

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



Financial Administrative Issuance
Financial Management and Control Order No. 15-14

Issuance Date: May 4, 2015
Revised Date: June 25, 2022


Effective Date: May 4, 2015

Pursuant to the authority vested in me as Chief Financial Officer of the District of Columbia (“CFO”) by Section 424 of the District of Columbia Home Rule Act of 1973, as amended by Pub. L. No. 109-356, approved October 16, 2006, D.C. Official Code §§ 1-204.24d and 1-204.26, and other applicable laws, it is hereby ORDERED that:

1. The rules attached hereto as Exhibit A and incorporated herein by reference (“Benefit Plan Rules”) shall govern the procurement of services in relation to certain benefit plans administered by the Office of the Chief Financial Officer (“OCFO”) when such services are exempt from: (i) District of Columbia Procurement Practices Reform Act of 2010, (D.C. Law 18-371; D.C. Official Code §§ 2-351.01, et seq. (“PPRA”); (ii) D.C. Council contract review provisions of Section 451 of the Home Rule Act (D.C. Official Code § 1-204.51); and (iii) Small and Certified Business Enterprise Development and Assistance Amendment Act of 2014 (the “CBE Act”).
2. The Benefit Plan Rules shall apply to the procurement of services for the following benefit plans administered by the OCFO: (1) District of Columbia 401(a) Defined Benefit Plan; (2) District of Columbia 457(b) Deferred Compensation Plan; (3) District of Columbia College Savings Program; (4) Not-For-Profit Hospital Corporation 401(a) Defined Benefit Plan; and (5) Not-For-Profit Hospital Corporation 457(b) Deferred Compensation Plan (hereinafter collectively, the “Benefit Plans”).
3. The Benefit Plan Rules shall no longer apply to the procurement of services in relation to the Other Post-Employment Benefits Trust Fund.
4. The OCFO’s Chief Procurement Officer (“CPO”), and designee, are authorized to enter into applicable contracts pursuant to these rules.
5. 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 a fair, efficient, and objective manner that promotes confidence in the OCFO’s integrity; and

(b) Produce reasonable value and results for the OCFO.

6. ***This delegation is granted until rescinded in writing.***
7. ***This*** delegation supersedes all previous CFO Orders to the extent of any inconsistency therein.

A handwritten signature in black ink, appearing to read "Fitzroy Lee". The signature is written in a cursive style with a horizontal line underneath it.

Fitzroy Lee
Chief Financial Officer

EXHIBIT A TO CFO ORDER No. 15-14

OFFICE OF CONTRACTS

OFFICE OF THE CHIEF FINANCIAL OFFICER

**CONTRACTING PROCEDURES FOR SERVICES IN RELATION TO BENEFIT
PLANS**

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1000 GENERAL

1000.1 These sections set forth the procurement rules of the Office of the Chief Financial Officer (OCFO), for the procurement of services in relation to the following benefit plans administered by the OCFO, the District of Columbia 401(a) Defined Contribution Plan; District of Columbia 457(b) Deferred Compensation Plan;; District of Columbia 529 College Savings Program; Not-For-Profit Hospital Corporation 401(a) Defined Benefit Plan; and Not-For-Profit Hospital Corporation 457(b) Deferred Compensation Plan (hereinafter collectively, the “Benefit Plans”).

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 a fair, 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 fair, competitive, and 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 Benefit Plans 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:

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

1003 RESERVED

1004 AUTHORITY AND DUTIES OF CONTRACTING OFFICERS

1004.1 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.

1004.2 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;
- (d) Maintaining the contract file, which serves as the repository for all required documentation concerning the procurement and any resulting contracts; and
- (e) Ensuring that all prospective contractors participating in the procurement receive fair and impartial treatment.

1005 CONTRACTOR QUALIFICATION REQUIREMENTS

1005.1 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.

1005.2 The issues of responsibility and conflicts of interests/disqualification are addressed in sections 1006 and 1007, respectively.

1006 RESPONSIBILITY

1006.1 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.

1006.2 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.

1006.3 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.

**1007 ORGANIZATIONAL CONFLICTS OF INTEREST;
DISQUALIFICATION**

1007.1 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 1007.4 – 1007.7.

1007.2 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 procurement;
- (b) Rescind or terminate a contract subsequent to contract award; or
- (c) Take other appropriate corrective measures, such as canceling a pending solicitation 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.

