

OFFICE OF THE ATTORNEY GENERAL

NOTICE OF FINAL RULEMAKING

The Attorney General, pursuant to authority granted by section 108b of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 1-301.88b)(2014 Repl. & 2017 Supp.), hereby gives notice of the adoption of the following rules. The rules will amend Chapter 50 (Office of the Attorney General Procurement Rules) in Title 27, (Contracts and Procurement) in the District of Columbia Municipal Regulations, in its entirety.

A Notice of Proposed Rulemaking was published on August 27, 2021 at 68 DCR 008907. No comments were received and no changes have been made to the text of the proposed rules. Final action to adopt these rules was taken on October 22, 2021, and these rules will be effective upon publication of this notice in the *District of Columbia Register*.

Chapter 50 (Office of the Attorney General Procurement Rules) of added to Title 27 (CONTRACTS AND PROCUREMENT) of the District of Columbia Municipal Regulations (DCMR) as amended in its entirety to read as follows:

**CHAPTER 50 OFFICE OF THE ATTORNEY GENERAL
PROCUREMENT RULES**

- 5001 GENERAL**
- 5002 COMPLIANCE WITH PROCUREMENT ACT AND REGULATIONS**
- 5003 CONTINGENT FEES**
- 5004 MULTIYEAR CONTRACTS**
- 5005 CANCELLATION OF MULTIYEAR CONTRACTS**
- 5006 MULTIYEAR CONTRACT SOLICITATIONS**
- 5007 APPLICABILITY**
- 5008 CHIEF CONTRACTING OFFICER**
- 5009 DELEGATION OF AUTHORITY TO CONTRACTING OFFICERS**
- 5010 AUTHORITY AND DUTIES OF CONTRACTING OFFICERS**
- 5011 CONDUCT OF CONTRACTING OFFICERS**
- 5012 CONTRACTOR QUALIFICATION REQUIREMENTS**
- 5013 RESPONSIBILITY**
- 5014 PRICE REASONABLENESS**
- 5015 ORGANIZATIONAL CONFLICTS OF INTEREST; DISQUALIFICATION**
- 5016 PROCUREMENT PLANNING**
- 5017 MARKET RESEARCH**
- 5018 PREPARING SOLICITATIONS**
- 5019 PUBLICIZING PROCUREMENT OPPORTUNITIES**
- 5020 INVITATION FOR BIDS**
- 5021 REQUESTS FOR PROPOSALS**
- 5022 NOTICE OF INTENT TO AWARD A SOLE SOURCE CONTRACT**

- 5023 NOTICE OF CONTRACT AWARDS OVER ONE HUNDRED THOUSAND DOLLARS (\$100,000)
- 5024 NOTICE OF EMERGENCY PROCUREMENTS
- 5025 CONTRACT TYPES
- 5026 FIXED-PRICE CONTRACTS
- 5027 COST REIMBURSEMENT CONTRACTS
- 5028 SPECIAL METHODS OF CONTRACTING
- 5029 BASIC ORDERING AGREEMENTS
- 5030 TIME AND MATERIALS CONTRACTS AND LABOR HOURS CONTRACTS
- 5031 CONTRACTING PROCEDURES GENERALLY
- 5032 SOLE SOURCE CONTRACTS
- 5033 EMERGENCY PROCUREMENTS
- 5034 SEALED BIDDING
- 5035 COMPETITIVE NEGOTIATION
- 5036 SIMPLIFIED CONTRACTING PROCEDURES
- 5037 COMPETITION EXEMPTIONS
- 5038 BLANKET PURCHASE AGREEMENTS
- 5039 DISTRICT OF COLUMBIA SUPPLY SCHEDULE
- 5040 MANDATORY SET-ASIDES
- 5041 FEDERAL SCHEDULES
- 5042 THE CONTRACTING OFFICER’S RESPONSIBILITY FOR CONTRACT ADMINISTRATION
- 5043 PAYMENT REQUESTS
- 5044 EXERCISING THE CONTRACT OPTIONS
- 5045 CONTRACT MODIFICATIONS
- 5046 CONTRACT TERMINATION
- 5047 CONTRACT DOCUMENTATION
- 5048 TRANSFER OF CONTRACTS
- 5049 DISPUTES
- 5050 PROTESTS
- 5051 REQUESTS FOR RECORDS
- 5052 PRIVACY AND DISCLOSURE
- 5053 APPLICABLE LAWS
- 5054 CONTINGENCY FEE CONTRACTS
- 5055 to 5098 RESERVED
- 5099 DEFINITIONS

5001 GENERAL

5001.1 This chapter sets forth the procurement rules of the Office of the Attorney General (OAG), pursuant to authority granted by Section 108b of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective October 15, 2015 (D.C. Law 21-36; D.C. Code § 1-301.88b) (2016 Repl. & 2017 Supp.) (“Act”). The following principles and procedures apply:

- (a) OAG is an independent agency of the District of Columbia government. Its general mission is to enforce the laws of the District in a manner that is in the public’s interest, to provide the District government with the highest level of legal advice and service, and to defend and protect the District’s interests in court.
- (b) OAG is subject to the requirements of the District of Columbia Procurement Practices Reform Act of 2010 effective April 8, 2011, (“PPRA”) (D.C. Law 18- 371; D.C. Code §§2-351.01, et seq.) (2016 Repl.), as amended, and, as an independent agency, has the authority to issue and implement its own procurement rules.
- (c) These regulations (also referred to as “rules”) supersede and replace any existing procurement regulations unless expressly referenced or incorporated in these rules. Where a procurement practice is not specifically addressed in this chapter, the CCO or CCO Delegate may, at his or her discretion, refer to other chapters of 27 DCMR for guidance. The CCO or CCO Delegate may adopt a provision from the other chapters of 27 DCMR for a particular procurement; provided that the provision is specifically referenced in the applicable procurement documentation.
- (d) The Attorney General has broad discretion to develop and use any procurement practice so long as it is consistent with the PPRA and is not specifically prohibited by any statute or this chapter; provided that the CCO or CCO Delegate shall issue a determination in writing that such practice is in the best interest of OAG.

5001.2 Where any statute or regulation is referred to in this chapter, the reference shall be to the most recent version, and any amendments or revisions to the statute or regulation.

5001.3 The Attorney General is authorized to enter into contracts to assist OAG to carry out its mission, and the Attorney General may delegate that authority in accordance with the Act and these rules.

5001.4 These procurement rules are for the benefit of OAG and are not intended to confer any rights or benefits on third parties. The principal purposes of these rules are to ensure that OAG’s procurement activities:

- (a) Are carried out in a fair, efficient and objective manner that promotes public confidence in OAG’s integrity; and
- (b) Produce reasonable value and results for OAG.

5001.5 These rules are intended to encourage participation by Certified Business Enterprises (CBEs), in accordance with the Small and Certified Business Enterprise Development and Assistance Act of 2005, (“SCBEDA Act”) effective October 20, 2005 (D.C. Law

16-133; D.C. Code § 2-218), as applicable. OAG's goals include expanding the use of CBEs.

5001.6 The Attorney General may waive the applicability of any provisions in these rules that are not specifically required by statute if the Attorney General finds in writing that:

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

5001.7 Pursuant to the authority described in section 2 of the Fiscal Year 2021 Local Budget Act of 2020, effective October 20, 2020 (67 DCR 10629) and incorporated in the District of Columbia Appropriations Act, 2021, approved December 22, 2020 (Pub. L. 116-260), and any substantially similar temporary or permanent authority, the Attorney General may enter into Contingency Fee Contracts, as defined in Section 5099.

5002 COMPLIANCE WITH PROCUREMENT ACT AND REGULATIONS

5002.1 Except as otherwise provided in the PPRA, the Act, or this chapter, a contract which is entered into in violation of the PPRA, the Act, or this chapter is void.

5002.2 Notwithstanding the provisions of §5002.1, a contract shall not be void if a determination is made that good faith has been shown by all parties and the violation of the provisions of the PPRA, the Act or this chapter are de minimis. The determination of good faith may be made by any of the following:

- (a) The Attorney General;
- (b) The Contract Appeals Board; or
- (c) A court of competent jurisdiction.

5002.3 The Attorney General's determination made pursuant to §5002.2 shall be in writing based upon a written request for review by the contractor or Contracting Officer. The request shall fully describe the contract, the status of performance, the reason why the contract is valid, and the grounds for the determination.

5003 PROHIBITED CONTINGENT FEES

5003.1 The Contracting Officer shall ensure that each solicitation, other than those for small purchases, contains language approved by the Attorney General giving notice to prospective contractors of the prohibition against contingent fee arrangements set forth in §416 of the PPRA.

- 5003.2 The Contracting Officer shall ensure that the language required by §416(b) of the PPRA is inserted into each contract.
- 5003.3 Except as permitted in §416(b) of the PPRA, the Contracting Officer shall not award any contract to a contractor that has made arrangements to pay a contingent fee or other consideration for soliciting or obtaining the contract.
- 5003.4 If the Contracting Officer has reason to believe that a prospective contractor or contractor is or has been involved in a contingent fee arrangement prohibited under §416 of the PPRA, and not otherwise permitted by law, the Contracting Officer shall notify the Attorney General in writing, which notification shall include any evidence or documentation of the alleged prohibited arrangement.
- 5003.5 If the Attorney General determines that a prohibited contingent fee has been paid or that a contractor has entered into an arrangement to pay a prohibited contingent fee under an existing contract, the Attorney General shall have the right to terminate an existing contract or take any other remedial action authorized under §416(b) of the PPRA.
- 5003.6 If the Attorney General determines that a prospective contractor has entered into an arrangement to pay a prohibited contingent fee, he or she shall direct the Contracting Officer to notify the prospective contractor that it is no longer eligible for contract award.

5004 MULTIYEAR CONTRACTS

- 5004.1 Unless prohibited by an appropriations act, a Contracting Officer may enter into a multiyear contract to obtain goods and services for any period of time deemed to be in the best interest of the District; provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation, funds are available for the first fiscal period at the time of contracting, and the contract is consistent with the requirement of §5004.2 of this chapter. Payment and performance obligations for succeeding fiscal periods shall be subject to availability and appropriations of funds.
- 5004.2 Except for contracts awarded pursuant to §5001.7, a multiyear contract is only authorized where the Contracting Officer determines in writing that:
- (a) Estimated requirements cover the entire period of the contract and are reasonably firm and continuing; and
 - (b) The multiyear term would encourage effective competition, promote economies in District procurement, or otherwise be in the best interest of the District.

