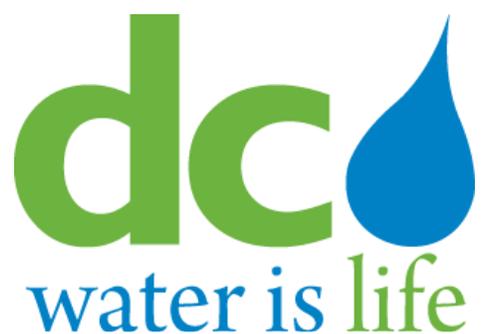


**DISTRICT OF COLUMBIA  
WATER AND SEWER AUTHORITY**



**PROCUREMENT MANUAL**

**Date Issued: June 12, 2009**

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**This Procurement Manual is issued by the General Manager of the District of Columbia Water and Sewer Authority (Authority) and shall be effective as of this 12th day of June, 2009. The Manual shall continue in effect unless modified by written amendment made by the General Manager. References to “§” are references to the Procurement Regulations of the Authority, which are Chapter 53 to Title 21 of the District of Columbia Municipal Regulations (21 DCMR, Chapter 53).**

### **Preamble**

**In accordance with District of Columbia Code Section 34-2202.05 (7) the Board of Directors of the Authority shall establish a procurement system which is consistent with principles of competitive procurement. The Procurement Regulations were approved by the Board of Directors in Resolution 99-66, September 9, 1999, published in the September 17, 1999 edition of the District of Columbia Municipal Regulations and revised effective June 12, 2009.**

**The Board of Directors of the Authority has the authority and responsibility to contract for authorized goods and services including construction services. §5310. The General Manager is the Chief Contracting Officer for the Authority and is authorized to enter into, administer, terminate, and otherwise manage contracts. §5311.1. This Manual is issued pursuant to the directive in the Regulations to issue a Procurement Manual. §5301.4**

**This Procurement Manual is designed to guide Authority staff in implementing the Authority’s procurement regulations in the acquisition of all goods and services, including construction services, for the District of Columbia Water and Sewer Authority. Nothing in this Manual and no deviation from its guidance by Authority staff is intended to nor shall create rights in any third person, including but not limited to Authority suppliers, contractors, service providers, bidders or proposers.**

**The General Manager may, in his or her discretion and without any formal amendment to the Manual, waive any of the guidelines or procedures set forth in this Manual, except any that are explicitly required by the Regulations.**



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## **CHAPTER 1. Authority Procurement Policy Statement**

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## 1.1 Introduction

This Procurement Manual is issued by the General Manager at the direction of the Board of Directors. This Manual is designed to guide staff in implementing the District of Columbia Water and Sewer Authority (the Authority's) Procurement Regulations, which require fair and ethical procurement practices for the cost-effective acquisition of all goods and services, including construction services. This Procurement Manual applies to all the Authority's procurements except to the extent its provisions are waived by the General Manager. Procurements funded with federal, state, or local funds, shall be guided by the Procurement Manual except as necessary to conform to the requirements of the funding source, provided that such conformance does not violate the terms and conditions of other applicable federal, state, or local laws. Neither the provisions of this Manual nor any deviation from them is intended to nor shall they create any rights in third parties, including but not limited to the Authority's bidders, proposers, contractors, suppliers or service providers.

## 1.2 Mission

In support of the Authority's mission to provide safe and reliable drinking water, sewage collection, and wastewater treatment to its customers in an efficient and economical manner, the procurement process is intended to deliver goods and services, including construction services, in a timely, economical and effective manner.

The procurement process includes supporting departments in forecasting their procurement needs. The planning phase of the procurement process includes an overall assessment of the Authority's needs and the planning of procurement actions accordingly. This process is fundamental for ensuring that procurements meet the Authority's needs efficiently. The process includes support of each office and department in defining its needs under each planned contract, participation in the selection process and in the administration of the contract.

## 1.3 General Policy

This Procurement Manual provides guidelines for the efficient implementation the Authority's Procurement Regulations. These guidelines are designed to assist responsible Authority staff to ensure that all procurements:

1. Are made in an ethical manner that is impartial and above reproach, with preferential treatment for none.
2. Are made efficiently and economically.
3. Are made within a Contract Management System. This Contract Management System ensures, at a minimum, that:
  - a. Solicitations and contracts are properly issued.
  - b. The methods of contractor selection and contract type are appropriate to the procurement and represent the Authority's best interest.
  - c. Bonding and security are obtained when appropriate.
  - d. Contractors have the necessary insurance to protect the Authority's interests.
  - e. Liquidated damages, when appropriate, are included in contracts.
  - f. Contractors perform in accordance with the terms and conditions of their contracts.
  - g. Payments are made only for goods and services, including construction services, received and authorized in the contract.



4. Are made only to responsible contractors.
5. Are made only to contractors selected in accordance with the stated evaluation criteria.
6. Are made without restrictive specifications that limit or inhibit full and open competition.
7. Are made on a sole-source or limited competition basis only after justification in writing.
8. Include reasonable efforts to increase the opportunity for participation business enterprises eligible under the Authority's business development program.
9. Are approved at the proper level.
10. Have approved funding.

#### **1.4 Contracting Officer Authority**

The General Manager is designated as the Authority's Chief Contracting Officer. The General Manager is authorized to enter into, administer, terminate, and otherwise manage contracts subject to any approval thresholds that may be established by the Board. The General Manager may delegate contracting authority in writing to one or more other Contracting Officers and/or Contracting Officer Representatives (COR). Contracting Officers and CORs have only such authority as delegated to them by the General Manager. In connection with any Authority procurement and in his or her discretion, the General Manager may waive proceeding in accordance with any guideline contained in this Manual, provided however that the General Manager may not waive compliance with any applicable provision in the Authority's Regulations.

Contracting Officers have the authority to determine the method of procurement, project delivery, and type of contract to use for each requirement, unless this function is excluded from the delegation of the contracting authority.

#### **1.5 Full and Open Competition**

Procurements shall be conducted using full and open competition, except as otherwise provided for in this Procurement Manual.

#### **1.6 Organizational Conflicts of Interest**

Organizational conflicts of interest provide an offeror or a contractor (prime contractor or subcontractor) with an unfair competitive advantage or render the offeror or contractor unable, or potentially unable, to provide impartial assistance or advice to the Authority. Organizational conflicts of interest are more likely to occur in contracts involving management support services, design, consultant or other professional services, contractor performance of or assistance in technical evaluations, or systems engineering and technical direction work. Contracting Officers shall analyze planned procurements in order to identify and evaluate potential organizational conflicts of interest as early in the procurement process as possible and to avoid, neutralize, or mitigate significant potential conflicts before contract award.

Where appropriate, solicitations shall notify offerors that performance of the proposed contract may raise a conflict of interest in providing one or more future contracts. For example, determining the feasibility of a major improvement to fixed assets may raise a conflict of interest in a prospective contract to plan or design the improvements once they are determined to be feasible. The feasibility study offeror might be biased toward recommending feasibility in anticipation of the prospective future design contract, and/or may have an unfair advantage in competing for the prospective design contract. A separate basis of conflict could arise from the offeror's other clients if any such clients had a significant interest in the feasibility determination.



Contracts shall not be awarded unless the organizational conflicts of interest are removed or mitigated to the Contracting Officer's satisfaction.

## **1.7 Exceptions**

The General Manager may grant exceptions to the Procurement Manual when necessary to meet the Authority's specific needs and requirements. The Contracting Officer must document the justification and General Manager's approval in the contract file.



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## **2.1 Policy**

Employees involved in the procurement process must conduct business impartially and in a manner above reproach, with preferential treatment for none. Employees must strictly avoid any conflict of interest or the appearance of a conflict of interest in the procurement process.

## **2.2 General Standards of Ethical Conduct**

### **2.2.1 Employees, Officers, and Agents**

Any attempt to realize personal gain through employment with the Authority by conduct inconsistent with proper discharge of the employee's duties is a breach of ethical standards.

### **2.2.2 Non-Employees**

Any attempt to influence any Authority employee to breach the standards of ethical conduct set forth in this Chapter or in Sections 5304 through 5309 of the Authority's Procurement Regulations is a breach of ethical standards.

## **2.3 Sanctions**

### **2.3.1 Employees, Officers, and Agents**

Disciplinary action may be taken against employees, officers, and agents who violate any provision of Sections 5304 through 5309 of the Authority's Procurement Regulations or this Chapter. Any employee, officer, or agent who violates any provision of Sections 5304 through 5309 of the Authority's Procurement regulations or this Chapter will be subject to discipline up to and including termination of the relationship with the Authority.

### **2.3.2 Non-Employees**

Any effort made by or on behalf of a non-employee, including an offeror or contractor, to influence an employee to breach the ethical standards set forth in Sections 5304 through 5309 of the Authority's Procurement Regulations or in this Chapter is prohibited and may be referred to appropriate authorities for civil enforcement or criminal prosecution. A violation by a contractor or subcontractor of Sections 5304 through 5309 of the Authority's Procurement Regulations or this Chapter constitutes a major breach of each Authority contract or subcontract to which the violator is a party. In addition, an offeror or contractor that violates or whose representative violates any provision of Sections 5304 through 5309 of the Authority's Procurement Regulations or this Chapter may be determined to be non-responsible or may be suspended or debarred.

## **2.4 Conflict of Interest**

### **2.4.1 Employees, Officers, Board Members and Agents**

No employee, officer, board member or agent shall participate in or attempt to influence any procurement when the employee, officer, **board member** or agent knows or has reason to know:

1. The employee, officer, **board member** or agent, or any relative of the employee, officer, **board member** or agent has a financial interest pertaining to the procurement.
2. The employee, officer, **board member** or agent, or any relative of the employee, officer, **board member** or agent has a financial interest in a business or organization pertaining to the procurement.



3. The employee, officer, **board member** or agent, or any relative of the employee, officer, **board member** or agent has an agreement or arrangement for prospective employment with a business or organization involved with the procurement.

## **2.5 Personal Gain**

### **2.5.1 Employees, Officers, and Agents**

It is a breach of ethical standards for any employee to receive or attempt to realize personal gain or advantage, either directly or indirectly, as a result of their participation in any action related to any procurement. No employee, officer, or agent may solicit or accept, directly or indirectly, on his or her own behalf or on behalf of a relative, any benefit, such as a gift, gratuity, favor, compensation, or offer of employment from any person or entity having or seeking to have a contractual, business, or financial relationship with the Authority.

In the event an employee, officer, or agent is offered or receives any benefit or any other thing having more than a monetary value of **\$25.00 (twenty five dollars)** the employee shall report the matter to the General Manager or designee who shall determine the disposition of the benefit. The failure to report such offer or benefit to the General Manager or designee is a breach of these ethical standards. Acceptance of gifts or benefits offered by vendors or contractors, and offered to larger groups or organizations, such as sponsoring dinners at professional conferences, are exempt from the reporting requirements.

## **2.6 Restrictions on Employment of Present and Former Employees**

### **2.6.1 Employees**

An employee who participates in the selection of a contractor, participates in the approval process of a contract or contract modification, or supervises contract implementation shall not be employed by the contractor in question with respect to the performance of the contract in which the employee participated.

### **2.6.2 Offeror, Contractor, or Subcontractor**

An offeror, contractor, or subcontractor shall not:

1. Employ for a period of 18 months after separation an Authority employee to work on an Authority project on which the employee directly worked. The General Manager may reduce this limitation period if it is determined that it is in the Authority's best interests after review and recommendation by the General Counsel.
2. At any time after granting employment to any Authority employee who participated in the selection of the contractor, participated in the approval of a contract or contract modification with the contractor, or supervised the contract implementation, allow such employee to work under the Authority's contract resulting from the selection or approval.
3. Offer to perform work for the Authority premised on the hiring of an Authority employee to perform part of the work that may reasonably be expected to participate in the selection of that contractor, participate in the approval of a contract or contract modification with that contractor, or supervise contract implementation.
4. Perform work for the Authority under the supervision, direction, or review of an Authority employee who was formerly employed by the contractor without notifying the Contracting Officer in writing.
5. Allow the relative of an Authority employee to work on an Authority project for which the employee has any direct responsibility or supervision.



6. Permit any person whose employment by the Authority was terminated by the Authority, other than pursuant to a reduction in force, to work on any Authority contract or project.
7. Offer or grant to an Authority employee, officer, agent, or relative of an Authority employee, officer, or agent, directly or indirectly, any benefit such as a gift, gratuity, favor, compensation, offer of employment, or any other thing having more than nominal monetary value.



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## **CHAPTER 3. Contracting Authority**

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### **3.1 Policy**

Only Contracting Officers appointed in writing are authorized to enter into, administer, terminate, and otherwise manage contracts subject to any approval thresholds on behalf of the Authority.

### **3.2 Chief Contracting Officer Authority**

The General Manager is the Chief Contracting Officer for the Authority. The Chief Contracting Officer is authorized to enter into, administer, terminate and otherwise manage contracts subject to any approval thresholds that may be established by the Board. The Chief Contracting Officer has the authority to delegate contracting authority to one or more other Contracting Officers and / or Contracting Officer Representatives. The Chief Contracting Officer determines the qualifications of other Contracting Officers and Contracting Officer Representatives. The Chief Contracting Officer delegates contracting authority in writing, specifying the limits of the authority granted in whole or in part.

### **3.3 Contracting Officer and Contracting Officer Representative Authority**

A Contracting Officer and a Contracting Officer's Representative have only that authority as delegated in writing by the Chief Contracting Officer.

### **3.4 Authority and Responsibilities of Contracting Officers**

Contracting Officers have the authority to enter into, administer, terminate, manage contracts, and make related determinations and findings subject to any approval thresholds or delegation of authority limitations. Contracting Officers have the discretionary authority to determine procurement methods, project delivery, and contract types to use for each requirement subject to any delegation of authority limitations.

Contracting Officers are responsible for ensuring performance of all necessary actions for effective procurement, ensuring compliance with the terms of the contract, and safeguarding the interests of the Authority. Contracting Officers are responsible for ensuring all requirements of law, regulations, and all other applicable procedures, including clearances and approvals, are met prior to entering into a contract on the Authority's behalf

### **3.5 Authority and Responsibilities of Contracting Officer Representatives**

Contracting Officer Representatives have limited, post-award construction contracting authority to perform administrative contract functions, and issue field changes and execute contract modifications pursuant to the delegation of functions and within the delegated monetary thresholds for modifying contracts.

### **3.6 Contracting Officer and Contracting Officer Representative Delegations**

Contracting Officer Delegations shall be made by the Chief Contracting Officer in writing on the Authority letterhead. The Letters of Delegation shall clearly state any limits of the delegated authority. Delegations are effective the date signed by the Chief Contracting Officer and remain in effect until terminated in writing, unless the Contracting Officer Delegation contains other provisions for automatic termination. Contracting Officer Delegations may not be further delegated.

Contracting Officer Representative Delegations may be made by the Chief Contracting Officer or the Contracting Officer if the authority to redelegate is granted by the Chief Contracting Officer in its letter of delegation to the Contracting Officer.



### **3.7 Delegation of Authority to Contracting Officer's Technical Representative**

Contracting Officers may appoint in writing a Contracting Officer's Technical Representative (COTR) to provide such management oversight and technical direction for a particular Goods or Services procurement or contract as the Contracting Officer shall determine is necessary or useful. COTRs do not have the authority to enter into, administer, terminate, manage contracts, and make related determinations.

### **3.8 Unauthorized Procurements**

Only Contracting Officers or designees (including the designation by the Director of Procurement of Purchase Card holders up to their respective limits as described in the chapter on Purchase Cards) are authorized to procure goods or services, including construction services, on behalf of the Authority. The Authority may not accept a financial obligation for transactions made pursuant to an unauthorized procurement.

Unauthorized procurements will require ratification by the Contracting Officer. The appropriate procurement action, including a complete procurement record, must be developed in order for the vendor/contractor to receive compensation for goods or services provided.



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## CHAPTER 4. Acquisition Planning

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## **4.1 Policy**

Acquisition planning is an indispensable component of the total procurement process. The Authority uses acquisition planning as an opportunity to evaluate/review the entire procurement process, so that sound judgments and decision making will facilitate the success of the overall procurement. Procurements shall provide for acquisition planning to consolidate or break apart requirements for more economical purchases and to result in an efficient procurement process. Acquisition planning should be appropriate and proportionate to the complexity and dollar value of the requirement.

## **4.2 Responsibilities**

The Authority department with the requirement is responsible for acquisition planning. Depending on the complexity and dollar value of the requirement, the Authority department planner shall form a team consisting of all those who will be responsible for significant aspects of the procurement, such as procurement, budget, legal, and technical personnel. The planner should review previous plans for similar procurements and discuss them with the key personnel involved in those procurements. At key dates specified in the plan or whenever significant changes occur, and no less often than annually, the planner shall review the plan and, if appropriate, revise it.

## **4.3 Advance Procurement Planning**

Acquisition procurement planning should begin as soon as the Authority need is identified, preferably well in advance of the fiscal year in which contract award or order placement is necessary.

## **4.4 Contents of Written Acquisition Plans**

Acquisition plans must address all the technical, business, management, and other significant considerations that will control the procurement. Acquisition plans must identify those milestones at which decisions should be made. The specific content of the acquisition plans will vary, depending on the nature, circumstances, and stage of the procurement.

## **4.5 Contact with Prospective Contractors**

Contact with prospective contractors is allowed as part of acquisition planning in the course of market research to learn industry capabilities. All contact, formal or informal, should be appropriately documented. The Authority shall not make commitments or representations that would lead a prospective contractor to believe that they will or will not receive an order or contract for the goods or services, including construction. The Authority shall not divulge information to any prospective contractor except as provided in the Authority regulations.

## **4.6 Market Research**

Market research is conducted to determine if commercial items or other items are available to meet the Authority's needs or could be modified to meet the Authority's needs. A description of the Authority's needs stated in sufficient terms is required prior to the conduct of market research. Market research can initiate industry involvement, develop and refine the procurement strategy, obtain price information, determine whether commercial items exist, determine the level of competition, identify market practices, or obtain comments on requirements. The magnitude and degree of formality of the market research should be appropriate to the contemplated procurement.



#### **4.7 Initiation and Approval of Procurement Action**

All procurements, whether for goods, services, architectural and engineering or construction begin in the budget planning process. Each Authority department shall formulate a procurement plan in conjunction with the budget and procurement offices. Each Authority department shall ensure that budget authority exists and that the procurement action sought is contained in the department's annual approved operating or capital budget prior to initiating a procurement action. If the procurement action is a material deviation from the department's approved budget and work plan, the Department Head must submit a written explanation to the General Manager for approval prior to the initiation of the procurement action.

#### **4.8 Specifications and Purchase Descriptions**

Specifications and purchase descriptions shall state Authority needs in a manner designed to promote full and open competition or maximum practicable competition based on the nature of the goods and services including construction being procured.

To the maximum extent practicable, requirements will be stated in terms of (a) functions to be performed; (b) performance required; or (c) essential physical characteristics. Requirements should be defined in terms that enable and encourage the offer of commercial items to the extent that commercial items suitable to meet Authority needs are available.

