

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



Financial Administrative Issuance
Financial Management and Control Order No. 03-002

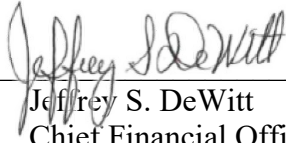
Issuance Date: July 22, 2003
Revised Date: August 24, 2020

Effective Date: July 22, 2003

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 §§ 1-204.25 and 1-204.26, and other applicable laws, I, Jeffery S. DeWitt, Chief Financial Officer of the District of Columbia (“CFO”), hereby ORDERED that:

1. Whenever a determination is made by the Office of the Chief Financial Officer’s (“OCFO”) General Counsel or Acting General Counsel (collectively “General Counsel”), that external legal assistance is needed and appropriate, the General Counsel shall select the law firm(s) to be procured by the OCFO, provided that sufficient funds are available. Such determination shall only be made by the General Counsel. The General Counsel may, at his or her discretion, appoint a special committee comprised of District of Columbia employees to assist him or her in creating an appropriate request for proposals and to review the submitted proposals. At the request of the General Counsel, the special committee may also submit recommendations to provide guidance to the General Counsel regarding his or her final selection.
2. The rules attached hereto as Exhibit A and incorporated herein by reference shall govern the procurement of services in relation to external legal services for financial transactions by the OCFO when such legal services are exempt from the Procurement Practices Reform Act of 2010, (D.C. Law 18-371; D.C. Official Code §§ 2-351.01, et seq.
3. No OCFO officer or employee shall order or direct legal services under any OCFO contract for legal services or any OCFO contract for any other services with a law firm without the express written consent and supervision of the General Counsel.
4. All invoices for legal services or services otherwise provided by a law firm procured by the OCFO must be reviewed and approved in writing by the General Counsel prior to payment. In addition, the General Counsel may also require prior to payment the review and written approval of the appropriate OCFO officer or employee. All such invoices shall be submitted on a monthly basis to the General Counsel unless otherwise agreed to in writing by the General Counsel.

5. All actions heretofore taken by David C. Tseng as General Counsel of the OCFO are hereby ratified.
6. ***This delegation is granted until rescinded in writing.***
7. ***This*** delegation supersedes all previous CFO Orders to the extent of any inconsistency therein.



Jeffrey S. DeWitt
Chief Financial Officer

EXHIBIT A TO CFO ORDER No. 03-002

RULES FOR PROCUREMENT OF EXTERNAL LEGAL SERVICES FOR FINANCIAL TRANSACTIONS BY THE OCFO WHEN SUCH LEGAL SERVICES ARE EXEMPT FROM THE PROCUREMENT PRACTICES REFORM ACT OF 2010

The following rules shall govern the procurement of external legal services for financial transactions by the Office of the Chief Financial Officer (“OCFO”) when such legal services are 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”):

100 GENERAL

100.1 In accordance with the D.C. L22-80, and any subsequent authorization acts or applicable laws, the OCFO is exempt from the requirements of the PPRA as it pertains to the procurement of legal services for financial transactions to which such laws apply, except for provisions regarding review and approval by the Council of multiyear contracts and review and approval by the Council of contracts in excess of one million dollars (\$1 million) during a twelve (12)-month period pursuant to District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D. C. Official Code § 1-204.51(2006 Repl.) and the OCFO has the authority to issue and implement its own procurement rules relating to the procurement of external legal services for financial transactions.

100.2 The OCFO Chief Procurement Officer (“CPO”) and an OCFO Contracting Officer are authorized to enter into applicable contracts pursuant to these rules.

100.3 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 a fair, efficient and objective manner that promotes confidence in the OCFO integrity; and
- (b) Produce reasonable value and results for the OCFO.

101 APPLICABILITY

101.1 These rules shall apply to the procurement of external legal services, by and for the OCFO, for financial transactions when such legal services are exempt from the PPRA.