1007.3 A determination by the Contracting Officer and the CPO to take a corrective measure described in subsection 1007.2 shall be made in writing and included in the contract file.

1007.4 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 and fairness of 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, where the expense or consideration of the contract is payable from the Benefit Plans' funds;
- (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;
- (c) Cases where a prospective contractor received preferential treatment in relation to its competitors;
- (d) 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 proposal preparation efforts; or

- (e) Cases where there is clear evidence suggesting collusive bidding or similar anti-competitive practices by prospective contractors.

1007.5 Organizational conflicts of interest also may warrant disqualification or other corrective measures. Organizational conflict of interest means a situation in which a contractor:

- (a) May be unable to render impartial and objective assistance or advice to the OCFO; or
- (b) May have an unfair advantage over potential competitors.

1007.6 Organizational conflicts of interests can arise in a variety of circumstances. For example, a contractor that develops the technical specifications for an item that will be the subject of a future procurement may have an incentive to develop specifications favoring its own products unless it is barred from participating in the future procurement. Another example is a case where a contractor performs services for the OCFO that require access to non-public information (for example, proprietary data of other companies) and could therefore gain an unfair advantage over competitors in future procurements.

1007.7 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. For example, a contract to assist the OCFO in developing requirements for a future procurement ordinarily should include a clause prohibiting the contractor from participating in the future procurement. A contract in which the contractor gains access to proprietary information of other companies (or non-public information on the OCFO's procurement plans) should include an appropriate clause that prevents the contractor from using such information in any manner that might give it an unfair advantage and prohibits the contractor from disclosing this proprietary information.

1007.8 In each case, the mechanism adopted to address an organizational conflict of interest should be designed to prevent:

- (a) The existence of conflicting roles that might bias a contractor's judgment; and
- (b) An unfair competitive advantage.

1008 MARKET RESEARCH

- 1008.1 Before issuing a solicitation, making a purchase, or awarding a contract, the OCFO may:
- (a) Estimate the likely cost of the proposed procurement and assure that adequate funds are available; and
 - (b) Conduct appropriate market research and establish minimum needs.
- 1008.2 Market research is designed primarily to familiarize the OCFO with the market for the goods or services it seeks to acquire in order to develop an appropriate strategy for conducting a prompt and efficient procurement that promotes reasonable competition between qualified firms. The extent of market research will vary depending on factors such as urgency, the size and complexity of the proposed procurement, and the OCFO's existing knowledge of the market based on its (or its key personnel's) past experience in procuring similar goods or services. If the OCFO has such existing knowledge, market research is not required.
- 1008.3 Market research, to the extent it is relevant to the particular procurement and not already known to the OCFO, generally should focus on obtaining information such as the following:
- (a) Customary practices in the relevant market;
 - (b) The prospective sources that may be able to supply the goods or services;
 - (c) The benchmarks available to evaluate the likely cost of the procurement and the reasonableness of prices or costs proposed by prospective contractors; and
 - (d) The requirements of any laws or regulations unique to the procurement.
- 1008.4 In conducting market research, the OCFO may solicit information from prospective sources on matters such as their interest in the potential procurement, the characteristics and costs of their products or services, their customary practices, and their knowledge of the industry generally. Such information may be solicited by requesting interested parties to submit written information (for example, by posting a notice on the Internet seeking information pertinent to the proposed procurement), through meetings or telephone contacts, by distributing and seeking comments on a draft solicitation, or through other prudent means.
- 1008.5 In addition to soliciting information from prospective contractors, the OCFO may also obtain information from other sources. For example, price information that

can assist in estimating the likely cost of the procurement and in evaluating price reasonableness is frequently available from sources such as catalogs, Internet sites, or records of past procurements.