5004.3 Multiyear contracting may be used in procurements by competitive sealed bids or competitive sealed proposals, sole source procurements, and in competition exempt procurements.

5004.4 Except for contracts awarded pursuant to §5001.7, budget authority to fund a multiyear contract shall be obligated on an annual basis. The initial obligation of funds shall be for the period between the dates of contract award through the end of the fiscal year in which the contract award occurs. Thereafter, each subsequent obligation of funds shall be made one (1) fiscal year at a time and must cover the contract amount that will be incurred in the fiscal year in which the contract work will be performed. First fiscal year requirements of the contract, and funds for requirements in each subsequent contract term, shall be obligated one (1) fiscal year at a time.

5005 CANCELLATION OF MULTIYEAR CONTRACTS

5005.1 Except for contracts awarded pursuant to §5001.7, at the end of each fiscal year a multiyear contract shall be canceled if sufficient budget authority is not available to fund the contract during a subsequent fiscal year.

5005.2 Except for contracts awarded pursuant to §5001.7, if a multiyear contract is canceled due to unavailability of funds, the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the goods delivered and accepted or services delivered and accepted under the contract.

5005.3 Except for contracts awarded pursuant to §5001.7, if a multiyear contract is terminated for the convenience of the District, including items subject to cancellation, the District’s obligation shall not exceed the amount specified for contract performance plus the reasonable value of any nonrecurring costs incurred but not amortized in the price of the goods delivered or services performed under the contract.

5005.4 The costs of cancellation under §5005.2 or termination under §5005.3 may be paid from appropriations available for such purposes.

5005.5 For contracts awarded pursuant to §5001.7, the terms of the contract shall govern cancellation and payments, if any.

5006 MULTIYEAR CONTRACT SOLICITATIONS

5006.1 A solicitation for a multiyear contract shall include:

- (a) The amount of supplies or services required or the proposed contract period;
- (b) A unit price for each supply or service, which unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation or resulting contract).

- (c) A clause stating that the multiyear contract will be cancelled if funds are not appropriated or otherwise made available to support the continuation of performance in any fiscal period succeeding the first and a statement that this clause does not affect either the District’s rights or the contractor’s rights under any termination clause in the contract; and
- (d) Whether bidders or offerors may submit prices for:
 - (1) The first fiscal period only;
 - (2) The entire time of performance only; or
 - (3) Both the first fiscal period and the entire time of performance.

5006.2 The requirements at § 5006.1 do not apply to competition exempt procurements.

5007 APPLICABILITY

5007.1 These rules apply to the procurement of goods or services, including construction services, by and for OAG:

- (a) Whether through purchase or lease; and
- (b) Whether the goods or services are already in existence or must be developed.

5007.2 This chapter does not apply to any goods or services that OAG may acquire as a gift or on a pro bono basis.

5007.3 These rules shall not apply to:

- (a) The purchase or lease of real property by OAG; or
- (b) The disposition of real or personal property by OAG.

5008 CHIEF CONTRACTING OFFICER

5008.1 The Attorney General shall serve as OAG’s Chief Contracting Officer (CCO). The CCO shall have plenary contracting authority and have responsibility for supervising OAG’s procurement activities. The CCO shall prescribe the standard contract format and standard contract provisions to be included in the contracts, consistent with this chapter. The CCO may waive standard contract provisions and substitute contract provisions if the CCO determines in writing that it is in the best interest of OAG to do so.

5009 DELEGATION OF AUTHORITY TO CONTRACTING OFFICERS

5009.1 The Attorney General may delegate contracting authority to any qualified OAG employee (CCO Delegate or Contracting Officer).

5009.2 Each delegation of contracting authority under the Act shall be in writing and shall include clear instructions on the limitations of the contracting authority being delegated.

5009.3 The Attorney General shall use a form approved for each written delegation or modification of contracting authority. The executed form shall include the following:

- (a) The limitations on the scope of delegated authority to be exercised;
- (b) The limitations on the authority set forth in applicable laws and regulations; and
- (c) The signature of the Attorney General.

5009.4 In no instance shall the CCO Delegate presume any greater contracting authority than has been given. A CCO Delegate shall not re-delegate his or her authority without approval of the Attorney General.

5009.5 Termination of a delegation of contracting shall be in writing unless the written delegation or modification of authority contains a provision for automatic termination or expiration. No termination shall operate retroactively.

5009.6 Subject to compliance with these rules, Contracting Officers shall have wide latitude to exercise business judgment in conducting procurements. Consequently, the ability to exercise that discretion wisely and responsibly is an important job qualification.

5009.7 The Attorney General shall ensure that Contracting Officers periodically receive training to strengthen and update their skills and knowledge concerning procurement matters.

5009.8 The Attorney General shall publish and regularly update on the OAG website an updated list of authorized Contracting Officers and their authority limits.

5010 AUTHORITY AND DUTIES OF CONTRACTING OFFICERS

5010.1 The Contracting Officer shall be authorized to enter into, administer, and terminate contracts. However, the Contracting Officer may bind the District only to the extent of the contracting authority set forth in his or her delegation.

5010.2 The Contracting Officer shall:

- (a) Make all determinations and findings required by the Act, the PPRA, or this chapter for each solicitation or contract for which he or she is responsible;

- (b) Not enter into a contract unless he or she has ensured that all requirements of law, rules, and all other applicable procedures (including approvals) have been met;
- (c) Have wide latitude to exercise business judgment;
- (d) Ensure that contractors receive impartial, fair, and equitable treatment in accordance with the PPRA, the Act and this chapter;
- (e) Request and consider the advice of specialists in auditing, law, engineering, transportation, and other fields when necessary or appropriate to the exercise of the contracting officer's authority;
- (f) Ensure that sufficient unencumbered budget authority is available for obligation for each contract, as applicable;
- (g) Not make any purchase or enter into any contract for an amount in excess of his or her specifically delegated contracting authority; and
- (h) Maintain an electronic contract file for each procurement action, which serves as the repository for all required documentation concerning the procurement and any resulting contracts.

5010.3 Only the Contracting Officer has the authority to take the following actions:

- (a) Enter into contracts;
- (b) Exercise contract options;
- (c) Terminate contracts; and
- (d) Modify contracts.

5010.4 Prior to terminating a contract over \$100,000, the Contracting Officer shall first obtain the approval of the CCO.

5010.5 No representative of OAG, including a Contracting Officer, shall:

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

5011 CONDUCT OF CONTRACTING OFFICERS

5011.1 The procurement business of OAG shall be conducted in a manner above reproach and, except as authorized by law, with complete impartiality and with preferential treatment for none.

5011.2 The Attorney General shall ensure that each Contracting Officer is thoroughly familiar with the conflict of interest and other employee conduct provisions of Chapter 18 (Employee Conduct) of Subtitle B (Government Personnel) of Title 6 (Personnel) of the District of Columbia Municipal Regulations, and the applicability of those regulations to Contracting Officers and the procurement process.

5012 CONTRACTOR QUALIFICATION REQUIREMENTS

5012.1 A prospective contractor must:

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

5012.2 The issues of responsibility and conflicts of interests/disqualification are addressed in §§ 5013 and 5015 respectively.

5013 CONTRACTOR RESPONSIBILITY

5013.1 To receive a contract from OAG, a contractor must be responsible. To be considered responsible, a prospective contractor must meet standards set forth in D.C. Code §2–353.01.

5013.2 For all contracts that exceed one hundred thousand dollars (\$100,000), the contracting officer shall not make a purchase or an award unless the contracting officer has determined in writing that the prospective contractor is responsible. For contracts under \$100,000, award of the contract shall be deemed the Contracting Officer’s determination that the contractor is responsible.

5013.3 In the absence of information clearly indicating that a prospective contractor is responsible, the prospective contractor shall be deemed non-responsive, and the Contracting Officer shall make a written determination of non-responsibility. The Contracting Officer shall provide a copy of the determination of non-responsibility to the prospective contractor. The Director of DSLBD shall also be notified of a potential non-responsibility determination involving a certified small business concern that is otherwise eligible for an award. The CO shall consider any information provided by DSLBD before making a determination of non-responsibility.

5013.4 In evaluating a prospective contractor’s responsibility, a Contracting Officer may request information from the contractor and may also consider information available

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

5013.5 For all contracts that exceed \$100,000, a potential contractor shall complete and submit with its bid or offer a certification that includes information needed to determine if a prospective contractor is responsible. The certification shall be signed under the penalty of perjury. The contractor shall update the certification prior to the exercise of an option year contract and, during the contract term, within 60 days of any material change incircumstances that affect its responses.

5014 PRICE REASONABLENESS

5014.1 The contracting officer shall determine whether a price is fair and reasonable for each contract.

5015 ORGANIZATIONAL CONFLICTS OF INTEREST; DISQUALIFICATION OF A CONTRACTOR

5015.1 OAG intends to avoid even the appearance of conflict of interest or impropriety in connection with its procurement activities. Thus, even if a prospective contractor is determined to be responsible, the CCO has the discretion to disqualify the contractor (or to take other appropriate measures) based on a conflict of interest, the appearance thereof, or other ethical considerations as further described in this section.

5015.2 If the Contracting Officer determines that there is a conflict of interest or the appearance of a conflict of interest that cannot be mitigated, or another ethical consideration, the Contracting Officer may:

- (a) Determine the contractor to be non-responsible; provided that the Contracting Officer notify the contractor of the conflict of interest and provide the contractor the opportunity to respond.
- (b) Rescind (void) or terminate a contract subsequent to contract award; or
- (c) Pursuant to §5015.4, take other appropriate corrective measures, such as canceling a pending solicitation and initiating a new procurement; provided, however, that prior to taking any such action, the Contracting Officer shall first obtain the approval of the CCO.
- (d) If the Contracting Officer determines that it is in the best interest of the District to award the contract notwithstanding a potential conflict of interest, the Contracting Officer shall submit a request for waiver to the CCO. The waiver request and decision shall be included in the contract file.