102 CHIEF PROCUREMENT OFFICER

102.1 The CPO appointed by the CFO shall have plenary contracting authority and have responsibility for supervising the OCFO’s procurement activities for procurement of services applicable to these rules. The CPO shall prescribe the standard

contract format and standard contract provisions to be included in contracts for services applicable to these rules.

103 AUTHORITY AND DUTIES OF CHIEF PROCUREMENT OFFICER

103.1 The CPO, or OCFO Contracting Officer, shall timely execute any solicitation, contract, task order, modification or full or partial termination of a contract or task order.

103.2 The CPO shall be responsible for:

- (a) Making any determination and findings that may be required in accordance with these rules;
- (b) Ensuring that all necessary preconditions to contract award have been satisfied before the contract is awarded;
- (c) Ensuring that all prospective contractors participating in a procurement receive fair and impartial treatment.

103.3 An authorized OCFO Contracting Officer may carry out the duties of the CPO set forth in these rules, except those established by Section 124.

104 AUTHORITY AND DUTIES OF GENERAL COUNSEL

104.1 The General Counsel (“GC”) shall designate the Contractor’s Technical Representative (“COTR”). The COTR shall have the responsibility, in cooperation with the Office of the General Counsel (“OGC”) attorneys assigned to the work, to supervise and manage all aspects of the work of the contractors in accordance with the requirements of the contract or task order, as applicable, and such other responsibilities and authorities as may be specified in the contract or task order. These include:

- (a) Providing the CPO evidence to warrant issuance of contract or task order modifications, options, or extensions to address additional work, cost or time necessary to complete a financing transaction or project; providing evidence that warrants the CPO to terminate a contract in full or in part for cause or convenience; and keeping the CPO informed in writing of any technical or contract difficulties encountered during the performance term or any potential problem areas under the contract or task order;
- (b) Reviewing and approving invoices for payment of work, including determining if a contractor’s prices and charges are consistent with the negotiated terms of the contract or task order; and the work performed and progress are satisfactory and commensurate with the rate of expenditures;
- (c) Reviewing and approving invoices for deliverables to ensure receipt of services, including the timely process of invoices in accordance with the District’s payment provisions;

- (d) Maintaining a file that includes all contracts and task orders, all contract or task order work products, including correspondence, and contract or task order modifications or other contract actions or changes;
- (e) Selecting the chair and members of a source selection evaluation board (“SSEB”);
- (f) Ensuring that all legal issues arising out of any contract or task order are considered by the GC;
- (g) Determining whether and under what conditions to allow a contractor to sub-contract its assigned work to another external law firm.

105 CONTRACTOR QUALIFICATION REQUIREMENTS

105.1 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.

105.2 The issues of responsibility and conflicts of interests/disqualification are addressed in Sections 106 and 107, respectively.

106 RESPONSIBILITY

106.1 For a contractor to be awarded pursuant to these rules, the 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; and
- (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.

106.2 The CPO shall make a written determination if the contractor is found to be non-responsible. Award of a contract shall be considered the CPO's determination that the contractor is responsible.

106.3 In evaluating a prospective contractor's responsibility, the CPO may request information from the contractor and may also consider valid information available from other sources. The CPO, at its discretion, 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.

**107 ORGANIZATIONAL CONFLICTS OF INTEREST;
DISQUALIFICATION**

107.1 The OCFO intends to avoid even the appearance of conflict of interest or impropriety in connection with its procurement activities. The GC shall determine any conflict of interest, the appearance thereof, or other ethical considerations as further described in subsections 107.5 - 107.6.

107.2 If the GC determines, that there is a conflict of interest, the appearance of a conflict of interest, or another ethical consideration, the GC shall:

- (a) Provide the CPO evidence to disqualify a contractor prior to award for failure to comply with Section 106.1(c);
- (b) Provide the CPO evidence to terminate a contract subsequent to contract award in accordance with Section 104.1(a); or
- (c) Take other appropriate corrective measures.

