were to be provided by employees of the District or its instrumentality or independent agency. The draft determination and findings shall include, at a minimum, the following:
    - (A) The estimated cost of having a contractor provide the service contrasted with the costs that would be directly associated with having employees of the District or its instrumentality or independent agency continue performance;
    - (B) Personal services costs attributable to having a contractor provide the service contrasted with the personal services costs that would result from having employees of the District or its instrumentality or independent agency continue performance, including salary and fringe benefits;
    - (C) Non-personal services costs attributable to having a contractor provide the service contrasted with the non-personal services costs that would result from having employees of the District or its instrumentality or independent agency continue performance, including rent, equipment, and utilities;
    - (D) Any additional costs that would be built into a privatization contract, including expected costs related to the administration, oversight, and supervision by District government personnel of a privatization contract;

- (E) A description of the expected impact of a privatization contract on the quality of goods or services provided to or on behalf of the District government;
  - (F) The number of employees of the District or its instrumentality or independent agency that are necessary to perform the service proposed to be the subject of a privatization contract; and
  - (G) The number of employees of the District or its instrumentality or independent agency that would be displaced by the contract within the meaning of subsection (a)(1) of this section;
- (2) Request an analysis by the Chief Financial Officer of whether the costs in the draft determination and findings can be substantiated;
  - (3) Share the draft determination and findings with employees who could be displaced within the meaning of subsection (a)(1) of this section as a result of the privatization contract and any labor unions or groups representing those employees to solicit their comments; and
  - (4) Issue a final determination and findings that incorporate the full analysis by the Chief Financial Officer, and a summary of comments provided pursuant to paragraph (3) of this subsection. Each final determination and findings shall be made publicly available online before any solicitation for a privatization contract based on the final determination and findings is issued.
- (c)
    - (1) If the Mayor, instrumentality, or independent agency issues a solicitation for privatization contract that would displace employees of the District or its instrumentality or independent agency, those employees or a person or entity representing those employees may submit a bid or proposal to perform the services as a private entity; provided, that the employees agree to resign their employment with the District or its instrumentality or independent agency upon selection as the awardee of the contract after final approval of the contract.
    - (2) The Mayor, instrumentality, or independent agency shall consider any employee bid or proposal submitted pursuant to paragraph (1) of this subsection on the same basis as any other bid or proposal.
    - (3) The Mayor shall make available reasonable resources, up to \$35,000 per instance, to assist employees of the District or its instrumentality or independent agency, or an entity representing such employees, in formulating a bid or proposal pursuant to paragraph (1) of this subsection; provided, that standards for determining the resources to be made available and whether they are reasonable shall be determined by rulemaking; provided further, that the Mayor may increase the

\$35,000 limit by rulemaking.\*

- (4) A solicitation for a privatization contract shall include information describing how displaced employees of the District or its instrumentality or independent agency may exercise their right to compete for the contract pursuant to this subsection.
- (d) A privatization contract that causes employees of the District or its instrumentality or independent agency to be displaced within the meaning of subsection (a)(1) of this section may be awarded; provided,
- (1) The contractor shall offer to each displaced employee a right of first refusal to employment by the contractor, in a comparable available position for which the employee is qualified, for at least a 6-month period during which the employee shall not be discharged by the contractor without cause;
  - (2) Any District employee who is displaced as a result of a privatization contract and is hired by the contractor who was awarded the contract, shall be entitled to the benefits provided by the Service Contract Act of 1965, approved October 22, 1965 (79 Stat. 1034; 41 U.S.C. § 6701 *et seq.*);
  - (3) If the employee's performance during the 6-month transitional employment period described in paragraph (1) of this subsection is satisfactory, the contractor shall offer the employee continued employment under terms and conditions established by the contractor; and
  - (4) The Mayor, instrumentality, or the independent agency head shall make efforts to assist employees of the District or its instrumentality or independent agency who would be affected by the privatization contract and to promote employment opportunities for District residents with the contractor. These efforts shall include:
    - (A) Consulting with union representatives and employees of the District or its instrumentality or independent agency who would be affected by the privatization contract;
    - (B) Providing prior notification of at least 30 days of any adverse impact of a privatization contract to employees of the District or its instrumentality or independent agency who would be affected by the contract, including notification to a labor organization certified as the exclusive representative of employees affected by the contract;
    - (C) Providing alternative employment in the District government to displaced employees if there are unfilled positions for which those employees are qualified; and

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\* **This provision goes into effect upon allocation of funds and should not be cited until verification by the Office of the Chief Financial Officer.**

- (D) Encouraging the contractor to offer employment to qualified District residents before offering employment to qualified nonresidents.
- (e)
  - (1) Any privatization contract shall incorporate specific performance standards and targets including for productivity and cost savings to be achieved under the contract.
  - (2) The contractor shall submit reports, as required by the contract, to the District government contracting officer and the Chief Financial Officer on the contractor's compliance with the specific performance criteria.
  - (3) The contract may be canceled without prejudice to the District if the contractor fails to comply with the performance criteria set out in the contract.
- (f) An agency or instrumentality shall not attempt to circumvent the requirements of this section by eliminating the provision of services by its own employees before procuring substantially the same services from a person who is not employed by that agency or instrumentality.
- (g)
  - (1) Each year the District of Columbia Auditor shall review a selection of privatization contracts, which shall be chosen by the Auditor based on the dollar value and scope of the contracts, their potential impact on the health and safety of District residents, their potential impact on economic development and employment opportunities in the District, and other factors deemed appropriate by the Auditor.
  - (2) The Auditor shall issue an annual report to the Mayor and the Council on the contracts reviewed pursuant to paragraph (1) of this subsection, analyzing for each contract whether it is achieving:
    - (A) The minimum 5% cost-savings requirement set forth in subsection (b)(1) of this section; and
    - (B) The performance standards and targets incorporated into the contracts as required under subsection (e) of this section.
  - (3) The Auditor may report that the cost and performance data for the selected contracts are inconclusive, but if the District has failed to collect, maintain, or provide cost or performance data, the Auditor reasonably may conclude that the cost savings or performance standards and targets are not being met.
  - (4) If the Auditor finds in the report issued pursuant to paragraph (2) of this subsection that a privatization contract has not met the cost savings or performance standards and targets, the Mayor or instrumentality or independent agency head shall review the merits of canceling the privatization contract and performing the work with District employees and shall report to the Council on the results of the review.

- (h) The requirements of this section shall not apply to:
  - (1) A contract for a new function for which the Council has specifically mandated or authorized the performance of the work by independent contractors;
  - (2) Services that cannot be performed satisfactorily by District government employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability, are not available through District employees, as determined by the Mayor;
  - (3) Contracts for staff augmentation services to be provided pursuant to a contract with a term of less than one year that does not contain options to extend the performance period;
  - (4) Contracts for services that are incidental to a contract for the purchase or lease of real or personal property such as contracts to maintain office equipment or computers that are leased or rented;
  - (5) Contracts that are necessary to protect against a conflict of interest or to insure independent and unbiased findings in cases in which there is a clear need for an unbiased and objective outside perspective, as determined by the Mayor;
  - (6) Contracts entered into pursuant to section 201(c);
  - (7) Contracts that will provide equipment, materials, facilities, or support services that could not be provided feasibly by the District in the location where the services are to be performed, as determined by the Mayor;
  - (8) Contracts to provide training for which appropriately qualified District employees are not available, as determined by the Mayor; and
  - (9) Contracts for services that are of such an urgent, temporary, or occasional nature that the delay incumbent in their formation under this section would frustrate their very purpose, as determined by the Mayor.
- (i) The CPO shall promulgate rules, pursuant to section 1106, with detailed procedures to implement the provisions of this section.

### **§ 2-352.05a INHERENTLY GOVERNMENTAL FUNCTIONS**

- (a) The District shall not award a contract to provide any service that is an inherently governmental function.

- (b) The District may enter into a contract for the performance of a function closely associated with an inherently governmental function only if the head of an agency benefited by the performance of the contract:
  - (1) Finds that appropriate District government employees cannot reasonably perform the function at issue;
  - (2) Ensures that appropriate District government employees supervise contractor performance of the contract and perform all inherently governmental functions associated with the contract; and
  - (3) Addresses any potential organizational conflicts of interest of the contractor in the performance of the functions closely associated with an inherently governmental function under the contract.
  
- (c) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the District to:
  - (1) Bind the District to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
  - (2) Appoint, direct, or control officials or employees of the District;
  - (3) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the District, including the control, or disbursement of, appropriated and other District funds.
  - (4) With respect to contracts to procure goods or services for the District:
    - (A) Determine what supplies or services are to be acquired by the District, and at what prices; provided, that the Mayor or the Mayor's designee may give contractor authority to acquire supplies for the District at prices within specified ranges and subject to other reasonable conditions considered appropriate;
    - (B) Participate as a voting member on any source-selection board, unless the contractor has:
      - (i) Been hired by the District for its specific technical expertise; and
      - (ii) No conflict of interest exists with regard to the contract or vendors under consideration by the source-selection board;
    - (C) Approve any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;
    - (D) Award contracts;



- (E) Administer contracts, including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services;
  - (F) Terminate contracts;
  - (G) Determine whether contract costs are reasonable, allocable, or allowable; and
  - (H) Evaluate a contractor's performance when the evaluation is to be used to determine whether payment should be made to the contractor and in what amount.
- (d) The CPO shall issue rules pursuant to section 1106, consistent with this section, containing guidance on further defining an inherently governmental function and a function closely related to an inherently governmental function and including categories of functions and specific functions meeting these definitions.
- (e) The Mayor may waive compliance with any of the requirements of this section for any contract in effect upon the effective date of the Procurement Integrity, Transparency, and Accountability Amendment Act of 2016, passed on 2nd reading on July 12, 2016 (Enrolled version of Bill 21-334)(“Procurement Act”), and for any option period exercised under such contract, so long as the option period was provided for in the contract as of the effective date of the Procurement Act.
- (f) Notwithstanding subsection (e) of this section, the requirements of this section shall apply to any contract or option period in effect 5 years after the effective date of the Procurement Act.

## **§ 2-352.06      PROCUREMENT TRAINING INSTITUTE**

- (a) The CPO shall establish and administer a procurement training institute to facilitate a system of training, continuing education, and certification for District contracting personnel. The procurement training institute may:
- (1) Conduct or participate in procurement education and training programs for District employees and others, including persons not employed by the District;
  - (2) Conduct, develop, or collaborate with established training or certification programs for the express purpose of providing certifications of proficiency to all participants who successfully complete the designated programs;
  - (3) Conduct research into existing and new methods of procurement;
  - (4) Establish and maintain a District procurement library; and

- (A) Establish a tiered core curriculum that sets forth the minimum procurement-related training courses to be completed by District procurement personnel.
  - (B) The tiered core curriculum shall be designed to develop procurement competency along with a uniform training approach for personnel ranging from entry level contract specialist to contracting officer.
- (b) The CPO may charge a fee for training conducted by the procurement training institute in accordance with § 2-361.03.
    - (c) The CPO shall require that District contracting personnel be certified and that they maintain a reasonable number of hours of continuing education to maintain their certification.
    - (d) The CPO may allow attendance at a recognized institute to satisfy the certification requirement and the number of hours for continuing education.