- 5015.3 A determination by the Contracting Officer, approved by the CCO, to take a corrective measure described in §5015.4 below shall be made in writing and included in the contract file.
- 5015.4 The Contracting Officer or CCO may properly take corrective measures whenever necessary or prudent to avoid the appearance of impropriety or otherwise eliminate doubts about the integrity and fairness of procurement. For example, situations in which corrective measures might be warranted include (but are not limited to):
- (a) Cases where an employee of OAG or the CCO have any interest, direct or indirect, as principal, surety, or otherwise in a contract, where the expense or consideration of the contract is payable from OAG funds.
 - (b) Cases where the Attorney General or an employee of OAG involved in a procurement had a relationship with a contractor that fell outside the District of Columbia government ethics rules, but nonetheless raised questions about the procurement's integrity;
 - (c) Cases where a prospective contractor received preferential treatment in relation to its competitors;
 - (d) Cases where a prospective contractor hired a former employee of OAG who was privy to non-public information about the procurement, and involved that individual in its proposal preparation efforts; or
 - (e) Cases where there is clear evidence suggesting collusive bidding or similar anti-competitive practices by prospective contractors.
- 5015.5 Organizational conflicts of interest also may warrant disqualification or other corrective measures. Organizational conflict of interest means a situation in which a contractor:
- (a) May be unable to render impartial and objective assistance or advice to OAG; or
 - (b) May have an unfair advantage over potential competitors.
- 5015.6 Organizational conflicts of interests can arise in a variety of circumstances. For example, a contractor that develops the technical specifications for an item that will be the subject of a future procurement may have an incentive to develop specifications favoring its own products unless it is barred from participating in the future procurement. Another example is a case where a contractor performs services for OAG that require access to non-public information (for example, proprietary data of other companies) and could therefore gain an unfair advantage over competitors in future procurements.

5015.7 A number of measures may be appropriate for eliminating or mitigating organizational conflicts of interest, and the Contracting Officer has broad discretion to select the approach that is most suitable in any particular case. For example, a contract to assist OAG in developing requirements for a future procurement ordinarily should include a clause prohibiting the contractor from participating in the future procurement. A contract in which the contractor gains access to proprietary information of other companies (or non-public information on OAG's procurement plans) should include an appropriate clause that prevents the contractor from using such information in any manner that might give it an unfair advantage and prohibits the contractor from disclosing this proprietary information.

5015.8 In each case, the mechanism adopted to address an organizational conflict of interest should be designed to prevent:

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

5016 PROCUREMENT PLANNING

5016.1 OAG shall perform procurement planning and conduct market research to promote and provide for full and open competition with due regard to the nature of the goods and services to be acquired.

5016.2 When full and open competition is not required by law, the Contracting Officer may perform procurement planning and conduct market research, as appropriate.

5016.3 Procurement planning shall begin as soon as an agency need is identified and preferably well in advance of the fiscal year in which the contract award is necessary. In developing the plan, the planner may form a team consisting of all those who will be responsible for significant aspects of the procurement, such as contracting, fiscal, legal, and technical personnel and, when applicable, the Department of Small and Local Business Development.

5017 MARKET RESEARCH

5017.1 Before issuing a solicitation or making a purchase, OAG shall:

- (a) Estimate the likely cost of the proposed procurement and assure that adequate funds are available; and
- (b) Conduct appropriate market research and establish minimum needs.

5017.2 Market research is designed primarily to familiarize OAG with the market for the goods or services it seeks to acquire and to assist OAG in the development of an appropriate strategy for conducting a prompt and efficient procurement in accordance

with these rules. The extent of market research may vary depending on the urgency, size and complexity of the proposed procurement, and on OAG's existing knowledge of the market based on its past experience in procuring similar goods or services.

5017.3 Market research, to the extent it is relevant to the particular procurement and not already known to OAG, generally should focus on obtaining information such as the following:

- (a) Customary practices in the relevant market;
- (b) The prospective sources that may be able to supply the goods or services;
- (c) The opportunities for participation by firms that qualify as CBEs; and
- (d) The benchmarks available to evaluate the likely cost of the procurement and the reasonableness of prices or costs proposed by prospective contractors.

5017.4 In conducting market research, OAG may solicit information from prospective sources on matters such as their interest in the potential procurement, the characteristics and costs of their products or services, their customary practices, and their knowledge of the industry generally. Such information may be solicited by requesting interested parties to submit written information (for example, by posting a notice on the Internet seeking information pertinent to the proposed procurement), through meetings or telephone contacts, by distributing and seeking comments on a draft solicitation, or through other prudent means.

5017.5 In addition to soliciting information from prospective contractors, OAG may also obtain information from other sources. For example, price information, which can assist in estimating the likely cost of the procurement and evaluating price reasonableness, is frequently available from sources such as catalogs, Internet sites, or records of past procurements.

5017.6 OAG may conduct market research for sole source, competition exempt, and other non-open source procurements by issuance of a market survey. Responses to such market surveys may be used only for informational purposes.

5018 PREPARING SOLICITATIONS

5018.1 Based on information obtained through market research, the Contracting Officer shall make a determination as to which procurement method identified in these regulations is most beneficial to OAG. The Contracting Officer will ordinarily prepare a solicitation requesting responses; however, the Contracting Officer may determine to purchase the required goods or services through its small purchase procedures or from a federal or District supply schedule contract, or any other method set forth in the PPRA or this chapter.

- 5018.2 When the Contracting Officer issues a solicitation, its length and contents will depend on factors such as the size of the procurement, the nature and complexity of the goods or services, the procurement method to be used, and the contract type. In general, however, a solicitation should clearly describe OAG's needs (for example, by providing a statement of work outlining the type of services required or information specifying product characteristics or capabilities) and method of award.
- 5018.3 In preparing a solicitation, the Contracting Officer should seek to enhance competition by carefully scrutinizing and eliminating, to the extent possible, any unnecessary requirements that may restrict the number of prospective sources or the range of goods or services they can offer. Such provisions may include, for example, technical specifications that unnecessarily limit the competitive field, unnecessarily aggressive delivery schedules, or burdensome terms and conditions that might deter smaller companies from competing.
- 5018.4 The Contracting Officer may issue solicitations in paper form or electronically.
- 5018.5 The Contracting Officer, with the approval of the CCO, may cancel a solicitation or reject all bids or proposals received at any time before the contract award when the Contracting Officer determines in writing that the cancellation is in OAG's best interests.

5019 PUBLICIZING PROCUREMENT OPPORTUNITIES

- 5019.1 The Attorney General shall maintain an OAG website that provides the public with notice of opportunities to participate in OAG's procurement process, and other relevant information about OAG procurements.
- 5019.2 The Contracting Officer may also use other methods to publicize procurements. The specific method or methods used should be tailored to the particular procurement, taking into account factors such as the size of the procurement, the type of goods or services sought, the urgency associated with the requirement, and the most efficient means of disseminating information in the relevant market. The methods available to publicize procurement opportunities may include print advertising Internet notices, targeted outreach to lists of qualified sources known to supply particular categories of goods or services, , and holding pre-bid or pre-proposal conferences.

5020 INVITATION FOR BIDS

- 5020.1 An Invitation for Bids (IFB) shall be advertised for at least fourteen (14) days before the date set for the receipt of bids, unless the Attorney General determines in writing that it is appropriate to shorten the notice period to not less than three (3) days. The Attorney General shall consider the following factors in determining whether it is appropriate to shorten a notice period:

- (a) The complexity of the procurement;

- (b) Subcontracting requirements;
- (c) The degree of urgency;
- (d) The impact of a shortened notice period on competition; and
- (e) Any other relevant factors.

5021 REQUESTS FOR PROPOSALS

5021.1 A Request for Proposals (RFP) shall be advertised for at least twenty-one (21) days before the date set for the receipt of proposals, unless the Attorney General determines in writing that it is appropriate to shorten the notice period to not less than fourteen (14) days. The Attorney General shall consider the following factors in determining whether it is appropriate to shorten the notice period:

- (a) The complexity of the procurement;
- (b) Subcontracting requirements;
- (c) The degree of urgency;
- (d) The impact of a shortened notice period on competition; and
- (e) Any other relevant factors.

5022 NOTICE OF INTENT TO AWARD A SOLE SOURCE CONTRACT

5022.1 Regardless of dollar value, and unless the sole source contract is an emergency procurement, a notice of intent to award a sole source contract pursuant to § 5032 shall be published on the OAG website for at least ten (10) days prior to contract award.

5022.2 A notice of intent to award a sole source contract shall include:

- (a) A copy of the proposed determination and findings (D&F) required under §404(b) of the PPRA;
- (b) A clear description of the item to be procured; and
- (c) The name of the intended sole source contractor.

5022.3 Sole source contracts, regardless of dollar value, shall be published on the OAG website within seven days of award.

5023 NOTICE OF CONTRACT AWARDS AND CONTRACT MODIFICATIONS OVER ONE HUNDRED THOUSAND DOLLARS (\$100,000)

5023.1 Contract awards or contract modifications in an actual or estimated amount over one hundred thousand dollars (\$100,000) shall be published on the OAG website within seven (7) days of execution.

5023.2 All information published under this section shall be removed from the OAG website upon the expiration or termination of the contract, or after five (5) years of award, whichever is longer.

5024 NOTICE OF EMERGENCY PROCUREMENTS

5024.1 Notice of emergency procurement awards, regardless of dollar amount, shall be published on the OAG website within seven (7) days of award. The notice shall include:

- (a) The determination and findings justifying the emergency procurement;
- (b) A description of the goods and services procured;
- (c) The name of the contractor; and
- (d) A copy of the contract.

5025 CONTRACT TYPES

5025.1 The type of contract awarded by the Contracting Officer will generally depend on factors such as the particular goods or services to be acquired, whether the costs of the goods or services can be estimated in advance with reasonable accuracy, and the degree to which the precise nature and extent of the contract work is known at the time of award.