1009 PREPARING SOLICITATIONS

- 1009.1 After conducting market research, when required, the Contracting Officer shall make a determination as to which procurement method identified in Section 1014 of these rules is most beneficial to the OCFO. The Contracting Officer will ordinarily prepare a solicitation requesting responses; however, the Contracting Officer may determine to purchase the required goods or services through its small purchase procedures or from a federal or District supply schedule contract, or any other method set forth in these rules.
- 1009.2 When the Contracting Officer issues a solicitation, its length and contents will depend on factors such as the size of the procurement, the nature and complexity of the goods or services, the contracting procedure to be used, and the contract type. In general, however, a solicitation should clearly describe the OCFO's needs (for example, by providing a statement of work outlining the type of services required or information specifying product characteristics or capabilities) and method of award.
- 1009.3 In preparing a solicitation, the Contracting Officer should seek to enhance competition by carefully scrutinizing and eliminating, to the extent possible, any unnecessary requirements that may restrict the number of prospective sources or the range of goods or services they can offer. Such provisions may include, for example, technical specifications that unnecessarily limit the competitive field, unnecessarily aggressive delivery schedules, or burdensome terms and conditions that might deter smaller companies from competing.
- 1009.4 The Contracting Officer may issue solicitations in paper form or electronically. The Contracting Officer may also use oral solicitations where efficient and practical (for example, where the procurement does not involve extensive specifications, detailed evaluation criteria, or numerous line items). Oral solicitations shall not be used for contracts that have an estimated value in excess of twenty-five thousand dollars (\$25,000).
- 1009.5 The Contracting Officer with the approval of the CPO may cancel a solicitation or reject all bids or proposals received at any time before the contract award when the Contracting Officer determines in writing that the cancellation is in the OCFO's best interests. The decision shall be based on the determination that the District's needs cannot be met by the solicitation.

1010 PUBLICIZING PROCUREMENT OPPORTUNITIES

1010.1 The Contracting Officer may use a variety of methods to publicize a procurement. The specific method or methods used should be tailored to the particular procurement, taking into account factors such as the size of the procurement, the type of goods or services sought, the urgency associated with the requirement, and the most efficient means of disseminating information in the relevant market. The methods available to publicize procurement opportunities may include print advertising, Internet notices, developing source lists of qualified firms known to supply particular categories of goods or services, soliciting specific sources through written notices or telephone contacts, and holding pre-bid or pre-proposal conferences.

1010.2 In addition to publication or other method of publicizing the procurement opportunity described in subsection 1010.1, unless otherwise specified in this chapter, the Contracting Officer shall also compile a list of at least three (3) vendors that the Contracting Officer reasonably believes are qualified to provide the services or goods specified in a solicitation and shall provide those vendors with a copy of the solicitation. If the Contracting Officer is unable to locate at least three (3) potential vendors, the Contracting Officer shall provide the solicitation to as many vendors as the Contracting Officer can reasonably identify.

1011 CONTRACT TYPES

1011.1 The type of contract awarded by the Contracting Officer will generally 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.

1011.2 The Contracting Officer may use a variety of contract types, including, but not limited to:

- (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.

1011.3 The Contracting Officer may also award any alternative type of contract that will produce reasonable value in the context of a particular procurement.

1011.4 The Contracting Officer may, when in the best interest of the OCFO, use cost-plus-percentage-of-cost contracts.

1012 FIXED-PRICE CONTRACTS

1012.1 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.

1012.2 Unlike cost reimbursement contracts, any type of fixed price contract obligates the contractor to complete the contractually-specified work for a fixed price.

1012.3 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.

1012.4 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.

1012.5 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.

1013 COST REIMBURSEMENT CONTRACTS

1013.1 Cost reimbursement contracts provide for the contractor to recover the reimbursable costs it incurs in contract performance, plus a fee (that is, a profit).

- 1013.2 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.
- 1013.3 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.
- 1013.4 Cost reimbursement contracts can take three (3) forms:
- (a) Cost-plus-fixed-fee;
 - (b) Cost-plus-incentive-fee; and
 - (c) Cost-plus-award-fee.
- 1013.5 The differences between the types of cost reimbursement contracts listed in subsection 1013.4 relate to the manner in which the contractor's fee is determined.
- 1013.6 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.
- 1013.7 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.
- 1013.8 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.

1013.9 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%).

1013.10 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.

1014 SPECIAL METHODS OF CONTRACTING

1014.1 Notwithstanding any other provisions of these rules, a Contracting Officer may award contracts with other organizations, public or private, for goods and services related to the Benefit Plans that are in the OCFO's best interest. As part of the procurement planning process, the Contracting Officer will determine the most appropriate method of contracting based on, among other considerations, the scope of work, delivery schedules, existing market conditions, and other relevant considerations. The selection of any Special Method of Contracting shall be considered a competitive procurement for the purposes of this chapter.