## **§ 2-352.07 OMBUDSMAN FOR CONTRACTING AND PROCUREMENT**

- (a) There is established within the Office of Contracting and Procurement an Office of Ombudsman for Contracting and Procurement which shall be headed by an ombudsman with purview over contracts under the authority of the CPO.<sup>†</sup>
- (b) Each District agency with independent procurement authority pursuant to section 201 shall designate an Agency Ombudsman for Contracting and Procurement.
- (c) Each ombudsman designated pursuant to this section shall:
  - (1) Serve as a vehicle for contractors and subcontractors performing work or providing services under a District contract to communicate their complaints and concerns regarding contracting, procurement, or a specific contract, through a single entity;
  - (2) Respond to complaints and concerns in a timely fashion with accurate and helpful information;
  - (3) Determine the validity of any complaint quickly and professionally;
  - (4) Generate options for a response by the agency or instrumentality and offer a recommendation from among the options;

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<sup>†</sup> **This provision goes into effect upon allocation of funds and should not be cited until verification by the Office of the Chief Financial Officer.**

- (5) Except when the parties are involved in legal or administrative proceedings, attempt informally to facilitate a resolution of a dispute between the contracting officer, the prime contractor, and the subcontractor, as appropriate; and
- (6) Identify systemic concerns and recommend to the CPO and the Council policy changes, and strategies to improve the contracting and procurement process.

## SUBCHAPTER III CONTRACTOR STANDARDS

### § 2-353.01 CONTRACTOR STANDARDS

- (a) The CPO shall establish a process to certify, on a solicitation-by-solicitation basis, the responsibility of prospective contractors. The process shall ensure that the prospective contractor:
- (1) Has adequate financial resources to perform the contract or the ability to obtain those resources;
  - (2) Is able to comply with the required or proposed delivery or performance schedule, based upon the bidder's or offeror's existing commercial and government contract commitments;
  - (3) Has a satisfactory performance record;
  - (4) Has a satisfactory record of integrity and business ethics;
  - (5) Has a satisfactory record of compliance with the law, including labor and civil rights laws and rules and part A of subchapter X of Chapter 2 of this title [§ 2-219.01 *et seq.*];
  - (6) Has, or has the ability to obtain, the necessary organization, experience, accounting, operational control, and technical skills;
  - (7) Has, or has the ability to obtain, the necessary production, construction, technical equipment, and facilities;
  - (8) Has not exhibited a pattern of overcharging the District;
  - (9) Does not have an outstanding debt with the District or the federal government in a delinquent status of more than the greater of \$1,000 or 1% of the contract value, up to \$25,000; and
  - (10) Is otherwise qualified and is eligible to receive an award under applicable laws and rules.
- (b) If the District awards a contract to a prospective contractor that has an outstanding debt with the District in a delinquent status that is in an amount less than the amount required to disqualify the prospective contractor pursuant to subsection (a)(9) of this section, the District shall recoup the outstanding debt by offsetting it against any payment due to the contractor under the contract.

### § 2-353.02 DETERMINATION OF CONTRACTOR RESPONSIBILITY

- (a) Prior to awarding a contract, the District shall make a determination, in accordance with the process established under § 2-353.01, that the prospective contractor has the necessary capacity to perform in accordance with the terms and conditions of the contract.
- (b) For all contracts to exceed \$100,000, a potential contractor shall complete and submit with its bid or offer a certification developed by OCP to provide information needed to determine if a prospective contractor is responsible. The certification shall be signed under the penalty of perjury.
- (c) After the contract is awarded, if the District learns that the contractor certified false information, the District may terminate the contract. The contractor shall update its responses in the certification during the term of the contract within 60 days of a material change in a response to its prior questionnaire and prior to the exercise of an option year contract. The District may consider failure of the contractor to update the certification with this information as material breach of the contract and invoke remedies pursuant to the provisions of this chapter. Information within the certification may be made available to the public, except to the extent that any information is exempt from disclosure.
- (d) A determination by the CPO that a prospective contractor is non-responsible shall be final. The determination of non-responsibility shall not be overturned unless arbitrary or capricious.
- (e) Upon determining that a prospective contractor is non-responsible, the CPO shall consider whether the contractor should be suspended or debarred pursuant to the procedure and criteria of § 2-359.07.
- (f) Contractors shall ensure that their subcontractors meet the criteria for responsibility pursuant to § 2-353.01.
- (g) Information about a prospective or current contractor relevant to a contractor's responsibility, or lack thereof, may be submitted for consideration to the CPO by a member of the general public.

## SUBCHAPTER IV SOURCE SELECTION AND CONTRACT FORMATION

### § 2-354.01 SOURCE SELECTION METHODS

- (a) (1) Except as otherwise authorized by law, all District government contracts shall be awarded by:
- (A) Competitive sealed bidding pursuant to § 2-354.02;
  - (B) Competitive sealed proposals pursuant to § 2-354.03;
  - (C) Sole source procurements pursuant to § 2-354.04;
  - (D) Emergency procurements pursuant to § 2-354.05;
  - (E) Human care procurements pursuant to § 2-354.06;
  - (F) Small purchase procurements pursuant to § 2-354.07;
  - (G) Special pilot procurements pursuant to § 2-354.08;
  - (H) Reverse auctions pursuant to § 2-354.09;
  - (I) Procurements through a General Services Administration schedule pursuant to § 2-354.10;
  - (J) Cooperative agreements pursuant to § 2-354.11;
  - (K) Procurements through the DCSS pursuant to § 2-354.12; or
  - (L) Infrastructure facilities and services pursuant to subchapter VI of this chapter.
- (2) The CPO shall publish annually on the Internet a report on the number of and dollar value of contracts executed under each source selection method.

### § 2-354.01a PROHIBITED CONTACTS DURING SOURCE SELECTION

- (a) Except for members of a technical advisory group, no District employee or official shall contact any contracting officer or contracting staff in an attempt to influence source selection outside of the processes established in Title IV of this act.
- (b) Before the commencement of a restricted period, the CPO, or the lead contracting official of an agency with procurement authority independent of the CPO, shall designate a person or persons to be the designated contact for offerors or bidders on a given contract during the restricted period.

- (c) (1) During the restricted period, no bidder or offeror shall contact any District employee or official with respect to source selection, except as provided for under subsection (d) of this section.
- (2) For the purposes of this section, the term “contact” means any oral, written, or electronic communication.
- (d) (1) During the restricted period, an offeror or bidder may make permissible contact with respect to source selection.
- (2) For the purposes of this section, the term “permissible contact” means that the offeror or bidder shall contact only the individual designated under subsection (b) of this section for a given contract; provided, that the following contacts are exempted from this subsection and do not need to be directed to the individual designated under subsection (b) of this section:
  - (A) The submission of written proposals in response to any method for soliciting a response from offerors or bidders intended to result in a contract;
  - (B) The submission of written questions through a process set forth in a solicitation, request for proposals, invitation for bids, or any other method of soliciting a response from offerors or bidders intended to result in a contract, so long as the written questions and responses are to be disseminated to all offerors or bidders who have expressed an interest in the proposed contract;
  - (C) Participation in any demonstration, conference, or other means of exchanging information in a setting open to all potential bidders or offerors through a process set forth in a solicitation, request for proposals, invitation for bids, or any other method of soliciting a response from offerors or bidders intended to result in a contract;
  - (D) Negotiation with the highest-ranking offeror or bidder regarding the terms of the proposed contract; and court of competent jurisdiction in connection with a protest, appeal, or dispute before that tribunal or court.
  - (E) Contacts by offerors or bidders with the Contract Appeals Board or any other tribunal or court of competent jurisdiction in connection with a protest, appeal, or dispute before that tribunal or court.
- (e) A bid or offer associated with a violation of this section shall be rejected, unless the CPO determines that it is in the best interest of the District not to reject the bid or offer.
- (f) For the purposes of this section, the term “bidder” or “offeror” shall include any employee, agent, consultant, or person acting on behalf of a bidder or offeror.

- (g) Nothing in this section shall be construed to prevent any contact or communications by any offeror, bidder, or District employee or official with respect to allegations of improper conduct to the Office of the Attorney General, the Office of the Inspector General, the Office of the District of Columbia Auditor, the CPO, the Council of the District of Columbia, or the Contract Appeals Board or any other tribunal or court of competent jurisdiction.

## **§ 2-354.02 COMPETITIVE SEALED BIDS**

- (a) Contracts exceeding \$100,000 shall be awarded by competitive sealed bidding unless the CPO issues a determination and findings that use of competitive sealed bidding is not practicable or not in the best interests of the District.
- (b) Bids shall be solicited through an Invitation for Bids.
- (c) The Invitation for Bids may include special standards of responsibility to ensure that bidders are properly qualified to perform the work.
- (d) The Invitation for Bids shall state whether an award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the lowest evaluated bid price basis is used, the objective measurable criteria to be utilized shall be set forth in the Invitation for Bids.
- (e)
  - (1) The CPO shall provide public notice of the Invitation for Bids of not less than 14 days for contracts, unless the CPO issues a determination and findings that it is appropriate to shorten the notice period to a period of not less than 3 days. In making the determination and findings, the CPO shall consider factors including the complexity of the procurement, the type of goods or services being purchased, and the impact of a shortened notice period on competition.
  - (2)
    - (A) The CPO shall maintain an Internet site that provides prospective contractors with public notice of opportunities to bid, notice of contract awards, and other relevant information about District procurements.
    - (B) Public notice of an Invitation for Bids may include publication in newspapers or trade publications considered to be appropriate by the CPO to give adequate public notice.
- (f) Bids shall be opened publicly at the time and place designated in the Invitation for Bids; provided, that the opening may be conducted in a publicly accessible electronic forum. Each bid, with the name of the bidder and price offering contained therein, shall be recorded and be open to public inspection.
- (g) The contract shall be awarded after completion of evaluation procedures for competitive sealed bids.



- (h) Correction or withdrawal of bids shall be allowed only to the extent permitted by rules issued pursuant to this chapter.

### **§ 2-354.03 COMPETITIVE SEALED PROPOSALS**

- (a) A contract may be entered into by competitive sealed proposal when the use of competitive sealed bidding is not practicable or not advantageous to the District.
- (b) Proposals shall be solicited from the maximum number of qualified sources and in a manner consistent with the nature of, and the need for, the goods, services, or construction being acquired.
- (c) Proposals shall be solicited through a request for proposals. The CPO shall provide public notice of the RFP of not less than 21 days, unless the CPO issues a determination and findings that it is appropriate to shorten the notice period to a period of not less than 14 days. In making the determination and findings, the CPO shall consider factors including the complexity of the procurement, the type of goods or services being purchased, and the impact of a shortened notice period on competition.
- (d) Each RFP shall include a statement of work or other description of the District's specific needs, which shall be used as a basis for the evaluation of proposals.
  - (d-1) An RFP for the construction of a road, bridge, other transportation system, or a facility or structure appurtenant to a road, bridge, or other transportation system, may allow prospective offerors or contractors to submit alternative technical concepts as a part of their proposals. The agency's determination on the alternative technical concepts may be considered by the contracting officer as part of the evaluation and ranking of proposals.
  - (d-2)
    - (1) Each RFP shall set forth each evaluation factor and indicate the relative importance of each evaluation factor. At a minimum, the following shall be included as evaluation factors:
      - (A) Price or cost to the District government;
      - (B) The quality of the product or service as addressed by one or more non-cost evaluation factors; and
      - (C) Past performance of the offeror.
    - (2) The general approach for evaluating past-performance information shall be described in the RFP, but at a minimum shall include an evaluation of the offeror's performance under past or current government or private-sector contracts with requirements similar to those of the proposed contract.
    - (3) In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.