The Authority may describe a requirement by use of a brand name, provided the description is followed by the words "or equal." This description shall be used only when adequate specifications or a more detailed purchase description cannot be employed. When using a brand name or equal purchase description, the description shall also list the salient characteristics and minimum acceptable features.

Restrictive provisions or conditions may be used only to the extent necessary to satisfy Authority needs.

#### **4.9 Solicitation Provisions and Contract Clauses**

Each Authority department, as part of its acquisition planning, shall consider and identify, any special or additional solicitation provisions or contract clauses that will be required as part of the procurement to ensure contractor performance and/or protect the Authority's interests.

#### **4.10 Authorized Methods of Procurement**

Unless the procurement is exempt from the requirements for competition (under Section 5332 of the Regulations), each Authority department, as part of its acquisition planning, shall consider for use only the authorized methods of procurement listed below:

1. Micro-purchase
2. Small purchase (simplified acquisitions)
3. Sealed bid
4. Competitive proposal
5. Multi-step method
6. Expedited purchase
7. Limited competition
8. Joint agency procurement method
9. Rider procurement method
10. General Services Administration schedule purchases



Procurements that are exempt from the requirements for competition under Section 5332 of the Regulations should be planned according to the chapters on Sole Source, Emergency Procurement, or Categorical Exemptions.

#### **4.11 Multi-year Contracts**

Multi-year contracts are appropriate when the need for the goods or services is reasonably firm and continuing, and covers more than one, but no more than five program years, and funding is only available for the first program year. The Authority's obligations and the contractor's performance are contingent upon the availability of funds.

Multi-year contracts are awarded with the full term and amount of the contract, but must include a provision for a limitation of funds. It is not necessary to establish and exercise an option for each program year after the first. The obligation of funding and the authorization to increase the level of spending is sufficient for the continuation of contract performance.

All multi-year contracts will contain a cancellation clause and a clause conditioning annual extension of the contract on the appropriation of sufficient funds to meet the Authority's obligation.

Each Authority department, as part of its acquisition planning, shall consider the use of multi-year contracts described in the chapter on Special Contracting Methods.

#### **4.12 Multiple-Year Contracts**

Multiple-year contracts buy more than one year's requirement, but no more than five, similar to multi-year contracting, but only the first program year is awarded. Each program year after the first requires the exercise of an option.

All multiple year contracts will contain a clause conditioning annual extension of the contract on the appropriation of sufficient funds to meet the Authority's obligation.

Each Authority department, as part of its acquisition planning, shall consider the use of multiple year contracts for goods and services whenever the extended contract will serve the needs of the Authority.

#### **4.13 Indefinite Delivery Indefinite Quantity Contracts**

Each Authority department, as part of its acquisition planning, shall consider the use of Indefinite-delivery, indefinite-quantity contracts in accordance with the chapter on Indefinite Delivery Indefinite Quantity Contracts, when the exact times or the exact quantities of future deliveries will not be known at the time of contract award.

#### **4.14 Use of Options**

Each Authority department, as part of its acquisition planning, shall consider the use of options in accordance with the chapter on Special Contracting Methods to procure additional goods, services, or construction. Options may be considered for award for individual elements of work that can be separately priced and are based on availability of funds or annual requirements for recurring needs.

#### **4.15 Stock Replenishments**

Each Authority department, as part of its acquisition planning, shall check with the Logistics Branch of Procurement for availability of the desired item in inventory prior to initiating a procurement action.



#### **4.16 Pre-Qualification**

Each Authority department, as part of its acquisition planning, may consider pre-qualifying prospective contractors or products. The department head or designee shall prepare a written justification stating the necessity for establishing the qualification requirement and specifying why the qualification requirement must be demonstrated before contract award. The justification shall specify only those least restrictive requirements that a prospective contractor (or its product) must satisfy in order to become qualified. The likely costs for testing and evaluation that will be incurred by prospective contractors and Authority should be included.

When a pre-qualified list is established, a validity period will be set at which time the list shall expire. The validity period will be set on a case-by-case basis and should be based on the nature of the requirements that a prospective contractor (or its product) must satisfy.

#### **General Services Administration Schedule Purchases**

Each Authority department, as part of its acquisition planning, may consider General Services Administration Schedule Purchases to satisfy its requirement. The Contracting Officer must determine the use of General Services Administration Schedule Purchases to be in the Authority's best interest.

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## CHAPTER 5. Bonds and Insurance

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## **5.1 Policy**

The Authority may, on an individual or class of requirement basis, require bonds (bid, performance, labor and material payment, fidelity, or other type of bonding or any combination thereof) and insurance as deemed necessary to protect the interests of the Authority. The Authority shall require bonds on any federally funded construction project according to federal requirements.

## **5.2 Bid Bonds and Other Security**

Bid bonds are required whenever a performance bond or a performance and payment bond is required; however, the Chief Contracting Officer may, prior to the bid opening/proposal due date, waive the requirement to obtain a bid bond when it is determined that a bid bond is not in the best interest of the Authority for a specific acquisition.

A bid bond securing multiple bids is acceptable for contracts for goods and services. Only separate bid bonds are acceptable for construction contracts.

## **5.3 Noncompliance with Bid Security Requirements**

Noncompliance with a solicitation requirement for a bid bond in sealed bidding renders the bid non-responsive, and requires rejection of the bid. When conducting a procurement using competitive proposals and an award is to be made based on initial proposals without discussion, noncompliance with a solicitation requirement for a proposal security renders the proposal unacceptable.

## **5.4 Performance and Payment Security**

All required bonds or alternative payment protection, including any necessary reinsurance agreements, must be received by the Authority before issuing a notice to proceed with the work or allowing work to start.

### **5.4.1 Federally Funded Construction Contracts with a Value Greater than \$100,000**

Bid performance and payment bonds are required for any federally funded construction contract exceeding \$100,000.

### **5.4.2 Other Construction Contracts**

Bid, performance and payment bonds are required for any non-federally funded construction contracts exceeding \$100,000. Consideration may be given to accepting up to two of the following forms of security in lieu of a performance and payment bond:

1. An irrevocable letter of credit (ILC);
2. A tripartite escrow agreement;
3. Certificates of deposit;
4. United States Bonds or Notes; or
5. Certified or Cashier's Checks, Bank Drafts, Money Orders, or Currency.

### **5.4.3 Other than Construction Contracts**

Performance and payment bonds should not normally be required for other than construction contracts; however, performance and payment bonds may be required for contracts exceeding the large procurement threshold (\$100,000) when necessary to protect the Authority's interest. The amount of the bond may be the value of the contract or the amount that could be at risk.

A performance and payment bond should be considered when:

1. Authority property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material);
2. A contractor sells assets to or merges with another concern, and the Authority, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable;
3. Progress payments are made substantially exceeding the value of end items delivered, such as when end item design or tooling is funded with progress payments; or

4. Additional performance bond protection is required because of an increase in contract price and the terms of the bond do not automatically increase the amount.

## **5.5 Security Bonds and Other Security**

When bonds are required, the Authority shall obtain adequate security for bonds (including coinsurance and reinsurance agreements). Forms of security that the Contracting Officer may consider include:

1. Corporate or individual sureties licensed to provide bonds in the District of Columbia;
2. United States Bonds or Notes;
3. Certified or Cashier's Checks, Bank Drafts, Money Orders, or Currency; or
4. Irrevocable Letter of Credit (ILC).

## **5.6 Sureties**

The Contracting Officer shall determine the acceptability of proposed sureties and shall ensure that the surety's pledged assets are sufficient to cover the bond obligation.

## **5.7 Insurance**

Contractors are required by law to provide insurance for certain types of perils (e.g., workers' compensation). Insurance is mandatory also when the contractor is making use of Authority property, and the type of operation, circumstances of ownership, or condition of the contract makes insurance necessary for the protection of the Authority.

Authority solicitations and contracts shall specify the insurance requirements depending on the nature of work performed. When applicable, the Rolling Owner Controlled Insurance Program shall be included in Authority solicitations and contracts.

Contractor self-insurance programs may be approved when in the Authority's interest.



## CHAPTER 6. Sealed Bids

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## **6.1 Policy**

Sealed bids are used when the requirements are well defined, discussion with bidders will not be necessary, several sources are expected, and fair and reasonable pricing is desired. Sealed bids are a straightforward way to achieve a demonstrably good value. Sealed bids are one method that may be used if the procurement is expected to exceed the small purchase threshold. Bids must comply in every material respect with the specifications, and bidders must not be allowed to reconsider their bids after the time set for submission of bids.

## **6.2 Preparation, Submission, and Receipt of Bids**

### **6.2.1 Preparation of Invitation for Bid**

An Invitation for Bid (IFB) is prepared using a uniform contract format that includes the solicitation and contract form, provisions, and clauses appropriate for the type of acquisition (e.g., goods, equipment, services, or construction). The IFB shall contain a description of the goods or services required; quantities; time, date, and address for receipt of the bids; and whether or not alternate bids will be accepted.

### **6.2.2 Invitation for Bid**

The IFB shall be publicized for thirty (30) days, unless the Contracting Officer determines otherwise. The IFB or notice of the availability of the IFB shall be mailed or otherwise furnished to an adequate number of bidders to ensure full and open competition.

### **6.2.3 Solicitation Mailing List**

The solicitation mailing list identifies sources for goods and services, including construction services. The Contracting Officer shall establish or have access to solicitation mailing lists. A list is not required when the requirement is non-recurring. A sufficient number of eligible bidders shall be placed on the appropriate solicitation mailing list to ensure adequate competition.

### **6.2.4 Pre-Bid Conference**

The pre-bid conference is generally used in a complex procurement as a means of briefing prospective bidders and explaining complicated specifications and requirements as early as possible after the IFB has been issued and before the bids are opened.

### **6.2.5 Amendment of Invitation for Bid**

The Contracting Officer may issue a written amendment to an IFB when it is necessary to make changes in quantity, specifications, delivery schedules, opening date, or other items or to correct a defective or ambiguous IFB.

The amendment shall be sent, before the bid opening time, to recipients of the IFB, and shall be distributed within a reasonable time to allow all prospective bidders to consider the information in submitting or modifying their bids.

### **6.2.6 Cancellation of Invitation for Bids before Opening**

An IFB may be cancelled before bid opening if it is in the Authority's best interest, for reasons including but not limited to inadequate or ambiguous specifications, revised specifications, goods or services being contracted are no longer required, or the IFB did not provide for consideration of all the Authority's cost



factors. More specifically, an IFB may be cancelled for inadequate or ambiguous specifications if the specifications cannot be corrected by issuing an amendment and if the ambiguous or inadequate specifications would mean that bidders would not be able to compete “on an equal basis.”

An IFB that is cancelled shall require the Contracting Officer’s determination that cancellation is in the Authority’s best interest. Notice of cancellation shall be sent to all recipients of the IFB. Any bids received shall be returned unopened.

### **6.2.7 Cancellation of Invitation for Bids after Opening**

One or more of the reasons to cancel an IFB listed in Cancellation of Invitation for Bids before Opening may arise after bids have been opened. An IFB may be cancelled after bid opening for the same reasons as in Cancellation of Invitation for Bids before Opening. In addition, an IFB may be cancelled after bid opening when:

1. Bids received indicate that the Authority’s needs can be satisfied by a less expensive means differing from that for which the bids were invited.
2. All otherwise acceptable bids received are at unreasonable prices, only one bid is received and the Contracting Officer cannot determine the reasonableness of the bid price, or no responsive bid has been received from a responsible bidder.
3. The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
4. When cancellation is in the public interest.

The Contracting Officer shall determine whether the Authority’s best interest is served by the cancellation of the IFB and rejection of all bids.

Generally, an IFB shall not be canceled and resolicited due solely to increased requirements for the items being procured. In that case, award shall be made on the initial IFB, and the additional quantity shall be treated as a change to the contract or a new procurement.

When it is determined that it is necessary to reject all bids, bidders shall be notified that all bids have been rejected and provided the reason for the action.

### **6.2.8 Requirements for Submission of Responsive Bids**

To be considered for award, a bid must comply in all material respects with the IFB. Each bid shall be typewritten or written legibly in ink. Each bid shall be signed in ink. All erasures or alterations shall be initialed in ink by the person who signs the bid. The IFB shall require the bidder to acknowledge receipt of amendments.

### **6.2.9 Submission of Bids**

A reasonable time shall be allowed for prospective bidders to prepare and submit their bids. Each bid shall be submitted in an envelope that clearly indicates the project name, identifies the bid by the IFB number, and the bidder’s name. Bids must be received at the time and place specified in the IFB.

### **6.2.10 Telegraphic Bids (RESERVED)**



### **6.2.11 Facsimile Bids (RESERVED)**

### **6.2.12 Internet Bids (RESERVED)**

### **6.2.13 Modification or Withdrawal of Bids**

A bid that has been submitted and received may be modified or withdrawn by written notice received in the office designated in the IFB not later than the exact date and time set for opening of bids. A bid may be withdrawn in person by a bidder or an authorized representative if, before the exact date and time set for opening of bids, the bidder or authorized representative requesting withdrawal establishes their identity and signs a receipt for the bid.

If a bid is withdrawn in accordance with this section, any bid guarantee shall be returned to the bidder.

### **6.2.14 Postponement of Bid Opening**

A bid opening may be postponed when the Contracting Officer determines that additional time is required in order to prepare and issue an amendment. The bid opening may also be postponed when the Contracting Officer has reason to believe that the bids of an important segment of bidders have been delayed in the mail, in the communications system specified for transmission of bids, or for causes beyond the bidders' control due to no fault or negligence of the bidders. Emergency or unanticipated events that interrupt the Authority's normal processes may also be the basis for postponement of a scheduled bid opening.

Except for an emergency or unanticipated event, an announcement of the postponement shall be publicly posted. If practical, prospective bidders that are likely to attend the scheduled bid opening shall be notified expeditiously of the postponement.

In the case of an emergency or unanticipated event, the bid opening may proceed as soon as practical after the original scheduled bid opening without prior amendment to the IFB or notice to bidders if the further delay is not in the Authority's best interest. In such cases, the bid opening time established in the IFB will be used for determining "late bids" or other late actions.

## **6.3 Bid Opening and Evaluation**

### **6.3.1 Bid Opening and Inspection**

The bid opening official shall decide when the time set for opening bids has arrived and shall inform those present of that decision. Bids shall be publicly opened and each bid read out loud without discussion. At the time of the bid opening, the name of each bidder and each bid price shall be read aloud and recorded by the bid official.

Interested parties at the bid opening may be provided the opportunity to inspect the Pricing Schedule, the Bid Tabulation Sheet and the Bid Bond of the apparent low bidder. Inspection of these documents shall be conducted under the supervision of bid officials and the original bids shall not leave the possession of the bid official. Bid officials shall supervise the inspection of these bid documents under conditions that preclude the possibility of a substitution, addition, deletion or alteration of the bid. The Authority will not permit photocopies of any inspected bid documents. Interested parties may, however, request selected bid documents through a Freedom of Information request.



### **6.3.2 Late Bids, Late Modifications, and Late Withdrawals**

Any bid, request for withdrawal, or request for modification received after the bid due date and time set forth in the IFB is late and shall not be accepted. Such bids shall not be considered for award except as noted below.

A late bid will be considered if it was received prior to the contract award and the Contracting Officer determines that it would have been timely but for the action or inaction of Authority personnel after timely receipt of the bid at the location specified in the solicitation.

A late modification of a successful bid that makes its terms more favorable to the Authority without changing the price will be considered at any time it is received and may be accepted.

A bidder shall be promptly notified if a bid that was not accepted and could not be rejected at the time that it was received, a modification of a bid, or a withdrawal of a bid is received late, and it is clear from available information that it cannot be considered. The bid shall be held unopened, unless opened for identification until after award. In either case, the bid will be retained with unsuccessful bids.

### **6.3.3 Rejection of Individual Bids**

Any bid that fails to conform to the essential requirements of the IFB; contains a condition that affects price, quantity, quality, or delivery of the items offered; or does not conform to the applicable specifications, delivery schedule, or permissible alternatives shall be rejected.

A bid shall be rejected if it is determined that the bidder imposes conditions that limit the bidder's liability to the Authority or limits the Authority's rights under any contract clause. A bid that requires the Authority to determine whether the bidder's product meets applicable specifications shall be rejected.

Any bid may be rejected if the Contracting Officer makes a determination and documents in writing that the price is unreasonable. This includes not only the total price of the bid, but also the prices for individual line items.

Bids received from a prospective contractor that is suspended, debarred, proposed for debarment, or declared ineligible as of the bid opening date shall be rejected unless it is determined that there is a compelling reason to accept the bid. Low bids received from prospective contractors determined to be not responsible shall be rejected.

A bid shall be rejected if the bidder fails to furnish the guarantee in accordance with the IFB requirements.

### **6.3.4 Bid Evaluation**

The Contracting Officer shall determine whether a prospective contractor is responsible and that the prices offered are fair and reasonable before awarding a contract. If only one bid is received, the Contracting Officer may enter into negotiations to determine the fair and reasonable price.

### **6.3.5 Unbalanced Bids**

Unbalanced bids may increase performance risk and may result in payment of unreasonably high prices. A bid is mathematically unbalanced if it is based on prices that are significantly less for some line items and significantly overstated for other line items. A bid is materially unbalanced if it is mathematically unbalanced and if there is reasonable doubt that the bid would result in the lowest overall cost to the Authority even though it is the lowest evaluated bid.



Bids shall be analyzed to determine whether they are unbalanced with respect to prices for separately priced line items. This is particularly important when evaluating the prices for options in relationship to the prices for the basic requirement.

A bid may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Authority.

### **6.3.6** *'All or None' Qualified Bids*

A bid may be responsive even if the bidder specifies that an award will be accepted only on all or a specified group of the items. Unless the IFB provides otherwise, bidders shall not be permitted to withdraw or modify "all or none" qualifications after bid opening because such qualifications are substantive and affect the rights of other bidders.

### **6.3.7** *Resolving Tie Bids*

If two or more bidders are equally eligible for award, an award shall be made by a drawing by lot limited to those bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three persons, and the contract file shall contain the names and addresses of the witnesses and the person supervising the drawing.

### **6.3.8** *Minor Informalities or Irregularities in Bids*

A minor informality or irregularity is one that is a matter of form and not of substance or that pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the solicitation. The Contracting Officer shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or waive the deficiency provided the waiver will not violate the principles of the competitive procurement.

### **6.3.9** *Mistakes in Bids before Award*

The Contracting Officer shall examine each bid for mistakes. In cases where the Contracting Officer has reason to believe that a bid mistake may have been made, the Contracting Officer shall request from the bidder verification of the bid, calling attention to the suspected mistake.

The Contracting Officer may correct an apparent clerical mistake before award. If the correction is made, the bid shall be corrected to the intended correct bid and may not be withdrawn.

Correction of a bid is limited to a bid that is responsive and shall not be used to permit corrections to make the bid responsive or competitive.

If a bidder alleges a mistake after opening of bids and before award, the Authority may permit correction of the bid if clear and convincing evidence establishes both the existence of the mistake and the bid actually intended. However, correction of the bid will not be permitted if the correction results in displacing one or more lower bids.

If clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, the Authority may allow a bidder to withdraw a bid rather than correct it.

When a bid is corrected or withdrawn, or correction or withdrawal is denied, the Contracting Officer shall prepare a written determination that explains why the action was taken.



