

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER



Financial Administrative Issuance
Financial Management and Control Order No. 19-02

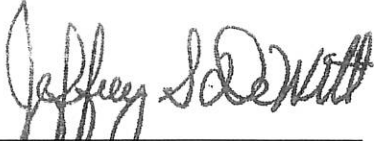
Issuance Date: February 26, 2019

Effective Date: February 26, 2019

Pursuant to the authority vested in me as Chief Financial Officer of the District of Columbia by Pub. L. No. 109-356, Title II, Section 203 (D.C. Official Code § 1-204.26), D.C. Act 23-6, D.C. Act 23-7, and other applicable laws, it is hereby ORDERED that:

1. The rules attached hereto as Exhibit A and incorporated herein by reference shall govern the procurement of services by the Office of the Chief Financial Officer (“OCFO”), on behalf of the Office of Lottery and Charitable Games, in relation to the initial sports betting, lottery gaming systems and related services contract used in connection with the Sports Wagering Lottery Amendment Act of 2018. Pursuant to the Sports Wagering Procurement Practices Reform Exemption Emergency Act of 2019, effective February 22, 2019 (D.C. Act 23-6) and the Sports Wagering Procurement Practices Reform Exemption Act of 2019, effective pending Congressional review (D.C. Act 23-7), the contract is exempt from the District of Columbia Procurement Practices Reform Act of 2010 (D.C. Law 18-371; D.C. Official Code §§ 2-351.01 *et seq.* (“PPRA”).
2. The OCFO’s Chief Procurement Officer (“CPO”), and warranted Contracting Officers, are authorized to enter into a contract pursuant to these rules.
3. These rules are for the benefit of the OCFO and are not intended to confer any rights or benefits on third parties. The principal purposes of these rules are to ensure that the OCFO’s procurement of the applicable services:
 - (a) Are carried out in an efficient and objective manner that promotes confidence in the OCFO’s integrity; and
 - (b) Produce reasonable value and results for the OCFO.
4. ***This delegation is granted until rescinded in writing.***
5. This delegation supersedes all previous CFO Orders to the extent of any inconsistency therein.

Effective: This Order shall be effective on February 26, 2019.



Jeffrey S. DeWitt

OFFICE OF CONTRACTS

OFFICE OF THE CHIEF FINANCIAL OFFICER

CONTRACTING PROCEDURES FOR THE EXEMPT GAMING CONTRACT

Sections

- 1000 General
- 1001 Applicability
- 1002 Chief Procurement Officer
- 1003 Authority and Duties of Contracting Officers
- 1004 Contractor Qualification Requirements
- 1005 Responsibility
- 1006 Organizational Conflicts of Interest; Disqualification
- 1007 Publicizing Procurement Actions
- 1008 Contract Types
- 1009 Fixed-Price Contracts
- 1010 Cost Reimbursement Contracts
- 1011 Basic Ordering Agreements
- 1012 Time And Materials Contracts and Labor Hours Contracts
- 1013 Noncompetitive Negotiations
- 1014 Contract Administration
- 1015 Payment Requests
- 1016 Exercising the Contract Options
- 1017 Contract Modifications
- 1018 Contract Termination
- 1019 Contract Documentation
- 1020 Disputes
- 1021 Protests
- 1022 Appeals
- 1023 Multiyear Contracts and Contracts In Excess Of \$1 Million

1000 GENERAL

- 1000.1 These sections set forth the procurement rules of the Office of the Chief Financial Officer (OCFO), for the procurement for the initial sports betting, lottery gaming systems and related services contract used in connection with the Sports Wagering Lottery Amendment Act of 2018 on behalf of the District of Columbia Office of Lottery and Charitable Games (D.C. Lottery), (hereinafter, the “Exempt Gaming Contract”). Pursuant to the Sports Wagering Procurement Practices Reform Exemption Emergency Act of 2019, effective February 22, 2019 (D.C. Act 23-6) and the Sports Wagering Procurement Practices Reform Exemption Act

of 2019, effective pending Congressional review (D.C. Act 23-7), the Exempt Gaming Contract is exempt from the Procurement Practices Reform Act of 2010 (D.C. Law 18-371; D.C. Official Code §§ 2-351.01 *et seq.* (“PPRA”).