5025.2 The Contracting Officer may use a variety of contract types, including but not limited to:

- (a) Fixed price contracts (fixed price contracts will generally be used in connection with the purchases of discrete and identifiable goods or assets, and for other appropriate purchases);
- (b) Cost reimbursement contracts;
- (c) Delivery order contracts;
- (d) Time-and-materials or labor-hours contracts; and

(e) Indefinite Delivery, Indefinite Quantity contracts.

5025.3 The Contracting Officer may also award any alternative type of contract, including Contingency Fee Contracts, that will produce reasonable value in the context of a particular procurement. However, the Contracting Officer may not award cost-plus-percentage-of-cost contracts.

5026 FIXED-PRICE CONTRACTS

5026.1 Fixed price contracts include several variants:

- (a) Firm fixed price;
- (b) Fixed price with economic price adjustment;
- (c) Fixed price incentive;
- (d) Fixed unit price; and
- (e) Fixed price plus award fee.

5026.2 Unlike cost reimbursement contracts, any type of fixed price contract obligates the contractor to complete the contractually-specified work for a fixed price.

5026.3 A firm fixed price contract provides for a price that is not subject to adjustment, except in the event of a change to the scope of work.

5026.4 A fixed price contract with economic price adjustment provides for an upward or downward adjustment in the stated contract price based on changes in certain benchmarks specifically identified in the contract (for example, catalog prices, the producer price index for a particular commodity, or a recognized index for the price of legal services), subject to a ceiling on upward adjustments.

5026.5 A fixed price incentive contract generally provides for establishing a final price by applying a formula based on the relationship between the total cost actually incurred by the contractor and a total target cost. A fixed price incentive contract results in the parties sharing in the cost savings or increases associated with differences between the actual and target cost. These contracts also can include incentive formulas based on the contractor's schedule or technical performance.

5026.6 A fixed unit price contract establishes fixed prices for a unit of services, materials or a combination of both. The units are known and definable but the actual quantity to complete the requirement cannot be determined in advance with certainty. The contract may contain an estimated quantity but must include a ceiling amount. Unlike a requirements contract, multiple fixed unit price contracts for the same work can be awarded.

5026.7 A fixed price plus award fee contract establishes a firm fixed price for services and provides an additional profit or fee amount that may be awarded, in whole or in part, based upon periodic evaluations of ongoing contractor performance. The award fee determination is subjective, made unilaterally by the Contracting Officer, and is not subject to the Disputes clause procedures.

5027 COST REIMBURSEMENT CONTRACTS

5027.1 Cost-reimbursement contracts provide for payment of incurred costs to the extent prescribed in the contract. A cost-reimbursement contracts must include a total cost ceiling (not-to-exceed amount), which the contractor may not exceed except at its own risk. Cost-reimbursement contracts are appropriate when costs of performance cannot be estimated with sufficient accuracy to establish a fixed price.

5027.2 Other contract types may include cost-reimbursement components, which must be clearly identified in the price schedule and include a cost ceiling. Cost-reimbursement components are reimbursed at cost, unless additional limitations are prescribed by the contract, and may not include a fee.

5027.3 In accordance with 27 DCMR Chapter 33, to be reimbursable, a cost must be:

- (a) Allowable, as prescribed by the contract;
- (b) Properly allocable to the contract;
- (c) Reasonable in nature and amount; and
- (d) Determined in accordance with generally accepted accounting principles.;

5027.4 The contractor must notify the Contracting Officer when it believes it will reach the total cost ceiling prior to the completion of all required contract work. The Contracting Officer may approve an increase to the ceiling if warranted, so long as sufficient funds have been certified for the increase, or may instruct the contractor to cease performance.

5027.5 Cost reimbursement contracts may include:

- (a) Cost-plus-fixed-fee;
- (b) Cost-plus-incentive-fee;
- (c) Cost-plus-award-fee;
- (d) Contracts with a guaranteed maximum price;

(e) Cost-sharing; and

(f) Cost-no-fee.

5027.6 A cost-plus-fixed-fee contract provides for a negotiated fee that is fixed at the contract's inception. The fee is only subject to adjustment as a result of changes the work to be performed under the contract that change the contractor's level of effort required to perform the work.

5027.7 A cost-plus-incentive-fee contract provides for a fee that is either based on the relationship between the contractor's total reimbursable cost and a total target cost, subject to a specified minimum and maximum, or on the contractor's schedule for completion or objective technical performance. These contracts must include a formula for calculating the incentive fee.

5027.8 A cost-plus-award-fee contract provides for:

(a) A base fee fixed at the contract's inception; and

(b) An award fee that the contractor may earn (in whole or in part) during performance, which is designed to motivate superior performance.

5027.9 The award fee in a cost-plus-award-fee contract is determined unilaterally by the Contracting Officer, based on the Contracting Officer's judgment and evaluation of how well the contractor has performed in relation to the award fee criteria identified in the contract. In no event shall the total award fee available to the contractor exceed ten percent (10%).

5027.10 In appropriate circumstances The Contracting Officer may include a guaranteed maximum price (GMP) in a cost reimbursement contract. A GMP differs from a not-to-exceed amount in that a contractor is required to complete performance of the base scope of work required under the contract for an amount that does not exceed the GMP. Under such an approach, if the total cost exceeds the GMP, the contractor shall be required to complete performance of the base scope of work at its own cost and expense.

5027.11 A cost-sharing contract is a cost-reimbursement contract in which the contractor receives no fee and is reimbursed only for an agreed-upon portion of its allowable costs. A cost-sharing contract may be used when the contractor agrees to absorb a portion of the costs, in the expectation of substantial compensating benefits.

5027.12 A cost-no-fee contract reimburses allowable costs up to a specified not to exceed total awarded amount of the contract. The contractor receives no fee or profit.

5028 SPECIAL METHODS OF CONTRACTING

5028.1 Notwithstanding any other provision of this chapter, a Contracting Officer may procure goods and services using special methods of procurement, if the Contracting Officer determines that it is in OAG's best interest. As part of the procurement planning process, the Contracting Officer will determine the most appropriate method of contracting based on, among other considerations, the scope of work, delivery schedules, existing market conditions, and other relevant considerations. Some examples of special methods of procurement are:

(a) Cooperative Purchasing Agreements

- i. OAG may participate in Cooperative Purchasing Agreements. Procurements through Cooperative Purchase Agreements shall be considered competitive for the purposes of this chapter.
- ii. OAG may sponsor, conduct, or administer Cooperative Purchasing Agreements with any other organization, public or private, including state, county, or municipal jurisdictions, for the purpose of procuring supplies and services, which shall include construction services or architectural and engineering services related to construction repairs, upgrades, restoration, alteration, and reconstruction of existing buildings and facilities.
- iii. Cooperative Purchasing Agreements entered into by OAG shall be in accordance with, to the extent practicable, all laws, statutes, and regulations applicable to OAG with respect to contracting, and shall not be inconsistent with laws, statutes, and regulations of the United States government that apply specifically to the District.

(b) Agreements with Federal Agencies

- i. OAG may enter into a Memorandum of Understanding (MOU) or a Memorandum of Agreement (MOA) with any federal department, establishment, bureau, or office for materials, supplies, equipment, work, or services of any kind that such federal agency may be in a position to supply or be equipped to render, by contract, or otherwise. The acquisition of goods or services directly from a federal agency are exempt from competition.
- ii. OAG shall pay the federal agency, upon its written request, in accordance with the terms of the agreement.
- iii. Orders placed as provided in this subsection shall be considered as obligations upon appropriations in the same manner as orders or contracts placed with private contractors.

(c) Agreements with District Agencies

- i. OAG may enter into a Memorandum of Understanding or a Memorandum of Agreement with any department, office, or agency of the District for materials, supplies, equipment, work, or services of any kind that the requisitioned department, office, or agency may be in a position to supply or equipped to render.
 - ii. To the extent that OAG places any such order, it shall either advance or reimburse such District department, office, or agency in accordance with the terms of the agreement.
 - iii. Orders placed as provided in this subsection shall be considered as obligations upon appropriations in the same manner as orders or contracts placed with private contractors.
- (d) Letter Contracts
- i. The Contracting Officer may use a letter contract when 1) OAG's interests demand that the contractor be given a binding commitment so that work can start immediately; and 2) executing a definitive contract is not possible in sufficient time to meet the requirement. A letter contract shall not commit OAG to a definitive contract in excess of the funds available at the time the letter contract is executed.
 - ii. Each letter contract shall be as complete and definite as possible under the circumstances and shall include clauses approved and required by the CCO.
 - iii. When a letter contract is executed, the Contracting Officer shall include a price ceiling for the anticipated definitive contract. The price ceiling of the executed definitized contract shall not exceed the price ceiling for the anticipated definitive contract included in the letter contract.
 - iv. Each letter contract shall also include a clause indicating the maximum liability of OAG under the letter contract. The maximum liability to OAG shall be the estimated amount necessary to cover the contractor's requirement for funds before execution of the definitive contract. However, OAG's maximum liability shall not exceed fifty percent (50%) of the overall price ceiling for the term of the definitive contract.
 - v. The Contracting Officer shall execute a definitive contract within one hundred and eighty (180) days after the date of execution of the letter contract unless the, the Contracting Officer determines that it is necessary to extend the letter contract for an additional period.

- vi. Prior to execution of a letter contract, the Contracting Officer shall ensure that funds are encumbered for obligation in the amount of the maximum OAG liability under the letter contract.
- vii. The Contracting Officer shall use the estimated amount of the definitive contract for determining the type and level of review and approval required as well as the contracting authority necessary.

5029 TERM CONTRACTS

- 5029.1 Under term contracts, the contractor's delivery and performance obligations are triggered when the Contracting Officer subsequently issues orders pursuant to the contract.
- 5029.2 Term Contracts include:
- (a) Requirements contracts; and
 - (b) Indefinite quantities contracts.
- 5029.3 A requirements contract provides the mechanism for OAG to order from a single contractor all of its requirements for designated supplies or services during a specified period. The Contracting Officer shall state a realistic estimated total quantity to be purchased in the solicitation and resulting contract. This estimate is not a representation to an offeror or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable. A solicitation for a requirements contract must be approved by the CCO in addition to the Contracting Officer.
- 5029.4 An indefinite quantity contract provides for an indefinite quantity, within specified limits, of supplies or services to be furnished during a fixed period.
- 5029.5 An indefinite quantity contract:
- (a) Requires OAG to order, and the contractor to deliver, at least the stated minimum quantity of supplies or services; and
 - (b) Requires the contractor to deliver any additional quantities OAG may order during the contract period subject to the stated maximum quantity limitations in the contract.
- 5029.6 The Contracting Officer may award a single indefinite quantity contract for particular goods or services or may award multiple contracts and choose between the selected contractors in awarding subsequent orders.