#### **6.3.10 Mistakes in Bids after Award**

If a mistake in a bid or proposal is not discovered until after award, the Contracting Officer may correct the mistake by contract modification if the Contracting Officer makes a written determination that correcting the mistake would be in the Authority's best interest and that the correction would not change the contract's essential requirements.

In lieu of correcting the mistake, the Contracting Officer may rescind the award, reform the contract to delete the items involved in the mistake or increase the price if the corrected contract price does not exceed that of the next lowest acceptable bid under the original IFB, make no change to the contract, or terminate the contract.

The Contracting Officer shall make the required determinations only on the basis of clear and convincing evidence that a mistake was made mutually or made by the contractor unilaterally but was so apparent that it should have been recognized by the Contracting Officer.

### **6.4 Contract Award**

#### **6.4.1 Basis of Contract Award**

Each contract shall be awarded to the responsible bidder that submitted the lowest responsive bid if the bid price is fair and reasonable.

#### **6.4.2 Information to Bidders**

The notice of award or contract document may be made available to the public. Unsuccessful bidders shall be notified that their bids were not accepted and any bid guarantee furnished with the unsuccessful bids returned. When award is made to other than a low bidder, the reason for rejection shall be included in the notice to each of the unsuccessful low bidders.



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## CHAPTER 7. Competitive Proposal

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## **7.1 Policy**

The competitive proposal method is used when the selection is based on price and other factors, such as qualifications, quality, experience, design, past performance, or work approach. It includes a Request for Proposals (RFP), publicizing the solicitation, and the submission of the proposals to the Authority in response to RFP. Depending on the particular requirements of the solicitation, technical considerations may be the more important criterion than price when evaluating the proposals and selecting the contractor. Discussions with the offerors may be conducted, but are not always necessary.

## **7.2 Source Selection Authority**

The Contracting Officer is designated as the source selection authority, unless the General Manager appoints another individual for a particular procurement or group of procurements. The source selection authority or designee establishes the evaluation committee and approves the evaluation factors.

## **7.3 Solicitation of Proposals**

### **7.3.1 Solicitation of Proposals**

The solicitation of proposals, referred to as an RFP, is used when requirements are not well defined, discussion with proposers will be necessary, and/or selection is based on other factors as well as on price. The RFP shall clearly, accurately, and completely describe the requirements (specification or scope of work), evaluation factors, and instructions for preparing an offer. The RFP shall be publicized for 30 days, unless the Contracting Officer determines otherwise. The RFP or notice of availability of the RFP shall be mailed or otherwise furnished to an adequate number of prospective contractors to ensure full and open competition.

### **7.3.2 Cancellation of Request for Proposal**

It may be in the Authority's best interest to cancel an RFP before or after the closing date for reasons such as inadequate or ambiguous specifications, revised specifications, goods or services being contracted for are no longer required, or the RFP does not provide for consideration of all of the Authority's evaluation factors.

### **7.3.3 Pre-Proposal Conferences**

Pre-proposal conferences are generally used in complex acquisitions as a means of briefing prospective offerors and explaining complicated specifications and requirements. Although various aspects of the RFP and the requirements may be discussed, a statement during the pre-proposal conference by itself shall not change the RFP. All changes to the RFP shall be issued through an amendment.

### **7.3.4 Amendment of Solicitations before Closing Date**

Amendments are issued in writing to formalize changes to the solicitation.

### **7.3.5 Postponement of Proposal Receipt**

A proposal due date may be extended when the Contracting Officer determines that such extension is in the Authority's best interest. An amendment shall be issued to all parties receiving the solicitation.



## **7.4 Evaluation and Negotiation of Proposals**

### **7.4.1 Receipt of Proposals**

Upon receipt at the location specified in the solicitation, proposals shall be marked with the date and time of receipt and shall be transmitted to the designated Authority officials. Proposals shall be safeguarded from unauthorized disclosure from receipt, throughout the source selection process, and until award.

### **7.4.2 Late Proposals and Withdrawals**

Proposal revisions received after the date and time designated in the RFP or subsequent amendments shall be considered late and shall not be opened or considered.

If it is determined that the proposal was delayed in the mail, in the communications system specified for transmission of proposal, or for cause beyond the control due to no fault or negligence of the offeror, the proposal shall be received by the procurement office.

### **7.4.3 Evaluation and Negotiation**

#### **7.4.3.1 Evaluation Factors**

Selection factors reflecting key areas of importance shall be identified in the solicitation document and must be considered in the selection decision.

#### **7.4.3.2 Proposal Evaluation**

Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the proposed contract successfully. Competitive proposals are evaluated and their relative qualities assessed solely on the factors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.

#### **7.4.3.3 Competitive Range**

The Contracting Officer shall establish a competitive range composed of the highly rated proposals. Discussions will be conducted only with offerors whose proposals are in the competitive range.

#### **7.4.3.4 Pre-Negotiation Objectives**

Pre-negotiation objectives shall be established prior to entering into negotiations with an offeror.

#### **7.4.3.5 Exchanges with Offerors after Receipt of Proposals**

Exchanges with offerors after receipt of proposals are allowed. These may take the form of clarifications, communications, or discussions. Exchanges shall take place as part of the formal selection process and only with the Authority representative who is specifically identified to receive or transmit information.

#### **7.4.3.6 Price Negotiation**

All terms identified in the pre-negotiation objectives are subject to negotiation. If price is being negotiated, price negotiations shall be conducted to ensure that the final price is fair and reasonable.



#### **7.4.4 Proposal Revisions**

At the conclusion of discussions, all revisions to the proposal shall be submitted in writing. The final proposal shall be identified as such.

#### **7.4.5 Disclosures of Mistakes before Award**

Offerors may amend their proposal for any reason during the discussion period(s). After receipt of the offeror's "final" revision, correction of a mistake will be considered only if the Contracting Officer determines it to be in the Authority's best interest. If the correction of the mistake will not be permitted, the offeror may be allowed to withdraw its proposal.

#### **7.4.6 Mistakes Disclosed After Award**

Correction of mistakes disclosed after award will not be considered, except if the mistake involves an administrative change (i.e., not affecting value, date of delivery, or requirement). A mistake disclosed after award that affects value, date of delivery, or requirement may result in cancellation of the award.

#### **7.4.7 Negotiation Memorandum**

An overview of the procurement process for a specific award shall be documented in a negotiation memorandum. The memorandum shall include key milestones, a brief explanation of exception occurrences, the negotiation strategy, the results of the negotiation, and a summary of the selection.

### **7.5 Contract Award**

#### **7.5.1 Basis of Contract Award**

Award of a contract shall be made to the responsible offeror with whom negotiations have been successfully completed and whose proposal is determined to be the most advantageous for and in the best interest of the Authority.

#### **7.5.2 Notifications and Debriefing**

After contract award, the unsuccessful offerors shall be notified in writing and provided a debriefing upon written request made within five (5) calendar days from the date the notification was received. Information provided in the debriefing will consist of the following:

1. The source selection procedures
2. The weaknesses and deficiencies in the proposal of the offeror being debriefed
3. The overall evaluated technical rating and price of the successful offeror and the offeror being debriefed.
4. The rationale for the award

The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors.



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## CHAPTER 8. Multistep Procurements

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## **8.1 Policy**

The multistep procurement process is used to obtain the benefit of sealed bidding by awarding a contract to the lowest responsive, responsible bidder, and the benefit of the competitive proposal that allows discussion with the proposers to clarify and improve the proposals. A two-step sealed bid, the advisory multistep, or a combination of other methods may be used. These procurements allow, in the first phase, for the submission of unpriced technical proposals or other information. In the second phase, depending on the type of multistep procurement, firms submit sealed bids or competitive proposals.

## **8.2 Two-Step Sealed Bidding**

### **8.2.1 *Conditions for Use of Two-Step Sealed Bidding***

Two-step sealed bidding may be used in preference to negotiation when all of the following conditions are present:

1. Available specifications or purchase descriptions are not sufficiently articulated for sealed bid and the process would benefit from discussion of the technical aspects of the requirement to ensure mutual understanding between each source and the Authority.
2. Definite criteria exist for evaluating technical proposals.
3. More than one technically qualified source is expected to be available.
4. Sufficient time will be available for use of the two-step method.
5. A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

### **8.2.2 *Solicitation Step One***

This step shall consist of a request for technical proposals and evaluation of the technical proposals.

### **8.2.3 *Solicitation Step Two***

This step shall consist of a request for sealed bids by offerors that submitted acceptable technical proposals.

### **8.2.4 *Contract Award***

Contract award shall be made to the responsible offeror that submitted the lowest responsive bid.

## **8.3 Advisory Multistep**

### **8.3.1 *Conditions for Use of the Advisory Multistep Method***

The conditions for use of the advisory multistep are the same as those for the use of competitive proposals with the noted exception that offerors are invited to submit information about their qualifications to fulfill the Authority's requirements and are advised whether or not they are considered to be viable competitors in the follow-on procurement.

### **8.3.2 *Solicitation Step One***

In step one, a notice is published that provides a general description of the scope or purpose of the procurement and invites potential offerors to submit information that allows the Authority to advise the



offerors about their potential to be viable competitors. The notice shall identify the information that must be submitted and the criteria that will be used in making the initial evaluation.

### **8.3.3**      *Receipt and Evaluation of Step-One Information*

All responses received in response to step one are evaluated in accordance with the criteria stated in the notice, and each respondent is advised in writing either that it will be invited to participate in the resultant procurement or, based on the information submitted, that it is unlikely to be a viable competitor. Respondents considered not to be viable competitors are provided the general basis for that opinion. Despite the advice provided to respondents considered not to be viable competitors, these respondents may participate in the resultant acquisition.

### **8.3.4**      *Solicitation Step Two*

In step two, a competitive RFP is issued in accordance with the chapter on Competitive Proposal.

### **8.3.5**      *Receipt and Evaluation of Step-Two Proposals*

Step-two proposals are received and evaluated in accordance with the chapter on Competitive Proposal.

#### **8.3.5.1**      *Technical and Price Proposals*

Technical and price proposals are submitted at the same time in separate packages; price evaluation may be limited to the offerors that submitted technically acceptable proposals.

## **8.4**      **Contract Award**

Contract award shall be made to the responsible offeror with whom negotiations have been successfully completed and whose proposal is determined to be the most advantageous for and in the best interest of the Authority.



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## CHAPTER 9. Simplified Acquisitions

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## **9.1 Policy**

The procurement process for simplified acquisition is streamlined and reduces the administrative time leading to award (simplified acquisition process). As in sealed bids and competitive negotiations, competition is still essential and is the basis for ensuring value. The small purchase method may be used for purchases under the large procurement threshold (\$100,000). The small purchase method may also be used for purchases of commercial items, where price and terms are largely set by the marketplace, and for expedited purchases, where the cost of the delay outweighs any potential benefits from full and open competition.

Requests for quotes may be limited to certified business enterprises when there are at least two such businesses capable of providing the goods, services, or construction and that can satisfy all applicable requirements and conditions. The Contracting Officer may establish a period of less than 30 days for receipt of quotes.

## **9.2 Small Purchases**

### ***9.2.1 Use of Small Purchases Procedures (Less Than \$100,000)***

Small purchase procedures may be used to procure goods, services, or construction that have an anticipated dollar value not exceeding \$100,000. When these procedures are used, price or rate quotations must be obtained from at least two qualified sources.

### ***9.2.2 Purchase Orders***

Purchase orders shall include pricing, a statement of work, delivery and acceptance information, and any clauses and conditions necessary for the particular procurement.

### ***9.2.3 Revisions of Purchase Orders***

Purchase orders may be modified in writing. Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number. A contractor's written acceptance of a purchase order modification may be required if it is determined to be necessary to ensure the contractor's compliance with the purchase order as revised.

### ***9.2.4 Termination and Cancellation of Purchase Orders***

Purchase orders may be canceled or terminated prior to the contractor beginning performance; however, if a contractor has begun performance, a purchase order should not be cancelled or terminated unless the cancellation is determined to be in the Authority's best interest.

## **9.3 Commercial Items**

### ***9.3.1 Use of Commercial Item Procedures***

Commercial items are procured using streamlined procedures. Small purchase procedures may be used and the extent of the documentation will be appropriate to the nature of the procurement and extent of competition among the suppliers of the required commercial items. The procedures shall be streamlined to accommodate markets where there is little variation in specifications or terms. Where multiple sources are available, enough prices shall be evaluated to provide reasonable assurance that the terms are fair and reasonable relative to the entire market. Sealed bids or competitive proposals may be used if appropriate for the particular procurement.



### **9.3.2 Commercial Items**

Commercial Items are items sold to the general public in the course of normal business operations that are competitively priced and based on established catalogue or market prices. Commercial products may include corresponding services for the installation, repair or maintenance associated with the item

### **9.3.3 Commercial Item Sources**

Market research shall be conducted to determine whether commercial items are available that would meet the Authority's requirements, and if so to determine the appropriate procedures and number of offers.

### **9.3.4 Commercial Item Offer**

Established operating procedures will be used for the solicitation, evaluation, and award of commercial items. Offerors may be allowed to propose more than one product that will meet the Authority's need in response to solicitations for commercial items. In such cases, each product will be evaluated as a separate offer.

## **9.4 Expedited Purchases**

### **9.4.1 Use of Expedited Purchase Procedures**

The small purchase procurement method may be used for large purchases when other procurement methods do not meet the Authority's time requirements. The use of the small purchase procurement method for large purchases must be justified in writing.

### **9.4.2 Determination of Reasonable Price and Award**

The price for purchases made under any of the procedures in the simplified acquisition method must be determined to be fair and reasonable. Purchase pricing resulting from competition is considered to be fair and reasonable. For some procurements, it may be necessary to establish price reasonableness by evaluating and/or analyzing the price.



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## **CHAPTER 10. Limited Competition Purchases**

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## **10.1 Policy**

Limited competition may be used when there are only a limited number of sources that can fulfill the Authority's need. The number of potential offerors competing for the procurement should be as large as practicable. The procurement shall be conducted to maximize the available competition in a manner that is practical and most advantageous for the Authority.

## **10.2 Limited Competition Process**

### **10.2.1 Use of Limited Competition Purchases**

Limited competition may be used when it is established that the Authority's need can only be met by certain companies and full and open competition will not increase the number of potential offerors. For example, limited competition may be used for proprietary software and restricted licenses where the intellectual property owner has authorized a limited number of firms to resell the software or licenses.

### **10.2.2 Determinations and Findings**

A justification is developed to support the limitation of competition. The justification shall contain sufficient facts and rationale to justify the use of limited competition. As a minimum, each justification shall include sufficient information in support of the restriction.

### **10.2.3 Limited Competition Purchases Procedures**

Limited competition purchases may be processed by using sealed bidding or the competitive proposal method.



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## CHAPTER 11. Other Agency Purchases

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## **11.1 Policy**

Other public bodies' contractual agreements (as appropriate) may be used to simplify the acquisition process for obtaining goods or services.

Joint procurements are competitively awarded contracts with other agencies or governmental users and may be used when other agencies have needs similar to the Authority's and at least one other agency plans to jointly acquire the goods or services to effect a more efficient purchase.

Rider procurements involve contracts or portions of contracts from a purchasing agency other than the Authority and may be used to streamline the process and improve the economic purchase when another agency has awarded a contract and provided for the Authority's participation in the procurement.

GSA schedules may be used for purchases only when it is anticipated that the value obtained from the schedule purchase would be greater than the value obtained from a separate procurement. When the GSA schedules are used, competing offers shall be solicited if the schedules include more than one qualified supplier.

## **11.2 Joint Procurements**

### ***11.2.1 Use of Joint Procurements***

Joint procurements may be planned in advance with other agencies or governmental users, and competitively awarded contracts may be drawn upon by several governmental entities to meet their needs. Joint procurements may be used when agencies consider that a joint procurement will result in obtaining the best price for all of the parties to the procurement.

### ***11.2.2 Joint Procurement Procedures***

Joint procurements may be structured using "partnership vehicles." Either one of the entities will conduct the procurement and enter into an agreement in part for the benefit of the other entities, or a multi-party, joint venture, or consortium procurement may be conducted if more than one purchasing entity is to be party to the original contract with the supplier(s).

## **11.3 Rider Procurements**

### ***11.3.1 Use of Rider Procurements***

Rider procurements involve contracts or portions of contracts from the original purchasing agency to the Authority, and may be used to expedite the procurement process.

### ***11.3.2 Rider Procurement Procedures***

Rider procurements do not always offer substantial price discounts, because the offeror cannot be certain regarding the Authority's purchases at the time of its bid/proposal submission to the original contracting agency. Therefore, the Contracting Officer shall make a determination whether the rider procurement is advantageous for the Authority before using this method.

## **11.4 General Services Administration Schedule Purchases**

### ***11.4.1 General Services Administration Schedule Purchases***

The Federal Supply Schedule (GSA) program may be used to acquire goods and services. This method provides a simplified process and volume discounts. When purchases are made from the schedule, the



Contracting Officer shall obtain three competitive quotes from firms that have contracted with GSA to supply the specific item or service. The Contracting Officer may waive the requirement to obtain three quotes when the GSA schedule does not allow for further competition, or when it is determined that time is of the essence and the need to obtain the goods or services outweighs the advantages of further competition.

#### ***11.4.2 Use of General Services Administration Schedule***

Orders may be placed under Federal Supply Schedule contracts using the GSA Supply Schedule. GSA Schedule Purchases shall be made only if the Contracting Officer makes a determination that the use of the GSA schedule is in the public's and the Authority's best interest.

#### ***11.4.3 General Services Administration Schedule Procedures***

Orders placed under a Federal Supply Schedule contract are to be placed as indicated on each individual supply schedule.



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## CHAPTER 12. Micro-Purchases

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## **12.1 Policy**

Effective October 2, 2014, the micro-purchase method may be used for purchases at or under the threshold of \$25,000 without soliciting competitive quotations.

## **12.2 Micro-Purchase Procedures**

Micro-purchases may require applicable provisions or clauses including all requisite billing information. However, the prices paid for such purchases must be fair and reasonable. To the extent practicable, micro-purchases shall be equitably distributed among qualified suppliers.



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## CHAPTER 13. Sole Source

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### **13.1 Policy**

Sole source procurements may be used only when competitive procurement methods are not appropriate, such as when goods, services, including construction are available only from one vendor or contractor. The procurement record for a sole source procurement must include the appropriate approval in support of the action to forego the competitive process.

### **13.2 Use of Sole Source**

Goods, services, including construction may be purchased without competition only if it determined that only one vendor or contractor, or product can satisfy the Authority's requirements, and no other source will meet the Authority's need. In addition, the following procurements may be made without competition:

1. Specific replacement parts or components for equipment where there is no alternative supplier or where the use of an alternative would void a warranty.
2. Equipment upgrade and repair, repair services, or parts unavailable from any other source except the original equipment manufacturer or its designated service representative.
3. Upgrade to existing software, available only from the producer of the software who sells only on a direct basis and where alternatives to the proprietary solution are not feasible.
4. When there is a need to standardize equipment or to facilitate the interoperability of equipment or systems which is greater in value than costs that could be recovered through competition and the maintenance of alternative sources of supply.
5. When substantial cost duplication in selecting an alternative source is not expected to be recovered through competition.
6. Utility services, when available from only one source.
7. Intellectual property rights that are owned or controlled by one source and made available through that source; these rights would include patents, copyrights, licenses, secret processes, material monopolies or other established rights that affect distribution of goods and services.