1000.2 These procurement rules are for the benefit of the OCFO and are not intended to confer any rights or benefits on third parties. The principal purposes of these rules are to ensure that the OCFO’s procurement activities:

- (a) Are carried out in an efficient and objective manner that promotes confidence in the OCFO’s integrity; and
- (b) Produce reasonable value and results for the OCFO.

1000.3 The OCFO may waive the applicability of any provisions in these rules that are not specifically required by statute if the OCFO finds in writing that:

- (a) Such waiver is in the best interest of the OCFO;
- (b) Such waiver is not inconsistent with transparent procurement practices; and
- (c) Such waiver would not alter the terms of a contract.

1001 APPLICABILITY

1001.1 These rules apply to the procurement of goods or services for the Exempt Gaming Contract by the OCFO.

1002 CHIEF PROCUREMENT OFFICER

1002.1 The OCFO’s Chief Procurement Officer (CPO) shall have plenary contracting authority and have responsibility for supervising the OCFO’s procurement activities. The CPO shall prescribe the standard contract format and standard contract provisions to be included in the contracts, consistent with these rules.

1002.2 If the CPO determines that it is in the best interest of the OCFO to do so, including in an emergency situation, it is in the CPO’s discretion to:

- (a) issue emergency rules that shall remain in effect for one hundred twenty (120) day periods;

- (b) waive contract provisions; and
- (c) substitute contract provisions.

1003 AUTHORITY AND DUTIES OF CONTRACTING OFFICERS

1003.1 Only the CPO or a Contracting Officer shall have the authority to award, modify, or terminate contracts; provided, however, that prior to terminating any contract, the Contracting Officer shall first obtain the approval of the CPO. As necessary or appropriate in exercising his or her authority, a Contracting Officer shall request and consider the advice of specialists in auditing, law, technical disciplines, and other relevant fields.

1003.2 A Contracting Officer shall be responsible for:

- (a) Making any determination and findings that may be required in connection with that procurement;
- (b) Ensuring that all statutory and regulatory requirements that apply to the procurement have been identified and observed;
- (c) Ensuring that all necessary preconditions to contract award have been satisfied before the contract is awarded; and
- (d) Maintaining the contract file, which serves as the repository for all required documentation concerning the procurement and any resulting contracts.

1004 CONTRACTOR QUALIFICATION REQUIREMENTS

1004.1 A prospective contractor must:

- (a) Be responsible; and
- (b) Not be disqualified on the basis of conflicts of interest (either personal or organizational) or related ethical concerns.

1004.2 The issues of responsibility and conflicts of interests/disqualification are addressed in sections 1005 and 1006, respectively.

1005 RESPONSIBILITY

1005.1 To receive a contract from the OCFO, a contractor must be responsible. To be considered responsible, a contractor must:

- (a) Have or provide evidence that it can obtain the financial, technical, and organizational skills and resources, and the facilities and equipment, necessary to perform the contract in accordance with its terms;
- (b) Have a satisfactory performance record;
- (c) Have a satisfactory record of integrity and business ethics;
- (d) Not be suspended, debarred, or otherwise ineligible to receive contracts from the District Government or the Federal Government;
- (e) Meet any other qualification criteria that may be imposed by applicable laws or regulations; and
- (f) Provide adequate evidence that it has paid all applicable District of Columbia and Federal taxes and filed District and Federal tax returns.

1005.2 The Contracting Officer shall make a written determination if the contractor is found to be non-responsible. Depending on the level of formality of the contract and at the Contracting Officer's discretion, the Contracting Officer may make a written determination if the contractor is found to be responsible. Award of a contract shall be considered the Contracting Officer's determination that the contractor is responsible.

1005.3 In evaluating a prospective contractor's responsibility, a Contracting Officer may request information from the contractor and may also consider information available from other sources. Where necessary, the Contracting Officer may also perform a pre-award survey involving interviews with contractor personnel or visits to the contractor's facilities. Information on the capabilities and suitability of proposed subcontractors also may be considered in evaluating responsibility.