1014.1 Letter Contracts - A letter contract may be used only after the Contracting Officer determines, in writing, that no other type of contract is suitable. A letter contract shall not commit the OCFO to a definitive contract in excess of the funds available at the time the letter contract is executed. The Contracting Officer may use a letter contract when the OCFO's interests demand that the contractor be given a binding commitment so that work can start immediately and executing a definitive contract is not possible in sufficient time to meet the requirement. Each letter contract shall be as complete and definite as possible under the circumstances and shall include clauses approved and required by the CPO. When a letter contract is executed, the Contracting Officer shall include a price ceiling for the anticipated definitive contract. The price ceiling shall not be exceeded. Each letter contract shall also include a clause indicating the maximum liability of the OCFO under the letter contract. The maximum liability to the OCFO shall be the estimated amount necessary to cover the contractor's requirement for funds before execution of the definitive contract. The Contracting Officer may execute a definitive contract after the date of execution

of the letter contract. Prior to execution of a letter contract, the Contracting Officer shall ensure that funds are encumbered for obligation in the amount of the maximum OCFO liability for the term of the letter contract. For purposes of review and approval of letter contracts, and for purposes of contracting authority, the Contracting Officer shall use the estimated cost of the definitive contract for determining the type and level of review and approval required.

1015 BASIC ORDERING AGREEMENTS

1015.1 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.

1015.2 Basic ordering agreements include:

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

1015.3 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.

1015.4 An indefinite quantity contract provides for an indefinite quantity, within specified limits, of supplies or services to be furnished during a fixed period.

1015.5 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).

1016 TIME AND MATERIALS CONTRACTS AND LABOR HOURS CONTRACTS

- 1016.1 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).

1016.2 A labor hours contract is a time-and-materials contract that does not involve materials.

1016.3 Both time-and-materials contracts and labor hours contracts should specify a ceiling price.

1017 CONTRACTING PROCEDURES GENERALLY

1017.1 Unless otherwise specified, every procurement by the OCFO in relation to the Benefit Plans should be conducted in accordance with competitive contracting procedures, suitable to the specific procurement, that produce reasonable value and reasonable results.

1018 SOLE SOURCE CONTRACTS

1018.1 Procurement contracts may be awarded through noncompetitive negotiations when the CPO or the CPO designee determines in writing that one (1) of the following conditions exists:

- (a) There is only one (1) source for the required commodity or service;
- (b) The scope of work is necessary to meet an essential requirement of the OCFO and the vendor is the only source that is readily available to perform in the time necessary to meet the essential requirement of the OCFO; or
- (c) When an emergency has been declared by the Contracting Officer.

1018.2 If the Contracting Officer makes a determination pursuant to subsection 1018.1 that a sole source procurement is necessary to meet an essential requirement of the OCFO, the Contracting Officer shall document such determination in writing and may procure goods and/or services without regard to the procedures set forth elsewhere in these rules.

- 1018.3 A written determination by the Contracting Officer supporting a single available source procurement pursuant to subsection 1018.1(a) shall include:
- (a) A description of the nature of the goods or services; and
 - (b) An explanation of why the goods or services are only available from a single source.
- 1018.4 A written determination by the Contracting Officer supporting an emergency procurement pursuant to subsection 1018.1(c) shall include:
- (a) A finding that circumstances which were not reasonably foreseeable by the OCFO have created a need for goods or services which, if not immediately filled, will endanger the continuation of an essential function of the OCFO;
 - (b) A description of steps taken, if any, to solicit bids or proposals under the emergency condition; and
 - (c) A finding that anticipated costs to the OCFO will be fair and reasonable.
- 1018.5 The Contracting Officer shall not make a procurement under Subsection 1018.1(c) to meet a continuing need of the OCFO beyond what is necessary to meet the emergency condition.

1019 SEALED BIDDING

- 1019.1 The solicitation used to initiate a procurement conducted by sealed bidding is known as an Invitation for Bids (IFB).
- 1019.2 If the Contracting Officer issues an IFB, the Contracting Officer shall allow prospective bidders a reasonable time to prepare and submit bids. Except in the event of an emergency, this time period shall be no less than ten (10) business days.
- 1019.3 The evaluation factors used in sealed bid procurements are limited to price and price-related factors.
- 1019.4 The IFB shall specify:
- (a) Any information necessary to explain how the Contracting Officer will evaluate price (for example, whether option prices will be evaluated);

- (b) Any price-related factors that will be evaluated and their relative importance in the overall evaluation scheme;
- (c) A description of the goods or services sought (including quantity requirements);
- (d) The contract delivery schedule;
- (e) A description of any special qualification requirements the contractor must satisfy;
- (f) Instructions for submitting bids (including the deadline for bid submission, the method(s) for submitting bids, any representations or certifications bidders must submit, and any requirements for the submission of items such as bid samples, subcontracting plans, or payment or performance bonds);
- (g) The period during which bids must remain open for acceptance; and
- (h) The contract's terms and conditions.