- (4) Notwithstanding any provision of this subsection, any review of past performance shall be evaluated in a manner consistent with the criteria specified in the solicitation and the criteria shall be applied consistently across all offerors.
- (e) The contract shall be awarded by written notice to the responsive and responsible bidder whose bid will be most advantageous to the District.
- (f)
  - (1) The contracting officer may issue an RFQ before an RFP if the CPO makes a determination and findings that proceeding with an RFQ process would be advantageous to the District and that establishes a reasonable price range for the procurement.
  - (2) The RFQ shall include a description of the statement of work to be solicited by the RFP, the deadline for submission of information, and how prospective offerors may apply for consideration. The RFQ shall require information only on the prospective contractor's qualifications, experience, and ability to perform the requirements of the contract.
  - (3) After receiving the responses to the RFQ from prospective contractors, the contracting officer shall determine in writing the ranking of the prospective contractors from the most qualified to the least qualified on the basis of the information provided. The contracting officer shall then issue an RFP to at least the 3 highest-ranked prospective contractors. The determination regarding how many proposals to solicit shall not be subject to review.
- (g) Upon receiving the responses to an RFP, the contracting officer shall:
  - (1) Evaluate the proposals received using only the criteria stated in the RFP and in accordance with weightings that have been provided in the RFP; and
  - (2) Rank the prospective contractors from most advantageous to least advantageous to the District.
- (h)
  - (1) After ranking the prospective contractors, the contracting officer may elect to proceed with negotiations in accordance with paragraph (2) of this subsection. The contracting officer's decision shall not be subject to review.
  - (2) If the contracting officer elects to proceed with negotiations, the contracting officer shall negotiate with the highest-ranked prospective contractor on price or matters affecting the scope of the contract, so long as the terms of the final contract are within the scope of the request for proposals. If a satisfactory contract cannot be negotiated with the highest-ranked prospective contractor, the contracting officer may negotiate the terms of the contract with the 2nd most qualified prospective contractor or lower-ranked prospective contractors in order of ranking until a satisfactory contract can be awarded.

- (3) The contracting officer may reopen negotiations with any prospective contractor with whom negotiations were terminated.
- (4) The contracting officer may make changes within the general scope of the RFP but shall then provide all offerors an opportunity to submit their best and final offers.

#### **§ 2-354.04 SOLE SOURCE PROCUREMENTS**

- (a) A contract may be awarded through noncompetitive negotiations when there is only one source for the required good or service.
- (b) The CPO shall make a determination and findings justifying the sole source procurement.
- (c) Notice of intent to enter into a sole source contract shall be posted on the Internet at least 10 days prior to award. The notice shall include:
  - (1) The determination and findings required by subsection (b) of this section;
  - (2) A description of the item to be procured; and
  - (3) The intended sole source contractor.
- (d) The contract shall be made available online within 7 days of the contract award.

#### **§ 2-354.05 EMERGENCY PROCUREMENTS**

- (a) Notwithstanding any other provision of this chapter, a contract may be awarded through an emergency procurement as defined by rules:
  - (1) When there is an imminent threat to the public health, welfare, property, or safety;  
or
  - (2) To prevent or minimize serious disruption in agency operations.
- (b) Emergency procurements shall be made with as much competition as is practicable under the circumstances, based on the judgment and determination of the contracting officer.
- (c) The contracting officer may issue oral orders or notices to proceed to contractors to provide services or goods to the District; provided, that the directive shall be reduced to writing within 3 business days after issuance and funding for the services or goods provided shall be certified by the appropriate fiscal official.
- (d) Emergency procurement procedures shall not be used for contracts exceeding 90 days; provided, that if the development time for the good or service exceeds 90 days, the contract shall not exceed 120 days.

- (e) The CPO shall make a determination and findings justifying the emergency procurement.
- (f) Notice of all emergency procurements shall be made available on the Internet no more than 7 days after the contract is awarded. The notice shall include:
  - (1) The determination and findings required by subsection (e) of this section;
  - (2) A description of the item to be procured;
  - (3) The designated contractor; and
  - (4) A copy of the contract.

## **§ 2-354.06 HUMAN CARE PROCUREMENTS**

- (a) Notwithstanding any other provision of this chapter, the CPO may award a human care agreement for a human care service if the human care service to be provided is:
  - (1) Negotiated on a fee for service or unit-rate basis using benchmarks and quantifiable measurements that shall be uniformly applied to providers of the same service;
  - (2) Purchased at rates adopted by rule; or
  - (3) One that an agency typically purchases as needs arise, but for which the quantity, rate of utilization, delivery areas, or specific beneficiaries of the service cannot be accurately estimated at the outset of the procurement process.
- (b) If a human care agreement for a human care service is to be awarded, the CPO shall publish a request for qualifications that:
  - (1) States the general requirements for the service; and
  - (2) Requests interested service providers to respond in writing with a statement of their qualifications to perform the service on a form prescribed by the CPO.
- (c) The CPO shall retain statements of qualifications submitted by providers for 3 years.
- (d) The CPO may conduct negotiations for a human care agreement with any responsible service provider who has submitted a statement of qualifications, without any additional public notice or solicitation required, to satisfy all or part of the District's anticipated requirements for a particular human care service.
- (e) Before conducting negotiations with a service provider, the CPO shall issue a determination and findings that the service provider is responsible in accordance with subchapter III of this chapter.

- (f) The CPO may authorize the use of vouchers to authorize the delivery of service provided by service providers who enter into human care agreements.
- (g) The CPO shall provide public notice of the award of a human care agreement pursuant to this section on the Internet.
- (h) The human care agreement shall identify the services to be rendered during the term of the agreement and shall set forth the terms and conditions of any purchases issued pursuant to the agreement. The contracting officer shall include in each human care agreement the following information:
  - (1) A statement that the human care agreement is not a commitment to purchase any quantity of a particular good or service covered under the agreement; and
  - (2) A statement that the District is obligated only to the extent that authorized purchases are made pursuant to the human care agreement.

#### **§ 2-354.07 SMALL PURCHASE PROCUREMENTS**

- (a) The CPO may establish a streamlined process for entering into contracts for goods and services not exceeding \$100,000. The process shall set forth:
  - (1) Requirements for basic competition, including solicitation of contracts or orders from multiple vendors;
  - (2) A noncompetitive process for entering into contracts under a dollar threshold established by the CPO not to exceed \$10,000; and
  - (3) Requirements that purchases be made transparent.
- (a-1) The Tax Revision Commission may establish a streamlined noncompetitive process for entering into contracts for goods and services not exceeding \$40,000.
- (b) Procurement requirements shall not be parceled, split, divided, or purchased over a period of time to avoid the \$100,000 limitation of subsection (a) of this section or the \$40,000 limitation of subsection (a-1) of this section.
- (c) The CPO shall implement standards to monitor small purchase procedures to ensure compliance with applicable laws, rules, and policies.

#### **§ 2-354.08 SPECIAL PILOT PROCUREMENTS**

- (a) The CPO may, with prior public notice and in accordance with rules issued pursuant to this chapter, award a contract without competitive sealed bidding or competitive sealed proposals if it is determined that an unusual or unique situation exists that makes the

application of all requirements of competitive sealed bidding or competitive sealed proposals not in the public interest.

- (b) A special pilot procurement under this section shall be made with as much competition as is practicable under the circumstances.
- (c) A special pilot procurement under this section shall require a determination and findings setting forth the reasons warranting the special procurement and for the selection of the particular contractor.
- (d) The CPO shall post the notice of award and the determination and findings on the Internet within 7 days after the execution and approval of a special pilot procurement.
- (e) An unusual or unique situation justifying a special pilot procurement under this section shall include a contract made to:
  - (1) Satisfy a new and unique District requirement; or
  - (2) Obtain a new technology.

## **§ 2-354.09 AUCTIONS**

- (a)
  - (1) The CPO may procure goods or services through reverse auction via the Internet when it is determined that the reverse auction bidding method is the most effective method for the District.
  - (2) The CPO may place any requirement for a good or service on an established Internet reverse auction exchange that would allow any bidder to competitively bid down the price of that good or service over a set period of time established by the CPO.
  - (3) The CPO may establish an online auction for the purposes of executing reverse auction transactions on behalf of the District.
- (b)
  - (1) The CPO may dispose of or sell surplus goods through standard auction via the Internet.
  - (2) The CPO may place any surplus goods on an established standard auction exchange on the Internet that would allow any person, excluding any employee of the disposing District agency, to competitively acquire surplus personal property or goods from the District.
  - (3) The CPO may establish a standard auction exchange on the Internet for the purpose of executing standard auction transactions on behalf of the District government.

## **§ 2-354.10 GENERAL SERVICES ADMINISTRATION SCHEDULES**

- (a) The CPO may procure goods or services through a General Services Administration schedule pursuant to 40 U.S.C. § 502(a)(3) and 40 U.S.C. § 602(c).
- (b) The CPO shall ensure that the price of any contract entered into under subsection (a) of this section is reasonable.

## **§ 2-354.11 COOPERATIVE PURCHASING**

- (a) The CPO may, and is encouraged to, participate in, sponsor, conduct, or administer cooperative purchasing agreements for the procurement of goods, services, or construction.
- (b) Cooperative purchasing agreements entered into by the District government shall be in accordance with, to the extent practicable, all laws and rules of the District government with respect to contracting, and shall be consistent with laws and rules of the United States government that apply specifically to the District.
- (c) An agency shall not enter into or participate in a cooperative purchasing agreement unless that participation is authorized by the CPO or a designee pursuant to the delegated contracting authority in § 2-352.01.
- (d) The CPO may charge and collect an administrative fee for serving as the lead jurisdiction on a cooperative agreement and may receive any rebates or other fees for participating in a cooperative agreement. The CPO shall deposit such fees in the District of Columbia Supply Schedule, Purchase Card, and Training Fund established in § 2-361.03.

## **§ 2-354.12 DISTRICT OF COLUMBIA SUPPLY SCHEDULE**

- (a) There is established a District of Columbia Supply Schedule program under which contracts may be awarded to certified business enterprises. The DCSS program may consist of multiple award schedules or other procurement programs established by the CPO.
- (b) A DCSS contract may be awarded by:
  - (1) Any source selection method authorized by subchapter IV of this chapter;
  - (2) A contract with a contractor who maintains a price agreement or schedule with any federal agency so long as the contract does not authorize a price higher than is contained in the contract between the federal agency and the contractor; or
  - (3) A contract with a contractor who agrees to adopt the same pricing schedule for the same goods or services as that of a contractor who maintains a price agreement or

schedule with any federal agency if the contract does not authorize a price higher than is contained in the contract between the federal agency and the contractor.