- 5029.7 If multiple indefinite quantity contracts are awarded, the Contracting Officer shall establish in the solicitation and resultant contracts the procedure by which orders will be placed with each contractor.
- 5029.8 Generally, one (1) of the following two (2) award procedures shall be used:
- (a) The rotating award procedure, where work is assigned on a rotation basis (that is, the first order is given to Contractor A, the second order to Contractor B, etc.); or
 - (b) The competitive award procedure, where the Contracting Officer requests task order proposals from two (2) or more contractors holding an indefinite delivery contract.
- 5029.9 The competitive award procedure is preferred.
- 5029.10 If the competitive award procedure is used for ordering, each bid or proposal request shall specify:
- (a) The specific goods or services required;
 - (b) A delivery schedule or period of performance; and
 - (c) Such other information as the Contracting Officer may reasonably request.

**5030 TIME AND MATERIALS CONTRACTS AND
LABOR HOURS CONTRACTS**

- 5030.1 Time-and-materials contracts provide for acquiring supplies or services on the basis of:
- (a) Direct labor hours charged at loaded fixed hourly rates, which include overhead, general and administrative expenses, and profit; and
 - (b) Materials (which may be charged either at their actual cost or at fixed unit prices, as specified in the contract).
- 5030.2 A labor hours contract is a time-and-materials contract that does not involve materials.
- 5030.3 Both time-and-materials contracts and labor hours contracts must specify a ceiling (not-to-exceed) amount.

5031 CONTRACTING PROCEDURES GENERALLY

5031.1 In general, every procurement by OAG should be conducted in accordance with competitive contracting procedures, suitable to the specific procurement, that produce reasonable value and reasonable results.

5031.2 The contracting procedures that the Contracting Officer may use include, but are not limited to, the procedures described in this chapter. In any procurement including change orders or supplemental agreements, the Contracting Officer may require the bidder, offeror or contractor to submit to OAG factual information reasonably available to the bidder, offeror or contractor, in order to substantiate that the price or cost offered, or some portion of it, is reasonable.

5032 SOLE SOURCE CONTRACTS

5032.1 Procurement contracts may be awarded through noncompetitive negotiations when the Contracting Officer determines in writing that there is only one source for the required commodity, service, construction, or litigation experts.

5032.2 If the Contracting Officer makes a determination pursuant to § 5032.1 that a sole source procurement is necessary to meet an essential requirement of OAG, the Contracting Officer shall document such determination in writing and may procure goods, services, or construction without regard to the procedures set forth elsewhere in this chapter; provided that the Contracting Officer shall comply with the provisions of § 5022 regarding posting notice of intent to award a sole source procurement and posting notice of contract award.

5032.3 A written determination by the Contracting Officer supporting a sole source procurement pursuant to this Section shall include:

- (a) A description of the nature of the goods or services; and
- (b) An explanation of why the goods or services are only available from a single source.

5032.4 The Contracting Officer shall publicize OAG's intent to enter into a sole source contract in accordance with the provisions of §5022.

5032.5 If a grant or law requires a specific vendor to provide certain goods or services for a requirement, the Contracting Officer does not have to publicize the notice of intent to enter into a sole source contract.

5032.6 A sole source contract shall not be justified on the basis of:

- (a) The lack of adequate advance planning for the procurement of the required goods or services;

- (b) Delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
- (c) Pending expiration of budget authority.

5033 EMERGENCY PROCUREMENTS

- 5033.1 The Contracting Officer may award a contract on an emergency basis when there is an imminent threat to the public health, welfare, property, or safety, or to prevent or minimize serious disruption in District services.
- 5033.2 The Contracting Officer shall prepare a D&F that sets forth the justification for the emergency procurement. The D&F shall include:
- (a) A description of the requirement;
 - (b) A description of the emergency;
 - (c) A description of steps taken, to solicit bids or proposals from as many potential competitors as possible under the emergency condition;
 - (d) A determination that the anticipated costs to the District will be fair and reasonable in light of the emergency;
 - (e) A specific citation to Section 405 of the PPRA (D.C. Code § 2- 354.05) and the applicable provisions of this chapter that provide legal authority for the emergency procurement; and
 - (f) Any other pertinent facts that support the emergency justification.
- 5033.3 Emergency procurements shall be limited to those goods or services necessary to meet the emergency.
- 5033.4 Emergency procurements shall be made with as much competition as is practicable under the circumstances, based on the judgment and determination of the Contracting Officer.
- 5033.5 When the funding for the goods or services intended to be procured is certified by the appropriate fiscal official, the Contracting Officer shall have the authority to issue oral or written orders allowing the contractor to proceed with an emergency procurement; provided that oral orders must be reduced to writing within three (3) business days. After issuing the emergency order, the Contracting Officer shall execute the emergency contract and publish it, along with the written determination, on the OAG website within seven (7) business days.

- 5033.6 Emergency procurement procedures shall not be used for contracts exceeding ninety (90) days; provided that if the development time for the goods or services exceeds ninety (90) days, the contract shall not exceed one hundred twenty (120) days.
- 5033.7 A contract procured on an emergency basis shall not be modified to expand the scope or extend the time of the procurement unless a limited number of additional goods or services are needed to fill an on-going emergency requirement until regular procurement action procedures can be completed.
- 5033.8 Notice of all emergency procurements, including D&Fs, shall be publicized in accordance with the provisions of §5024.

5034 COMPETITIVE SEALED BIDS

- 5034.1 The solicitation used to initiate a procurement conducted by sealed bidding is known as an Invitation for Bids (IFB).
- 5034.2 The evaluation factors used in sealed bid procurements are limited to price and price-related factors (including price evaluation preferences for CBEs).
- 5034.3 The IFB shall specify:
- (a) Any information necessary to explain how the Contracting Officer will evaluate price (for example, whether option prices will be evaluated);
 - (b) Any price-related factors that will be evaluated and their relative importance in the overall evaluation scheme;
 - (c) A description of the goods or services sought (including quantity requirements);
 - (d) The contract delivery schedule;
 - (e) A description of any special qualification requirements the contractor must satisfy;
 - (f) Instructions for submitting bids (including the deadline for bid submission, the method(s) for submitting bids, any representations or certifications bidders must submit, and any requirements for the submission of items such as bid samples, subcontracting plans, or payment or performance bonds);
 - (g) The period during which bids must remain open for acceptance; and
 - (h) The contract's terms and conditions.

- 5034.4 If the Contracting Officer deems it advisable, the IFB may contain either an estimate that generally describes the price range contemplated by OAG or a funding limitation for the procurement.
- 5034.5 Any changes in the information set forth in an IFB must be made by an amendment to the IFB.
- 5034.6 Bidders are responsible for submitting bids and any modifications or withdrawals so as to reach the Contracting Officer designated in the invitation for bid (IFB) by the time specified in the IFB. Bids shall be submitted by a method specifically permitted by the IFB (for example, hand delivery, mailing, or electronic transmission). If no time is specified in the IFB, the time for receipt is 2:00 p.m., local time, on the date that bids are due.
- 5034.7 A bid may be withdrawn or modified at any time before bid opening by any of the methods permitted for submitting bids.
- 5034.8 Any bid, modification, or withdrawal of a bid received after the exact time specified for receipt of bids is late and will not be considered unless:
- (a) It was transmitted through an electronic method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure prior to the due date and time;
 - (b) There is acceptable evidence that it was transmitted in sufficient time to be received by the exact time specified, however the Government infrastructure caused the bid to not be transmitted or the Government otherwise mishandled the bid;
 - (c) The late bid is the only responsive bid received;
 - (d) A late modification is of an otherwise successful bid, that makes its terms more favorable to the Government; or
 - (e) An emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and an amendment to bid opening date and time could not be issued.
- 5034.9 Notwithstanding the requirements of 5034.8, the District may accept a late bid, modification, or withdrawal if such bid, modification, or withdrawal is received prior to award and the contracting officer determines, in his or her sole discretion, that acceptance of such bid, modification, or withdrawal is in the best interest of the District.

- 5034.10 The Contracting Officer shall prepare and maintain in the contract file an abstract listing the bid prices.
- 5034.11 The contract shall be awarded to the responsive and responsible bidder with the lowest evaluated bid.
- 5034.12 To be considered responsive, a bid must comply in all material respects with the IFB. Responsiveness involves matters that relate to the bid itself as opposed to the responsibility or other qualifications of the bidder. In determining whether a bid is responsive, the Contracting Officer has the discretion to permit correction of minor informalities or irregularities. However, a bidder who fails to submit a subcontracting plan as required in the IFB will not be considered responsive.
- 5034.13 The Contracting Officer should include with every IFB solicitation the form of the contract that the contractor will be required to enter into. To the greatest extent possible, the Contracting Officer should provide clear and concise contract documents. Prior to award of the contract, the contracting officer shall create a single conformed contract document, which includes the relevant terms of the solicitation, amendments, and bid.

5035 COMPETITIVE SEALED PROPOSALS

- 5035.1 A contract may be awarded using the competitive sealed proposal method when the Contracting Officer determines that the use of competitive sealed bidding is not practicable or not advantageous to the District. The solicitation used to initiate a procurement conducted by the competitive sealed proposal method is known as a Request for Proposals (RFP).
- 5035.2 RFPs shall be drafted in a manner that encourages participation from the maximum number of qualified sources, and in a manner consistent with the nature of, and the need for, the goods or services being acquired.
- 5035.3 The RFP may, if the Contracting Officer deems it advisable, contain either an estimate that generally describes the price range contemplated by the Contracting Officer or a funding limitation for the procurement.
- 5035.4 The RFP shall specify all evaluation factors and subfactors and their relative importance. The RFP must include the following evaluation factors:
- (a) The Offeror's proposed price or cost to the District;
 - (b) One or more technical (non-cost) factors that address the quality of the product or service. Such evaluation factors should 1) represent key areas of importance and emphasis to be considered in the source selection decision and 2) allow the CO to distinguish between proposals.; and

- (c) Offeror's past performance. If an Offeror does not have a record of relevant past performance, the Offeror may not be evaluated favorably or unfavorably on this factor. The RFP must clarify what rating will be given if an Offeror lacks relevant information.