**1006 ORGANIZATIONAL CONFLICTS OF INTEREST;
DISQUALIFICATION**

1006.1 The OCFO intends to avoid even the appearance of conflict of interest or impropriety in connection with its procurement activities. Thus, even if a prospective contractor is determined to be responsible, the CPO has the discretion to disqualify the contractor (or to take other appropriate measures) based on a

conflict of interest, the appearance thereof, or other ethical considerations as further described in subsections 1006.4 – 1006.6.

- 1006.2 If the Contracting Officer determines that there is a conflict of interest, the appearance of a conflict of interest, or another ethical consideration, the Contracting Officer may:
- (a) Disqualify a contractor at any point during the procurement;
 - (b) Rescind or terminate a contract subsequent to contract award; or
 - (c) Take other appropriate corrective measures, such as canceling a pending contract and initiating a new procurement; provided, however, that prior to taking any such action, the Contracting Officer shall first obtain the approval of the CPO.
- 1006.3 A determination by the Contracting Officer and the CPO to take a corrective measure described in subsection 1006.2 shall be made in writing and included in the contract file.
- 1006.4 The ethical consideration(s) that may authorize disqualification or another corrective measure go beyond a violation of the ethics and conflict of interest rules of the OCFO and the prospective contractor, if any. The CPO may properly take corrective measures whenever necessary or prudent to avoid the appearance of impropriety or otherwise eliminate doubts about the integrity of the procurement. For example, situations in which corrective measures might be warranted include (but are not limited to):
- (a) Cases where an OCFO employee or the CPO have any interest, direct or indirect, as principal, surety, or otherwise in a contract;
 - (b) Cases where an employee of the OCFO involved in a procurement had an affiliation with a contractor that raised questions about the procurement's integrity; or
 - (c) Cases where a prospective contractor hired a former employee of the OCFO who was privy to non-public information about the procurement and involved that individual in its procurement efforts with the OCFO.
- 1006.5 A number of measures may be appropriate for eliminating or mitigating organizational conflicts of interest, and the Contracting Officer has broad discretion to select the approach that is most suitable in any particular case.

10066 In each case, the mechanism adopted to address an organizational conflict of interest should be designed to prevent the existence of conflicting roles that might bias a contractor's judgment.

1007 PUBLICIZING PROCUREMENT ACTIONS

1007.1 The Contracting Officer may use a variety of methods to publicize procurement actions. The specific method or methods used should be tailored to the particular procurement action, taking into account factors such as the size of the procurement action, the type of goods or services, the urgency associated with the requirement, and the most efficient means of disseminating information to the public.

1007.2 Notice of an award shall be published within seven (7) days of the award pursuant to the methods described in 1007.1.

1008 CONTRACT TYPES

1008.1 The type of contract awarded by the Contracting Officer shall depend on factors such as the particular goods or services to be acquired, whether the costs of the goods or services can be estimated in advance with reasonable accuracy, and the degree to which the precise nature and extent of the contract work is known at the time of award.

1008.2 The Contracting Officer may use a variety of contract types, including:

- (a) Fixed price contracts (fixed price contracts will generally be used in connection with the purchases of discrete and identifiable goods or assets, and for other appropriate purchases);
- (b) Cost reimbursement contracts;
- (c) Delivery order contracts;
- (d) Time-and-materials or labor-hours contracts;
- (e) Basic ordering agreements (Requirements and Indefinite Quantities); and
- (f) Purchase Orders.

1008.3 The Contracting Officer may also award any alternative type of contract that will produce reasonable value in the context of a particular procurement.

1008.4 The Contracting Officer may, when in the best interest of the OCFO, use cost-plus-percentage-of-cost contracts.

1009 FIXED-PRICE CONTRACTS

1009.1 Fixed price contracts include several variants:

- (a) Firm, fixed price contracts;
- (b) Fixed price contracts with economic price adjustment; and
- (c) Fixed price incentive contracts.

1009.2 Unlike cost reimbursement contracts, any type of fixed price contract obligates the contractor to complete the contractually-specified work for a fixed price.

1009.3 A firm fixed price contract provides for a price that is not subject to adjustment, except in the event of a change to the scope of work.