107.3 The ethical consideration(s) go beyond a violation of the ethics and conflict of interest rules of the OCFO and the prospective contractor, if any. The GC shall avoid the appearance of impropriety or otherwise eliminate doubts about the integrity and fairness of procurement.

107.4 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.

107.5 A number of measures may be appropriate for eliminating or mitigating organizational conflicts of interest, and the GC has the discretion to select the approach that is most suitable in any particular case.

107.6 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.

108 PREPARING SOLICITATIONS

- 108.1 The GC in conjunction with the CPO shall prepare a solicitation to initiate a procurement conducted by competitive negotiation known as a Request for Proposals (RFP) in the fulfillment of these rules as the most beneficial method to the OCFO.
- 108.2 The solicitation shall clearly describe the OCFO's needs and method of award.
- 108.3 The solicitation should seek to enhance competition and provide for awarding an adequate number of service providers.
- 108.4 The evaluation criteria shall include: (i) organization, experience and qualifications of the offeror's staff, sub-contractors and consultants; (ii) price or cost (including, but not limited to, hourly rates for services); and (iii) any other factors appropriate to the particular procurement (for example, the offeror's technical approach, or past performance.
- 108.5 The RFP shall specify all evaluation factors and their relative importance. The RFP should also include:
 - (a) A description of the legal services;
 - (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 or for subcontracting plans), 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.
- 108.6 The CPO shall issue the solicitation in paper form or electronically.
- 108.7 The CPO may cancel a solicitation or reject all bids or proposals received at any time before the contract award when the GC determines in writing that the cancellation or rejection is in the OCFO's best interests.

109 PUBLICIZING PROCUREMENT OPPORTUNITIES

109.1 The CPO shall advertise the solicitation having a value of \$250,000 or more on the OCFO web site for not less than 21 days unless the CPO makes a determination that a shorter period of time is necessary to meet the needs of the OGC. In addition, the CPO will advertise the notice of solicitation in an appropriate newspaper or trade journal for not less than one day.

109.2 The GC shall compile a list of at least three (3) external law firms that the GC reasonably believes are qualified to provide the services or goods specified in a solicitation and shall provide the list to the CPO who shall inform those external law firms of the bidding opportunity and location of the solicitation documents.

110 CONTRACT TYPE

110.1 The type of contract awarded by the CPO, pursuant to this rule, shall be a requirements contract that provides the mechanism for the GC to order from the contractor(s) all of its requirements for designated services during a specified period (subject to any maximum ordering limitation in the contract). A requirements contract will provide superior economic benefits as it locks the OCFO into a fixed unit price for services with no limit of the quantity of services required under the resultant contract.

110.2 The CPO may award a single contract or award multiple contracts. The GC may choose between the contractors in awarding subsequent task orders to obtain the best combination of quality and value based on considerations and evaluations, including, without limitation, the contractor's knowledge, experience, business practice, other practice areas associated with financing transactions (including, but not limited to securities, tax, real property and contracts), accessibility, available staff, cost, past working experiences with the District, knowledge of applicable District law, and the District's need ("Best Value Consideration").

110.3 Generally, one (1) of the following two (2) award procedures shall be used to award task orders:

(a) Non-competitive award procedure based on the Best Value (for purposes of these rules, "Best Value" is the expected outcome of a procurement that provides the best overall benefit for the government in response to the requirement); or

(b) The preferred, competitive award procedure, where the GC or CPO requests task order proposals from two (2) or more contractors.

110.4 If the competitive award procedure is used, each task order request shall specify:

(a) The specific legal services required;

(b) A delivery date; and

(c) Such other information as the GC may reasonably request.