5035.5 The RFP must also include:

- (a) A description of the goods, services, or scope of construction work sought (including quantity or estimated quantity);
- (b) The contract delivery schedule (including any permitted variations in the delivery schedule), if applicable;
- (c) A description of any special qualification or responsibility requirements the contractor must satisfy, if any;
- (d) Instructions for submitting proposals including:
 - (i) The deadline for proposal submission,
 - (ii) The method(s) proposals must be submitted, the information to be provided in the proposal (including any requirements for past performance information or for subcontracting plans), and
 - (iii) Any representations or certifications the offeror must submit;
- (e) The period during which proposals must remain open for acceptance; and
- (f) The anticipated contract terms and conditions.

5035.6 Any changes in the information set forth in an RFP must be made by an amendment to the RFP. Amendments should be made no less than two (2) business days before the proposal submission date specified by the RFP.

5035.7 Offerors are responsible for submitting proposals, and any modifications or withdrawals, so as to reach the Contracting Officer designated in the request for proposal (RFP) by the time specified in the RFP. Offers shall be submitted by a method specifically permitted by the RFP (for example, hand delivery, mailing, or electronic transmission). If no time is specified in the RFP, the time for receipt is 2:00 p.m., local time, on the date that offers are due.

5035.8 Any proposal, modification, or withdrawal of an offer received after the exact time specified for receipt of proposals is late and will not be considered unless:

- (a) It was transmitted through an electronic method authorized by the RFP, it was received at the initial point of entry to the Government infrastructure prior to the due date and time;
- (b) There is acceptable evidence that it was transmitted in sufficient time to be received by the exact time specified, however the Government infrastructure caused the proposal to not be transmitted or the Government otherwise mishandled the proposal;
- (c) The late proposal is the only one received;
- (d) A late modification is of an otherwise successful proposal, that makes its terms more favorable to the Government; or
- (e) An emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the Government office designated for receipt of proposals by the exact time specified in the RFP, and an amendment to due date and time could not be issued.

5035.9 Notwithstanding the requirements of 5035.10, the District may accept a late bid, modification, or withdrawal if such bid, modification, or withdrawal is received prior to award and the Contracting Officer determines, in his or her sole discretion, that acceptance of such bid, modification, or withdrawal is in the best interest of the District.

5035.10 The Contracting Officer shall evaluate proposals based solely on the evaluation criteria specified in the RFP. In evaluating past performance, the Contracting Officer is not limited to considering only the information from references listed by the offeror.

5035.11 After initial proposals have been evaluated, the Contracting Officer may:

- (a) Make an award based on initial proposals;
- (b) Proceed with negotiations with the highest-ranked prospective contractor; and if a satisfactory contract cannot be negotiated with the highest-ranked prospective contractor, negotiate terms of the contract with the second most qualified prospective contractor or lower-ranked prospective contractors in order of ranking until a satisfactory contract can be awarded; or
- (c) Establish a competitive range consisting of those proposals that remain under consideration, which shall include all proposals that, in the Contracting Officer's judgment (erring on the side of the offeror), could be awarded the procurement.

5035.12 If the Contracting Officer establishes a competitive range and holds discussions, he or she must hold discussions with all offerors in the competitive range. Discussions with

the offerors may be written (including electronic) or oral. The primary objective of discussions is to maximize OAG's ability to obtain the best value based on the evaluation factors set forth in the RFP.

- 5035.13 At the conclusion of discussions, the Contracting Officer shall request that the offerors with whom discussions were held submit best and final offers by a common cut-off date.
- 5035.14 The contract shall be awarded to the qualified offeror whose offer is most advantageous to OAG based on the evaluation criteria stated in the RFP.
- 5035.15 The Contracting Officer shall prepare documentation explaining the basis for the contract award decision, which shall be maintained in the contract file.
- 5035.16 To the greatest extent possible, the Contracting Officer should provide clear, concise contract documents. Prior to award of the contract, the contracting officer shall create a single conformed contract document, that includes the relevant terms of the solicitation, amendments, and bid.

5036 SMALL PURCHASE PROCEDURES

- 5036.1 Small purchase procedures may be used only with contracts that have an estimated value equal to or less than one hundred thousand dollars (\$100,000) for the base year and for each option year.
- 5036.2 Requirements procured under this section shall not be parceled, split, divided, or purchased over a period of time in order not to exceed the small purchase limit.
- 5036.3 The Contracting Officer shall conduct small purchases in the manner that is most suitable, efficient, and economical based on the circumstances of each acquisition. As appropriate, the Contracting Officer may elect to use or adapt procedures that apply to competitive sealed bids or competitive sealed proposals.
- 5036.4 In small purchases, the Contracting Officer shall:
- (a) Promote competition to the extent practicable and efficient;
 - (b) Establish reasonable deadlines for the submission of responses to solicitations; and
 - (c) Evaluate quotations or offers in an impartial manner on the basis established in the solicitation.
- 5036.5 The contracting officer may make a purchase for an amount of ten thousand dollars (\$10,000) or less without obtaining competitive quotes.

- 5036.6 The contracting officer shall solicit written quotes from at least three sources for each procurement in an amount that is estimated to be over ten thousand dollars (\$10,000), but less than or equal to one hundred thousand dollars (\$100,000).
- 5036.7 The Contracting Officer may solicit quotations orally in appropriate cases when soliciting in writing is not practical (*e.g.*, emergency). When soliciting quotations orally, the Contracting Officer shall instruct suppliers to respond in writing.
- 5036.8 An oral solicitation shall provide a clear description of OAG's requirements (*e.g.*, the type of goods or services sought, quantities, and schedule) and the basis on which the award will be made. The Contracting Officer shall ensure that each potential supplier is provided the same information about the requirements.
- 5036.9 Written solicitations shall provide a complete statement of relevant information without being unnecessarily lengthy. A written solicitation should include the same information required in an oral solicitation, plus the following:
- (a) Anticipated contract terms and conditions (and the extent to which they are negotiable);
 - (b) Applicable certifications or representations; and
 - (c) Instructions for submitting responses.
- 5036.10 The basis for award may be price or cost alone or price/cost and other factors. Solicitations shall state the relative importance assigned to each evaluation factor. If not, all factors will be given equal weight.
- 5036.11 The price/cost and other terms of the award shall be set forth in a written contract or purchase order. The Contracting Officer shall include a comment or statement in the electronic contract file briefly explaining the basis for the award decision.

5037 COMPETITION EXEMPTIONS

- 5037.1 The procurements that are exempt from competition pursuant to Section 413 of the PPRA (D.C. Code §2-354.13) are not subject to the competition requirements of the Act or to the SCBEDA Act, as amended.
- 5037.2 The exemption from competition when procuring legal or negotiation services in connection with proceedings before administrative agencies or state or federal courts, including experts, attorneys, and mediators, cited in Section 413(3) of the PPRA, includes services in connection with present or anticipated proceedings, and services to provide advice or to prevent litigation.
- 5037.3 The exemption from competition when procuring entertainers, cited in Section 413(6) of the PPRA, includes entertainers and speakers.

- 5037.4 The exemption from competition when procuring job-related seminars and training for District employees, cited in Section 413(7) of the PPRA, applies to job-related seminars and training that are intended to enhance OAG employees' knowledge, skill and ability to perform the duties of their positions.
- 5037.5 The exemption from competition when procuring goods or services provided by another (non-District) public entity, agency, or authority, cited in Section 413(10) of the PPRA, includes goods and services provided by another governmental entity, public entity, agency, or authority, or an organization consisting of such entities, agencies, or authorities.
- 5037.6 The exemption from competition when procuring maintenance and support of existing software and technology to the extent that the creator of the intellectual property is still protected and is the only source of the maintenance and support of the existing software and technology, cited in Section 413(8) of the PPRA, also applies to renewal of existing software licenses purchased either directly from the creator or from an authorized dealer.
- 5037.7 Procurements of gift cards for incentive awards from the Office of the Chief Financial Officer are exempt from competition.

5038 BLANKET PURCHASE AGREEMENTS

- 5038.1 A blanket purchase agreement (BPA) is not a contract and is established without a purchase requisition or the obligation of funds.
- 5038.2 The Contracting Officer may use a BPA as a simplified contracting procedure to fill anticipated repetitive needs for goods or services by establishing fixed pricing with sources of supply if at least one (1) of the following criteria apply:
- (a) 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;
 - (b) The administrative cost of writing numerous purchase orders can be avoided through the use of this procedure; or
 - (c) There is no existing requirements-type contract for the same supply or service that the contracting activity is required to use.
- 5038.3 BPAs may be established with:
- (a) More than one supplier for supplies or services of the same type to provide maximum practicable competition;

- (b) A single firm from which numerous individual purchases at or below the small purchase threshold will likely be made in a given period; or
- (c) Federal or DC Supply Schedule contractors, if not inconsistent with the terms of the applicable schedule contract.

5038.4 The Contracting Officer shall include the following information in each BPA:

- (a) A statement that the supplier will furnish goods or services, described in general terms, if and when requested by the contracting officer during a specified period and within a stipulated total ceiling amount of the BPA. The statement shall also stipulate that no individual order placed under the BPA shall exceed \$100,000;
- (b) A statement that the District is obligated only to the extent that authorized purchases are actually made under the BPA;
- (c) A statement that the prices to the District shall be as low or lower than those charged to the supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment;
- (d) A statement that specifies the dollar limitation for purchases under the BPA (not to exceed the small purchase limit); and
- (e) A requirement that all deliveries or shipments under the BPA shall be accompanied by delivery tickets or sales slips that contain the following minimum information:
 - (1) The name of the supplier;
 - (2) The BPA number;
 - (3) The date of purchase;
 - (4) The purchase order number;
 - (5) An itemized list of goods or services furnished;
 - (6) The quantity, unit price, and extension of each item, less applicable discounts; and
 - (7) The date of delivery or shipment.