Any of the procurement methods authorized elsewhere in this manual for small or large purchases may be used.

### **13.3 Justifications**

Negotiations for a sole source contract or purchase order award may commence without providing for full and open competition only after the Contracting Officer justifies the use of such actions in writing, certifies the accuracy and completeness of the justification, and obtains any required approvals. A justification must contain sufficient facts and rationale to justify the use of the sole source method. The program/project office is responsible for preparing the findings on which the justification for sole source procurement is based.

### **13.4 Sole Source for Small Purchases**

A simplified procedure may be used for sole source procurements where the estimated value is below the large purchase threshold unless the Contracting Officer determines that another method, such as noncompetitive negotiation for large purchases as described hereinafter, will achieve better value. A quotation or price offer shall be obtained and a purchase order will be issued. If delivery cannot be obtained according to the original terms of the purchase order, the purchase order may be modified in writing. Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number. A contractor's written acceptance of a purchase order modification may



be required if it is determined to be necessary to ensure the contractor's compliance with the purchase order as revised.

### **13.5 Sole Source for Large Purchases**

Noncompetitive negotiation shall be used for sole source procurements where the estimated value is greater than the large purchase threshold unless the contracting Officer determines that another method, such as a simplified procedure, will achieve better value. An acquisition plan including an independent cost estimate shall be prepared for sole source purchases where the estimated value is greater than the large purchase threshold; the simplicity or complexity of the plan shall be appropriate to the specific procurement. Noncompetitive negotiation includes a Request for Proposal (RFP), the submission of the proposal to the Authority in response to RFP, and evaluation of the proposal. At the conclusion of discussions, all price and other revisions to the proposal, if any shall be submitted in writing.

### **13.6 Determination of Price Reasonableness**

Before award of any sole source procurement, the proposed price must be determined to be fair and reasonable using the method most appropriate to the procurement.



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## **CHAPTER 14. Emergency Procurements**

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## **14.1 Policy**

Reasonable steps shall be taken to avoid using non-competitive emergency procurement methods.

An emergency situation occurs when the failure to acquire the goods, services, or construction in a timely manner would seriously threaten any of the following: (1) the health or safety of any person; (2) the preservation or protection of property; (3) the continuation of necessary Authority functions; or (4) the Authority's compliance with legal requirements. The General Manager or designee may approve in writing a procurement on an emergency basis if the procurement is essential to prevent or avoid an imminent emergency or to respond to, mitigate, or resolve an existing emergency.

## **14.2 Use of Emergency Procurements**

Any of the procurement methods authorized elsewhere in this manual may be used for emergency procurements. Where time permits, negotiations will be conducted prior to performing the work. If necessary, the Contracting Officer may give a contractor a verbal authorization to proceed; however, a written contract shall be executed in a reasonable timeframe thereafter.

The requesting department is responsible for the documentation in support of an emergency procurement action.

## **14.3 Approval of Emergency Procurement Method**

The General Manager or designee must approve in writing, as practicable, a non-competitive procurement on an emergency basis.



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## CHAPTER 15. Categorical Exemptions

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## 15.1 Policy

Goods or services determined to be categorically exempt may be purchased without competition.

## 15.2 Use of Categorical Exemptions

The use of any categorical exemption will be at a fair and reasonable price and approved in writing by the Contracting Officer. The below goods or services are categorically exempt and may be purchased without competition:

1. Purchase, rent, or lease of land or other interest in real property
2. Memberships, films, manuscripts, publications, and educational services
3. Personal property sold at an auction by a licensed auctioneer
4. Personal property or services provided by another public entity, agency, or authority
5. Legal services
6. Research programs
7. Advertisements in newspapers or other publications
8. Intergovernmental agreements and cooperative agreements with other institutions where the primary purpose is not the purchase of goods, services, or construction services
9. Travel services
10. The following services provided by the Metropolitan Washington Council of Governments:
  - (1) Services and equipment related to pollution control measures and water quality management required by the Blue Plains Intermunicipal Agreement;
  - (2) Studies, including modeling and water sampling for the purpose of validating assumptions on the effect of pollutants discharged into the Potomac River and its tributaries by wastewater treatment facilities; and
  - (3) Specialized security equipment for detection of chemical, biological and radiological contaminants in the waterways.

## 15.3 Sources for Exempt Goods or Services

Market research appropriate to the circumstances of the procurement will be conducted to determine the availability and number of sources for categorically exempt goods or services.

## 15.4 Procurement Methods for Categorical Exemptions

Categorically exempt goods or services are not subject to the competitive procurement requirements of Section 5331 of the Authority's procurement regulations and will be procured using procedures appropriate for the particular procurement. Legal services, research programs, and travel services may be procured using competitive procurement methods when determined to be in the Authority's best interest.

### 15.4.1 Categorical Exemption of Small Purchases

A simplified procedure shall be used for procurements exempt under this chapter where the estimated value is below the large purchase threshold unless the Contracting Officer determines that another method, such as noncompetitive negotiation, will achieve better value. A quotation or price offer shall be obtained and a purchase order will be issued.



#### **15.4.2 Categorical Exemption of Large Purchases**

An acquisition plan including an independent cost estimate shall be prepared for categorically exempt purchases where the estimated value is greater than the large purchase threshold; the simplicity or complexity of the plan shall be appropriate to the specific procurement. Noncompetitive negotiation shall be used for procurements exempt under this Chapter where the estimated value is greater than the large purchase threshold unless the Contracting Officer determines that another method, such as a simplified or limited competition procedure, will achieve better value. Noncompetitive negotiation includes a Request for Proposal (RFP), the submission of the proposal to the Authority in response to the RFP, and evaluation of the proposal. The strengths, deficiencies, significant weaknesses, and risks relative to the Authority's needs or the proposer's potential shall be documented in the contract file supporting proposal evaluation. At the conclusion of discussions, all price and other revisions to the proposal, if any, shall be submitted by the proposer in writing.

#### **15.4.3 Determination of Price Reasonableness**

Before award of any categorically exempt procurement, the proposed price must be determined to be fair and reasonable using the method most appropriate to the procurement.



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## CHAPTER 16. Unsolicited Proposals

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## **16.1 Policy**

The submission of new and innovative ideas is encouraged. Unsolicited proposals will be reviewed and the feasibility of their implementation will be considered.

## **16.2 Receipt and Acknowledgement**

Unsolicited proposals shall be marked with the date and time of receipt and shall be transmitted to the General Manager. The General Manager will designate an Authority official to review the unsolicited proposal and brief the General Manager on the objectives of the unsolicited proposal. The General Manager will decide whether or not to proceed with a formal evaluation. If the General Manager decides to proceed with a formal evaluation, the receipt of the unsolicited proposal will be acknowledged in writing. The proposer will be informed of the Authority's Regulations, and procedures regarding unsolicited proposals. Proposals shall be safeguarded from unauthorized disclosure from the time of receipt, throughout the review and evaluation process, to the final decision to accept or reject the unsolicited proposal.

## **16.3 Requirements for Unsolicited Proposals**

An unsolicited proposal is one which:

1. Is innovative or unique
2. Is independently originated and developed by the offeror
3. Is prepared without the Authority's supervision
4. Includes sufficient detail to permit a determination that the proposed product, services, or work could benefit the Authority's mission or allow it to meet its responsibilities
5. Is not an advance proposal for a known or anticipated Authority requirement that can be procured by competitive methods

Unsolicited proposals should contain sufficient information to permit consideration in an objective and timely manner. Unsolicited proposals must contain at a minimum:

1. Basic information about the entity submitting the unsolicited proposal (e.g., name, address, and points of contact)
2. Technical information stating the objectives of the effort or activity, method of approach, extent of effort to be employed, nature and extent of the anticipated results, and manner in which the work will help to support accomplishment of the Authority's mission
3. Supporting information including proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation, preferred contract type, proposed period of performance, and proposal validity period

## **16.4 Exchanges with Proposer**

Exchanges with the proposer after receipt of an unsolicited proposal are allowed. These may take the form of clarifications, communications, or discussions.

## **16.5 Revised Proposals**

An unsolicited proposal may be revised only if it has been determined that the unsolicited proposal meets all the requirements of the "Requirements for Unsolicited Proposals" above.



## **16.6 Competitive Proposals**

An unsolicited proposal may be the basis of a competitive procurement if deemed by the Contracting Officer to be in the Authority's best interest. Such determination shall be in writing and approved by the General Manager.

## **16.7 Confidential Information**

The Authority shall not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other firm unless the proposer is notified of the intended use. However, this prohibition does not preclude using any data, concept, or idea in the proposal that also is available from another source without restriction.

## **16.8 Negotiation Memorandum**

An overview of the procurement process for an unsolicited proposal that meets the requirements of the Requirements for Unsolicited Proposals above shall be documented in a negotiation memorandum. The memorandum shall include key milestones, a brief explanation of exception occurrences, the negotiation strategy, the results of the negotiation, and a summary of the rejection/acceptance recommendation.

## **16.9 Rejection of Unsolicited Proposal**

An unsolicited proposal that does not meet the requirements of the "Requirements for Unsolicited Proposals" above shall be rejected without further review. An unsolicited proposal that meets the requirements of the "Requirements for Unsolicited Proposals" but that does not result in an acceptance recommendation shall be rejected. The proposer shall be notified in writing of the reasons for rejection and of the proposed disposition of the unsolicited proposal.

## **16.10 Recommendation to Accept Unsolicited Proposal**

The Contracting Officer may recommend acceptance of an unsolicited proposal to the General Manager, who may accept it or reject it.

## **16.11 Award of Contract**

Award of a contract as a result of an unsolicited proposal shall comply with the provisions of the chapter on Sole Source. Any of the contract types in the chapter on Contract Types may be used when accepting an unsolicited proposal for award.



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## CHAPTER 17. Contract Types

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## **17.1 Policy**

Fixed-price, cost-reimbursement, incentive, or any other type of contracts or combination of types of contracts may be used except cost-plus-a-percentage-of-cost contracts, which are prohibited.

## **17.2 Selecting Contract Types**

Contract types shall be selected according to the degree and timing of the responsibility to be assumed by the contractor for the costs of performance and according to the amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.

Contracts resulting from sealed bidding shall be firm-fixed-price contracts or fixed-price contracts with economic price adjustment. Firm-fixed-price contracts also include fixed-rate and other types of unit-price contracts. Contracts resulting from other than sealed bidding may be of any type or combination of types that will promote the Authority's best interest.

## **17.3 Fixed Price Contract Types**

### **17.3.1 *Fixed-Price Contracts***

Firm-fixed-price contracts shall be used for procuring goods, services, or construction on the basis of reasonably definite functional or detailed specifications and when the Contracting Officer can establish fair and reasonable prices at the outset.

### **17.3.2 *Fixed-Price Contracts with Economic Price Adjustment***

Fixed-price contracts with economic price adjustment may be used to avoid contingencies in the contract when the stability of market and/or labor conditions are uncertain during an extended period of contract performance. The Contracting Officer must determine that the use of this contract type is necessary to protect the contractor and the Authority against significant fluctuations in labor or material costs.

### **17.3.3 *Fixed-Price Contracts with Prospective Price Redetermination***

Fixed-price contracts with prospective price redetermination may be used only when the conditions for use of a fixed-price contract are not present and a fixed-price incentive contract would not be more appropriate.

### **17.3.4 *Fixed-Ceiling-Price Contracts with Retroactive Price Redetermination***

Fixed-ceiling-price contracts with retroactive price redetermination may be used only for research and development estimated at \$100,000 or less and when it is established at the outset that a fair and reasonable firm-fixed price cannot be negotiated and that the amount involved and the short performance period make the use of any other fixed-price contract type impractical.

### **17.3.5 *Firm-Fixed-Price, Level-of-Effort Term Contracts***

Firm-fixed-price, level-of-effort term contracts may be used only when the work required cannot otherwise be clearly defined, the required level of effort is identified and agreed upon in advance, and there is reasonable assurance that the intended result cannot be achieved by expending less than the stipulated effort.



### **17.3.6 Fixed-Price Incentive Contracts**

Fixed-price incentive contracts may be used when a firm-fixed-price contract is not suitable; the nature of the goods, services, or construction being procured and other circumstances of the procurement are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance; and the contract includes incentives on technical performance and/or delivery and the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work.

## **17.4 Cost Reimbursement**

### **17.4.1 Cost-Reimbursement Contracts**

Cost-reimbursement contracts may be used only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. These type of contracts require that the contractor's accounting system must be adequate for determining costs applicable to the contract. Only allowable and allocable costs shall be considered in reimbursing the contractor for work performed.

### **17.4.2 Cost-Plus-Fixed-Fee Contracts**

Cost-plus-fixed-fee contracts may be used for the performance of research or preliminary exploration or study and for other requirements where the level of effort required is unknown, or for development and testing when a cost-plus-incentive-fee contract is not practical. Cost-plus-fixed-fee contracts may be either completion (where the contractor is working toward a specific scope) or term (where the contractor is working within a specific duration).

### **17.4.3 Cost-Reimbursement Incentive Contracts**

Cost-reimbursement incentive contracts shall provide for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. Cost-reimbursement incentive contracts shall be either cost-plus incentive fee or cost-plus award fee.

## **17.5 Time-and-Materials and Labor-Hour Contracts**

### **17.5.1 Time-and-Materials Contracts**

Time-and-materials contracts provide for acquiring goods or services on the basis of direct labor hours at specified fixed hourly rates, which include wages, overhead, general and administrative expenses, and profit, and actual cost for materials.

Time-and-materials contracts may be advantageous when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

Time-and-materials contracts shall contain a ceiling price that the contractor exceeds at its own risk. Appropriate surveillance of contractor performance shall be conducted to give reasonable assurance that efficient methods and effective cost controls are used in the absence of positive profit incentive to the contractor for cost control or labor efficiency.

### **17.5.2 Labor-Hour Contracts**

Labor-hour contracts are a variation of the time-and-materials contracts, differing only in that materials are not supplied by the contractor.



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## **CHAPTER 18. Indefinite Delivery Indefinite Quantity**

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## **18.1 Policy**

Indefinite-delivery, indefinite-quantity contracts may be used when the exact times or the exact quantities of future deliveries are not known at the time of contract award.

## **18.2 Definite Quantity**

Definite-quantity contracts may be used when it can be determined in advance that a definite quantity of goods or services will be required during the contract period and the goods or services are regularly available or will be available after a short lead-time.

## **18.3 Indefinite Quantity**

Indefinite-quantity contracts may be used when the precise quantities of goods or services that will be required during the contract period cannot be predetermined above a specified minimum.

## **18.4 Basic Ordering Agreement**

Basic ordering agreements may be used to expedite procurement of uncertain requirements for goods or services when specific items, quantities, and prices are not known at the time the basic ordering agreement is executed but a substantial number of requirements for the type of goods or services covered by the basic ordering agreement are anticipated to be purchased from the contractor or contractors.

Basic ordering agreements are not contracts and do not state or imply any agreement to place future contracts or orders with the contractor.

## **18.5 Blanket Purchase Agreements**

Blanket purchase agreements may be established when there is a wide variety of items in a broad class of goods or services that are generally purchased but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

## **18.6 Requirements Contracts**

Requirements contracts may be used for procuring any goods or services when recurring requirements are anticipated but the precise quantities of goods or services that will be needed during a definite period cannot be predetermined.



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## CHAPTER 19. Special Contracting Methods

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## **19.1 Policy**

Special contracting methods such as options, multi-year and multiple-year contracts, and letter contracts may be used when necessary and appropriate.

## **19.2 Options**

Options are a unilateral right in a contract through which, for a specified time, the Authority may elect to procure additional goods, services, or construction called for in the contract or to extend the term of the contract. Options may be awarded for individual elements of work that are separately priced, based on availability of funds, or annual requirements for recurring needs.

Options may be exercised at the time of, or after contract award. The method for evaluating and exercising the option is specified in the solicitation. Options are exercised in writing.

Options for additional years beyond the initial year (multiple-year contracts) should not be specified if the requirement is reasonably certain; instead, a multi-year contract shall be used.

## **19.3 Multi-year Contracts**

Multiyear contracting is a special contracting method to procure known requirements for goods or services in quantities at various periods during the period of performance for up to 5 years. Contracts under this method are awarded for the full performance, subject to the appropriation of funds.

Multi-year contracts may be used when the need for the goods or services is reasonably firm and continuing over the period of the contract and it will serve the Authority's best interest by encouraging full and open competition or promoting economy in administration, performance, and operation of Authority programs.

All program years except the first are subject to cancellation. Funding for subsequent program years need not be available at the time of contract award. Funds initially obligated for multiyear contracts must be sufficient to cover the first program year and any potential cancellation and/or termination costs.

## **19.4 Multiple-year Contracts**

Multiple-year contracting is a special contracting method, similar to multi-year contracting, except that they require the establishment and exercise of options for each program year after the first. For the exercise of option, funding must be in-place and a determination of the need for the continuation of the contract.

## **19.5 Letter Contracts**

Letter contracts may be used in situations where offers have been evaluated and a selection decision has been made, but there is a need to proceed with the work or portions of the work pending the preparation and execution of the contract documents.

Letter contracts must stay within the authorized levels of authority. When the definitive contract is executed, it will be modified to include as the first modification the work that was authorized as a "letter contract".

Letter contracts may be used only after it is determined in writing by the Contracting Officer that its use is necessary to protect the Authority's interests



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## **21.1 Policy**

All architectural and engineering (A/E) services shall be publicly announced and procured based on the demonstrated competence and qualifications of prospective contractors to perform the services at fair and reasonable prices.

## **21.2 Selection of Firms for Architect-Engineer Contracts**

Qualification statements and/or qualification statements plus technical proposals by A/E firms will be submitted in response to the public announcement for specific architectural or engineering services. If requested by DC Water, qualification statements and technical proposals shall include Standard Form 330 Part II (OMP form). A/E firms that submit qualification statements and technical proposals are eligible for evaluation and recommendation to the Contracting Officer for performance of required A/E services.

## **21.3 Evaluation**

A/E firms shall be evaluated by a panel consisting of persons recommended by the Director of Engineering and approved by the Contracting Officer. Panel members collectively shall have experience in architecture, engineering, construction, and procurement. A/E firms shall be evaluated based on criteria to include but not limited to the following:

1. Professional qualifications necessary for satisfactory performance of the required services
2. Specialized experience and technical competence of the firm and its personnel (including a joint venture, association, or professional subcontractor), considering the type of services required and the complexity of the project
3. Capacity to perform the work (including any specialized services) within the time limitations, considering the firm's current and planned workload
4. Past performance on contracts with the Authority, the District of Columbia, other governmental entities, and private industry considering cost control effectiveness, quality of work, and compliance with performance schedules
5. Compliance with applicable Business Development Plan requirements

## **21.4 Negotiations**

Negotiations will be conducted with at least three (3) firms that make the short list as a result of the evaluation and are determined to be the most highly qualified to perform the required services. Negotiations may be conducted with two firms if there are no additional highly qualified firms. Negotiations shall commence with the highest ranked firm. A fee proposal, and technical proposal where applicable, shall be requested from the firm. If a mutually satisfactory contract cannot be negotiated, negotiations will be concluded, and the Contracting Officer shall then initiate negotiations with the next highest ranked firm on the short list. This procedure shall be continued until a mutually satisfactory contract has been negotiated. If negotiations fail with all short listed firms, the Contracting Officer shall refer the matter to the General Manager who may direct that additional firms be recommended in accordance with the section above on Evaluation.