- (c) An agency may refuse to award a contract or procurement set aside pursuant to subchapter IX-A of Chapter 2 of this title, [§ 2-218.01 *et seq.*], and may thereafter issue the contract or procurement in the open market if the agency determines in writing that the bids for the contract or procurement set aside for a small business enterprise are believed to be 12% or more above the likely price on the open market.

## **§ 2-354.13      COMPETITION EXEMPTIONS**

Contracts for the following procurements shall be exempt from the competition requirements established by this chapter:

- (1) Artistic services or works of art;
- (2) Commodities or contractual services if federal or District law prescribes with whom the District must contract;
- (3) Legal services or negotiation services in connection with proceedings before administrative agencies or state or federal courts, including experts, attorneys, and mediators;
- (4) Copyrighted or patented materials, including technical pamphlets, published books, maps, and testing or instructional materials; provided, that the materials are purchased directly from the owner of the copyright or patent;
- (5) Memberships in trade or professional organizations;
- (6) Entertainers;
- (7) Job-related seminars and training for District employees;
- (8) Maintenance and support of existing software and technology to the extent that the creator of the intellectual property is still protected and is the only source of the maintenance and support of the existing software and technology;
- (9) Public transit farecards, passes, and tokens;
- (10) Personal property or services provided by another public entity, agency, or authority;
- (11) Postage;
- (12) Purchases of advertising in all media, including electronic, print, radio, and television; provided, that they are purchased directly from the media outlet;



- (13) Trade and career fairs for District employees;
- (14) Special event venues and related services as dictated by the establishment;
- (15) Subscriptions for periodicals and newspapers;
- (16) Ticket purchases for special events, tourist attractions, and amusement parks; and
- (17) Professional development training which supports principal, teacher, and student achievement pursuant to the District of Columbia Public Schools Master Education Plan.

#### **§ 2-354.14 CANCELLATION OF SOLICITATIONS**

An Invitation for Bid, a Request for Proposals, or other solicitation may be cancelled if it is determined in writing by the CPO that the action is taken in the best interests of the District government.

#### **§ 2-354.15 COLLUSION**

- (a) A person who enters into a contract with the District after engaging in collusion with another person for the purpose of defrauding the District shall be liable for damages equal to 3 times the value of the loss to the District attributable to the collusion.
- (b) If there is a reasonable basis for believing that collusion has occurred among any individuals or entities for the purpose of defrauding the District, the CPO shall send a written notice of this belief to the Attorney General and to the Mayor.
- (c) All documents involved in any procurement in which collusion is suspected shall be retained until the Attorney General gives notice that they may be destroyed. All documents shall be made available to the Attorney General.

#### **§ 2-354.16 CONTINGENT FEES**

- (a) A contractor shall not offer to pay any fee or other consideration that is contingent on the making of a contract.
- (b) Every contract shall contain the following prohibition against contingent fees: “The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage fee, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For a breach or violation of this warranty, the District shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.

- (c) A District employee shall not solicit or secure, or offer to solicit or secure, a contract for which the employee is paid or is to be paid any fee or other consideration contingent on the making of the contract between the employee and any other person.

### **§ 2-354.17 CONFIDENTIALITY**

The CPO shall review information which has been designated as confidential or proprietary by a person and which has been submitted in response to an Invitation for Bids or Request for Proposals. If the CPO determines that the designation is proper, the information shall be treated by the CPO, and any other District employee, in a confidential manner, shall be disclosed only to District employees for use in the procurement process, and shall not be disclosed to other persons or parties without the prior written consent of the person, except as provided by subchapter II of Chapter 5 of this title [§ 2-531 *et seq.*].

### **§ 2-354.18 RIGHT TO AUDIT RECORDS; RIGHT TO INSPECT**

- (a) The District may, at reasonable times and places, audit the books and records of any person who has submitted data to substantiate offered prices pursuant to § 2-354.19 to the extent that the books and records relate to that data. A person who receives a contract, change order, or contract modification for which the data is required, shall maintain books and records that relate to the cost or pricing data for 3 years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.
- (b) The Inspector General, District of Columbia Auditor, or District shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract, other than a firm fixed-price contract, to the extent that the books and records relate to the performance of the contract or subcontract. Books and records shall be maintained by the contractor for a period of 3 years from the date of final payment under the prime contract and by the subcontractor for a period of 3 years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.
- (c) The Inspector General, District of Columbia Auditor, or District may, at reasonable times, inspect the part of the place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the District.

### **§ 2-354.19 REASONABLE PRICES**

- (a) A contracting officer may request factual information reasonably available to the contractor or prospective contractor to substantiate that the price or cost offered, or some portion of it, is reasonable.
- (b) The CPO shall establish a process for determining the reasonableness of prices.

## § 2-354.20 PREQUALIFICATION

- (a) The CPO may establish a prequalification process to certify the financial and professional qualifications of prospective bidders and offerors for District government contracts. The CPO may limit participation in certain procurements to prospective contractors who have been prequalified under the process.
- (b) The use of the prequalification process under this section shall not nullify the requirement for a determination of contractor responsibility under subchapter III of this chapter.
- (c) Information about a prospective or current contractor relevant to a contractor's prequalification criteria may be submitted by a member of the general public to the CPO for consideration in determining or verifying the contractor's prequalified status.

## **SUBCHAPTER V TYPES OF CONTRACTS**

### **§ 2-355.01 COST-PLUS-A-PERCENTAGE-OF-COST CONTRACT PROHIBITED**

An agency shall not enter into a cost-plus-a-percentage-of-cost contract.

### **§ 2-355.02 COST-REIMBURSEMENT CONTRACTS**

- (a) A cost-reimbursement contract shall not be awarded pursuant to § 2-354.02, § 2-354.03, or § 2-354.04 unless there is a determination and findings that:
  - (1) The contract is likely to be less costly to the District than any other type of contract; or
  - (2) It is impracticable to obtain goods or services of the kind or quality required except under a cost-reimbursement contract.
- (b) All cost-reimbursement contracts shall contain a provision that only costs determined in writing to be reimbursable by the contracting officer, in accordance with cost principles set forth in rules issued pursuant to this chapter, shall be reimbursable.

### **§ 2-355.03 USE OF OTHER TYPES OF CONTRACTS**

Subject to the limitations of this chapter and this subchapter, any type of contract which will promote the best interests of the District may be used.

### **§ 2-355.04 MULTIYEAR CONTRACTS**

- (a) Unless otherwise provided in an appropriations act, or approved pursuant to § 1-204.51, a contract for goods or services shall not be entered into for periods which extend beyond 12 months.
- (b) Before entering into a multiyear contract, the CPO shall determine in writing that:
  - (1) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
  - (2) The contract would serve the best interests of the District, encourage effective competition, or otherwise promote economies in District procurement.
- (c) If funds are not appropriated or otherwise made available for the continued performance in a subsequent year of a multiyear contract, the contract for the subsequent year shall be terminated, either automatically or in accordance with the termination clause of the contract, if any. Unless otherwise provided for in the contract, the effect of termination shall be to discharge both the District and the contractor from future performance of the contract, but not from their existing obligations. The contractor shall be reimbursed for

the reasonable value of any nonrecurring costs incurred but not amortized in the price of the goods or services delivered under the contract.

## **SUBCHAPTER VI PROCUREMENT OF CONSTRUCTION PROJECTS AND RELATED SERVICES**

### **§ 2-356.01 PROJECT DELIVERY METHODS AUTHORIZED**

- (a) This subchapter shall govern procurements for construction projects and related management services in the District.
- (b) The following project delivery methods are authorized for procurements within the scope of this subchapter:
  - (1) Architectural and engineering services;
  - (2) Construction management;
  - (3) Construction management at risk;
  - (4) Design-bid-build;
  - (5) Design-build;
  - (6) Design-build-finance-operate-maintain;
  - (7) Design-build-operate-maintain; and
  - (8) Operations and maintenance.
- (c) Participation in a report or study that is subsequently used in the preparation of design requirements for a project shall not disqualify a firm from participating as a member of a proposing team in a design-build, design-build-operate-maintain, or design-build-finance-operate-maintain procurement unless the participation would provide the firm with a substantial competitive advantage.

### **§ 2-356.02 SOURCE SELECTION METHODS ASSIGNED TO PROJECT DELIVERY METHODS**

- (a) This section specifies the source selection methods applicable to procurements for the project delivery methods identified in § 2-356.01, except as provided in §§ 2-354.04, 2-354.05, 2-354.07, 2-354.08, 2-354.11, and 2-354.12.
- (b)
  - (1) The qualifications-based selection process set forth in § 2-356.04 shall be used to procure architectural and engineering services in design-bid-build procurements.
  - (2) Competitive sealed bidding, as set forth in § 2-354.02, shall be used to procure construction in design-bid-build procurements, except where rules authorize the

use of competitive sealed proposals, as set forth in § 2-354.03, for contracts for construction management at-risk.

- (c) Contracts for operations and maintenance shall be procured as set forth in § 2-354.01.
- (d) Contracts for design-build shall be procured by competitive sealed proposals, as set forth in § 2-354.03.
- (e) Contracts for design-build-operate-maintain shall be procured by competitive sealed proposals, as set forth in § 2-354.03.
- (f) Contracts for design-build-finance-operate-maintain shall be procured by competitive sealed proposals, as set forth in § 2-354.03.

### **§ 2-356.03      PREQUALIFICATION PROCESS FOR CONSTRUCTION**

- (a) Except for architectural and engineering services, prospective contractors for procurements under this subchapter may be selected through a prequalification process as set forth in this section.
- (b) The prequalification process shall provide for the annual publication of a list describing specific types of solicitations for which the agency will seek prequalified contractors. Solicitations may be added to the list at any time; provided, that the addition of a solicitation to the list shall be published for not less than 30 days before the solicitation is released.
- (c) The prequalification criteria may include the following:
  - (1) Experience and expertise of personnel;
  - (2) Prior completion of similar work;
  - (3) Receipt of favorable references from prior work;
  - (4) A certified letter indicating a surety's willingness to provide bonding to the contractor for 100% of the proposed bid price;
  - (5) Availability to complete the desired work;
  - (6) Confirmation that the vendor is responsible;
  - (7) Acceptable subcontracting plans; and
  - (8) Any other criteria identified by the agency as relevant to evaluation of the prospective contractor.

- (d) After an agency has prequalified prospective contractors, it may exclude from competition for the ensuing solicitation any person that has not been prequalified.
- (e) The use of the prequalification process under this section shall not nullify the requirement

#### **§ 2-356.04 ARCHITECTURAL AND ENGINEERING SERVICES**

- (a) The District shall announce all requirements for architectural and engineering services and negotiate contracts for these services on the basis of demonstrated competence and qualification and at fair and reasonable prices.
- (b) In the procurement of architectural and engineering services, the CPO shall:
  - (1) Provide notice to firms to submit annually a statement of qualifications and performance data;
  - (2) Appoint one or more permanent or ad hoc architect-engineer evaluation boards, comprised of members with experience in architecture, engineering, construction, and District and related procurement matters.
- (c) These boards shall include highly qualified professional employees of the District and may include private practitioners of architecture, engineering, or related professions. The members of a permanent or an ad hoc evaluation board shall be known as the architect-engineer selection committee.
- (d) For each architectural and engineering services contract over \$100,000, the CPO shall appoint an architect-engineer selection committee. The selection committee for architectural and engineering services contracts under this amount shall be established in accordance with rules promulgated by the CPO. The selection committee shall evaluate current statements of qualifications and performance data on file with the District and those that may be submitted by other firms regarding the proposed contract. The selection committee shall conduct discussions with no less than 3 firms regarding the contract and the relative utility of alternative methods of approach for furnishing the required services, and then shall select therefrom, in order of preference, based upon criteria established and published by the selection committee, no less than 3 of the firms considered to be the most highly qualified to provide the services required.
- (e) The contracting officer shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the contracting officer determines in writing to be fair and reasonable to the District. The contracting officer shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. A contracting officer shall proceed as follows:
  - (1) If the contracting officer is unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be



terminated and the contracting officer shall then undertake negotiations with the 2nd most qualified firm.