- 5038.5 To the extent practicable, BPAs for items of the same type shall be placed concurrently with more than one (1) supplier. All competitive sources shall be given an equal opportunity to furnish goods, services, or other items under a BPA.
- 5038.6 A BPA shall be considered expired when the procurements under it are equal to its total dollar limitation or when the stated time period expires.

5039 DISTRICT OF COLUMBIA SUPPLY SCHEDULES

- 5039.1 The Contracting Officer shall award contracts of \$250,000 or less to a qualified Small Business Enterprise (SBE), as that term is defined in the SCBEDA Act., on the District of Columbia Supply Schedule (DCSS).
- 5039.2 If the Contracting Officer determines that there are at least two (2) qualified SBEs on the DCSS that can provide the goods or services, the Contracting Officer shall procure the goods and services in accordance with this section. If there are not at least two (2) such qualified SBEs, the Contracting Officer may use a qualified CBE on the DCSS that can provide the goods or services in accordance with Section 5040.
- 5039.3 If the Contracting Officer determines in writing that the price offered by the SBE or CBE is believed to be 12% or more above the likely price in the open market, the Contracting Officer may decline to award a contract under this section and may issue the solicitation in the set-aside market under § 5040.
- 5039.4 A copy of each determination made under this section shall be submitted promptly to the Director of the Department of Small and Local Business Development (DSLBD).

5040 MANDATORY SET-ASIDES

- 5040.1 If, after concluding there are no qualified SBEs or CBEs on the DCSS, the Contracting Officer shall seek to award contracts of \$250,000 or less to a qualified SBE in accordance with this Section.
- 5040.2 If the Contracting Officer determines in writing that there are not at least two (2) qualified SBEs that can provide the goods or services, the Contracting Officer may use a qualified CBE that can provide the goods or services. If there are no qualified SBEs or CBEs, the CO can award to a non-CBE. Similarly, if no SBE or CBE responds to a solicitation, the CO can use other contracting methods. The CO shall document in the contract file, the reason for not setting aside a procurement of \$250,000 or less to a qualified SBE.
- 5040.3 If the Contracting Officer determines in writing that the price offered by the SBE or CBE is believed to be 12% or more above the likely price in the open market, the Contracting Officer may decline to award a contract under this section and issue the solicitation in the open market or use another procurement method.

5040.4 A copy of each determination made under this section shall be submitted promptly to the Director of the DSLBD.

5041 FEDERAL SCHEDULES

5041.1 The Contracting Officer may utilize federal schedules that offer supplies and services to the District following the applicable schedule procedures.

5041.2 Except as otherwise provided in a federal schedule, all schedule contract terms and conditions apply to contracts between the schedule contractor and the District.

5042 CONTRACT ADMINISTRATION

5042.1 The Contracting Officer shall designate a Contract Administrator whose primary duty will be to monitor the contractor's performance to ensure that all of the technical requirements under the contract are met by the delivery date or within the period of performance, and at the price or within the estimated cost stipulated in the contract.

5042.2 The Contracting Officer may delegate the following duties to the Contract Administrator (CA):

- (a) Ensuring that the contractor complies with all of the requirements of the statement of work, specifications, or performance work statement, and when requested by the contractor, provide technical direction to the contractor. The technical assistance must be within the scope of the contract (*e.g.*, interpreting specifications, statement of work, performance work statement, etc.). The CA shall notify the Contracting Officer immediately when a difference of opinion between the CA and the contractor occurs;
- (b) Inspecting, and accepting or rejecting, all deliverables under the contract;
- (c) Ensuring that the contractor personnel qualifications are of the same caliber that was originally proposed by the contractor to OAG. The CA may not approve the substitution key personnel without the Contracting Officer's approval;
- (d) Reviewing the contractor's invoices, vouchers, timesheets, travel claims etc., for reasonableness and applicability to the contract, and promptly approving all proper invoices for payment to ensure compliance with the Quick Payment Act. The CA must ensure that the invoice is consistent with the terms of the contract.
- (f) Providing the Contracting Officer with a written analysis and rationale for any changes to the contract requested by the contractor and evaluation of any additional costs or cost savings associated with the change;

- (g) Recognizing and reporting to the Contracting Officer any changes required to the contract (*e.g.*, items or work no longer required, changes in the specifications, etc.);
- (h) When applicable, making site visits to the contractor's location to: (1) evaluate the contractor's performance; (2) evaluate any changes in the technical performance affecting personnel, the schedule, deliverables, and price or costs; (3) inspect and monitor the use of DC Government property, if applicable; and (4) ensure that contractor employees being charged to the contract are actually performing the work under the contract;
- (i) Fully informing the Contracting Officer of any technical and contractual difficulties that are encountered throughout the duration of the contract;
- (j) Evaluating proposals for and participate in negotiation of Change Orders, Contract Modifications, and Contract Claims at the request of the Contracting Officer;
- (k) Maintaining independent status of the contractor in the interest of procurement integrity as well as sound contract management. Proper care should be taken to avoid improper business practices and personal conflicts of interest consistent with Chapter 18 of the District's Personnel Manual;
- (l) Maintaining an organized contract administration file to record all contractor and DC Government actions pertaining to the contract; and
- (m) When requested by the Contracting Officer, completing an evaluation form to document contractor performance.

5042.3 The CA cannot authorize the contractor to stop work, and the CA is not authorized to delete, change, waive, or negotiate any of the technical requirements or other terms and conditions of the contract. Should any change to the contract become necessary, it must be made by a contract modification issued by the Contracting Officer.

5043 PAYMENT REQUESTS

5043.1 Contractors shall create and submit payment requests in an electronic format through the DC Vendor Portal, <https://vendorportal.dc.gov>.

5043.2 Contractor payment requests shall include or attach any information necessary to demonstrate entitlement to the requested payment under the contract's terms.

5043.3 Depending on the contract's payment provisions, a payment request may consist of, for example, a statement that specified work has been completed in a satisfactory manner, documentation showing that contract deliverables have been accepted by OAG, or information detailing the reimbursable costs incurred by the contractor.

- 5043.4 Payment shall not be made unless authorized by OAG.. A payment authorization shall not preclude OAG from seeking repayment (or pursuing other remedies) if it subsequently concludes that the contractor was overpaid, paid in error, or otherwise misled OAG.
- 5043.5 In addition to the payment authorization, all payment requests must be certified and approved by the District's Chief Financial Officer (or his or her designee) prior to making any payment.
- 5043.6 No OAG employee shall authorize payment for the value of supplies and services received without a valid written contract or for supplies or services that have not been verified to be received or satisfactorily delivered. Any vendor who enters into an oral agreement with an OAG employee to provide supplies or services to OAG without a valid written contract shall not be paid unless approved by the CCO. This subsection shall not apply to a payment required by court order, or a final decision of the District of Columbia Contract Appeals Board.

5044 EXERCISING OF OPTIONS

- 5044.1 To exercise an option over one hundred thousand dollars (\$100,000) the Contracting Officer must first obtain the approval of the CCO.
- 5044.2 In addition to the approval of the CCO (if applicable), prior to exercising any option, the Contracting Officer must obtain certification of OAG's Agency Fiscal Officer (AFO) that funds are available for the exercise of the option.
- 5044.3 When exercising an option, the Contracting Officer shall provide written notice to the contractor within the time period specified in the contract.

5045 CONTRACT MODIFICATIONS

- 5045.1 The Contracting Officer may modify a contract subject to the provisions of this section.
- 5045.2 A modification must be within the general scope of the original contract. Any requirement for extra work that goes beyond the contract's general scope shall be the subject of a new procurement.
- 5045.3 A contract modification in excess of one hundred thousand dollars (\$100,000) shall be approved by the CCO.
- 5045.4 A contract modification may be made:
- (a) By a bilateral supplemental agreement executed by the Contracting Officer and an authorized representative of the contractor;

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

5046 CONTRACT TERMINATION

- 5046.1 All contracts awarded by the Contracting Officer shall include "Termination for Default" and "Termination for Convenience" clauses specifically defining OAG's termination rights.
- 5046.2 When exercising OAG's rights under a termination clause in the contract, the Contracting Officer shall provide the contractor with a written notice specifying:
- (a) Whether the termination is for default or for convenience;
 - (b) The effective date of the termination;
 - (c) The extent of the termination if the termination is partial; and
 - (d) Any special instructions that apply to the termination (for example, instructions concerning the disposition of contract inventory).
- 5046.3 Unless a settlement can be reached beforehand, after terminating a contract for convenience, the Contracting Officer shall request a settlement proposal from the contractor and shall attempt to negotiate a settlement that resolves all of the parties' rights and liabilities (except those arising from any portion of the contract still in effect). If the parties negotiate a settlement, the Contracting Officer shall prepare a memorandum describing the principal elements of the settlement and shall include the memorandum in the contract file. If the parties fail to negotiate a settlement within one year from the effective date of termination, the contracting officer shall make a final determination of settlement.

5047 CONTRACT DOCUMENTATION

- 5047.1 The Contracting Officer is responsible for maintaining documentation regarding the contract and the procurement.
- 5047.2 The contract file, which may be entirely electronic, shall include:
- (a) The solicitation and any amendments;

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

5048 TRANSFER OF CONTRACTS

- 5048.1 Contracts or pending procurements related to OAG may be transferred by OAG to any agency or instrumentality of the District in accordance with the provisions of this section.
- 5048.2 The CCO shall review the proposed procurement or contract and determine whether it is in the best interest of OAG to transfer the procurement or contract.
- 5048.3 If the CCO determines it is in OAG’s best interest to transfer a contract or procurement, the Contracting Officer shall have the authority to transfer the contract.
- 5048.4 Transfer of a contract or procurement shall not operate to transfer funds to support the assigned contract or procurement. Funds shall be transferred pursuant to an intra-District memorandum of understanding, reprogramming, or other appropriate process.

5049 DISPUTES

- 5049.1 Each contract entered into by the Contracting Officer shall include a disputes clause that sets forth the procedures by which disputes shall be resolved.