1009.4 A fixed price contract with economic price adjustment provides for an upward or downward adjustment in the stated contract price based on changes in certain benchmarks specifically identified in the contract (for example, catalog prices or the producer price index for a particular commodity), subject to a ceiling on upward adjustments.

1009.5 A fixed price incentive contract generally provides for establishing a final price by applying a formula based on the relationship between the total cost actually incurred by the contractor and a total target cost. A fixed price incentive contract results in the parties sharing in the cost savings or increases associated with differences between the actual and target cost. These contracts also can include incentive formulas based on the contractor's schedule or technical performance.

1010 COST REIMBURSEMENT CONTRACTS

1010.1 Cost reimbursement contracts provide for the contractor to recover the reimbursable costs it incurs in contract performance, plus a fee (that is, a profit).

1010.2 A reimbursable cost must be:

- (a) Reasonable in nature and amount;
- (b) Properly allocable to the contract;

- (c) Determined in accordance with generally accepted accounting principles; and
- (d) Not identified as non-reimbursable under the terms of the particular contract.

1010.3 To ensure that the OCFO's payment obligations are not open-ended, a cost reimbursement contract must specify an estimated total cost that the contractor cannot exceed (the "not-to-exceed limit"), except at its own risk, without the Contracting Officer's written approval. Because the contractor can cease performance once it reaches the estimated total cost (unless the Contracting Officer approves an increase), it is not obligated to complete the contract work unless it can do so within the not-to-exceed limit.

1010.4 Cost reimbursement contracts can take three (3) forms:

- (a) Cost-plus-fixed-fee;
- (b) Cost-plus-incentive-fee; and
- (c) Cost-plus-award-fee.

1010.5 The differences between the types of cost reimbursement contracts listed in subsection 1010.4 relate to the manner in which the contractor's fee is determined.

1010.6 A cost-plus-fixed-fee contract provides for a fee that is fixed at the contract's inception and is not subject to adjustment unless the contract is modified to change the contract work.

1010.7 A cost-plus-incentive-fee contract provides for a fee that generally is determined by applying a formula based on the relationship between the contractor's total reimbursable cost and a total target cost, subject to a specified minimum and maximum. These contracts also can include incentive formulas based on the contractor's schedule or technical performance.

1010.8 A cost-plus-award-fee contract provides for:

- (a) A base fee fixed at the contract's inception; and
- (b) An award fee that the contractor may earn (in whole or in part) during performance, which is designed to motivate superior performance.

1010.9 The award fee in a cost-plus-award-fee contract is determined unilaterally by the Contracting Officer, based on the Contracting Officer's judgment and evaluation of how well the contractor has performed in relation to the award fee criteria

identified in the contract. In no event shall the total award fee available to the contractor exceed ten percent (10%).

1010.10 In appropriate circumstances, the Contracting Officer may include a guaranteed maximum price (GMP) in a cost reimbursement contract. A GMP differs from a not-to-exceed amount in that a contractor is required to complete performance of the base scope of work required under the contract for an amount that does not exceed the GMP. Under such an approach, if the total cost exceeds the GMP, the contractor shall be required to complete performance of the base scope of work at its own cost and expense.

1011 BASIC ORDERING AGREEMENTS

1011.1 Under basic ordering agreements (also known as task order contracts or term contracts), the contractor's performance obligations are triggered when the Contracting Officer subsequently issues task orders, delivery orders, or direct purchase orders pursuant to the contract.

1011.2 Basic ordering agreements include:

- (a) Requirements contracts; and
- (b) Indefinite quantities contracts.

1011.3 A requirements contract provides the mechanism for the Contracting Officer to order from the contractor all of its requirements for designated supplies or services during a specified period (subject to any maximum ordering limitation in the contract). This type of contract should only be used when the Contracting Officer determines that a requirements contract will provide superior economic benefits to an indefinite quantity contract as it locks the Contracting Officer into one (1) source of supply for the goods or services required under the basic ordering agreement.

1011.4 An indefinite quantity contract provides for an indefinite quantity, within specified limits, of supplies or services to be furnished during a fixed period.