- (2) If the contracting officer is unable to negotiate a satisfactory contract with the firm considered to be the 2nd most qualified firm, the contracting officer shall terminate negotiations and shall undertake negotiations with the 3rd most qualified firm.
- (3) If the contracting officer is unable to negotiate a satisfactory contract with the firm considered to be the 3rd most qualified firm, the contracting officer shall terminate negotiations.
- (4) If the contracting officer is unable to negotiate a contract with any of the selected firms, the contracting officer may select additional firms in order of their competence and qualifications and shall continue negotiations in accordance with this section until an agreement is reached.

## **§ 2-356.05 ESTIMATE OF CONSTRUCTION COSTS**

- (a) An estimate of costs shall be prepared by the contracting officer for each proposed contract, contract modification, or change order to be issued in connection with a construction project and anticipated to exceed \$100,000.
- (b) The estimate shall be prepared in detail, as though the District were competing for the contract, and shall not be based solely on the estimates or actual costs of similar construction projects.
- (c) The estimate shall be made available to the contracting officer for use in preparation of the contract solicitation and in the determination of price reasonableness in awarding a contract.
- (d) Access to materials gathered or created for the estimate, and the overall amount of the estimate, shall be limited to District personnel or agents of the District whose official duties require knowledge regarding the estimate. These materials and the overall amount of the estimate shall not be disclosed, except as otherwise permitted by law.
- (e) Within 90 days of the effective date of the Procurement Integrity, Transparency, and Accountability Amendment Act of 2016, passed on 2nd reading on July 12, 2016 (Enrolled version of Bill 21-334), the Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this section.

## § 2-356.06 USE OF PROJECT LABOR AGREEMENTS FOR CONSTRUCTION PROJECTS

- (a) The Mayor shall require, as part of a solicitation for a construction contract pursuant to this title, that every contractor and subcontractor that will engage in the construction project agree to negotiate or become a party to a project labor agreement, for that project, with one or more labor organizations if:
- (1) Use of a project labor agreement will advance the District's interest in producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters;
  - (2) The project will require multiple construction contractors or subcontractors employing workers in multiple crafts or trades; and
  - (3) The total cost, not including ongoing operations and maintenance, of the contract to the District is anticipated to be \$75 million or more.
- (b) A project labor agreement agreed to pursuant to subsection (a) of this section shall:
- (1) Bind all contractors and subcontractors engaged in construction on the construction project to comply with the project labor agreement;
  - (2) Contain guarantees against strikes, lockouts, and similar job disruptions;
  - (3) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;
  - (4) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and
  - (5) Include any additional requirements that the CPO considers necessary to promote the District's interest.
- (c) The Mayor may waive the requirements of this section by issuing a determination and findings, posted on the Internet for at least 10 calendar days before advertising the solicitation, that:
- (1) A project does not meet the criteria set forth in subsection (a) of this section;  
or
  - (2) A project labor agreement would be contrary to the interests of the District.

**This section goes into effect upon allocation of funds and should not be cited until verification by the Office of the Chief Financial Officer.**

## SUBCHAPTER VII BONDS AND OTHER FORMS OF SECURITY

### § 2-357.01 BID SECURITY IN CONSTRUCTION CONTRACTS

- (a) Bid security shall be required for all competitive sealed bidding and competitive sealed proposals for construction contracts when the price is estimated by the contracting officer to exceed \$100,000. Bid security shall be a bond provided by a surety company authorized to do business in the District or the equivalent in cash, or otherwise supplied in a form satisfactory to the District. This section shall not prevent the requirement of such bonds on such contracts under \$100,000 or bid or proposal bonds on any other contracts when the circumstances warrant.
- (b) Bid security shall be in an amount equal to at least 5% of the amount of the bid.
- (c) If the Invitation for Bids or Request for Proposals requires that a bid bond be provided, a bidder that does not comply shall be rejected unless, pursuant to rule, it is determined that the bid or offer fails to comply in a nonsubstantial manner with the security requirements.
- (d) After bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids. If a bidder is permitted to withdraw its bid or proposal before award, or is excluded from the competition before award, no action shall be had against the bidder or the bid security.

### § 2-357.02 CONTRACT PERFORMANCE AND PAYMENT BONDS IN CONSTRUCTION CONTRACTS

- (a) (1) When a construction contract is awarded in excess of \$100,000, the following bonds or security shall be delivered to the District and shall become binding on the parties upon the execution of the contract:
  - (A) A performance bond satisfactory to the District, executed by a surety company authorized to do business in the District or otherwise secured in a manner satisfactory to the District, in an amount equal to 100% of the portion of the contract price that does not include the cost of operation, maintenance, and finance; and
  - (B) A payment bond satisfactory to the District, executed by a surety company authorized to do business in the District or otherwise secured in a manner satisfactory to the District, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract.
- (2) The payment bond required by paragraph (1)(B) of this subsection shall be in an amount equal to 100% of the portion of the contract price that does not include the cost of operation, maintenance, and finance.

- (b) The CPO may:
- (1) Reduce the amount of performance and payment bonds for construction contracts to 50% of the amounts established in subsection (a) of this section;
  - (2) Substitute for a bond required by subsection (a) of this section, a letter of credit in an amount equal to at least 10% of the portion of the contract price that does not include the cost of operation, maintenance, and finance, in cases in which the contractor:
    - (A) Is a nonprofit corporation, as defined in D.C. Official Code § 29-401.02(6), or an entity controlled, directly or indirectly, by a nonprofit corporation;
    - (B) Had a net worth of at least \$1 million in the preceding fiscal year;
    - (C) Is a licensed general contractor; and
    - (D) Has done business as a construction contractor for at least 5 years.
- (c) This section shall not limit the authority of the District to require a performance bond or other security in addition to such bonds or in circumstances other than specified in subsection (a) of this section.
- (d) (1) A person who has furnished labor or material to the contractor or its subcontractors for the work provided in the construction contract, in respect of which a payment bond is furnished under this section, and who has not been paid in full before the expiration of a period of 90 days after the day on which the last of the labor was done or performed by such person or material was furnished or supplied by such person for which claim is made, shall have a right of action on the payment bond for the amount unpaid at the time of institution of the action and to prosecute the action for the amount due to the person.
- (2) Any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship express or implied with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days after the date on which the person did or performed the last of the labor or furnished or supplied the last of the material upon which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. The notice shall be personally served or served by other form of receipted transmittal that confirms actual delivery to the contractor at any place the contractor maintains an office or conducts its business or at the contractor's residence.
- (e) An action instituted upon a payment bond shall be brought in a court of competent jurisdiction within the District, but an action suit shall not be commenced after the expiration of one year after the day on which the last of the labor was performed or

material was supplied by the person bringing the action. The obligee named in the bond need not be joined as a party in the action.

- (f) An action instituted under this section shall not be commenced after one year from the date that the final labor was performed or the material was supplied.

### **§ 2-357.02a SECURITY IN NON-CONSTRUCTION SERVICE CONTRACTS**

The CPO shall issue rules pursuant to section 1106 to require performance bonds, payment bonds, letters of credit, or other forms of security for non-construction service contract prime contractors in cases in which such security may be effective in furthering the District's interests or such security may assist subcontractors doing business under a prime contract to receive payment for goods or services.

### **§ 2-357.03 BOND FORMS AND COPIES**

- (a) The CPO shall prescribe the form of the bonds required by this chapter.
- (b) Any person may request and obtain from the District a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

### **§ 2-357.04 OTHER FORMS OF SECURITY**

Pursuant to rules promulgated under this chapter, the CPO may require a solicitation to include one or more of the following forms of security to assure the timely, faithful, and uninterrupted provision of operations and maintenance services, procured separately or as one element of design-build-operate-maintain or design-build-finance-operate-maintain services:

- (1) Operations period surety bonds that secure the performance of the contractor's operations and maintenance obligations under the project delivery methods set forth in § 2-356.01;
- (2) Letters of credit in an amount appropriate to cover the cost to the District of preventing infrastructure service interruptions for a period up to 12 months under the project delivery methods set forth in § 2-356.01; or
- (3) Appropriate written guarantees from the contractor (or depending upon the circumstances, from parent corporations) to secure the recovery of procurement costs to the District in the event of a default in performance by the contractor.

### **§ 2-357.05 AUTHORITY TO REQUIRE BONDS**

Pursuant to rules promulgated under this chapter, the CPO may require a bond for any solicitation if the CPO determines that it would be in the best interests of the District.

**§ 2-357.06 FISCAL RESPONSIBILITY**

- (a) Every contract modification, change order, or contract price adjustment under a contract with the District shall be subject to prior written certification by the fiscal officer of the entity responsible for funding the project or the contract, or other official responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget.
  
- (b) If the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget or the total contract budget, the contracting officer shall not execute or make the contract modification, change order, or adjustment in contract price unless:
  - (1) Sufficient funds are available therefor; or
  
  - (2) The scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration.

## **SUBCHAPTER VIII            SUPPLY MANAGEMENT**

### **§ 2-358.1        SUPPLY MANAGEMENT RULES**

The CPO shall issue rules governing:

- (1) The management of goods during their entire life cycle;
- (2) The sale, lease, disposal, or transfer of surplus goods by public auction, competitive sealed bidding, competitive electronic sales, or other appropriate method designated by rule; provided, that no employee of the disposing agency shall be entitled to purchase any surplus goods.

### **§ 2-358.2        DISPOSITION OF SURPLUS GOODS**

- (a) The CPO may transfer District surplus goods to an organization qualified as tax-exempt under section 501 of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501), or state, county, or municipal jurisdictions after an attempt has been made to:
  - (1) Transfer property within an agency;
  - (2) Transfer property between agencies; and
  - (3) Auction the property for sale.
- (b) To qualify for the receipt of surplus goods, a tax-exempt organization shall:
  - (1) Demonstrate that it meets any approval, accreditation, or licensing requirements for operation of its program;
  - (2) Certify and provide evidence that it is a nonprofit and tax-exempt organization under section 501 of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501);
  - (3) Certify that it is not debarred, suspended, or excluded from any federal or District program, including procurement programs; and
  - (4) Operate in compliance with applicable Federal nondiscrimination law.
- (c)
  - (1) Prior to sale, lease, transfer, or disposal of surplus computer and other information technology assets, the Chief Technology Officer shall certify that the equipment is sanitized of any confidential data or personal identifying information.