- 1019.5 Any changes in the information set forth in an IFB must be made by an amendment to the IFB.
- 1019.6 Bids shall be submitted by a method specifically permitted by the IFB (for example, hand delivery, mailing, electronic transmission, or fax).
- 1019.7 A bid may be withdrawn or modified at any time before bid opening by any of the methods permitted for submitting bids.
- 1019.8 A late bid (or late modification or withdrawal) shall not be considered, unless such delay is caused by the OCFO.
- 1019.9 The Contracting Officer shall prepare and maintain in the contract file an abstract listing the bid prices.
- 1019.10 The contract shall be awarded to the qualified bidder whose bid is responsive to the IFB and is most advantageous to the OCFO considering only price and the price-related evaluation factors identified in the IFB.
- 1019.11 To be considered responsive, a bid must comply in all material respects with the IFB. Responsiveness involves matters that relate to the bid itself as opposed to the responsibility or other qualifications of the bidder. In determining whether a

bid is responsive, the Contracting Officer has the discretion to permit correction of minor informalities or irregularities.

1019.12 The Contracting Officer shall endeavor to include with every IFB solicitation the form of the contract that the contractor will be required to enter into. To the greatest extent possible, the Contracting Officer should endeavor to provide clear and concise contract documents. Contracts which consist of the solicitation, the proposal, and other documents attached together but not integrated into a single contract document are discouraged.

1020 COMPETITIVE NEGOTIATION

1020.1 The solicitation used to initiate a procurement conducted by competitive negotiation is known as a Request for Proposals (RFP).

1020.2 If the Contracting Officer issues an RFP, the Contracting Officer shall establish a reasonable deadline based on complexity and the OCFO's needs for offerors' submission of initial proposals.

1020.3 The evaluation criteria used in procurements conducted by competitive negotiation include price or cost (including, but not limited to, hourly rates for services and fixed fees for cost reimbursement contracts) along with any other factors appropriate to the particular procurement (for example, the offeror's technical approach or past performance).

1020.4 The RFP may, if the Contracting Officer deems it advisable, contain either an estimate that generally describes the price range contemplated by the Contracting Officer or a funding limitation for the procurement.

1020.5 The RFP shall specify all evaluation factors and their relative importance. The RFP should also include:

- (a) A description of the goods or services sought (including quantity or estimated quantity);
- (b) The contract delivery schedule (including any permitted variations in the delivery schedule);
- (c) A description of any special qualification requirements the contractor must satisfy;
- (d) Instructions for submitting proposals including: the deadline for proposal submission, the method(s) for submitting proposals, the information to be provided in the proposal (including any requirements for past performance

information), and any representations or certifications the offeror must submit;

- (e) The period during which proposals must remain open for acceptance; and
- (f) The anticipated contract terms and conditions and the extent to which they are negotiable.

1020.6 Any changes in the information set forth in an RFP must be made by an amendment to the RFP. If a change warrants substantial revision of the solicitation, the Contracting Officer shall cancel the original solicitation and issue a new one, regardless of the state of the procurement. In issuance of an amendment, the Contracting Officer shall consider the state in the procurement cycle at which the change occurs and the magnitude of the change, as follows:

- (a) If proposals are not yet due, the amendment shall be published in the same manner as the solicitation;
- (b) If the time for receipt of proposals has passed but proposals have not yet been evaluated, the amendment shall be sent only to the responding offerors; and
- (c) If a competitive range has been established, the amendment shall be sent only to those offerors within the competitive range.

1020.7 Proposals shall be submitted by a method specifically permitted by the RFP.

1020.8 The Contracting Officer shall evaluate proposals based solely on the evaluation criteria specified in the RFP. Where past performance is an evaluation factor, the Contracting Officer is not limited to considering only the information from references listed by the offeror.

1020.9 After initial proposals have been evaluated, the Contracting Officer may:

- (a) Make an award based on initial proposals;
- (b) Negotiate with the highest-ranked offeror, however if a satisfactory contract cannot be negotiated with the highest-ranked offeror, the Contracting Officer may enter negotiations with the lower-ranked offerors in order of ranking and may reopen negotiations with any offeror with whom negotiations were terminated until a satisfactory contract can be awarded; or

- (c) Establish a competitive range consisting of those proposals that remain under consideration, which shall include all proposals that, in the Contracting Officer's judgment (erring on the side of the offeror), could be awarded the procurement.