1011.5 An indefinite quantity contract:

- (a) Requires the OCFO to order and the contractor to deliver at least the stated minimum quantity of supplies or services; and
- (b) Requires the contractor to deliver any additional quantities the OCFO may order during the contract period (subject to any maximum quantity limitations in the contract).

1012 TIME AND MATERIALS CONTRACTS AND LABOR HOURS CONTRACTS

1012.1 Time-and-materials contracts provide for acquiring supplies or services on the basis of:

- (a) Direct labor hours charged at fixed hourly rates that include overhead and profit; and
- (b) Materials (which may be charged either at their actual cost or at fixed unit prices).

1012.2 A labor hours contract is a time-and-materials contract that does not involve materials.

1012.3 Both time-and-materials contracts and labor hours contracts should specify a ceiling price.

1013 NONCOMPETITIVE NEGOTIATIONS

1013.1 The contract for the Exempt Gaming Contract is necessary to meet an immediate essential requirement of the OCFO. The procurement contract for the Exempt Gaming Contract shall be awarded through noncompetitive negotiations to a source that is readily available to perform in the time necessary to meet the essential requirement of the OCFO.

1014 CONTRACT ADMINISTRATION

1014.1 The Contracting Officer or designee has overall responsibility for the contract's administration. Among other things, this requires the Contracting Officer or designee:

- (a) To monitor whether goods or services are delivered or completed on schedule and conform to contract requirements;
- (b) To ensure that any contractually required inspection or acceptance procedures are followed; and
- (c) To identify and attempt to resolve issues or problems that arise during contract performance.

1014.2 The Contracting Officer has the authority to take the following actions:

- (a) Authorize contract payments;
- (b) Exercise contract options;
- (c) Terminate the contract; and
- (d) Modify the contract.

1014.3 Prior to terminating a contract, the Contracting Officer shall first obtain the approval of the CPO.

1014.4 No representative of the OCFO, including a Contracting Officer, shall:

- (a) Act in a manner that misleads a contractor regarding the limits of his or her authority; or
- (b) Direct or encourage a contractor to perform work that has not been properly authorized.

1015 PAYMENT REQUESTS

1015.1 Except as provided by subsection 1015.8, requests for payment must be created and submitted in an electronic format through the DC Vendor Portal, <https://vendorportal.dc.gov>.

1015.2 To constitute a proper invoice, the contractor shall enter all required information into the Portal after selecting the applicable purchase order number which is listed on the contractor's profile.

1015.4 Payment shall not be made unless authorized by the Contracting Officer or designee. A payment authorization shall not preclude the OCFO from seeking repayment (or pursuing other remedies) if it subsequently concludes that the contractor was overpaid or otherwise misled the OCFO.

1015.6 No OCFO employee shall authorize payment for the value of supplies and services received without a valid written contract. Any vendor who enters into an oral agreement with an OCFO employee to provide supplies or services to the OCFO without a valid written contract shall not be paid. This subsection shall not apply to a payment required by court order, a final decision of an authorized forum, or an approval by the CPO in accordance with subsection 1024.8 of this section.

1015.7 The CPO shall review and verify requests submitted by a Contracting Officer for authorization for payment for supplies or services received without a valid written

contract, and shall either approve or disapprove requests for authorization for payment.

1015.8 The CPO may authorize payments for supplies or services received without a valid written contract if:

- (a) supplies or services have been provided to and accepted by the OCFO, or the OCFO otherwise has obtained or will obtain a benefit resulting from provision of supplies or services without a valid written contract;
- (b) the Contracting Officer determines that the price for the supplies or services provided without a valid written contract is fair and reasonable;
- (c) the Contracting Officer recommends payment for the supplies or services provided without a valid written contract;
- (d) the Chief Financial Officer, or a designee, certifies that appropriated funds are available; and
- (e) the request for authorization for payment for supplies or services received without a valid written contract is in accordance with any other procedures or limitations prescribed by the CPO.

1016 EXERCISING CONTRACT OPTIONS

1016.1 The Contracting Officer may exercise a contract option upon determining that:

- (a) Funds are available and authorized for this purpose;
- (b) The goods or services covered by the option fulfill an existing need; and
- (b) Exercising the option is the most advantageous method of fulfilling the OCFO's need.