## **21.5 Basis of Award**

If negotiations are successful, the basis of the award will be to the most qualified offeror who offers a fair and reasonable price.



### **21.6 Release of Information on Firm Selection**

The Contracting Officer may release information identifying the A/E firm with which a contract has been negotiated.

### **21.7 Simplified Procedures**

For procurements less than the large purchase threshold, background and qualification data on as many prospective contractors from the current data files, as deemed feasible under the circumstances shall be reviewed and the contractor found best qualified to perform the services being procured shall be selected. The Contracting Officer may commence negotiations with the most highly qualified firm.

### **21.8 Estimate**

An independent estimate of the A/E services shall be prepared and furnished to the Contracting Officer, or the Contracting Officer's Representative where applicable, before commencing negotiations for each proposed contract or contract modification. The estimate shall be prepared on the basis of a detailed analysis of the required work as though the Authority were submitting a proposal.

### **21.9 Architect-Engineer Liability (RESERVED)**

### **21.10 Additional A-E Contract Guidelines (RESERVED)**



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## CHAPTER 22. Alternate Project Delivery

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## 22.1 Policy

An alternative to the design-bid-build project delivery method should be considered when

1. A cost savings is anticipated from an alternative method
2. Project delivery time warrants the use of the alternative method
3. Unique attributes of the project warrant having a contractor introduced to the project team before the project is fully designed

The contractor's technical knowledge of design and construction methods and the increased integration of design and construction will, in some circumstances, yield cost savings and faster project completion. In addition, the Authority's risk for design defects can be mitigated under a design-build delivery system.

In other situations, the factors that may warrant use of the traditional design-bid-build method include:

1. Responsiveness of the traditional design process to the Authority's needs
2. The design and construction quality advantages of an arms-length relationship between designer and builder
3. The availability of price competition in the sealed bid process
4. The increase in opportunities for a larger number of designers and builders

The Brooks-Act is not applicable in selecting the source for alternate project delivery methods.

## 22.2 Selecting Project Delivery Method

Alternatives to the Design-Bid-Build project delivery method should be used when the Contracting Officer, in consultation with the customer department, determines that the conditions make an alternative project delivery method most advantageous for the Authority. The determination may include the policy considerations listed in the preceding section together with consideration of the extent to which the following apply:

1. Project definition complete
2. Environmental clearances secured
3. Design criteria complete
4. Construction standards complete
5. Level of design adequate to support a firm, fixed price and to assure users of adequate functionality
6. Risk analysis adequate to reduce to an acceptable level the risk premium in a firm, fixed price
7. Project performance criteria complete
8. Funding in place
9. Adequate competition among possible design/build contractors

Project delivery methods that may be considered for use are described below. Other methods or variations of methods that have been developed and used in the industry may also be considered by the Contracting Officer:



1. Agency construction management – Traditional design-bid-build where a construction management firm acts as an agent for the Authority in selecting and contracting with the designer and builder.
2. Design-build – Award of a single contract with a firm, fixed price to complete the design and construction of a facility.
3. Construction-manager-at-risk – Where the construction contractor is retained to provide pre-construction services during the design phase, and thereafter provides a guaranteed maximum price for the construction of the project.
4. Design-build-operate-transfer – The design-build contractor owns or leases and operates the project upon completion, and then transfers its interest to the Authority at the completion of the contract term.
5. Design-build-operate-maintain – The Authority owns the project but the design-build contractor operates and maintains the assets upon completion for a specified term.
6. Design-build-finance-operate – The design-build contractor finances the project in whole or in part and operates it upon completion. While equity participation in the project by the private contractor/operator is possible, in infrastructure projects that do not have adequate revenue, the contractor/operator's costs, including financing, and profit are included in the contract's payment structure.
7. Outsourcing – A broad term including all alternative project delivery methods where responsibility is assigned to a private firm and focusing particularly on contracting for operations and maintenance.
8. Public/private partnerships – A broad term including project delivery methods where a private firm assumes more responsibility than in traditional project delivery.

### **22.3 Design-Build**

The Contracting Officer, the Contracting Officer's Technical Representative and the user department representative should agree that the solicitation will include enough performance specification or preliminary design information to support the design-build project delivery method. The design-build method requires a performance specification or preliminary design that makes it feasible to arrive at a final price or a guaranteed maximum price<sup>1</sup> as part of the evaluation and selection of the design-build contractor, and that reduce the project risks to a point that the design-builder's allowance for the risk (contractor's risk premium) will be acceptable. The design-builder will be responsible for completing the design and construction, subject to the Authority's approval at predefined points for compliance with project design, construction, and performance standards. The most common form of design-build is when a general contractor is in the lead, and retains a designer as a subcontractor. The design-builder could also be an integrated firm that has internal design and construction capability, a joint venture, a limited liability company, a developer or a designer-led team that subcontracts construction services. The key attribute of the design-build method is that the designer-of-record and the construction contractor have a direct contractual relationship with each other.

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<sup>1</sup> Compensation terms will depend on the project and work to be performed, but design-build objectives will be best achieved with a firm, fixed-price contract.



### **22.3.1 Market Research Preparation for RFP**

The Contracting Officer may conduct market research regarding the feasibility of and extent and quality of the supply market for a particular design-build contract. The Contracting Officer may use a request for expressions of interest (“RFI”) or any other method that does not unduly create an advantage for any potential offeror.

### **22.3.2 Request for Qualifications**

Although not required in all cases, in general a request for qualifications (“RFQ”) should be issued for a design-build project before requesting proposals from the qualified firms. The benefits of requesting qualifications before requesting proposals include:

1. Limiting the number of entities that must invest in the expense of preparing a complete proposal to those that may reasonably be expected to qualify for award.
2. Allowing the potential offerors and the Authority to focus on and resolve the principal qualifications of each team before addressing specific proposal issues.
3. Allowing the Authority to refine the RFP and its contracting strategy based on firm knowledge of the probable offerors.

Supplemental information or revised statements of qualifications may be requested before determining which firms are qualified.

### **22.3.3 Request for Proposals**

RFPs will either be publicized in the manner required for competitive solicitations or will be issued to the firms found qualified pursuant to an RFQ process. In some cases, a draft RFP may be issued to qualified proposers for comment before issuance of the final RFP. Upon receipt of proposals, the most advantageous of the initial offers may be accepted, or the Authority may hold discussions with one or more offerors and/or request revised offers.

### **22.3.4 Contract Administration**

RFPs and contracts for design-build project delivery should be particularly clear regarding Authority approval points and should provide the basis for Authority approval or disapproval. An objective of the design information specified for the design-builder and of merging the remainder of the design with the construction is to minimize the number of contract changes required. The system of cost estimation (including, as appropriate, a work breakdown structure) should support the determination of any equitable adjustments to price.

Progress payment terms and procedures for the design-build contract should be tailored to the compensation methods and work schedule in the contract.

## **22.4 Construction Manager at Risk**

In contrast to the design-build method, the construction-manager-at-risk (CM at Risk) (CMAR) project delivery method does not have the designer-of-record in privity of contract with the construction contractor. However, unlike the design-bid-build method, CMAR provides for the contractor’s participation in the design process before a firm fixed price could reasonably be established. The CMAR project delivery method includes a contract whereby the contractor provides preconstruction advisory services during the design phase of a project, which services generally relate to value engineering, conceptual estimating and scheduling, and constructability reviews. Then, based in part on those pre-construction



services, the contractor will establish a guaranteed maximum price (GMP) or other terms<sup>2</sup> for the completion of the project.

#### **22.4.1 Request for Qualifications**

As in the case of design-build project delivery method, an RFQ may be issued in advance of the solicitation of CMAR offers and a list of firms qualified to receive an RFP may be designated. Although there is the potential for additional subcontracting, evaluation of the qualifications of responders to the RFQ may include analyzing the extent to which the initially qualified proposer will directly perform the work.

#### **22.4.2 Request for Proposals**

As in the design-build method, the competitive proposal method is the procurement method generally used for the CMAR project delivery method. The criteria for evaluating proposals should be set out in the RFP and may include the approaches proposed for establishing the GMP and for subcontracting.

#### **22.4.3 Preconstruction Phase Contract Terms**

The contract may provide for compensation to the contractor during the phase prior to the establishment of a GMP. The basis for compensation will depend on the work to be performed, but may be on a cost reimbursement (e.g., cost plus fixed fee) basis.

#### **22.4.4 Subcontracts**

The Construction Manager may carry out the work through its own forces or through subcontracting. To assure a fair and reasonable price, the RFP and CMAR contract may provide for Authority oversight of subcontracting awards before establishment of a GMP.

#### **22.4.5 Guaranteed Maximum Price**

The CMAR contract will require the parties to negotiate a GMP prior to a project development milestone, percent completion, or another specific triggering event or condition. The contract may provide that if the Authority determines that a fair and reasonable GMP cannot be established, the Authority has the alternative to convert the project delivery method to design-bid-build by inviting offers for all or a portion of the remainder of the work.

#### **22.4.6 Contract Administration**

RFPs and contracts for CMAR project delivery should be particularly clear regarding Authority approval points and should provide the basis for Authority approval or disapproval of subcontract awards prior to establishment of a GMP, as well as when the GMP will be set and what happens if there is failure to reach agreement on a GMP. After establishment of a GMP, the contract should provide for Authority determination of compliance with conformance to the project design, construction, and performance standards. The system of cost estimation and actual cost reporting (including, as appropriate, a work breakdown structure) should support the determination of any equitable adjustments to price and the computation of any incentives based on GMP.

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<sup>2</sup> While the compensation terms for completion of the work will depend on the work to be performed, objectives of the CM@Risk project delivery method are best served with a GMP.



## **22.5 Other Alternative Project Delivery Methods**

The design-build delivery method can include, where appropriate, additional features such as operation and maintenance of the project, either while under the Authority's ownership or while under the ownership or leasehold control of the design/builder, and full or partial financing of the project. The features described in this section are illustrative and should not be considered exclusive.

### **22.5.1 *Design Build Operate Maintain (DBOM)***

Under this delivery model, a single entity, typically but not necessarily a consortium or joint venture, is contracted with not only to design and build the project but also to operate and maintain it for a specified length of time, after which the Authority takes over control. An expected advantage to this approach is that the design and construction of the project will be performed with a focus on its efficient and reliable operation and maintenance because the design/builder will be actually and financially responsible for those elements.

### **22.5.2 *Design Build Operate Transfer***

This delivery model is the DBOM approach with the added feature that the entire project is owned by or under lease to the DBOM contractor for a specified length of time, after which ownership or full control is restored or transferred to the Authority. While the DBOM method transfers virtually all risk involved in the design, construction and operation of the project to the contractor, in this approach even any remaining risks involved in ownership of the project are shifted to the contractor. Given the nature of the Authority's operations and property, this delivery model will rarely be appropriate.

### **22.5.3 *Design Build Finance Operate and Maintain***

This is also a DBOM delivery method, with the added feature that the contractor is expected to provide full or partial financing for the project. Financing, in this context, is not synonymous with funding. This approach may be considered when it may be advantageous to the Authority to have a contractor obtain financing, such as when the Authority is unable to access financing when the need for a project arises or when the contractor is able to access financing at an advantageous cost. This delivery method may also be considered in connection with a revenue-generating project where it could be advantageous to the Authority to permit the contractor to fund the project in whole or in part in return for granting the contractor a financial stake in the expected revenue stream.

### **22.5.4 *Procurement Methods***

The procurement methods available for design-build contracting may be used in proceeding with any of the foregoing delivery methods. Evaluation and selection criteria specific to the added features, such as experience and capability in operating and maintaining similar projects, must be determined and included in the solicitation.

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## CHAPTER 23. Contract Management and Administration

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### **23.1 Policy**

Contracts for goods and services including construction must be managed and administered to ensure that they are delivered on time, at projected cost, and meet all performance requirements. Contract management and administration is the management of contracts made with customers, vendors, partners, or employees. Contract management includes negotiating the terms and conditions in contracts and ensuring compliance with the terms and conditions, as well as documenting and agreeing to any changes that may arise during contract implementation or execution

### **23.2 Authority and Responsibilities**

Only Contracting Officers acting within the scope of their delegation authority may:

1. Award, modify, extend, terminate, and close-out contracts;
2. Exercise contract options; and
3. Settle contract claims and disputes.

Contracting Officer Representatives (COR) acting within the scope of their delegated authority may perform the following functions as they relate to construction contracts:

1. Negotiate adjustments of contract price above the level of their delegation and/or time with a contractor and recommend acceptance or rejection of negotiation results;
2. Prepare Authority estimates of contract modifications;
3. Modify the contract in accordance with the CHANGES clause within the limits of their delegation;
4. Issue orders for goods or services under the provisions of a blanket purchase agreement; a basic ordering agreement, or other contract type that provides for the placement of orders under the contract terms;
5. Perform other duties that the Chief Contracting Officer, or the Contracting Officer may assign because of special situations; and
6. Perform duties normally assigned to a COTR.

Contracting Officer's Technical Representatives (COTR) may provide such management oversight and technical direction for a particular procurement or contract as specified in writing from the Contracting Officer. A COTR may perform functions such as inspecting, testing, and accepting contract line items, monitoring the contractor's performance, controlling Authority-furnished property, reviewing and approving and/or recommending to the Contracting Officer approval/disapproval of vouchers/invoices, etc.

Contracting Officers, CORs, COTRs, and cognizant department personnel are responsible for monitoring contractor performance and ensuring contractor compliance with contractual commitments and obligations.

### **23.3 Approval of Award Actions**

Contracting Officers acting within the scope of their delegation authority may approve award actions.

Except for emergency procurements, no award action may be approved until all required reviews, clearances, determinations, justifications, and other applicable procedures have been completed, and Board of Director's approval has been obtained, where applicable.

### **23.4 Pre-Award Orientation**

A Pre-Award Orientation may be used for construction contracts, complex contracts, or for contracts where there are outstanding issues which need to be discussed and/or resolved prior to contract award. The Contracting Officer in coordination with the COTR will determine whether to hold such a conference, identify who should attend, set the agenda, and make the necessary arrangements.

### **23.5 Post-Award (Pre-Construction) Conference with Contractor**

A Post-Award Conference may be conducted for construction contracts or complex contracts before the work under contract begins. Such a meeting provides key members of both organizations (Authority and the contractor) an opportunity to establish lines of authority and communication and identify their respective duties and responsibilities. Discussions may also cover specific projects plans, specifications, safety requirements, unusual conditions, and schedules of completion. A thorough understanding of equal employment regulations, civil rights requirements, applicable labor laws as described in Section 23.28.6, and other pertinent features of the contract will promote better relations and usually improve contract performance.

A summary report of the post-award conference will be prepared with all information and guidance provided to the contractor, all items discussed, including areas requiring resolution, controversial matters, the names of the participants assigned responsibility for further actions, and the due dates for the actions.

### **23.6 Post-Award Conference with Subcontractor**

The prime contractor is normally responsible for conducting post-award conferences with subcontractors. The prime contractor may invite Authority representatives to a conference with subcontractors or the Authority may request that the prime contractor initiate a conference with subcontractors.

The Authority lacks privity of contract with subcontractors and shall not take any action that is inconsistent with or alters the subcontracts.

### **23.7 Contract Execution by the Authority**

Only a Contracting Officer is authorized to sign and enter into a contract on behalf of the Authority. The Contracting Officer's name and official title shall be typed, stamped, or printed on the contract. The Contracting Officer shall generally sign the contract after it has been signed by the contractor and shall ensure that the person signing for the contractor has authority to bind the contractor.

### **23.8 Contract Execution by Contractor**

Only an individual or individuals with the authority to bind the contractor shall sign a contract with the Authority on behalf of the contractor. The Contracting Officer may request satisfactory evidence of the signer's authority to bind the contractor.

### **23.9 Contract Distribution**

Copies of contracts or modifications shall be distributed within 10 days after execution by all parties. Copies shall be distributed simultaneously to the contractor, requiring department, and budget office.

### **23.10 Contract Files**

The Authority shall establish and maintain files containing the records of all contractual actions. The documentation in the files shall be sufficient to constitute a complete history of the procurement. Normally, each file should be kept separately; however, if appropriate, any or all of the files may be combined. Contents of contract files that contain contractor bid or proposal information or source selection information must be protected from disclosure to unauthorized persons.

The COTR shall maintain separate contract files as specified by the Contracting Officer.

### **23.11 Changes to Contract**

Contracts shall contain a clause that will give the Contracting Officer the right to make any change in the work, within the general scope of the contract, by a written order designated as a change order.

Changes resulting from direction from Authority representatives believed to be a requirement of the contract based on erroneous interpretation of the contract documents, constitute a constructive change, and require a determination of merit by the Contracting Officer in order for the directive to constitute a change order.

Claims or disputes that are subsequently recognized as meritorious may be processed as changes, based on a determination of merit issued by the Contracting Officer.

Changes that are outside the general scope of the contract will require a justification as to the reason the change should be issued to an existing contract, rather than procuring the requirement on competitive basis. The Contracting Officer does not have the contractual authority to issue such changes unilaterally, and must obtain agreement from the contractor prior to issuance. Such changes are issued as supplemental agreements to the contract.

The procurement record will include the reason and necessity for the change.

The equitable adjustment for directed changes, supplemental agreements and value engineering changes will be determined by cost analysis based on an independent Authority Estimate, and a reconciliation of the differences between the contractor's and the authority's figures of the individual work elements.

The equitable adjustment for meritorious claims for work performed will be based on the contractor's incurred costs, adjusted as appropriate for reasonableness and allowability.

If there is no agreement between the Authority and the contractor on the equitable adjustment, the Contracting Officer may determine the equitable adjustment based on the Authority's estimate, and implement the change by a unilateral contract modification. A quantum dispute will be processed as a claim.

### **23.12 Contract Modifications**

Contract modifications are issued to provide the equitable adjustment as a result of changes issued under the contract under the "changes" clause, including supplement agreements, or other clauses. The equitable adjustment may also be provided in a single step by the change order.

Contract modifications require concurrence of the equitable adjustment and acceptance by the Contracting Officer in order for the action to be finalized.

A contract modification executed by both parties cannot be reopened for adjustment unless the Contracting Officer determines the existence of a mutual mistake. Such mistakes are addressed by a separate contract modification which must refer to the modification that requires adjustment or remedy.

If the contractor does not agree with the price or time adjustment, and declines to sign the contract modification, the Contracting Officer may execute the modification on a unilateral basis. Unilateral contract modifications become claims at this point, and they are processed according the procedures for claims and disputes.

Contract modifications stemming from directed changes may be issued in two parts, if work must commence immediately, but the full or detailed scope cannot be defined at the outset.