- (2) The CPO shall ensure that all policies for the transfer of computers or other information technology goods are consistent with data and information security policies developed by the Chief Technology Officer.
- (d) The CPO may abandon, recycle, sell for scrap, or destroy undistributed surplus goods upon making a written finding that the goods have no commercial value or the estimated cost of their continued care and handling would exceed the estimated proceeds from their sale.
- (e) The CPO shall publish on the Internet all forms used for the purpose of disposing of surplus goods. The CPO may receive completed forms electronically.
- (f) OCP shall publish records of all transfers of surplus goods on the Internet.
- (g) OCP shall develop written policies and procedures for advertisement of auctions to ensure adequate public notice.

#### **§ 2-358.2a SURPLUS PROPERTY DISPOSITION AGREEMENTS**

- (a) The CPO may enter into an agreement with a District agency not otherwise under the authority of the CPO, including an independent agency or a public charter school, to sell its surplus goods.
- (b) OCP may charge an administrative fee of 6% of gross proceeds for the sale of surplus property sold pursuant to an agreement entered into under this section. The administrative fees shall be deposited into the Surplus Property Sales Fund established by § 2-358.05.

#### **§ 2-358.3 ELECTRONIC INVENTORY CONTROL SYSTEM FOR SURPLUS PROPERTY**

The CPO shall establish an electronic inventory control system to monitor all surplus property. The system shall contain the following information:

- (1) The date of the receipt of the surplus property;
- (2) The agency or organization from which the surplus property was received;
- (3) A description of the surplus property, including quantity and condition;
- (4) A photograph of the surplus property; and
- (5) The estimated value of the surplus property.

#### **§ 2-358.4 [REPEALED]**

Repealed



**§ 2-358.5 SURPLUS PROPERTY SALES FUND**

- (a) There is established as a special fund the Surplus Property Sales Fund (“Fund”), which shall be administered by the CPO in accordance with subsection (c) of this section.
- (b) There shall be deposited into the Fund:
  - (1) Administrative fees collected pursuant to an agreement entered into pursuant to § 2-358.02a; and
  - (2) Proceeds from the sale of surplus property by OCP.
- (c) Money in the Fund shall be used to pay the administrative costs of maintaining and disposing of surplus property, including the costs of online auctions.
- (d) Amounts in excess of the money needed to pay for the cost of online auction contracts for surplus personal property shall be deposited into the unrestricted fund balance of the General Fund of the District of Columbia.

## SUBCHAPTER IX PROHIBITED ACTIONS; REMEDIES

### § 2-359.1 ORAL AGREEMENTS

- (a) A District employee shall not enter into an oral agreement with a contractor to provide goods or services to the District government without a valid written contract. A violation of this paragraph shall be cause for termination of employment of the District employee.
- (b) A District employee shall not authorize payment for the value of goods or services received without a valid written contract. This subsection shall not apply to a payment required by court order, a final decision of the Contract Appeals Board, a settlement, or an approval by the CPO in accordance with subsection (d) of this section.
- (c) Except as authorized under subsection (d) of this section, a contractor who enters into an oral agreement with a District employee to provide goods or services to the District government without a valid written contract shall not be paid. If the oral agreement was entered into by a District employee at the direction of a supervisor, the supervisor shall be terminated.
- (d)
  - (1) The CPO shall review, verify, and either approve or disapprove a request submitted by an agency director for authorization for payment for goods or services received without a valid written contract. A request shall not be approved without written notification of the disciplinary action taken by the relevant personnel authority against the responsible employee.
  - (2) If the employee who authorized payment or delivery of goods or services without a valid written contract is the CPO, the matter shall be referred to the Mayor for appropriate disciplinary action and the Mayor shall state in writing the disciplinary action taken before the CPO may approve or disapprove the request.
  - (3) The disciplinary action prescribed by this paragraph shall be in accordance with subchapter XVI-A of Chapter 6 of Title 1 [§ 1-616.51 *et seq.*].

### § 2-359.2 IMPROPER CONTRACTS

- (a) A contract entered into in violation of this chapter or the rules issued pursuant to this chapter shall be void.
- (b) A contract entered into in violation of this chapter or the rules issued pursuant to this chapter shall not be void if:
  - (1) It is determined in a proceeding pursuant to this chapter or subsequent judicial review that good faith has been shown by all parties; and
  - (2) The violation of the provisions of this chapter and the rules issued pursuant to this chapter was *de minimis*.

- (c) If a contract is determined to be void under subsection (a) of this subsection, a contractor who has entered into the contract in good faith, without directly contributing to a violation and without knowledge of any violation of the act or rules issued pursuant to this chapter prior to the awarding of the contract, shall be compensated for costs actually incurred until the date that the contract was determined to be void.

### **§ 2-359.3 TERMINATION OF CONTRACTS**

- (a) The CPO may terminate, without liability, any contract if:
- (1) The contractor has been convicted of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract; or
  - (2) There has been a violation of this chapter.
- (b) If a contract is terminated pursuant to this section, the contractor shall:
- (1) Be paid only the actual costs of the work performed to the date of termination, plus termination costs, if any;
  - (2) Refund, and the CPO shall recover, all profits or fixed fees realized under the contract; and
  - (3) Refund, and the CPO shall recover, any other fee, commission, percentage, gift, compensation, or similar consideration paid, including contingent fees and brokerage fees.
- (c) The rights and remedies in this section shall be in addition to any other right or remedy provided by law and the exercise of any of them shall not constitute a waiver of any other right or remedy provided by law.

### **§ 2-359.4 SOVEREIGN IMMUNITY DEFENSE NOT AVAILABLE**

Unless otherwise specifically provided by law of the District, the District government and every officer, department, agency, or other unit of the District government shall not raise the defense of sovereign immunity in the courts of the District in an action based upon a written procurement contract executed on behalf of the District government.

### **§ 2-359.5 DISTRICT GOVERNMENT NOT LIABLE FOR PUNITIVE DAMAGES**

In an action in contract based upon a written contract executed on behalf of the District government, or by an official or employee acting within the scope of the official's or the employee's authority, the District government, and its officers, departments, agencies, or other units of government, shall not be liable for punitive damages.

## § 2-359.6 CLAIMS BY DISTRICT GOVERNMENT AGAINST CONTRACTORS

- (a) (1) All claims by the District government against a contractor arising under or relating to a contract shall be decided by the contracting officer, who shall issue a decision in writing and furnish a copy of the decision to the contractor.
- (2) The decision shall be supported by reasons and shall inform the contractor of his or her rights as provided in this subchapter. Specific findings of fact shall not be required, but, if made, shall not be binding in any subsequent proceeding.
- (3) This subsection shall not apply to a claim or dispute for penalties or forfeitures prescribed by a law or rule which another District government agency is specifically authorized to administer, settle, or determine.
- (4) This subsection shall not authorize the contracting officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- (b) The decision of the contracting officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced as authorized by § 2-360.04.
- (c) This subchapter shall not prohibit the contracting officer from including a clause in District government contracts requiring that pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the decision of the contracting officer.

## § 2-359.7 DEBARMENT AND SUSPENSION

- (a) (1) After reasonable notice to a person, and reasonable opportunity to be heard:
  - (A) The CPO shall debar a person from consideration for award of contracts or subcontracts for any conviction under subsection (c)(1) through (3) of this section, for a judicial determination of a violation under subsection (c)(4) of this section, or for a CPO determination of a violation under subsection (c)(5) through (7) of this section, unless the CPO makes a finding in writing that it would be contrary to the best interests of the District to do so or the present responsibility of the person is such that a debarment would not be warranted; and
  - (B) The CPO may debar a person from consideration for award of contracts or subcontracts if one or more of the causes listed in subsection (b) of this section exist.
- (2) The debarment shall not be for a period of more than 5 years.
- (b) (1) The CPO shall suspend a person from consideration for award of contracts or

subcontracts for any conviction listed in subsection (c)(1) through (3) of this section, or for a CPO determination of a violation under subsection (c)(5) through (7) of this section, unless the CPO makes a finding in writing that it would be contrary to the best interests of the District to do so.

- (2) The CPO may suspend a person from consideration for award of contracts or subcontracts if the person is charged with the commission of any offense described in subsection (c) of this section and if the CPO makes a finding in writing that such suspension would be in the best interests of the District unless the present responsibility of the person is such that a suspension would not be warranted.
- (c) Causes for debarment or suspension include the following:
- (1) 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;
  - (2) Conviction under this chapter 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;
  - (3) Conviction under District, federal, or state antitrust laws arising out of the submission of bids or proposals;
  - (4) A violation under subchapter I of Chapter 3B of this chapter [ §§ 2-381.01 through 2-381.09];
  - (5) A false assertion of certified business enterprise status or eligibility as defined in subchapter IX-A of Chapter 2 of this title [ § 2-218.01 *et seq.*];
  - (6) A violation of contract provisions, as set forth below, of a character which is regarded by the CPO to be sufficiently serious to justify debarment action:
    - (A) Willful failure, without good cause, to perform in accordance with the specifications or within the time limit provided in the contract; or
    - (B) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms or conditions 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 bases for debarment;
  - (6A) A violation of subchapter II of Chapter 13 of Title 32 [ § 32-1331.01 *et seq.*];

- (7) Any other cause the CPO determines to be sufficiently serious and compelling to affect responsibility as a District government contractor, including debarment by another governmental entity for any cause listed in rules; or
  - (8) Submission of a bid or proposal to contract with an agency or office of the District by a person debarred or suspended pursuant to a conviction under subsection (c)(1), (2), or (3) of this section, unless the CPO has provided in the submission a written statement to the Chairman of the Council of the compelling reasons to consider the bid or proposal. A second debarment resulting from the submission of a bid or proposal by a debarred person shall result in a permanent debarment pursuant to subsection (k) of this section.
- (d) (1) After reasonable notice to a person and reasonable opportunity to be heard, the CPO may debar the person from consideration for award of any contract or subcontract if the CPO receives written notification from:
- (A) The Chairman of the Council or the chairperson of a Council committee that the person has willfully failed to cooperate in a Council or Council committee investigation conducted pursuant to § 1-204.13;
  - (B) The District of Columbia Auditor that the person has willfully failed to cooperate in an audit conducted pursuant to § 1-204.55 or to produce books or records pursuant to § 1-354.18; or
  - (C) The Inspector General that the person has willfully failed to cooperate in an audit, inspection, or investigation conducted pursuant to § 1-301.115a(a)(3)) or to produce books and records pursuant to § 1-354.18.
- (2) The CPO shall issue a decision on a debarment recommended through a notification received under paragraph (1) of this subsection within 30 days of receipt of the notification.
- (3) The debarment shall be for a period of 5 years, unless the CPO receives written notification during the 5-year period from the Chairman of the Council or the chairperson of a Council committee, the District of Columbia Auditor, or the Inspector General that the debarred person has cooperated in the audit, inspection, or investigation referred to in paragraph (1) of this subsection.
- (4) For the purposes of this subsection, the term “willfully failed to cooperate” means:
- (A) Intentionally failed to attend and give testimony at a public hearing convened in accordance with the Rules of Organization and Procedure for the Council; or