1016.2 The determination to exercise a contract option shall be in writing and shall be included in the contract file.

1017 CONTRACT MODIFICATIONS

1017.1 The Contracting Officer may modify a contract subject to the provisions of this section.

1017.2 A modification must be within the general scope of the original contract. Any requirement for extra work that goes beyond the contract's general scope shall be the subject of a new procurement.

1017.3 A contract modification may be:

- (a) By a bilateral contract modification executed by the Contracting Officer and an authorized representative of the contractor to:
 - i. Make negotiated equitable adjustments resulting from the issuance of a change order, or
 - ii. to reflect other agreements of the parties to modify the terms of the contract; or
- (b) By the Contracting Officer's use of a unilateral contract modification to:
 - i. Make administrative changes, such as correction of typographical errors or appropriations information;
 - ii. Issue change orders;
 - iii. Make changes authorized by a provision of the contract other than a changes clause, such as an option; or
 - iv. Issue a termination notice.

1017.4 When a contractor considers that the OCFO has effected or may effect a change in the contract that has not been identified as such in writing and signed by the Contracting Officer, the contractor shall notify the Contracting Officer in writing as soon as possible. The Contracting Officer shall evaluate the alleged change and:

- (a) Confirm that it is a change, direct the mode of further performance, and plan for its funding;
- (b) Countermand the alleged change; or
- (c) Notify the contractor that the OCFO considers no change to have occurred.

1018 CONTRACT TERMINATION

1018.1 All contracts awarded by the Contracting Officer shall include "Termination for Default" and "Termination for Convenience" clauses specifically defining the OCFO's termination rights.

1018.2 When exercising the OCFO's rights under a termination clause in the contract, the Contracting Officer shall provide the contractor with a written notice specifying:

- (a) Whether the termination is for default or for convenience;
- (b) The effective date of the termination;

- (c) The extent of the termination if the termination is partial; and
- (d) Any special instructions that apply to the termination (for example, instructions concerning the disposition of contract inventory).

1018.3 After terminating a contract for convenience, the Contracting Officer shall request a settlement proposal from the contractor and shall attempt to negotiate a settlement that resolves all of the parties' rights and liabilities (except those arising from any portion of the contract still in effect). If the parties negotiate a settlement, the Contracting Officer shall prepare a memorandum describing the principal elements of the settlement and shall include the memorandum in the contract file.

1019 CONTRACT DOCUMENTATION

1019.1 The Contracting Officer is responsible for maintaining documentation regarding the contract and the procurement.

1019.2 The contract file shall include:

- (a) The contract and any modifications;
- (b) Any type of documentation that is specifically required to be maintained in the contract file by other sections of these rules; and
- (c) Any other documentation that may be necessary to memorialize important decisions or events relating to the procurement or the contract.

1020 DISPUTES

1020.1 Each contract entered into by the Contracting Officer shall include a disputes clause that sets forth the procedures by which disputes shall be resolved.

1020.2 The disputes clause in each contract shall be as follows, unless the Contracting Officer determines a change is in the best interest of the OCFO:

A. All disputes arising under or relating to this contract shall be resolved as provided herein.

B. Claims by a Contractor against the District

Claim, as used in Section B of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

- (a) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision. The contractor's claim shall contain at least the following:
 - (1) A description of the claim and the amount in dispute;
 - (2) Any data or other information in support of the claim;
 - (3) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
 - (4) The Contractor's request for relief or other action by the Contracting Officer.
- (b) The Contracting Officer may meet with the Contractor in a further attempt to resolve the claim by agreement.
- (c) For any claim of \$100,000 or less, the Contracting Officer shall issue a decision within sixty (60) days from receipt of a written request from a Contractor that a decision be rendered within that period.
- (d) For any claim over \$100,000, the Contracting Officer shall issue a decision within ninety (90) days of receipt of the claim. Whenever possible, the Contracting Officer shall take 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.
- (e) The Contracting Officer's written decision shall do the following:
 - (1) Provide a description of the claim or dispute;
 - (2) Refer to the pertinent contract terms;
 - (3) State the factual areas of agreement and disagreement;
 - (4) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
 - (5) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
 - (6) Indicate that the written document is the contracting officer's final decision; and
 - (7) Inform the Contractor of the right to seek further redress by appealing the decision.
- (b) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal.
- (g) (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 for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.