Contract modifications are also issued to implement direction, or changes involving other clauses, such as:

1. Differing site conditions;
2. Value engineering proposals;
3. Weather delays or strikes;
4. Suspension of work;
5. Termination for convenience;
6. Termination for default; or
7. To incorporate a Letter Contract into a definitive contract.

The above actions may also be implemented by the issuance of a "change order." The procurement record for contract modifications will include as a minimum:

1. Description of the changed statement of work or specification;
2. Contractor proposal;
3. Independent authority estimate;
4. Record of negotiations; and
5. Executed contract modification.

### **23.13 Novation and Change of Name Agreements**

A novation agreement recognizes a successor in interest to an Authority contract when contractor assets are transferred. The novation agreement is executed by the contractor (transferor), the successor in interest (transferee), and the Authority, and by which the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Authority recognizes the transfer of the contract.

A change-of-name recognizes a change in the contractor's name. A change-of-name agreement is executed by the contractor and the Authority, and recognizes the legal change of name of the contractor without disturbing the original contractual rights and obligations of the parties.

### **23.14 Suspension of Work for Noncompliance**

The Authority may suspend the work, partially or completely when the contractor's performance is not satisfactory or for the contractor's failure to comply with a material requirement of the contract, such as providing proof of insurance. The contractor shall not be allowed to resume work until the condition giving rise to the suspension of work has been remedied.

The Contracting Officer, or the Contracting Officer's representative where applicable, shall notify the contractor in writing of the suspension or stoppage of work, stating the reasons for the suspension or stoppage, the corrective action required by the contractor, and a date by which the corrective action must be accomplished. Consideration should be given to stating that the contract will be terminated for default unless the corrective action is accomplished or the time allowed for the corrective action is extended.

If the contractor does not complete the required corrective action by the specified date, the Contracting Officer may extend the suspension, or terminate the contract.

The Authority shall not be liable for any costs incurred by the contractor as a result of the suspension or stoppage of work caused by the contractor's unsatisfactory performance or failure to comply with a material requirement of the contract.

#### **23.14.1 Suspension of Work for the Convenience of the Authority**

The Authority may, when in its interest, order a partial or complete suspension of work, or a work stoppage. The Contracting Officer shall notify the contractor in writing of the suspension or stoppage of work.

The notice shall include:

1. A description of the work to be suspended;
2. The period of the suspension or stoppage of work;
3. Instructions concerning the contractor's issuance of further orders for materials or services;
4. Guidance to the contractor on action to be taken on any subcontracts; and
5. Other suggestions to the contractor for minimizing costs

Prior to the expiration of the suspension, the Contracting Officer shall take appropriate action to:

1. Rescind the suspension/stop-work order;
2. Extend the period of suspension/ stop-work order; or
3. Terminate the contract for the convenience of the Authority

If a suspension/stop-work order is rescinded, or the period of the order or any extension thereof expires, and if the order or extension does not contain an automatic termination for convenience, the contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and modify the contract in writing.

If the contract is terminated, the Contracting Officer shall allow reasonable costs resulting from the stop-work order.

### **23.15 Termination for Default**

The Authority may terminate a contract, in whole or in part for default, if it is determined that the contractor has failed to meet the terms and conditions of the contract or the anticipated failure of the contractor to perform its contractual obligations.

Conditions that may be grounds for termination for default are:

1. Contractor failure to make delivery of the goods or to perform the services within the time specified in the contract;
2. Contractor failure to perform or unsatisfactory performance of any other term or condition of the contract; or
3. Contractor failure to make progress so as to endanger performance of the contract.

The contracts will be terminated in accordance with the Termination for Default clause in the contract. Contracts terminated for default may be completed by the Authority using its own workforce or by contract. In either case, the terminated contractor shall be liable for any additional costs incurred by the Authority to complete the work. If a performance bond applies, the surety will be responsible for the completion.

### **23.16 Termination for Convenience**

The Authority may terminate a contract, in whole or in part for convenience when it is in the best interest of the Authority. When the price of the undelivered balance of the contract is very small, the contract may be permitted to run to completion.

When termination for convenience is considered appropriate, a notice of termination shall be sent to the contractor specifying:

1. That the contract is being terminated for the convenience of the Authority;
2. The effective date of termination;
3. The extent of termination; and
4. Any special instructions.

Any work not terminated will continue. Contracts will be terminated for convenience in accordance with the Termination for Convenience clause in the contract.

### **23.17 Consent to Subcontract**

The Authority may require consent to subcontract if the Authority determines that an individual consent action is required to protect the Authority because of the subcontract type, complexity, value, or because the subcontract

needs special surveillance (e.g. subcontracts for critical systems, subsystems, components, or services).

The Contracting Officer shall ensure that any requirements for consent to subcontract are included in the contract.

### **23.18 Authority-Furnished Property**

Contractors are ordinarily required to furnish all property necessary to perform Authority contracts. The Authority may furnish property to its contractors when it is its best interest.

When the Authority furnishes property under a contract or the contractor acquires property and the Authority reimburses the contractor (e.g. cost-reimbursement contract) for the property, the Contracting Officer shall include a provision in solicitations and contracts that provides for control and accountability of Authority property.

### **23.19 Negotiation Meetings**

All negotiation meetings should be conducted at Authority facilities. The Contracting Officer, or the Contracting Officer's Representative where applicable, may approve exceptions on a case-by-case basis.

### **23.20 Delivery and Performance**

The Authority shall clearly state delivery or performance requirements in each solicitation and contract. The Contracting Officer shall ensure that delivery or performance requirements are realistic and meet the requirements of the procurement.

The Authority may establish different delivery or performance requirements for separable items of work. When establishing delivery or performance requirements, the Contracting Officer shall take into account factors pertaining to the ability of the contractor to actually begin performance, such as time for receipt of notice by the contractor of the contract award or acceptance by the Authority, or the time for receipt by the contractor of an executed contract.

The Contracting Officer is responsible to ensure that goods, services, or construction procured under each Authority contract conform to the quality, safety and quantity requirements of the contract. The Contracting Officer shall be notified immediately of any delivery or performance issues.

### **23.21 Acceptance and Rejection of Goods and Services**

Each Authority contract shall include appropriate inspection and test and other quality requirements, including warranty and reliability clauses necessary to protect the Authority's interests. Goods and services procured by the Authority shall be inspected to ensure the goods are delivered or the services are performed as specified.

The ordering department is responsible for notifying the Contracting Officer when goods delivered or services performed comply, or fail to comply, with the terms and conditions of the contract.

The Contracting Officer is responsible for acceptance or rejection of goods delivered or services performed. The Contracting Officer shall notify the contractor of the rejection of goods or services and may require the contractor to correct the deficiencies or take other action as authorized by the appropriate contract clause. Any costs incurred by the contractor to correct the deficiencies, including any re-inspection costs shall be borne solely by the contractor. Any shipping costs incurred by the Authority to return rejected goods to the contractor shall be chargeable to the contractor.

### **23.22 Acceptance and Rejection of Construction (RESERVED)**

### **23.23 Additional Contract Compliance Responsibilities**

Authority contracts shall not preclude the Authority from performing inspection, test, or other pertinent quality assurance measures.

Contract quality assurance shall be conducted before acceptance by or under the direction of Authority personnel. The Authority department responsible for the technical requirements shall provide any quality plan

specifications necessary for inspection, testing, and other contract quality requirements.

The necessary requirements for the contractor's control of quality for the goods, services, or construction shall be included in Authority solicitations and contracts.

### **23.24 Liquidated Damages**

Liquidated damages shall be included in all construction contracts exceeding \$100,000. Liquidated damages may also be included in other than construction contracts when the time of delivery or performance is such an important factor in the award of the contract that the Authority may reasonably expect to suffer damages if the project is delayed.

The Contracting Officer shall determine a rate of liquidated damages for each contract that will approximate the amount of the damages that the Authority will incur as a result of the delay.

The Authority contracts may include an overall maximum dollar amount or period of time during which liquidated damages may be assessed, or both, to prevent an unreasonable assessment of liquidated damages. The Contracting Officer may use more than one liquidated damages rate when necessary and appropriate.

The Contracting Officer must take all reasonable steps to mitigate liquidated damages, including cure notices when progress is not maintained, and there is probability for late completion.

### **23.25 Contract Funding and Fiscal Year**

Before executing any contract, the Contracting Officer shall obtain certification that funds are available in the amount and for the purpose of the contract.

The Contracting Officer shall include in a contract that is based on the availability of funds a provision expressly stating that the portion of the contract requiring payment of any amount in excess of available funding is conditioned upon the appropriation or allocation of additional budget authority.

The Contracting Officer shall include in a contract that is based on future fiscal year funding a provision stating that the portion of the contract requiring expenditures in a future fiscal year is conditioned upon the appropriation of budget authority for that fiscal year.

A contractor shall not perform services or deliver goods under a contract conditioned upon the availability of funds until the Contracting Officer has given written notice to the contractor that funds are available.

The Authority shall not accept goods, services, or construction services under a contract conditioned upon the availability of funds until the Contracting Officer has given written notice to the contractor that funds are available.

### **23.26 Limitation of Cost or Funds**

The Contracting Officer, upon learning that the contractor is approaching the estimated cost of the contract or the limit of the funds allotted, shall promptly obtain programming information pertinent to the contract's continuation.

The Contracting Officer shall notify the contractor in writing that:

1. The contract is to be continued and additional funds have been allotted or that the estimated cost has been increased, in a specified amount; or
2. The contract is not to be continued and the contractor should submit a proposal for an adjustment of fee, if any, based on the percentage of work completed in relation to the total work called for under the contract; or
3. The contract is to be terminated.

### **23.27 Invoicing and Payment**

Authority contracts shall include invoicing and payment instructions. The Authority shall promptly pay contractors

for goods, services, and construction that are delivered and accepted, meet contract quality requirements, and are properly invoiced. Payment for goods is normally made after delivery and acceptance. Payment for services is normally made based on established milestones or monthly for services rendered. Payment for construction is normally made by progress payments.

#### **23.27.1 Advance Payments**

The Authority shall not make advance payments on any contract, except for contracts for the payment of rents, tuition, insurance premiums, and subscriptions to publications

#### **23.27.2 Progress Payments for Construction Contracts (Reserved)**

#### **23.27.3 Progress Payments for Other than Construction Contracts**

The Contracting Officer shall include a clause in each solicitation that will describe the method of determining payments under the contract.

The clause may include one of the following methods, or other methods that are determined appropriate:

1. Payment based on the contractual value of the deliverable, upon delivery, inspection and acceptance;
2. Payment based on milestone achievements as established in the contract; or
3. Payment based on progress based on an assessment by the Authority as to the status of the contract. Progress payment cycles normally cover one month, but cycles with shorter periods may be specified when appropriate.

#### **23.27.4 Progress Payments to Subcontractors**

The Contracting Officer shall include provisions in each contract providing for progress payments requiring the contractor to include in the terms of each subcontract, the substance of the progress payment provisions in the prime contract. The subcontract payment provision should be modified to indicate that the contractor awards the subcontract and administers the progress payments.

#### **23.27.5 Risk of Loss**

The Contracting Officer shall include provisions in each contract providing for progress payments that, except for normal spoilage, the contractor shall bear the risk of loss, theft, destruction, or damage to property affected by the provision, unless the Authority has expressly assumed that risk.

#### **23.27.6 Protection of Authority Title**

The Contracting Officer shall include provisions in each contract that would give the Authority title to all of the materials, work-in-progress, finished goods, intellectual property, and other items for which payments have been made under the contract.

#### **23.27.7 Setoff and Withholding of Payments**

The Authority may setoff or withhold payments due a contractor to settle a contract debt. Prior to using a setoff or withholding payments, the Contracting Officer, or other designated official, shall use all reasonable means available, short of litigation, to collect the debts.

#### **23.27.8 Assignment of Contract Payments by Contractor**

A contractor may assign moneys due or to become due under a contract if the contract does not prohibit the assignment.

Any assignment not prohibited by the contract shall be made to a bank, trust company, or other financing institution, including any Federal lending agency and shall not be further assigned, except for any assignment made to one party as agent or trustee for two or more parties participating in the financing of the contract.

#### **23.27.9 Final Payments**

Final payments are made only after completion and acceptance of all goods, services or construction required under the contract, presentation of a properly executed voucher, and presentation of release of all claims against

the Authority arising under the contract.

### **23.28 Contract Closeout**

Authority contracts will be closed out when they are both physically and administratively complete and all aspects of contractual performance have been accomplished, terminated, or otherwise disposed of by contract modification. Authority contracts are physically complete only after all articles and services called for under the contract, including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by the Authority, including those articles, have been delivered to and accepted by the Authority, including those articles and services for which no specific compensation may have been stipulated. Authority contracts are administratively complete when all payments have been made and administrative actions accomplished. This includes a determination by the Contracting Officer that the Authority has recovered the cost incurred by the Authority for its review and consideration of, and action taken relating to, any Labor Violations (as defined in Section 23.28.6 of this Procurement Manual) determined by the Authority to have occurred during the course of and in connection with the contract.

The Contracting Officer is responsible for review of the contract file and obtaining all necessary documentation to ensure:

1. All deliverables and/or services (including any reports) required under the contract have been received and accepted;
2. The terms and conditions of the contract have been complied with;
3. The disposition of accountable property under the contract has been accomplished;
4. A final audit, when appropriate, has been performed and all questioned costs have been resolved;
5. The surety for the payment bond, if any, has consented to releasing final payment to the contractor;
6. All costs incurred by the Authority for its review and consideration of, and action taken relating to, any Labor Violations determined by the Authority to have occurred during the course of and in connection with the contract (and any related subcontracts) shall be paid by the contractor. "Labor Violation" is hereby defined as any violation of an applicable labor law including but not limited to any violation of the National Labor Relations Act, prevailing wage laws, wage and hour laws, anti-discrimination laws, and occupational safety and health laws. Such "Labor Violation" shall also include retaliation against an employee for exercising or attempting to exercise any right or interest under law arising from, in connection with, or related to a contract covered herein or intimidation of an employee to prevent the exercise of such right or interest; and
7. All necessary actions required to close the contract are completed and documented.

Small purchase files shall be considered closed when the Contracting Officer receives evidence of receipt of goods or services and final payment.

### **23.29 Quick Close of Cost Reimbursement Contracts**

Cost reimbursement contracts may be closed out in advance of the determination of final indirect cost rates if the contract is physically complete and the amount of unsettled indirect cost to be allocated to the contract is relatively insignificant.

Indirect cost amounts will be considered insignificant when the total unsettled indirect cost to be allocated to any one contract does not exceed \$1,000,000 and the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15 percent of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year.

The Contracting Officer may waive the 15 percent restriction based upon a risk assessment that considers the contractor's accounting, estimating, and purchasing systems; other concerns of the cognizant contract auditors; and any other pertinent information and agreement can be reached on a reasonable estimate of allocable dollars.

Indirect cost rates used in the quick closeout of a contract shall not be considered a binding precedent when establishing the final indirect cost rates for other contracts.

### **23.30 Evaluation of Contractors**

The Authority shall evaluate all contractors providing goods and services including construction in excess of \$100,000. Contractor evaluation occurs during and after contract performance and shall be used in evaluating contractor past performance during future solicitations.



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## **CHAPTER 24. Cost Principles and Proposal Analysis**

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## **24.1 Policy**

The Contracting Officer shall conduct a price or cost analysis in order to establish that the amount for the contract action is fair and reasonable prior to awarding a contract or contract modification.

## **24.2 Price Analysis**

Price analysis shall be performed for all contract actions. It involves the evaluation of a proposed price without evaluating its separate cost elements and profit.

In performing price analysis, the total price proposed by the offeror will be compared against the Authority's independent estimate, and the price submitted by other offerors in response to the same solicitation.

If price analysis produces significant variations in pricing that cannot be explained or reconciled, cost analysis may be performed.

The Contracting Officer will select one or more of the following techniques to perform price analysis:

1. Comparison of proposed prices with independent Authority estimate
2. Comparison of proposed prices received in response to the solicitation
3. Comparison of prior proposed prices and contract prices with current proposed prices for the same or similar end items
4. Application of rough yardsticks to highlight significant inconsistencies that warrant additional pricing inquiry
5. Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements

## **24.3 Cost Analysis**

Cost analysis shall be performed for all non-competitive procurements, except for purchases where price reasonableness can be established on the basis of a catalog or market price of commercial items sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

Cost analysis is the review and evaluation of the separate direct and indirect cost elements and profit and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

The Contracting Officer will select one or more of the following techniques, to perform cost analysis for prospective work:

1. Comparison of individual price elements with the Authority's independent estimate. The Authority's estimate may be in the form of "roundtable estimate" by subject matter experts, comparison estimate "with current or past purchases, or "detailed estimate" addressing components, processes, labor, materials, equipment and indirect costs.
2. Identification and reconciliation of differences between proposed prices and Authority estimate pricing, such as scope variances, pricing of the same or similar items, consideration of unique, or special situations and the like.
3. Other recent proposals received in response to a similar Authority request.



4. Previous proposal(s) from the offeror or from other offerors for the same or similar items.
5. Prices paid recently by the Authority, or costs incurred by the offeror for performing similar work.
6. Review of the contractor's estimating methods, subcontractor quotes, assumptions and projections.
7. Any other techniques that are determined to be appropriate for the situation.

In those cases where the work has been performed prior to establishing the equitable adjustment, the Contracting Officer will determine the fairness and reasonableness of the price on the basis of incurred costs, if the contractor has segregated such costs. In addition, and if it is determined necessary, any of the techniques identified above may be used to validate the fairness and reasonableness of the proposal,

#### **24.4 Profit Analysis**

The Contracting Officer should consider a structured approach to analyzing profit in terms of common factors. Some of the common factors are:

1. Contract cost risk – The contractor assumes the greatest cost risk in a closely priced firm-fixed-price contract under which it agrees to perform a complex undertaking on time and at a predetermined price. The contractor assumes the least cost risk in a cost-plus-fixed-fee level-of-effort contract, under which it is reimbursed those costs determined to be allocable and allowable, plus the fixed fee.
2. Contractor effort – Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance.
3. Extent of Subcontracting – The larger the portion of the work that the contractor will perform with its own forces, the greater the opportunity for profit should be considered.
4. Capital investments – This factor takes into account the contribution of contractor investments to efficient and economical contract performance.
5. Other factors may be used as necessary and appropriate.

The goal for profit allowance for fixed price contracts should be ten percent or less, with a maximum allowance of twelve percent. For cost reimbursement contracts, the maximum allowance should be limited to eight percent.

#### **24.5 Contract Audit as a Pricing Aid**

The Contracting Officer may request a contract audit as a pricing aid to review, examine, and validate all financial and factual elements submitted in connection with a proposal and/or claim.

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## CHAPTER 25. Contractor Responsibility

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## **25.1 Policy**

Goods and services including construction services may be procured only from contractors that affirmatively demonstrate their responsibility including, when necessary, for any proposed subcontractors.