5050 PROTESTS

- 5050.1 All protests to a solicitation or to the award of a contract shall be resolved by the Contracting Officer in accordance with Code §§100 – 400 of this Title 27 District of Columbia Municipal Regulations.

5051 REQUESTS FOR RECORDS

- 5051.1 A request for a record of OAG shall be made to OAG’s designated Freedom of Information Officer.
- 5051.2 OAG’s response to a request for a record shall be made in accordance with the provisions of the D.C. Freedom of Information Act (Title II of the District of Columbia Administrative Procedure Act, effective March 29, 1977, as amended, (D.C. Law 1-96; D.C. Code §§ 2-531 et seq. (2012 Repl.)) (“FOIA Act”), and Title I, Chapter 4 of the D.C. Municipal Regulations.

5052 PRIVACY AND DISCLOSURE

5052.1 The Contracting Officer shall include in every solicitation and contract the following provisions:

- (a) If a contractor collects, retains, or has in its possession any document, record, or other information obtained in the performance of a District contract, which document, record, or information may be exempt from disclosure under the FOIA Act, the contractor shall not disclose the document, record, or other information to any person other than an authorized District employee or agent;
- (b) If a contractor collects, retains, or has in its possession any document, record, or other information obtained in the performance of a District contract the disclosure of which is prohibited by any District or federal law or regulation, the contractor shall not disclose the document, record, or other information to any person other than an authorized District employee or agent; and
- (c) If a contractor is not sure whether a document, record, or other information may be disclosed, the contractor shall refer the matter to the contracting officer.

5053 APPLICABLE LAWS

5053.1 To the extent applicable, OAG shall comply with the requirements related to:

- (a) Council review of multiyear contracts and contracts in excess of one million dollars (\$1,000,000) as set forth in Section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Code §1-204.51); and in Section 105a of the PPRA.
- (b) Anti-Deficiency Act – OAG’s obligations and responsibilities under the terms of the contract and the contract documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) D.C. Code §47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§47-355.01 - 47-355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act.
- (c) Other contracting laws applicable to OAG – District of Columbia Quick Payment Act of 1984, as amended, D.C. Code §2-221.01; Living Wage Act of 2006, as amended, D.C. Code §2-220.01; SCBEDA Act; as amended (D.C. Law 16-133; D.C. Code §2-218), First Source Employment Agreement Act of 1984, as amended, D.C. Code §2-219.01; Service Contract Act, 41 USC 351(a); Health Insurance Portability and Accountability Act of 1996, P.L. 104-191; the Privacy and Security Rules codified at 45 C.F.R. Parts 160 and 164.

5054 CONTINGENCY FEE CONTRACTS

5054.1 OAG may enter into a contingency fee contract with private counsel when:

- (a) There is a substantial need for the legal services;
- (b) The legal services cannot be adequately performed by the attorneys and supporting personnel of the agency; and
- (c) The legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained or because the agency does not have appropriated funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees.

5054.2 Before entering into a contingency fee contract, the CCO must make a determination that the retention of qualified outside counsel will substantially assist the Office of the Attorney General (OAG) in protecting District residents and is in the public interest.

5099 DEFINITIONS

5099 .1 When used in this chapter, the following terms have the meanings ascribed:

Accepted or Acceptance - the act of an authorized representative of the District by which the District, for itself or as agent of another, assumes ownership of existing identified goods tendered or approves specific services rendered or construction completed as partial or complete performance of the contract.

Actual costs - amounts determined on the basis of costs incurred, as distinguished from forecasted costs. Actual costs include standard costs properly adjusted for applicable variances.

Adequate evidence - information sufficient to support the reasonable belief that a particular act or omission has occurred.

Amendment - any change to a solicitation issued by the contracting officer.

Attorney General - the agency head of the Office of the Attorney General (OAG) for the District of Columbia.

Change order - a written order signed by the contracting officer directing the contractor to make a change that the contracting officer is authorized to order without the contractor's consent pursuant to the contract.

Claim - a written demand or written assertion by the District or a contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

Prohibited contingent fee - any commission, percentage, brokerage, or other fee that is dependent upon or tied to the success that a person or concern has in securing a District contract.

Contingency fee contract - a contract for legal services in which payment by the District is based on, and limited to, a percentage of revenue, if any, recovered by the District.

Contract - a mutually binding agreement between the District and a contractor, which must be in writing unless otherwise authorized by the Act, including agreements in which a party other than the District is obligated to pay the contractor.

Contract modification - any written change in the terms of a contract.

Cooperative purchasing agreement - an agreement between a vendor and one or more government agencies that allows other government agencies to purchase goods and services under it.

Cost - the amount paid or charged for something. Cost does not include the contractor's profit.

Cost-no-fee contract - a cost-reimbursement contract in which the contractor receives no fee.

Cost-plus-award-fee contract - a cost-reimbursement type contract that provides for a fee consisting of an amount fixed at the beginning of the contract and potential award of additional fee amounts based upon a judgmental evaluation by the contracting officer, sufficient to provide motivation for excellence in contract performance.

Cost-plus-fixed-fee contract - a cost-reimbursement type contract that provides for the payment of a fixed fee to the contractor. The fixed fee, once negotiated, does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or services to be performed under the contract.

Cost-plus-incentive-fee contract - a cost-reimbursement type contract that provides for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. After performance of the contract, the fee payable to the contractor is determined in accordance with a negotiated formula.

Cost-reimbursement contract - a contract that provides for payment of allowable costs incurred in the performance of a contract, to the extent prescribed in the contract. This type of contract establishes an estimate of total cost for the purpose of obligating funds and establishes a ceiling that the contractor may not exceed (except at its own risk) without prior approval of, or subsequent ratification by, the contracting officer.

Definitive contract - the contract executed pursuant to letter contract commitment.

District of Columbia Supply Schedule - indefinite quantity contracts made with more than one (1) CBE supplier for comparable goods and services at varying prices.

Expert - a person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field, whose knowledge and mastery of the principles, practices, problems, methods, and techniques of his or her field or activity, or of a specialized area in the field, are clearly superior to those usually possessed by ordinarily competent persons in that activity, and whose attainment is such that he or she usually is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity.

Firm-fixed-price contract - a fixed-price contract that provides for a price that is not subject to any adjustment of the basis of the contractor's cost experience in performing the contract. This type of contract places maximum risk and full responsibility for all costs and resulting profit or loss upon the contractor and provides maximum incentive for the contractor to control costs and perform effectively.

Fixed-price contract with economic price adjustment - a fixed-price contract that provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies that are specifically defined in the contract.

Incentive contract - a fixed-price or cost-reimbursement type contract that provides for relating the amount of profit or fee payable under the contract with the contractor's performance in order to obtain specific procurement objectives.

Indefinite-quantity contract - a contract that provides for an indefinite quantity, within written stated limits, of specific goods or services to be furnished during a fixed period, with deliveries to be scheduled by placing orders with the contractor. The contract requires the District to order and the contractor to furnish at least a stated minimum of goods or services.

Inspection - examining and testing goods, services, or construction to determine whether they conform to contract requirements. This includes, when appropriate, examination and testing of raw materials, components, and intermediate assemblies.

Labor-hour contract - a contract that is a variant of the time-and-materials type contract differing only in that materials are not supplied by the contractor.

Legal services - Work performed by an attorney or experts or legal support personnel under the supervision of an attorney on behalf of a client, involving law-related matters including, but not limited to: 1) issuing advice or opinions in general or to prepare for or prevent litigation; 2) filing, pleading, and defending present or anticipated administrative, civil, or criminal claims; or 3) mediating, arbitrating, or any other pre or post trial negotiating or alternative dispute resolutions.

Letter contract - a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing or delivering goods or performing services. A letter contract is always associated with a definitive contract, and a letter contract by itself cannot be the sole document used for a complete procurement.

Market survey - a testing of the marketplace to ascertain whether qualified sources capable of satisfying the District's requirement exist. It may range from written or telephone contacts with knowledgeable experts regarding similar or duplicate requirements, and the results of any market test recently undertaken, to the more formal sources-sought announcements in pertinent publications (such as technical or scientific journals) or solicitations for information or planning purposes.

Maximum liability - the amount, not to exceed fifty percent (50%) of the overall contract price ceiling, obligated by the letter contract over which the District cannot be liable if the letter contract is terminated.

Multiyear contract - as used in this chapter, a contract for a base period longer than twelve (12) months.

Nonrecurring costs - those production costs that are generally incurred on a one-time basis and include costs such as plant or equipment relocation, plant rearrangement, pre-production engineering, initial spoilage and rework, and specialized workforce training.

Option - a unilateral right in a contract under which, for a specified time, the District may elect to extend the term of a contract.

Person - any business entity, individual, union, committee, club, or other organization or group of individuals.

Pre-solicitation - prior to the transmittal by the District of any proposed contract documents to the proposed contractor before the issuance of a solicitation or in a proposed sole source procurement.

Price - the amount the District anticipates it will pay the contractor for full performance under the terms of a contract, including costs and profit.

Price ceiling - an amount established during negotiations or at the discretion of the contracting officer that constitutes the maximum amount that may be paid to the contractor for performance of a contract.

Procurement planning - the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling agency needs in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

Recurring costs - the production costs that vary with the quantity being produced, such as labor and materials.

Requirements contract- a contract that provides for the filling of all actual purchase requirements of designated District agencies for specific goods or services during a specified contract period, with deliveries to be scheduled by placing orders with the contractor as needs arise.

Settlement proposal - a proposal for effecting settlement of a contract terminated, in whole or in part, submitted by a contractor or subcontractor.

Subcontractor - any supplier, distributor, vendor, or firm who furnishes goods, services, or construction to or for a prime contractor or another subcontractor.

Supplemental agreement - a bilateral contract modification.

Term contract - a requirements contract or an indefinite-quantity contract.

Termination for default - the exercise of the District's contractual right to terminate, completely or partially, a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.

Testing - the element of inspection that determines the properties or elements, including functional operation of goods or their components, by the application of established scientific principles and procedures.

Time-and-materials contract - a type of contract that provides for the procurement of 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 material at cost.