- (B) Intentionally failed to provide documents, books, papers, or other information upon request of the Council or a Council committee, the District of Columbia Auditor, or the Inspector General.
- (e) The CPO shall issue a written decision to debar or suspend a person. The decision shall:
  - (1) State the relevant facts and the reasons for the action taken;
  - (2) Describe the present responsibility of the person;
  - (3) Describe whether the debarment is in the best interests of the District; and
  - (4) Inform the debarred or suspended person of the right to judicial or administrative review as provided in this chapter.
- (f) A copy of the decision pursuant to subsection (e) of this section shall be final and conclusive unless fraudulent or unless the debarred or suspended person appeals to the Contract Appeals Board within 60 days of receipt of the CPO's decision by the person.
- (g) The filing of an action pursuant to subsection (f) of this section shall not stay the CPO's decision.
- (h)
  - (1) Unless otherwise indicated in the debarment or suspension decision, the debarment or suspension of a person shall be effective for all District government agencies.
  - (2) Unless otherwise indicated in the debarment or suspension decision, the debarment or suspension of a person shall constitute a debarment or suspension of any affiliate of that person.
- (i) If a person is charged with or convicted of committing any offense listed in subsection (c)(1) through (5) of this section, the Office of the Attorney General for the District of Columbia or the United States Attorney, whoever is responsible for prosecuting the charge, shall immediately notify the CPO of the charge or conviction and shall provide such information to the CPO as may otherwise be permitted by law to enable the CPO to take any action authorized by this section. The CPO, in turn, shall immediately notify both the Office of the Attorney General for the District of Columbia and the United States Attorney of any action taken or finding made under this section.
- (j)
  - (1) The Office of Contracting and Procurement shall compile and maintain a list of persons who have been debarred or suspended in the District to be known as the "Excluded Parties List," which shall include:
    - (A) The name and phone number of the OCP official responsible for maintaining the list;
    - (B) The names and addresses of suspended and debarred persons;

- (C) The name of the agency that instituted the suspension or debarment;
  - (D) The cause of the suspension or debarment; and
  - (E) The dates and terms of each suspension or debarment.
- (2)
- (A) The Excluded Parties List shall be updated monthly and prominently published on the OCP's website.
  - (B) Copies of the Excluded Parties List shall be distributed electronically to District contracting officers and contract administrators on a monthly basis.
  - (C)
    - (i) Bids or proposals received from a person named on the Excluded Parties List shall be rejected unless the CPO provides the person with a written statement before the bid or proposal is submitted stating the compelling reasons why the bid or proposal should be considered. The CPO's determination shall be appended to the bid or proposal submitted.
    - (ii) If the bid or proposal is awarded to the debarred or suspended person, the award, along with the CPO's determination, shall be prominently published on the OCP's website within 15 days of the issuance of the award and published in the District of Columbia Register as soon as is practicable.
- (3) Immediately before the award of a contract, the contracting officer or administrator shall review the most recent version of the Excluded Parties List to ensure that persons being considered for the award are not named on the list. If a person being considered for the award appears on the Excluded Parties List, the contracting officer or administrator shall notify the person in writing that the person's bid or proposal shall be rejected unless the person provides a written statement from the CPO in accordance with sub-subparagraph (i) of this subparagraph within 15 days of receipt of the written notification.
- (k) A person who has been debarred 2 times by the District shall be banned permanently from contracting with a District agency or office; provided, that the suspensions leading to debarment resulted from a violation, conviction, or judicial determination listed in subsection (b)(1) of this section but not a charge listed in subsection (b)(2) of this subsection. A permanent ban from contracting with the District bars a person from consideration for award of contracts or subcontracts permanently; provided, that 10 years after the person's debarment, the person may be eligible for reinstatement if the CPO provides written notification to the Chairman of the Council that the person's business practices have been reformed.



## **§ 2-359.8 CLAIMS BY CONTRACTORS AGAINST THE DISTRICT GOVERNMENT**

- (a) 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.
- (b) Within 120 days after receipt of a claim, the contracting officer shall issue a decision, whenever possible taking into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.
- (c) Any failure by the contracting officer to issue a decision on a contract claim within the required time period shall be deemed to be a denial of the claim and shall authorize the commencement of an appeal on the claim as otherwise provided in this subchapter.
- (d)
  - (1) If a contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the contractor, the contractor shall be liable to the District government for an amount equal to the unsupported part of the claim in addition to all costs to the District government attributable to the cost of reviewing that part of the contractor's claim.
  - (2) Liability under this section shall be determined within 6 years of the commission of the misrepresentation of fact or fraud.

## **§ 2-359.9 INTEREST**

Interest on amounts found due to a contractor on claims shall be payable at a rate set in § 28-3302(b) applicable to judgments against the District government from the date the contracting officer receives the claim until payment of the claim. Interest on amounts found due to the District from a contractor on claims shall be payable at the rate set in § 28-3302(b) applicable to judgments against the District government from the date the contractor receives a contracting officer's written decision asserting the claim on behalf of the District until payment of the claim.

## **§ 2-359.10 EMPLOYEES SUBJECT TO EMPLOYEE CONDUCT STANDARDS OF MERIT PERSONNEL ACT**

- (a) Except for those District government employees employed by agencies not subject to Chapter 6 of Title 1 [§ 1-601.01 *et seq.*], District government employees who participate in the procurement process shall be subject to the provisions of subchapter XVIII of Chapter 6 of Title 1 [§ 1-618.01 *et seq.*].
- (b) Participation in the procurement process shall include involvement, either directly or indirectly, in:

- (1) The decision, approval, disapproval, recommendation, or preparation of any part of a purchase request;
- (2) Influencing the content of any specification or purchase standard;
- (3) Rendering of advice;
- (4) An investigation or audit; or
- (5) Any other advisory capacity pertaining to any contract, subcontract, solicitation, or proposal.

## **SUBCHAPTER X      CONTRACT APPEALS BOARD**

### **§ 2-360.01      CREATION OF CONTRACT APPEALS BOARD**

- (a)    (1)    There is established in the executive branch of the District government a Contract Appeals Board (“Board”) to be composed of a chairperson and 2 other members.
- (2)    The members shall be appointed as administrative judges in the Career Service and shall not be removed except for cause.
- (3)    The chairperson and members of the Board shall be appointed by the Mayor with the advice and consent of the Council, and shall serve full-time.
- (b)    The Board shall adopt operational procedures, not inconsistent with this chapter, necessary to execute the Board’s functions. The chairperson’s authority may be delegated to the Board’s members and employees, but only members of the Board may hear appeals and issue decisions on the appeals. The attendance of at least 2 members of the Board shall constitute a quorum.
- (c)    (1)    The Office of the Attorney General may provide for the Board those goods, materials, and administrative services that the chairperson requests, on a basis, reimbursable or otherwise, agreed upon between the Office of the Attorney General and the chairperson.
- (2)    All costs of hearings before the Board, including witness fees and costs of transcripts, shall be borne by the agency from which the appeal originated through direct billing.
- (3)    The Board shall use any fees received pursuant to § 2-360.03 at the discretion of the Chairperson to improve the Board’s services and programs, including the option to provide incentive awards to Board personnel consistent with subchapter XIX of Chapter 6 of Title 1 [§ 1-619.01 *et seq.*].

### **§ 2-360.02      TERMS AND QUALIFICATIONS OF MEMBERS**

- (a)    (1)    The term of office of the chairperson and other full-time members of the Board shall be 4 years, except that in making the initial appointment, the Mayor shall appoint one members for a term of one year, one member for a term of 2 years, and the chairperson for a term of 3 years. The terms of the chairperson and members first appointed shall begin on the date that a majority of the first members are sworn in, which shall become the anniversary date for all subsequent appointments. Thereafter, their successors shall be appointed for terms of 4 years, or for the balance of any unexpired term, but members may continue to serve beyond their terms until their successors take office.

- (2) The Mayor shall endeavor to nominate persons for appointment to the Board at least 30 days before the expiration of a member's term.
  - (3) Members may be reappointed for succeeding terms.
  - (4) If there is no chairperson, or if the chairperson is absent or unable to serve, the member senior in length of service shall be acting chairperson.
- (b) The chairperson and members of the Board shall be attorneys licensed to practice law in the District who shall have no less than 5 years experience in public contract law. All members of the Board shall have experience in the areas of procurement and contract law.
- (c) Notwithstanding the provisions of this section, current members of the Contract Appeals Board, appointed pursuant to the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; 32 DCR 7396) [§ 2-301.01 *et seq.*], serving on April 8, 2011, shall be considered qualified and may continue to serve as members of the Board.

### **§ 2-360.03 JURISDICTION OF BOARD**

- (a) The Board shall be the exclusive hearing tribunal for, and shall review and determine de novo:
- (1) Any protest of a solicitation or award of a contract addressed to the Board by any actual or prospective bidder, offeror, or the contractor who is aggrieved in connection with the solicitation or award of a contract;
  - (2) Any appeal by a contractor from a final decision by the contracting officer on a claim by a contractor, when the claim arises under or relates to a contract; and
  - (3) Any claim by the District against a contractor, when such claim arises under or relates to a contract.
- (b) Jurisdiction of the Board shall be consistent with the coverage of this chapter as set forth in § 2-351.05, except that the Board may enter into fee-for-service agreements with agencies, departments, boards, commissions, and instrumentalities of the District or other public entities that are not subject to the Board's jurisdiction. The agreements shall provide for the Board to resolve contract disputes, including appeals and protests of those agencies, departments, boards, commissions, and instrumentalities. With agreements of the parties, the Board may provide alternate dispute resolution services.

## § 2-360.04 CONTRACTOR'S RIGHT OF APPEAL TO BOARD

- (a) Except as provided in § 2-359.08, within 90 days after the date of receipt of a decision of the contracting officer, the contractor may appeal the decision to the Board by filing a complaint.
- (b) The Board shall provide, to the fullest extent practicable, informal, expeditious, and inexpensive resolution of disputes, shall issue a decision in writing, or take other appropriate action on each appeal submitted, and shall mail or otherwise furnish a copy of the decision to the contractor and the Mayor. All decisions which constitute a final adjudication of appeal on the merits shall be published in the District of Columbia Register.
- (c)
  - (1) The rules of the Board shall include a procedure for the accelerated disposition of any appeal from a decision of the contracting officer if the amount in dispute is \$50,000 or less.
  - (2) The procedure shall be applicable at the sole election of the contractor.
  - (3) Appeals under the accelerated procedure shall be resolved within 180 days from the date the contractor elects to utilize the procedure.
- (d)
  - (1) The rules of the Board shall include a small claims procedure for the expedited disposition of any appeal from a decision of the contracting officer if the amount in dispute is \$10,000 or less. The procedure shall be applicable at the sole election of the contractor.
  - (2) The small claims procedure shall provide for simplified rules of procedure to facilitate the decision of any appeal. The appeals may be decided by a single member of the Board with any concurrences required by rule.
  - (3) Appeals under the small claims procedure shall be resolved, whenever possible, within 90 days from the date on which the contractor files an appeal.
  - (4) A decision against the District government or the contractor reached under the small claims procedure shall be final and conclusive and shall not be set aside except in cases of fraud.
  - (5) Administrative determinations and final decisions under the small claims procedure shall have no value as precedent for future cases under this subchapter.

## § 2-360.05 APPEAL OF BOARD DECISIONS

- (a) A contractor may appeal a Board decision to the District of Columbia Court of Appeals within 120 days after the date of receipt of a copy of the decision.