## **25.2 Responsible Prospective Contractors**

To be determined responsible, a prospective contractor must:

1. Have or have the ability to obtain adequate financial resources to perform the contract;
2. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
3. Have the integrity and reliability which will assure good faith performance;
4. Have a satisfactory performance record. A prospective contractor shall not be determined responsible or non-responsible solely on the basis of a lack of relevant performance history;
5. Disclose all Labor Violations (as defined in Section 23.28.6 of this Procurement Manual) by contractor or any affiliated person or entity, including contractor's owners, parent entity, predecessors and subsidiaries ("Affiliated Entities"), that have resulted in any adverse administrative determination, arbitral award or decision, or civil judgment on the merits, or in a settlement or consent decree resolving violations in the three (3) year period preceding the proposed effective date of the contract, and any pending formal charges of Labor Violations against contractor, any Affiliated Entity, or subcontractor that have not yet been settled or otherwise adjudicated, and address to the satisfaction of the Contracting Officer, with such documentation and records as he/she may request, the details of any such violations and corrective measures, if any, taken;
6. Not have engaged in Labor Violations (as defined in Section 23.28.6 of this Manual) in the three (3) year period preceding the proposed effective date of the contract that the Contracting Officer determines constitute(s) an unsatisfactory record of integrity or business ethics, including any Labor Violations engaged in by any Affiliated Entity;
7. Not be the subject of debarment or suspension proceedings commenced by the General Manager pursuant to Chapter 26 of this Procurement Manual; and
8. Include a provision in any subcontract entered into during the course of and in connection with the contract stating the subcontractor shall not engage in any Labor Violations, and shall require that all subcontractors disclose to the contractor all Labor Violations by subcontractor or any affiliated person or entity, including subcontractor's owners, parent entity, predecessors and subsidiaries ("Affiliated Entities"), that have resulted in any adverse administrative determination, arbitral award or decision, or civil judgment on the merits, or in a settlement or consent decree resolving violations in the three (3) year period preceding the proposed effective date of the contract, and any pending formal charges of Labor Violations that have not been settled or otherwise adjudicated and addressed to the satisfaction of the contractor, with such documentation and records as it may request, the details of any such violations and corrective measures, if any, taken.

## **25.3 Subcontractor Responsibility**

Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors regarding debarred, ineligible, or suspended firms. Determination of prospective subcontractor responsibility may affect the Authority's determination of the prospective prime contractor's responsibility.

The Authority may determine a prospective subcontractor's responsibility when the work to be performed by the subcontractor constitutes a significant part of the overall contract, or if it involves elements where a high level of risk of performance would be unacceptable.

## **25.4 Determination of Responsibility**

The Contracting Officer will award contracts only to prospective contractors that are determined to be responsible with respect to the contract in accordance with the section entitled Responsible Prospective Contractors.

## **25.5 Pre-Award Surveys**

Pre-award surveys may be required when the information on hand or readily available including from commercial sources is not sufficient to make a determination regarding responsibility.

## **25.6 List of Excluded Parties**

In addition to reviewing the information provided by the General Services Administration (“GSA”) and the United States Department of Labor (“DOL”), the General Manager or his designee shall search the DC Courts, and, to the extent available, courts in prospective contractor’s principal place of business, the Federal Bid List, the National Labor Relations Board (“NLRB”) and the Office of Federal Contract Compliance Programs regarding entities that, within the three (3) year period preceding the proposed effective date of the contract, have been: debarred, suspended, proposed for debarment, excluded or disqualified under the non-procurement common rule; adjudicated as having committed Labor Violations as defined in section 23.28.6; having admitted Labor Violations in a formal settlement, conciliation agreement, or consent decree; or otherwise declared ineligible from receiving federal contracts, certain subcontracts, and certain federal assistance and benefits. Such information shall be considered in determining a prospective contractor’s responsibility under Section 25.2.

Bids or proposals from, awards or contracts to, or consent to subcontract with contractors so designated by GSA shall not be accepted unless the General Manager determines that there is a compelling reason for such action.

## **25.7 Certification Regarding Debarment or Ineligibility**

The solicitations shall contain provisions requiring contractors and subcontractors at any level to verify that the entity (and its principals and affiliates) with which they propose to contract or subcontract is not debarred or ineligible.

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## CHAPTER 26. Debarment and Suspension

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## **26.1 Policy**

Offers shall be solicited from, contracts awarded to, and consent given to subcontracts with responsible Contractors only. Contractors may be debarred or suspended when necessary and appropriate.

## **26.2 Debarment**

### **26.2.1 Authority to Debar**

The General Manager has the authority to debar for cause a person or business entity from consideration for award of contracts. The General Manager may appoint in writing one or more debarment officials (hereinafter referred to as designees). The authority to debar may be delegated to the Contracting Officer (as defined in Section 5399.1 of the Procurement Regulations and further discussed in Section 1.4 of this Procurement Manual) who shall also follow the procedures set out herein.

### **26.2.2 Causes for Debarment**

A contractor may be debarred for a conviction of or a civil judgment for, or an administrative finding of:

1. Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;
2. Violation of federal, state, or District of Columbia antitrust statutes relating to the submission of offers;
3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
4. Commission of any other offense indicating a lack of integrity or business ethics that seriously and directly affects the present responsibility of an Authority contractor or subcontractor.

### **26.2.3 Additional Causes for Debarment**

A contractor may be debarred for a serious violation of the terms of an Authority, federal, District of Columbia, state or local jurisdiction contract or subcontract including by way of example but not limitation:

1. Willful failure to perform in accordance with the terms of one or more contracts;
2. A failure to perform or unsatisfactory performance of one or more Authority contracts;
3. Willful failure to pay subcontractors for work performed on any Authority contract;
4. Willful failure to implement MBE, WBE, and LSDBE participation goals; or
5. Labor Violations (as defined in Section 23.28.6 of this Procurement Manual) adjudicated or admitted in a formal settlement, conciliation agreement, or consent decree during the contract term or in the three (3) year period preceding the proposed effective date of the contract that the Authority determines constitute an unsatisfactory record of integrity or business ethics.

### **26.2.4 Effect of Other Debarment**

A contractor currently debarred by the District of Columbia or any federal, state, or the Authority's participating jurisdiction may be debarred.

### **26.2.5 Reasonable Notice**

The General Manager or his designee (s) shall initiate debarment proceedings by notifying the contractor and any specifically named affiliates by certified mail, return receipt requested or other nationally recognized notification process agreed to by the DC Water Office of the General Counsel, of the following:

1. The factual basis for the proposed debarment, in sufficient detail to put the contractor on notice of the conduct or transaction(s) upon which the proposed debarment is based;
2. That within fifteen (15) calendar days after receipt of the notice, the contractor may submit in writing information and argument in opposition to the proposed debarment, including any genuine dispute of material fact;

3. The potential effect of the proposed debarment; and

4. That DC Water shall not solicit offers from, award contracts to, renew, extend contracts with, or consent to subcontracts with the contractor pending a debarment decision.

#### **26.2.5.1 Opportunity to be Heard**

If the contractor fails to make a submission within fifteen (15) calendar days of receipt of the notice of proposed debarment, the General Manager or his designees(s) shall notify the contractor that it has waived the right to a hearing and a final decision shall be made based upon the facts available.

If a submission is timely received in debarment actions not based upon a conviction or civil judgment and the General Manager or his designee(s) find that the contractor's submission raises a genuine dispute of material fact, the General Manager shall:

1. Provide the contractor with written notice by certified mail, return receipt requested, that (i) informs the contractor that it shall be given an opportunity for a hearing, and (ii) includes the time, place, date, and purpose of the hearing; and

2. Appoint a DC Water employee to act as Hearing Examiner. The General Manager shall have the option, if he determines it is in the Authority's best interest, to select an independent third party to act as Hearing Examiner.

#### **26.2.5.2 Hearing, Proposed Order, Final Order and Right to Appeal**

The hearing may be conducted informally, with all parties given an opportunity to be heard, be represented by counsel, present evidence, cross-examine witnesses and argue in support of their respective positions. The Hearing Examiner's standard of proof shall be a preponderance of the evidence. Within sixty (60) calendar days of the conclusion of the proceedings, the Hearing Examiner shall issue a proposed decision and order, in writing, to the General Manager or the General Manager's designee(s) and to the contractor. The General Manager or the General Manager's designee(s) shall review the proposed decision and order and may affirm, reverse, or modify the proposed decision and order, or remand the case to the Hearing Examiner for further proceedings. The General Manager shall provide a copy of the final decision and order to the contractor and inform the contractor by certified mail, return receipt requested, of the right to appeal the final decision or order in a court of competent jurisdiction within the District of Columbia.

#### **26.2.6 Effective Date of Debarment**

A debarment shall take effect when the General Manager's final decision and order is issued. The contractor shall then be debarred from consideration for the award of contracts until the debarment period specified in the General Manager's final decision and order expires, such time period to be consistent with Section 26.2.7 herein.

#### **26.2.7 Period of Debarment**

A contractor may be debarred for a period commensurate with the seriousness of the cause(s). The period of debarment should not exceed three (3) years. Any prior suspension period shall be considered in determining the debarment period. The debarment period may be extended for an additional period not to exceed three (3) years if an extension is deemed necessary to protect the Authority's interests, as determined by the General Manager, the General Manager's designee(s), or the Contracting Officer. However, a period of debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based.

#### **26.2.8 Reduction of Period of Debarment**

The period of debarment may be reduced upon the contractor's request, supported by documentation, for reasons such as:

1. Newly discovered material evidence;

2. Reversal of the conviction or civil judgment upon which the debarment was based;

3. Bona fide change in ownership or management;

4. Elimination of other causes for which the debarment was imposed; or

5. Other reasons deemed appropriate by the General Manager or the General Manager's designee(s).

## **26.3 Suspensions**

### **26.3.1 Authority to Suspend**

The General Manager has the authority to suspend a contractor pending the completion of an investigation or legal proceedings when it has been determined that immediate action is necessary to protect the Authority's interests. The General Manager may appoint in writing one or more suspension official(s) (herein after referred to as designees). The authority to suspend may be delegated to the Contracting Officer.

### **26.3.2 Causes for Suspensions**

A contractor may be suspended for:

1. Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;
2. Indictment for any of the causes stated in the section above on Causes for Debarment, including when a cause results from an administrative hearing finding;
3. Being placed on a debarment list by any public body;
4. Commencement of debarment proceedings by the Authority;
5. Labor Violations (as defined in Section 23.28.6 of this Procurement Manual) adjudicated or admitted in a formal settlement, conciliation agreement, or consent decree during the contract term or in the three (3) year period preceding the proposed effective date of the contract that the Authority may determine constitute an unsatisfactory record of integrity or business ethics; or
6. Any other cause of such a serious or compelling nature that it affects the present responsibility of an Authority contractor.

### **26.3.3 Reasonable Notice**

The General Manager or his designee (s) shall initiate suspension proceedings by notifying the contractor and any specifically named affiliates by certified mail, return receipt requested or other nationally recognized notification process agreed to by the DC Water Office of the General Counsel, of the following:

1. The factual basis for the proposed suspension in sufficient detail to put the contractor on notice of the conduct or transaction(s) upon which the proposed suspension is based;
2. That within fifteen (15) calendar days after receipt of the notice, the contractor may submit in writing, information and argument in opposition to the proposed suspension, including any specific information that raises a genuine issue of material fact;
3. The potential effect of the proposed suspension; and
4. That DC Water shall not solicit offers from, award contracts to, renew, extend contracts with, or consent to subcontracts with the contractor pending a suspension decision.

#### **26.3.3.1 Opportunity to be Heard**

If the contractor fails to make a submission within fifteen (15) calendar days of receipt of the notice of proposed suspension, the General Manager or his designee(s) shall timely notify the contractor that it has waived the right to a hearing and a final decision shall be made based upon the facts available.

If a submission is timely received in a suspension action not based upon a conviction or civil judgment and the General Manager or his designees(s) find that the contractor's submission raises a genuine dispute of material fact, the General Manager shall do the following within fifteen (15) calendar days of receipt of the contractor's submission:

1. Provide the contractor with written notice by certified mail, return receipt requested, that (i) informs the contractor that it shall be given an opportunity for a hearing, and (ii) includes the time, place, date, and purpose of the hearing; and
2. Appoint a DC Water employee to act as Hearing Examiner. The General Manager shall have the option, if he determines it is in the Authority's best interest, to select an independent third party to act as Hearing Examiner.

#### 26.3.3.2 Hearing, Proposed Order, Final Order and Right to Appeal

The hearing may be conducted informally, with all parties given an opportunity to be heard, be represented by counsel, present evidence, cross-examine witnesses and argue in support of their respective positions. The Hearing Examiner's standard of proof shall be that of substantial evidence. Within sixty (60) calendar days of the conclusion of the proceedings, the Hearing Examiner shall issue a proposed decision and order in writing to the General Manager or the General Manager's designee(s) and to the contractor. The General Manager or the General Manager's designee(s) shall review the proposed decision and order and may affirm, reverse, or modify the proposed decision and order, or remand the case to the Hearing Examiner. The General Manager shall provide a written copy of the final decision and order to the contractor, and inform it in writing by certified mail return receipt requested of the right to appeal the final decision and order in a court of competent jurisdiction in the District of Columbia.

#### 26.3.4 Effective Date of Suspension

A suspension shall take effect when the General Manager's final decision and order is issued. The contractor shall then be suspended from the consideration for award of contracts until the suspension period specified in the General Manager's final decision and order expires.



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## **CHAPTER 27. Patents, Copyrights, and Other Proprietary Information**

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## **27.1 Policy**

The Authority shall comply with the requirements of Federal law and regulations in acquiring or using rights in patents, copyrights, and proprietary information.

## **27.2 General Provisions**

The Authority shall limit its demands for rights in proprietary information resulting from private developments to those reasonable for present and future use by the Authority, and to those required pursuant to the terms and conditions of a Federal grant.

The Authority shall not unreasonably restrict the commercial use of inventions made while performing Authority contracts.

The Contracting Officer shall not refuse to award a contract solely on the basis of a suspicion that the contractor may infringe a patent, unless the Contracting Officer determines that refusal is in the best interests of the Authority.

Contractors shall obtain permission from the lawful owner(s) of copyrighted materials before including all or part of any copyrighted work in any item to be delivered under contract to the Authority; however, permission is not required under the fair use or other applicable provisions of Federal copyright statutes or regulations.

## **27.3 Notice and Assistance**

The Contractor shall promptly notify the Contracting Officer in writing of each notice or claim of patent or copyright infringement based on the performance of a contract of which the Contractor has knowledge.

In the event of any claim or suit against the Authority on account of any alleged patent or copyright infringement, the Contractor shall furnish the Authority with all evidence and information in the Contractor's possession pertaining to such claim or suit.

## **27.4 Indemnification**

Contractors providing commercial items shall indemnify the Authority against liability of the infringement of U.S. and/or international patents. Contracts requiring indemnification shall include an indemnity clause providing for reimbursement of the Authority for any liability incurred as the result of an infringement of rights in patents, copyrights, or proprietary information.

## **27.5 Licensing and Royalty Information**

Prospective contractors shall provide the Contracting Officer with royalty information when it is anticipated that royalties will be paid under an Authority contract. The Contracting Officer shall take appropriate action to reduce or eliminate excessive or improper royalties.

Each Request for Proposal shall include a clause requesting information relating to any proposed charge for royalties or need to obtain a license for use of any rights in patents, copyrights, or proprietary information. This information may be requested in Invitation for Bids if the Contracting Officer determines the information is necessary for the protection of Authority's interests.

When considering the approval of a subcontract, the Contracting Officer shall require royalty information if it is required under the prime contract.



The Contracting Officer shall include a notice in the solicitation when the Authority is obligated to pay a royalty on patent, copyright, or proprietary information because of a license agreement between the Authority and the licensor, and the Contracting Officer knows or has reason to believe that the licensed patent will be applicable to a prospective contract.

The Contracting Officer shall include a notice in the solicitation requiring each offeror to furnish information indicating whether it is a licensee when the Authority is obligated to pay a royalty because of a license agreement between the Authority and a licensor.

## **27.6 Patent Rights under Authority Contracts**

An invention is made in the performance of work under an Authority contract if it is conceived or first actually reduced to practice in the performance of work under an Authority contract.

The Authority shall have the right to receive title to any invention made in the performance of a contract unless the contract provides otherwise. The Authority may permit a contractor to retain title to any invention made in the performance of work under a contract. If the contractor elects to retain title to an invention, the Authority shall have at least a nonexclusive, nontransferable, irrevocable, paid up license to use or have used, the invention for or on behalf of the Authority. If provided in the contract, the Authority may have additional rights to sublicense the invention.

The Chief Contracting Officer may determine in writing to modify, waive, or omit any of the rights set forth in this section in the best interests of the Authority.

## **27.7 Patent Rights Procedures**

Contractors shall submit to the Contracting Officer a document confirming all rights to which the Authority is entitled, and shall furnish to the Contracting Officer an irrevocable power to inspect and make copies of the patent application file six (6) months after submitting the invention disclosure if the application has been previously filed.

Contractors shall establish and maintain effective procedures to ensure that patent rights obligations are met, that subject inventions are timely identified and disclosed, and that patent applications are filed when required.

Contractors shall submit all reports required by the Contracting Officer in accordance with the contract.

The Contracting Officer shall establish follow-up procedures to ensure contractor compliance with the above and to protect Authority's interests.

## **27.8 Rights to Copyrighted Material and Proprietary Information**

Contracts that obligate Federal funds shall include a provision which provide the Authority and the Federal grant agency a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal Government purposes:

1. The copyright in any work developed under an Authority contract; and
2. Any rights of copyright to which a contractor purchases ownership with grant support.

The Authority may acquire title to, or obtain or limit access to, copyrighted materials, materials subject to copyright protection, and proprietary information developed under or used in the performance of contracts not federally funded.



## **27.9 Proprietary or Confidential Information in Bids and Proposals**

The Authority may include a request for proprietary information and data in a solicitation when necessary for the evaluation of bids or proposals.

An offeror shall designate information contained in a response to the invitation for bids or request for proposals as proprietary or confidential by specifically identifying that information in writing in the bid or proposal.

Each solicitation shall contain a provision which indicates the right of the offeror to designate confidential or proprietary information in response to the solicitation, as well as the right of the Contracting Officer to challenge the designation and either eliminate the bid or proposal or remove the designation.



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## CHAPTER 28. Protests

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## **28.1 General**

### **28.1.1 Policy**

A protest is a procedure whereby a bidder/proposer may bring to the Authority's attention and seek relief from a perceived error or unfairness. A protest must be accepted and reviewed to ensure the fairness, competitiveness and cost effectiveness of the procurement process. Errors or inappropriate procedures in the procurement process should be corrected without litigation if possible, and the protest procedures shall be implemented toward this end.

A Contracting Officer will attempt to resolve all issues in dispute related to the solicitation documents or procurement process by mutual agreement. Reasonable efforts should be made to bring to the Authority's attention as early as possible any ambiguities, claims of discriminatory or exclusionary specifications, or other concerns regarding the solicitation documents or the solicitation process prior to the submission of a protest.

If a person or firm is already under contract with the Authority and is alleging a wrong with respect to the contract, even if the alleged wrong involves the procurement process that resulted in the contract, the matter is a dispute that should be addressed under the chapter on Claims, Disputes, and Appeals. The protest procedure in this Chapter is only for persons or firms that have not been awarded a contract.

### **28.1.2 Notice to Offerors**

The Contracting Officer shall insert a provision in all solicitations that informs prospective offerors of the applicable protest procedures, and cites the procedures in this Chapter.