- (2) Liability under paragraph (g) (1) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.
- (h) The decision of the Contracting Officer shall be final and not subject to review unless an appeal is timely commenced by the Contractor as authorized by Section 1031.
- (i) 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.

C. Claims by the District against a Contractor

- (a) Claim as used in Section C of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.
- (b)
 - (1) All claims by the District against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer.
 - (2) The Contracting Officer shall send written notice of the claim to the Contractor. The Contracting Officer's written decision shall do the following:
 - (a) Provide a description of the claim or dispute;
 - (b) Refer to the pertinent contract terms;
 - (c) State the factual areas of agreement and disagreement;
 - (d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
 - (e) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
 - (f) Indicate that the written document is the Contracting Officer's final decision; and
 - (g) Inform the Contractor of the right to seek further redress by appealing the decision.
 - (3) The decision shall be supported by reasons and shall inform the Contractor of its rights as provided herein.

- (4) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.
- (5) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- (6) The decision of the Contracting Officer shall be final and not subject to review unless an appeal is timely commenced by the Contractor as authorized by Section 1031.
- (7) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

1021 PROTESTS

- 1021.1 All protests to the award of a contract by the Contracting Officer shall be resolved in accordance with this section.
- 1021.2 A proper protest shall be submitted to the Contracting Officer in writing no later than 10 business days after the basis of protest is known or should have been known, whichever is earlier.
- 1021.3 A proper protest shall include:
 - (a) The name of the protestor;
 - (b) The name of the protestor's counsel or other representative;
 - (c) A detailed description of the basis for the protest and all supporting evidence; and
 - (d) A description of the relief requested.
- 1021.4 The Contracting Officer shall issue a decision with regard to a protest within ninety (90) days from receipt of a proper protest.
- 1021.5 If the Contracting Officer is someone other than the CPO, the protestor may appeal the Contracting Officer's decision to the CPO.
- 1021.6 An appeal of the Contracting Officer's decision shall be submitted to the CPO within five (5) business days after the protestor receives the Contracting Officer's decision.

- 1021.7 The decision of the CPO shall be issued within 60 days from receipt of appeal and shall be the OCFO's final decision with regard to the protest.
- 1021.8 An appeal of the CPO's decision shall be submitted in accordance with, and follow thereafter, Section 1023 of these rules.
- 1021.9 A protest must be filed within the timeframes established in this subsection to be considered.
- 1021.10 A protest that is not filed within these timelines will not be considered by the OCFO, and the protestor shall be deemed to have waived the right to protest.

1022 APPEALS

- 1022.1 Within 10 business days after the date of receipt of a decision of the Contracting Officer, a Contractor or protestor may seek administrative review of the Contracting Officer's decision by submitting an appeal to the CPO.
- 1022.2 For a contract matter in which the CPO has made the final decision as the Contracting Officer and for appeals of the CPO's decision of a protest, a Contractor may seek administrative review of the CPO's decision by submitting an appeal to the OCFO Office of General Counsel.
- 1022.3 Each administrative review shall follow the provisions pursuant to these rules for Claims by a Contractor against the District.
- 1022.4 A Contractor or protester may seek judicial review of the OCFO Office of General Counsel's decision by filing a petition for review of agency action in the Superior Court of the District of Columbia.

1023 MULTIYEAR CONTRACTS AND CONTRACTS IN EXCESS OF \$1 MILLION

- 1023.1 Prior to the award of a multiyear contract or a contract in excess of \$1 million during a 12-month period, the CPO shall submit the proposed contract, and supporting documentation, to the OCFO Office of General Counsel for legal sufficiency in accordance with these established procedures prior to award of the contract.
- 1023.2 To exercise a multiyear option period or an option in excess of \$1 million during a 12-month period, the CPO shall submit the option, and supporting documentation, to the OCFO Office of General Counsel for legal sufficiency in accordance with these established procedures prior to exercise of the option.