- 110.5 Each task order shall state the not-to-exceed price or the firm fixed price and the duration for the period of service performance.
- 111 RESERVED**
- 112 RESERVED**
- 113 RESERVED**
- 114 RESERVED**
- 115 RESERVED**
- 116 NON-COMPETITIVE PROCESS**
- 116.1 The purpose of the non-competitive procurement process is to allow the OCFO to procure legal services for financial transactions when the GC determines, in his sole discretion and after consultation with the CPO, that use of a non-competitive process is necessary to enable the OCFO to timely obtain external services for a financial transaction.
- 116.2 A non-competitive procurement under this section shall require a determination and finding by the GC in consultation with the CPO, setting forth the reasons warranting the non-competitive procurement and for the selection of the particular contractor.
- 116.3 If the GC makes a determination pursuant to subsection 116.2, the CPO may procure the services described in the determination without regard to the procedures set forth elsewhere in these rules.
- 117 COMPETITIVE PROCESS**
- 117.1 Once the solicitation is issued, any changes in the information set forth in an RFP must be made by the CPO in an amendment to the RFP. Amendments shall be made in a reasonable timeframe before the proposal submission date specified by the RFP.
- 117.2 Proposals shall be submitted by a method specifically permitted by the RFP.
- 117.3 The GC, in conjunction with the CPO, shall evaluate proposals based solely on the evaluation criteria specified in the RFP. The GC and CPO may, at his or her discretion, appoint an SSEB to assist him or her in the evaluation process.
- 117.4 After initial proposals have been evaluated, the GC, in conjunction with the CPO, may:
- (a) Establish a competitive range consisting of those proposals that remain under consideration, which shall include all proposals that have a reasonable chance to be awarded based on the GC's determination;

- (b) Have the CPO proceed to negotiate with the highest-ranked offeror, however if a satisfactory contract cannot be negotiated with the highest-ranked offeror, the CPO 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) Recommend an award based on initial proposals to the responsible offeror(s) whose offer(s), conforming to the needs and requirements of the solicitation, will be most advantageous to the District in terms of price, legal and technical abilities, and other factors as specified in the solicitation.

117.5 The CPO may begin discussions with all 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 offerors who will be most advantageous to the District in terms of price, legal and technical abilities, and other factors as specified in the solicitation based on the evaluation factors set forth in the RFP. The CPO will document all discussions with offerors.

117.6 At the conclusion of discussions, the CPO shall request that the offerors submit best and final offers by a common cut- off date.

117.7 The contract(s) shall be awarded based on the determination by the GC.

117.8 The GC shall prepare documentation explaining the basis for the contract award recommendation that shall be maintained in the contract file.

118 INVOICES AND PAYMENT REQUESTS

118.1 Requests for payment must be submitted in writing by the contractor, together with a valid written contract, to the COTR.

118.2 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.

118.3 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 GC, or information detailing the reimbursable costs incurred by the contractor.

118.4 Payment shall not be made unless authorized by the GC. The GC'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.

118.5 No OCFO officer or employee shall authorize payment for the value of legal services received without a valid written contract. Any law firm that enters into an oral agreement with an OCFO officer or employee to provide legal 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 or a final decision of an authorized forum.

119 EXERCISING CONTRACT OPTIONS

119.1 Notwithstanding Section 104.1(a), the determination to exercise a contract option shall include:

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

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

120 CONTRACT MODIFICATIONS

120.1 Notwithstanding Section 104.1(a), modifying a contract shall be subject to the provisions of this section.

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

120.3 A contract modification may be effected:

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

121 CONTRACT TERMINATION

121.1 All contracts awarded by the CPO shall include "Termination for Default" and "Termination for Convenience" clauses as standard contract provisions specifically defining the OCFO's termination rights.

121.2 Notwithstanding Section 104.1(a), when exercising the OCFO's rights under a termination clause in the contract, the CPO 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).

121.3 After terminating a contract for convenience, the CPO 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 CPO shall prepare a memorandum describing the principal elements of the settlement and shall include the memorandum in the contract file.