## **28.2 Written Submission**

Protests shall be concise and logically presented to facilitate review. Failure to substantially comply with any of the requirements of this subparagraph may be grounds for dismissal of the protest.

Protests shall include at least the following information:

1. Name, address, email address, and fax and telephone numbers of the protester
2. Solicitation or contract number
3. Detailed statement of the legal and factual grounds for the protest, including a description of resulting harm to the protester
4. Copies of supporting documents, if any
5. Statement as to the form of relief requested
6. All information establishing that the protester is an interested party for the purpose of filing a protest on an award decision
7. All information establishing the timeliness of the protest

All protests shall be addressed and submitted to the issuing Contracting Officer (name, title, and address of the individual) as listed in the solicitation.

## **28.3 Time for Filing**

Protests directed to the terms, conditions, or form of a proposed procurement action, must be received by the Contracting Officer in writing not later than 10 calendar days prior to the date established for opening



of bids or receipt of proposals, except that an initial protest that arises under an amendment to a solicitation or invitation to bid may be filed up to 4 calendar days after the date the amendment was issued but in no case after the time established for opening of bids or receipt of proposals.

Protests of an award decision shall be filed in writing with the Contracting Officer within 5 calendar days of when the protester knew or should have known of the facts and circumstances upon which the protest is based. Only offerors may protest an award decision.

If the contract has been awarded, protests must be filed within 5 calendar days of when the protester knew or should have known of the facts and circumstances upon which the protest is based. To be filed on a given day, protests must be received by 5:00 p.m. according to local time in the District of Columbia. Any protests received after that time will be considered to be filed on the next day.

## **28.4 Pre-Award Protests**

During resolution of a pre-award protest, all procurement activities and, where applicable, contractor performance shall continue unless the Contracting Officer determines there is a reason to suspend or delay all or part of the procurement activities.

### **28.4.1 Decision to Continue or Withhold Award**

After receipt of a protest before award, a contract may be awarded, pending resolution of the protest, provided the decision is in the Authority's best interest.

If contract award is withheld pending resolution of the protest, the Contracting Officer will inform the offerors whose offers might become eligible for award of the contract. If appropriate, the offerors should be requested, before expiration of the time for acceptance of their offers, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding with award.

## **28.5 Post-Award Protests**

Incomplete submissions will not be considered filed until all information is provided. When a protest is filed after contract award within the specified protest time limit, the Contracting Officer shall immediately review whether to suspend performance pending resolution of the protest. The Contracting Officer may authorize continued contract performance, notwithstanding the protest, based on a written finding of at least one of the following:

1. Contract performance would be in the Authority's best interest
2. Urgent and compelling circumstances that significantly affect the Authority's interests will not permit waiting for a decision

## **28.6 Consideration of Protests**

The Contracting Officer will acknowledge receipt of a protest. The Contracting Officer may, at his or her discretion, hold a hearing, request additional submissions or information either orally or in writing, or take any other actions he or she deems useful or necessary in making a decision. The Authority's consideration of the particular types of protests will, except as otherwise provided in this Chapter, be in accordance with the following provisions.



## **28.7 Resolution of Protests**

Best efforts shall be made to respond to protests within 30 calendar days after the protest is filed. The Contracting Officer may respond to the protest without further exchanges of information if the documentation is sufficient. To the extent permitted by law and regulation, the parties may exchange relevant information.

The Contracting Officer will issue a written decision on the basis of the information provided by the protestor, the results of any meetings with the protestor, and the Authority's own investigation. If the protest is upheld, the Authority will take the appropriate action to correct the procurement action and protect the rights of the protestor, including without limitation the resolicitation of bids or proposals, a re-evaluation of bids or proposals or revision or correction of determinations, or termination of an awarded contract. If the protest is denied, the Authority will lift any suspension imposed, notify other proposers to the extent they were previously informed of any suspension of the procurement process, and proceed with the procurement process or the contract, as the case may be.

The Contracting Officer's decision shall be well-reasoned and explain the Authority's position and the reason for the decision. The decision shall be provided to the protestor using a method that provides evidence of receipt.

### **28.7.1 Remedies if Pre-Award Protest Is Upheld**

If the pre-award protest is upheld, the Contracting Officer may grant one or more of the following remedies:

1. Re-compete the requirement
2. Issue a new solicitation
3. Amend the solicitation provisions that gave rise to the protest and continue with the procurement
4. Such other remedies as the Contracting Officer may determine are necessary to correct a defect

### **28.7.2 Remedies if Post-Award Protest Is Upheld**

If the post-award protest is upheld, the Contracting Officer may grant one or more of the following remedies:

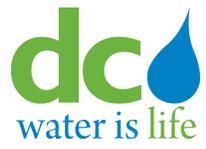
1. Terminate the contract
2. Re-compete the requirement
3. Refrain from exercising options under the contract
4. Such other remedies as the Contracting Officer may determine are necessary to correct a defect

### **28.7.3 Findings and Notice if Protest Is Denied**

If the decision is to deny the protest and to proceed with contract award or continue contract performance, the Contracting Officer shall include the written findings or other required documentation in the file. The Contracting Officer also shall give written notice of the decision to the protestor and other interested parties.

## **28.8 Appeal**

1. A protestor may appeal a denial of protest by a Contracting Officer to a court of competent jurisdiction.



- 
2. The decision of the Contracting Officer shall be final and conclusive. No further administrative remedies will be available to the protester.



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## CHAPTER 29. Claims, Disputes, and Appeals

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## **29.1 Policy**

Contractor claims against the Authority should be resolved expeditiously. In the course of contract administration and contract performance, any number of issues may arise. These could range from differing interpretations over specifications, terms and conditions, payments, and performance schedules, to disputes as serious as to lead to termination for default.

The parties shall try to resolve all contractual issues in dispute by mutual agreement at the Contracting Officer level. When that is unsuccessful, claims and disputes are subject to administrative and judicial review.

## **29.2 Applicability**

This Chapter shall apply to claims and disputes between the Authority and a vendor or contractor that arise under or by virtue of a contract between them. All contracts shall include a provision directing that all disputes of the kind delineated in this Chapter shall be finally resolved in accordance with this Chapter. Parties to contracts that do not contain any such provision may, by written agreement, consent to the resolution of any disputes pursuant to this Chapter.

This Chapter applies to claims and disputes about the scope of work as set forth in the contract, the interpretation of contract documents, the amount to be paid for extra work or disputed work performed in connection with the contract, the conformity of the contractor's work to the contract, and the acceptability and quality of the contractor's work.

## **29.3 Notice and Submission of Claims**

### **29.3.1 Written Submission**

All claims must be in writing. The claim must contain all information and material relevant to the claim and must contain at a minimum:

1. An explanation of the claim, including reference to all contract provisions upon which it is based
2. The amount of the claim
3. The facts upon which the claim is based
4. Any pertinent data and correspondence the contractor relies upon to substantiate the claim
5. A certification by a senior official, officer, or general partner of the contractor that to the best of the person's knowledge and belief, the claim is made in good faith, supporting documents that accurately reflect the conditions of the claim, and the amount or relief requested accurately reflects the contract adjustment for which the person believes the Authority is liable

### **29.3.2 Time for Filing**

The claim must be filed with the person designated in the contract for receipt of claims or, if none is so designated, with the Contracting Officer responsible for the contract. The claim shall be presented within the time provided for in the contract or, if none is provided, within 30 days after the basis for the claim is known or should have been known, whichever is earlier.

The Contractor must give notice of work performed as a result of direction from the Authority's representative, or due to defective specifications where the defect is known to the contractor at the time of performance no later than thirty (30) days from the date of commencement of such work. Lack of notice may prejudice the Authority's position, and such claims will be denied on that basis when appropriate.



## **29.4 Resolution of Claims**

During such time as any dispute is being presented, heard, or considered pursuant to this Chapter, the contract terms shall remain in force and work shall continue as directed by the project manager or the Contracting Officer.

The Chief Contracting Officer may establish in selected contracts non-binding alternate dispute resolution procedures. The procedures may include the use of a Disputes Review Board (DRB), Mediation, or Project Neutrals. The purpose of these procedures is to facilitate the resolution of claims and disputes on expedited basis and to provide additional input to the Contracting Officer in considering the disposition of a claim and/or dispute when agreement cannot be reached between the Authority and its contractor.

### **29.4.1 Suspected Fraudulent Claims**

If the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the Contracting Officer may refer the matter to Authority officials responsible for investigating fraud and shall suspend consideration of so much of the claim as is affected by possible misrepresentation or fraud until the issue is resolved.

### **29.4.2 Contracting Officer's Authority**

The Contracting Officers is authorized, within any specific limitations to his/her delegation of authority, to decide or resolve all claims arising under or relating to a contract in accordance with policy and the contract. The Contracting Officer is authorized to use all reasonable means to the extent practicable including consultation with user departments and outside consultants, and consideration of the input, if any from the Alternate Dispute Resolution procedures set forth in Section 29.4 to resolve claims.

### **29.4.3 Contracting Officer's Decision**

When a claim by a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the Contracting Officer shall:

1. Review the facts pertinent to the claim
2. Consider the input, if any, from the Alternate Dispute Resolution procedures
3. Secure assistance as necessary from the user and legal departments and other advisors
4. Obtain from the claimant such additional information or documentation as may be useful to rendering a decision
5. Prepare a written decision that shall include:
  - a. A description of the claim or dispute.
  - b. A reference to the pertinent contract terms.
  - c. A statement of the factual areas of agreement and disagreement.
  - d. A statement of the Contracting Officer's decision, with supporting rationale.
  - e. A statement substantially as follows: "This is the final decision of the Contracting Officer. There are no other administrative remedies under the contract"

The Contracting Officer shall issue the final decision within 60 calendar days of receipt of the claim, unless a longer period is determined to be necessary,



The Contracting Officer shall have no obligation to render a final decision on any claim or portion of a claim that does not contain the requested supporting documentation. The Contracting Officer should, however, inform the claimant that supporting documentation has been omitted and, if the omission is shown to have been inadvertent and unintentional, permit the claimant to supply the missing documentation.

### **29.5 Appeal**

A Contracting Officer's final decision may be appealed to a court of competent jurisdiction.

### **29.6 Obligation to Continue Performance**

The contractor shall continue performance of the contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract.



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## **CHAPTER 30. Quality Assurance and Warranties**

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### **30.1 Policy**

The Authority's policy is to ensure that contracts conform to the contract's quality and quantity requirements. Contractors are responsible for controlling the quality of goods, services, or construction and delivering to the Authority for acceptance only those items that conform to contract requirements.

### **30.2 Authority Responsibilities**

Specifications for inspection, testing, and other contract quality requirements necessary for the contractor's control of quality shall be included in Authority solicitations and contracts.

Authority contracts shall clearly state the level of quality required by reference to established standards, procedures, tests, and equipment or by providing acceptance criteria and tolerances. Authority contracts shall not preclude inspection.

Contract quality assurance shall be conducted before acceptance, unless otherwise provided in the contract. Nonconforming items shall be rejected, unless otherwise provided for in the contract. The Contracting Officer is responsible for ensuring contractor compliance with the quality and quantity requirements of the contract, including inspection, acceptance, warranty, and any other measures associated with quality assurance. The Contracting Officer may delegate contract quality assurance and warranty responsibility to a Contracting Officer's Technical Representative.

### **30.3 Non-Conforming Goods, Services or Construction**

The Contracting Officer, Contracting Officer's representative (COR), or Contracting Officer's Technical Representative (COTR) as appropriate, shall reject non-conforming goods, services, or construction except as noted blow. The Contracting Officer shall issue a notice of rejection in writing and include the reasons for rejection.

The contractor shall be given an opportunity to correct or replace nonconformance when the correction or replacement can be accomplished within the required delivery or performance schedule. Correction or replacement shall be done without additional cost to the Authority, unless the contract specifies otherwise.

If the Contracting Officer determines in writing that acceptance of non-conforming goods, services, or construction is in the best interest of the Authority, the Contracting Officer may accept the non-conforming items and modify the contract providing for an equitable price reduction or other consideration.

### **30.4 Responsibility for Acceptance**

The Contracting Officer is responsible for acceptance of goods, services, or construction for the Authority. The Contracting Officer may delegate acceptance responsibility to a Contracting Officer's Technical Representative.

### **30.5 Transfer of Title and Risk of Loss**

Title to goods, services, and construction shall pass to the Authority upon formal acceptance, regardless of when or where the Authority takes physical possession, unless the contract specifically provides for earlier passage of title. Title to stock items shall pass to the Authority upon receipt at destination and initial inspection for completeness and absence of damages. Risk of loss of or damage shall remain with the contractor until delivery of the goods to a carrier if transportation is f.o.b. origin, or delivery to the Authority at the destination specified in the contract if f.o.b. destination or acceptance by the Authority, whichever is later. Risk of loss or damage to goods shall remain with the contractor until formal



acceptance by the Authority unless loss of or damage is caused by the negligence of officers, agents, or employees of the Authority. Risk of loss of or damage to nonconforming items shall remain with the contractor until the nonconforming items are corrected or accepted by the Authority.

### **30.6 Warranties and Expiration of Warranty**

As part of the determination of the need for a warranty provision in a contract, the Contracting Officer shall consider the nature of the goods, services, or construction, cost, the Authority's ability to enforce the warranty, and industry practice. Contract warranty provisions shall clearly delineate the rights and obligations of the contractor and the Authority. Warranty clauses shall not limit the Authority's rights under an inspection clause in relation to latent defects, fraud, or gross mistakes that amount to fraud. The Contracting Officer shall establish procedures to ensure all defects discovered during the warranty period are reported and notice given to the contractor prior to the expiration of the warranty.



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## CHAPTER 31. Purchase Cards

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### **31.1 Policy**

Purchase cards simplify the buying process and may be used by specific authorized individuals to procure for immediate delivery low-dollar-value, non-production materials and expense items. The purchase card shall only be used in accordance with established guidelines and procedures and only for purchases that are otherwise authorized. Purchase Cards should not be used to circumvent standard procurement requirements to maximize competition.

### **31.2 Ethics**

Authority employees involved in the purchase card procurement process must conduct business in a manner above reproach, with impartiality, and with preferential treatment for none. The general rule is to strictly avoid any conflict of interest or the appearance of impropriety in the procurement process.

### **31.3 Obtaining a Purchase Card**

The Director of Procurement shall establish all requirements for use and control of purchase cards for all authorized users. These requirements will be consistent with the terms and conditions of the current purchase card contract and the Purchase Card Manual. A credit background check will be conducted of all individuals proposed to be purchase card holders prior to issuance and receipt of a commercial purchase card.

### **31.4 Limitations of Transaction Amounts**

The Director of Procurement shall establish and determine in writing all individual dollar limitations for purchase cards. In addition, the Director of Procurement shall determine the limitation per transaction for each purchase card. No individual shall exceed his or her individual limitations without the Director of Procurement's express written approval. Dividing transactions in order to stay below the individual maximum transaction dollar amount is prohibited.

### **31.5 Use of the Purchase Card**

The purchase card may be used for but not limited to micro-purchases, and may be used to place a task or delivery order (if authorized in the basic contract, basic ordering agreement, or blanket purchase agreement) or make payments when the contractor agrees to accept payment through the card.

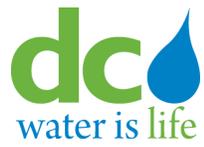
### **31.6 Sanctions**

Violation of the Authority's Purchase Card policy will subject the user to the following sanctions.

1. Card holder may be held financially responsible for unauthorized purchases
2. Revoking the individual's P-Card
3. Termination of employment

### **31.7 Maintaining Required Records**

Authorized purchase card holders are responsible for maintaining a spreadsheet log of transactions made. The spreadsheet shall contain the minimum information specified in the Purchase Card Manual.



### **31.7.1 Responsibilities**

The individual purchase card holder is responsible for securing his or her purchase card and preventing unauthorized use. In addition, the card holder is responsible for all charges until the Authority makes payment. Key responsibilities for Department Heads, Accounts Payable, and the Procurement Department are found in the Purchase Card Manual.



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## **CHAPTER 32. Business Development Programs**

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## **32.1 Policy**

To the maximum extent possible, the Authority will actively encourage and support the utilization and participation of certified Local Business enterprises (LBEs), Local Small Business Enterprises (LSBEs), Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in its contracting and procurement activities.

## **32.2 LBE and LSBE Program**

LBE and LSBE requirements shall apply to non-federally funded competitively solicited contracts and procurements.

### ***32.2.1 Large Purchases (\$100,000 or greater)***

To encourage the participation of LBEs and LSBEs, preferences will apply to competitive solicitations for large purchases. Preference points will be used in evaluating proposals submitted by LBEs and/or LSBEs or prime contractors utilizing LBEs and/or LSBEs as subcontractors. Preference points for evaluating proposals are an additional 5 points for LBEs and an additional 10 points for LSBEs.

For sealed bids, a preference percentage reduction in price will be used in evaluating bids submitted by LBEs and/or LSBEs or prime contractors utilizing LBEs and/or LSBEs as subcontractors. For evaluation purposes, the preference reduction is 5% for LBEs and 10% for LSBEs or \$100,000, whichever is less.

For joint ventures, if the prime bidder/proposer is a joint venture that is not a certified LBE or LSBE joint venture, preference will be applied proportionately based on the total dollar value of the bid or proposal designated for the certified LBE or LSBE participation in the joint venture. If the prime bidder/proposer is a certified LBE or LSBE, preferences will also be applied to LBEs and/or LSBEs subcontractors based on the dollar value that is designated by the prime contractor for subcontracting with the LBEs and/or LSBEs.

The maximum eligible preference price reduction for a single bid is a total of 10% or \$100,000, whichever is less.

The maximum number of eligible preference points for a single proposal is 10 points.

### ***32.2.2 Small Purchases (less than \$100,000)***

Quotes may be limited to LBEs and/or LSBEs when there are at least two LBEs or LSBEs capable of providing the goods, services and/or construction.

### ***32.2.3 Eligible LBE and LSBE Participants***

Eligible participants must be currently certified as a Local or Local Small Business Enterprise (LBE or LSBE) by one of the following jurisdictions:

1. District of Columbia
2. Montgomery County
3. Prince George's County
4. Virginia Department of Transportation certification as accepted respectively by Fairfax and Loudoun County as local and local small.
5. Other certification programs recognized by the above listed jurisdictions and meet their respective criteria for local and local and small businesses.

Documentation of current certification status must be submitted at time of bid opening or in the case of a Request for Proposal (RFP), the documentation must be submitted as a part of the proposal.



### **32.3 Federal Fair Share MBE and WBE Program**

Goals for the participation of MBEs and WBEs will apply to competitive solicited contracts for construction and architectural and engineering (A&E) services that are or may be eligible for federal assistance. MBE and WBE goals are approved by the U.S. Environmental Protection Agency (EPA).

The MBE and WBE participation goals may be achieved by certified MBE and/or WBE firms participating as a vendor, prime contractor, subcontractor or joint venture.

#### ***32.3.1 Eligible MBE and WBE Participants***

Businesses participating in this program must be currently certified as a MBE or WBE (as defined by EPA) by the Small Business Administration (SBA), another federal agency, a State or State agency or local jurisdictions whose certification is accepted by EPA.