1020.10 The Contracting Officer may begin discussions with offerors in the competitive range. Discussions with the offerors may be written (including electronic) or oral. The primary objective of discussions is to maximize the OCFO's ability to obtain the best value based on the evaluation factors set forth in the RFP. The scope and extent of discussions are a matter of Contracting Officer judgment.

1020.11 At the conclusion of discussions, the Contracting Officer shall request that the offerors submit best and final offers by a common cut-off date. If the Contracting Officer is unable to award a contract after best and final offers have been evaluated, the Contracting Officer may proceed to negotiate with the highest ranked offerors pursuant to Section 1020.9(b). The Contracting Officer may proceed to select a contractor by the method set forth in these rules until a contract is awarded or the solicitation cancelled.

1020.12 The contract shall be awarded to the qualified offeror whose offer is most advantageous to the OCFO under the RFP's evaluation criteria and these rules.

1020.13 The Contracting Officer shall prepare documentation explaining the basis for the contract award decision which shall be maintained in the contract file.

1020.14 The Contracting Officer shall endeavor to include with every RFP solicitation the form of the contract that the contractor will be required to enter into. To the greatest extent possible, the Contracting Officer should endeavor to provide clear, concise contract documents. Contracts which consist of the solicitation, the proposal, and other documents attached together but not integrated into a single contract document are discouraged.

1021 SIMPLIFIED CONTRACTING PROCEDURES

1021.1 The basic purposes of simplified contracting procedures are to:

- (a) Promote economy, efficiency, and innovation in contracting;
- (b) Reduce administrative costs to the OCFO; and
- (c) Avoid unnecessary burdens or complexities that could reduce competition, such as by deterring smaller contractors from participating in a procurement.

- 1021.2 Simplified contracting procedures may be used only with contracts, as listed in subsection 1011.2, that have an estimated value equal to or less than one hundred thousand dollars (\$100,000).
- 1021.3 The Contracting Officer shall conduct simplified procurements in the manner that is most suitable, efficient, and economical based on the circumstances of each acquisition. As appropriate, the Contracting Officer may elect to use or adapt procedures that are part of the sealed bidding or competitive negotiation process.
- 1021.4 On a simplified procurement, the Contracting Officer shall:
- (a) Promote competition to the extent practicable and efficient;
 - (b) Establish reasonable deadlines based on the OCFO's needs and vendor capacity for the submission of responses to solicitations; and
 - (c) Evaluate quotations or offers in an impartial manner on the basis established in the solicitation.
- 1021.5
- (a) If a contract that has an estimated value of more than twenty-five thousand dollars (\$25,000) is procured through the simplified contracting procedures, the Contracting Officer shall attempt to obtain at least three (3) written quotes from potential suppliers.
 - (b) If a contract that has an estimated value equal to or less than twenty-five thousand dollars (\$25,000) is procured through the simplified contracting procedures, the Contracting Officer may obtain a written quote from a single supplier.
- 1021.6 The Contracting Officer may solicit quotations orally in appropriate cases when doing so is practical and economical. When soliciting quotations orally, the Contracting Officer shall instruct suppliers to respond in writing.
- 1021.7 An oral solicitation shall provide a clear description of the OCFO's requirements (for example the type of goods or services sought, quantities, and schedule) and the basis on which the award will be made.
- 1021.8 Written solicitations shall provide a complete statement of relevant information without being unnecessarily lengthy. A written solicitation should include the same information required in an oral solicitation, plus the following:
- (a) Anticipated contract terms and conditions (and the extent to which they are negotiable);

(b) Applicable certifications or representations; and

(c) Instructions for submitting responses.

1021.9 The basis for award may be price or cost alone or price/cost and other factors. Solicitations are not required to state the relative importance assigned to each evaluation factor.

1021.10 The price/cost and other terms of the award shall be set forth in writing and executed by the Contracting Officer or in a purchase order approved by the Contracting Officer. The Contracting Officer shall document the basis for the award decision.

1022 D.C. SUPPLY SCHEDULE; GSA SCHEDULES

1022.1 The Contracting Officer may purchase goods and services directly from the D.C. Supply Schedule or the U.S. General Service Administration (GSA) Schedule.