- (b) If the CPO determines that an appeal should be taken, the CPO, with the prior approval of the Office of the Attorney General, may appeal the Board's decision to the District of Columbia Court of Appeals for judicial review within 120 days from the date of the receipt of the Board's decision.

#### **§ 2-360.06 OATHS, DISCOVERY, AND SUBPOENA POWER**

- (a) A member of the Board may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpoena the attendance of witnesses and production of books and papers for the taking of testimony or evidence by deposition or in the hearing of an appeal by the Board.
- (b) If any witness, having been personally served with a subpoena, shall neglect or refuse to obey the subpoena issued, on written application, the Board may report the fact of the neglect or refusal to a judge of the Superior Court for the District of Columbia who may compel obedience to the subpoena.

#### **§ 2-360.07 ACTIONS IN COURT; JUDICIAL REVIEW OF BOARD DECISIONS**

In the event of an appeal by a contractor or the CPO from a decision of the Board pursuant to § 2-360.05, notwithstanding any contract provision, rule, or rule of law to the contrary, the decision of the Board on questions of fact shall be final and conclusive and shall not be set aside unless the decision is fraudulent, arbitrary, capricious, or so grossly erroneous as to necessarily imply bad faith, or if the decision is not supported by substantial evidence.

#### **§ 2-360.08 PROTEST PROCEDURES**

- (a) This section shall apply to a protest of a solicitation or award of a contract addressed to the Board by any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract.
- (b)
  - (1) A protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, shall be protested not later than the next closing time for receipt of proposals following the incorporation.
  - (2) In cases other than those covered in paragraph (1) of this subsection, protests shall be filed not later than 10 business days after the basis of protest is known or should have been known, whichever is earlier.
- (c)
  - (1) Within one business day of receipt of the protest, the Board shall notify the

contracting officer that the protest has been filed. Except as provided in this section, no contract shall be awarded in any procurement after the contracting officer has received the notice and while the protest is pending. If an award has already been made but the contracting officer receives notice within 11 business days after the date of award, the contracting officer shall immediately direct the awardee to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the District under the contract. Except as provided in this section, performance and related activities suspended pursuant to this section shall not be resumed while the protest is pending.

- (2) Performance under a protested procurement may proceed, or award may be made, while a protest is pending only if the CPO makes a written determination, supported by substantial evidence, that urgent and compelling circumstances that significantly affect interests of the District will not permit waiting for the decision of the Board concerning the protest. A copy of the determination shall be provided within one business day of issuance to both the Board and the protester.
  
- (d) On any direct protest pursuant to subsection (a) of this section, the Board shall decide whether the solicitation or award was in accordance with the applicable law, rules, and terms and conditions of the solicitation. The proceeding shall be de novo and the decision of the Board shall be issued within 60 business days from the date on which the protest is filed. Any prior determinations by administrative officials shall not be final or conclusive. If the Board determines that a contract is void pursuant to § 2-359.02, the Board shall direct that the contract be cancelled and cause a determination to be made pursuant to § 2-359.02.
  
- (d-1) An agency's determination of its minimum needs and its determination of the best method of accommodating those minimum needs are business judgments primarily within the agency's discretion. The Board may not sustain a protest on the basis of either determination unless a protester demonstrates by clear and convincing evidence that the determination lacked a reasonable basis.
  
- (e) A determination of an issue of fact by the Board under subsection (d) of this section shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.
  
- (f) (1) In addition to other relief, the Board may order, when a protest is sustained, that the contract awarded under the solicitation be terminated for the convenience of the District; provided, that the Board shall not direct the award of a contract to a particular person. A determination in this regard shall be based on considerations such as:
  - (A) Best interests of the District government;
  - (B) Seriousness of the procurement deficiency;
  - (C) Existence of prejudice to other bidders;

- (D) Maintaining the integrity of the procurement system;
  - (E) Good faith of District government officials and other parties;
  - (F) Extent of contract performance; or
  - (G) Impact of termination on the agency's activities and mission.
- (2) The Board may, when requested, award reasonable bid or proposal preparation costs and costs of pursuing the protest, not including legal fees, if it finds that the District government's actions toward the protester or claimant were arbitrary or capricious.
- (g) (1) The Board may dismiss, at any stage of the proceedings, any protest, or portion of a protest, it considers frivolous.
- (2) In addition, the Board may require the protester to pay reasonable attorneys' fees, for time counsel spent representing the agency in defending the frivolous protest or its frivolous part. If the entire protest is dismissed on frivolous grounds, it may also assess the protester additional damages for each day the contract was suspended equal to the amount of liquidated damages specified in the contract for late completion of the contract.
- (3) The Board shall not determine damages if liquidated damages are not specified.
- (4) In addition, counsel for the protester may be suspended or barred from practicing before the Board.
- (h) The Board shall adopt rules for exercising its authority under this section.



## **SUBCHAPTER XI MISCELLANEOUS PROVISIONS**

### **§ 2-361.01 GREEN PROCUREMENT**

- (a) Except for emergency procurements, before entering into any contract in excess of \$ 100,000, the District shall issue an environmental certification to demonstrate, to the maximum extent practicable, the purchase of an EPPS.
- (b) An environmental certification shall not be required for procurements that conform to an applicable Default Environmental Preference Standard.
- (c) The requirement shall be satisfied if a District solicitation included a requirement that a contractor provide an EPPS.
- (d) Within one year after December 24, 2013, and annually thereafter, OCP shall prepare and submit to the Council a report detailing the progress of this policy, including the following elements:
  - (1) Total contracting amount, and percentage of contracting amount, spent on EPPS;
  - (2) Successes and challenges to implementing the policy; and
  - (3) Changes to policies or standards.

### **§ 2-361.02 PAYMENT OF STIPENDS AUTHORIZED**

- (a) The contracting officer may pay a stipend to cover a portion of bid or proposal development costs to an unsuccessful responsible offeror that submits a responsive proposal to a solicitation to generate meaningful competition and to ensure that small businesses are not competitively disadvantaged.
- (b) The contracting officer shall determine the number and amount of the stipends, if any.
- (c) In consideration for paying the stipend fee, the District may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the unsuccessful offerors.
- (d)
  - (1) Notwithstanding the other provisions of this section, an unsuccessful offeror may elect to waive the stipend.
  - (2) If an unsuccessful offeror elects to waive the stipend, the District shall not use ideas and information contained in the offeror's proposal; provided, that this restriction shall not prevent the District from using any idea or information if the idea or information is also included in a proposal of an offeror that accepts the stipend.

### **§ 2-361.03 SUPPLY SCHEDULE, PURCHASE CARD, AND TRAINING FUNDS**

- (a) The CPO may charge and collect a fee, in an amount to be determined by rule, on all sales, purchase orders, delivery orders, task orders, and purchase card transactions made under contracts awarded to contractors under the DCSS.
- (b) The CPO may charge a fee for training conducted by the procurement training institute established pursuant to § 2-352.06.
- (c) Subject to the terms of any memoranda of understanding with the Chief Financial Officer regarding adherence to the applicable requirements of federal grants, loans, or other extensions of credit to the District, the Chief Procurement Officer shall collect any rebates issued to the District by the purchase card issuers under the Purchase Card Program.
- (d) All funds received pursuant to this section shall be deposited in the unrestricted fund balance of the General Fund of the District of Columbia.

### **§ 2-361.04 TRANSPARENCY IN CONTRACTING**

- (a) The CPO shall maintain on the Internet a website containing publicly-available information regarding District procurement.
- (b) The website established pursuant to subsection (a) of this section shall contain, at a minimum, the following:
  - (1) Information regarding the statutes and rules that govern procurement for all District agencies and instrumentalities, including those exempt from the authority of the CPO;
  - (2) Links to the contract solicitation websites of OCP and all District agencies exempt from the authority of the CPO.
  - (3) A database containing information regarding each contract executed by the District for an amount equal to or greater than \$100,000, including each such contract made by a District agency exempt from the authority of the CPO pursuant to section 105. For each contract maintained in the database, the database shall include a unique identifier and, at a minimum, the following:
    - (A) A copy of the executed contract;
    - (B) All determinations and findings related to the contract;
    - (C) All contract modifications, change orders, or amendments associated with the contract;

- (D) All solicitation documents for the contract, including all requests for proposals and invitations for bids, and any amendments of such documents; and
  - (E) The contract summary documents for the contract that are submitted to the Council for its review.
- (4) Placeholders identifying any portions of the items set forth in paragraph (3) of this subsection withheld as confidential by the CPO pursuant to section 417.
  - (5) A list of each contract executed by the District for an amount less than \$100,000, which shall include, for each contract, the vendor name, a description of the goods or services purchased, and the dollar amount of the contract.
  - (6)
    - (A) A list of each payment made by the District to a prime contractor, the date and the dollar amount of the payment. The list shall be updated not less than once each week.
    - (B) Payments not administered through the Procurement Automated Support System shall be exempt from the requirement of subparagraph (A) of this paragraph.
- (c) Agencies not subject to the authority of the CPO shall transmit the information required by this section to the CPO for posting on the Internet.

## **§ 2-361.05 ACQUISITION PLANNING**

- (a) The CPO shall develop and implement a process by which each agency subject to the CPO's procurement authority shall prepare and submit to the CPO an acquisition plan identifying the size and nature of the anticipated procurement workload for the following fiscal year.
- (a-1) At a minimum, each agency acquisition plan shall contain anticipated procurement needs of the coming fiscal year with specific information on the following:
  - (1) Program-level needs;
  - (2) Anticipated multiyear procurements;
  - (3) Anticipated exercises of option periods of existing contracts;
  - (4) Expected major changes in ongoing or planned procurements;
  - (5) The guiding principles, overarching goals, and objectives of the agency's acquisitions of work, goods, and services; and

- (6) Goals and plans for utilization of strategic sourcing.
- (b) Each agency shall submit to the Council a summary of planned contracts for the upcoming fiscal year no later than the date of submission of the Mayor's proposed budget to the Council. Each summary, at a minimum, shall list each planned contract and the source of funding for each contract by program code in the budget.

## **§ 2-361.06      RULES**

- (a)
  - (1) The CPO, pursuant to subchapter I of Chapter 5 of this title [§ 2-501 *et seq.*], shall issue rules to implement the provisions of this chapter, except subchapter VI of this chapter.
  - (2) Notwithstanding paragraph (1) of this subsection, the Department of General Services, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of Title VI of this act for contracts within the authority of the Department of General Services.
- (b) The existing procurement rules, to the degree that they are consistent with this chapter, shall remain in effect until they are superseded by rules issued in accordance with subsection (a) of this section.
- (c) A District government procurement rule or regulation promulgated pursuant to this chapter shall not change in any way a contractual commitment by the District government or of a contractor to the District government which was in existence on the effective date of the rule or regulation.

**SUBCHAPTER XII REPEALED PROVISIONS; TRANSFERS AND  
CONTINUATION**

**§ 2-362.01 [RESERVED]**

**§ 2-362.02 TRANSFERS AND CONTINUATION**

All rules, orders, obligations, determinations, grants, contracts, licenses, and agreements shall continue in effect according to their terms until lawfully amended, repealed, or modified.

**§ 2-362.02 APPLICABILITY [REPEALED]**

Repealed.

**END OF TITLE II, CHAPTER 3A**

\* \* \*