122 CONTRACT DOCUMENTATION

122.1 The CPO is responsible for maintaining documentation regarding the procurement and the contract administration.

122.2 The CPO's contract files shall include those documents specified by the CPO to include but not limited to:

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

122.3 The COTR is responsible for maintaining documentation regarding the procurement and the contract administration. The COTR's files shall include:

- (a) Copies of the documents described in section 122.2;
- (b) Requests for payment, invoices, and related documents;
- (c) Copies of all authorizations to pay invoices;
- (d) Copies of all requests for procurement actions;
- (e) Copies of all requests for contract modifications; and

- (f) Any other documentation that may be necessary to memorialize important decisions or events relating to the decisions of the GC and the COTR as they pertain to the contract.

123 DISPUTES

123.1 Each contract entered into by the CPO shall include a disputes clause that sets forth the procedures by which disputes shall be resolved.

123.2 The disputes clause in each contract shall be as follows, unless the CPO 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.
- (a) 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. 03-002.

- (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. 03-002.
- (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.

124 PROTESTS

- 124.1 All protests to the solicitation or award of a contract shall be resolved in accordance with this section.
- 124.2 A protest shall be submitted to the CPO in writing.
- 124.3 A protest shall include:
 - (a) The name of the protester;
 - (b) The name of the protester's counsel or other representative;
 - (c) A detailed description along with detailed justification of the basis for the protest; and
 - (d) A description of the relief requested.
- 124.4 The CPO shall issue a decision with regard to a protest within ninety (90) days from receipt of a properly prepared and documented protest request. Failure of the CPO to adjudicate a protest within the time limit allotted shall not be grounds for a favorable decision on the protester's part.
- 124.5 The decision of the CPO shall be the OCFO's final decision with regard to the protest.
- 124.6 A protest must be filed within the timeframes established in this subsection to be considered by the OCFO.
- 124.7 A protest that is not filed within these timelines will not be considered by the OCFO, and the protester shall be deemed to have waived the right to protest.
- 124.8 A protest that is based on the language or requirements of a solicitation or is otherwise based on facts that are apparent on the face of the solicitation shall be filed with the CPO no later than five (5) business days before the date responses to the solicitation are due.

- 124.9 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 protester knows or should have known of the facts that serve as the basis for the protest.
- 124.10 An appeal of the CPO's decision shall be submitted in accordance with, and follow thereafter, Section 125 of these rules.

125 APPEALS

- 125.1 Within 10 business days after the date of receipt of a decision of the CPO, a Contractor or protester may seek administrative review of the CPO's decision by submitting an appeal to the Executive Director of the OCFO's Office of Management and Administration ("Executive Director").
- 125.2 Each administrative review shall follow the provisions pursuant to these rules for Claims by a Contractor against the District.
- 125.3 A Contractor or protester may seek judicial review of the Executive Director's decision by filing a petition for review of agency action in the Superior Court of the District of Columbia.

126 APPLICABLE LAWS

- 126.1 The following laws are incorporated into these rules by reference:
- (a) Council review of multiyear contracts and contracts in excess of one million dollars (\$1,000,000) as set forth in section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.51 (2006 Repl.); and Council review of multiyear contracts and contracts in excess of one million dollars (\$1,000,000) as set forth in section 105a of the District of Columbia Procurement Practice Act of 1985, effective March 8, 1991 (D.C. Law 8-257; D.C. Official Code § 2-301.05a(2006 Repl.; Supp. 2008);
 - (b) Anti-Deficiency Act. The OCFO's responsibilities under the terms of the contract and the contract documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (ii) D.C. Official Code § 47-105; (iii) the District Anti-Deficiency Act of 2002 (D.C. Official Code §§ 47-355.01 -47-355.08), as the foregoing statutes may be amended from time to time, and (iv) § 446 of the District of Columbia Home Rule Act (D.C. Official Code § 1-204.46);
 - (c) Other contracting laws applicable to the OCFO - District of Columbia Quick Payment Act of 1984, as amended, D.C. Official Code § 2-221.01; Living Wage Act of 2006, as amended, D.C. Official Code § 2-218.01 and

2-218.50; First Source Employment Agreement Act of 1984, as amended,
D.C. Official Code § 2-219.01.