1023 THE CONTRACTING OFFICER'S RESPONSIBILITY FOR CONTRACT ADMINISTRATION

1023.1 The Contracting Officer has overall responsibility for the contract's administration. Among other things, this requires the Contracting Officer:

(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.

1023.2 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.

1023.3 Prior to terminating a contract, the Contracting Officer shall first obtain the approval of the CPO.

1023.4 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.

1024 PAYMENT REQUESTS

1024.1 Except as provided by subsection 1024.8, requests for payment must be submitted in writing by the contractor together with a valid contract number.

1024.2 Contractor payment requests shall:

- (a) Certify that the contractor is entitled to payment in the requested amount; and
- (b) Include or attach any information necessary to demonstrate entitlement to the requested payment under the contract's terms.

1024.3 Depending on the contract payment provisions, a payment request may consist of, for example, a statement that specified work has been completed in a satisfactory manner, documentation showing that contract deliverables have been accepted by the OCFO, or information detailing the reimbursable costs incurred by the contractor.

1024.4 Payment shall not be made unless authorized by the Contracting Officer. A Contracting Officer's 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.

1024.5 RESERVED

1024.6 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.

- 1024.7 The CPO or designee 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.
- 1024.8 The CPO or designee 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.

1025 EXERCISING CONTRACT OPTIONS

- 1025.1 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.
- 1025.2 The determination to exercise a contract option shall be in writing and shall be included in the contract file.

1026 CONTRACT MODIFICATIONS

- 1026.1 The Contracting Officer may modify a contract subject to the provisions of this section.

1026.2 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.

1026.3 A contract modification may be effected:

- (a) By a bilateral agreement executed by the Contracting Officer and an authorized representative of the contractor; or
- (b) By the Contracting Officer's issuance of a written change order, when the contract includes a changes clause permitting the Contracting Officer to make unilateral changes in the contract work. Under such a clause, the contractor is obligated to perform in accordance with a change order issued by the Contracting Officer, and the contract price is adjusted to reflect the increase or decrease in costs caused by the change.

1027 CONTRACT TERMINATION

1027.1 All contracts awarded by the Contracting Officer shall include "Termination for Default" and "Termination for Convenience" clauses specifically defining the OCFO's termination rights.

1027.2 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).

1027.3 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.

1028 CONTRACT DOCUMENTATION

1028.1 The Contracting Officer is responsible for maintaining documentation regarding the contract and the procurement.

1028.2 The contract file shall include:

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

1029 DISPUTES

1029.1 Each contract entered into by the Contracting Officer shall include a disputes clause that sets forth the procedures by which disputes shall be resolved.

1029.2 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.

- (f) 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 CFO Order No. 15-14.
- (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 CFO Order No. 15-14.
 - (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.

1030 PROTESTS

- 1030.1 All protests to the award of a contract by the Contracting Officer shall be resolved in accordance with this section.
- 1030.2 A proper protest shall be submitted to the Contracting Officer in writing.

- 1030.3 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.
- 1030.4 The Contracting Officer shall issue a decision with regard to a protest within ninety (90) days from receipt of a proper protest.
- 1030.5 If the Contracting Officer is someone other than the CPO, the protestor may appeal the Contracting Officer's decision to the CPO.
- 1030.6 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.
- 1030.7 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.
- 1030.8 An appeal of the CPO's decision shall be submitted in accordance with, and follow thereafter, Section 1031 of these rules.
- 1030.9 A protest must be filed within the timeframes established in this subsection to be considered.
- 1030.10 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.
- 1030.11 A protest that is based on the language or requirements of a solicitation or is otherwise based on facts which are apparent on the face of the solicitation shall be filed with the Contracting Officer no later than five (5) business days before the date responses to the solicitation are due.
- 1030.12 A protest that is not based on the language or requirements of a solicitation or otherwise based on facts which are apparent on the face of a solicitation must be submitted within five (5) business days after the protestor knows or should have known of the facts that serve as the basis for the protest.

1031 APPEALS

- 1031.1 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.
- 1031.2 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.
- 1031.3 Each administrative review shall follow the provisions pursuant to these rules for Claims by a Contractor against the District.
- 1031.4 A Contractor or protestor 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.

1032 MULTIYEAR CONTRACTS AND CONTRACTS IN EXCESS OF \$1 MILLION

- 1032.1 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.
- 1032.2 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.