

**THE OFFICE OF CONTRACTING AND PROCUREMENT**

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**NOTICE OF EMERGENCY RULEMAKING**

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The Chief Procurement Officer of the District of Columbia, pursuant to authority granted by section 204 of the District of Columbia Procurement Practices Act of 1985 ("PPA"), effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-302.04 (2001)), and Mayor's Order 2002-207 (dated December 18, 2002), hereby gives notice of the adoption of the following emergency rules to amend Chapter 16 of Title 27 of the District of Columbia Municipal Regulations (Contracts and Procurements). The rulemaking is intended to add a section of Chapter 16 concerning solicitations for development, construction and management of a District office building to be known as the Anacostia Gateway Government Center ("AGGC"). The purpose of the rules is to authorize a two-step selection process in which the first step will be to solicit statements of qualification from firms or combinations of firms prior to the issuance of a request for proposals for development, construction and initial management of the AGGC. The AGGC is planned to have not less than 150,000 gross square feet of usable space. The District plans to construct the AGGC on a site owned by it located in Ward 8. The purpose of this two-step process will be to select a developer whose offer will provide the best value to the District.

In the first step, prospective contractors will be evaluated based on statements of their qualifications to perform the development, construction and initial management work, in order to enable the District to determine whether or not they are qualified to respond to a request for competitive sealed proposals ("RFP") to be issued subsequently under Chapter 16. The District's request for qualifications ("RFQ") will also serve to maximize competition and dialogue between the District and the private development community, as well as to facilitate determination of the scope and timing of AGGC site development and corresponding issuance of the RFP.

On October 19, 2005, the Chief Procurement Officer adopted emergency rules to enable the Office of Contracting and Procurement (OCP) to commence procedures to solicit and evaluate information from potentially qualified prospective contractors for this project through publication and issuance of an RFQ. Those rules were published in a Notice of Emergency Rulemaking in the *D. C. Register* on November 25, 2005, at 52 DCR 10422. In reviewing the scope of work for the solicitation, OCP has determined that it would be in the best interest of the District to allow no more than the five-top-ranked offerors to be selected in the first step as qualified to submit proposals in the second step. Accordingly, action was taken on December 8, 2005, to adopt the following rules on an emergency basis effective on that date. These rules revise sections 1611.2(b), 1611.5(e), 1611.7, 1611.8 and 1611.9(a) of the rules adopted on October 19, 2005, and supersede those rules.

Without these emergency rules, OCP will not be able to solicit and evaluate information from qualified prospective contractors through publication and issuance of an amended RFQ as part of a two-step selection process. Adoption of these emergency rules to amend Chapter 16 is thus necessary for the immediate preservation of the public safety or welfare, in accordance with District law as codified at D. C. Official Code § 2-505(c) (2001). These emergency rules will remain in effect for up to one hundred twenty (120) days from the date of adoption.

## CHAPTER 16

### PROCUREMENT BY COMPETITIVE SEALED PROPOSALS

*Chapter 16 is amended by adding a new section 1611 to read as follows:*

#### **1611 SOLICITATIONS FOR DEVELOPMENT, CONSTRUCTION AND MANAGEMENT OF THE ANACOSTIA GATEWAY GOVERNMENT CENTER**

- 1611.1 Notwithstanding the provisions of § 1602, the purpose of this section is to adopt a two-step procurement method to be used for procurement of a contractor to develop, construct and initially manage the proposed Anacostia Gateway Government Center ("AGGC"). The first step will be a request for qualifications (RFQ) to enable the contracting officer to determine which prospective contractors are qualified to receive requests for proposals (RFP's) and submit responses to the RFP's, based on financial and professional responsibility criteria established by the contracting officer for pre-qualification of a prospective contractor to develop, construct and initially manage the AGGC.
- 1611.2 The District shall conduct the two-step selection process as follows:
- (a) The first step consists of a request issued by the Office of Contracting and Procurement (OCP) for qualifications from a firm or combination of firms that has expertise, ability and entrepreneurship (i) to assemble the land, labor and capital necessary for the completion of the design, construction and management of the AGGC (as described by the District), (ii) to manage all components of the design and construction of a project of this size, (iii) to construct and complete the proposed project in a timely manner while serving the District's stated policy objectives, and (iv) to manage the land and operate the building after the construction of the AGGC is completed; and
  - (b) The second step of the two-step process involves the submission of proposals in response to an RFP issued by OCP to up to five offerors determined to be the most qualified in the first step. The only offerors who may submit proposals in response to the RFP in the second step are those offerors that (i) responded to the RFQ, and (ii) were determined to be the most qualified by the contracting officer.
- 1611.3 The contracting officer shall give public notice of the RFQ for development, construction and management of the AGGC in accordance with Chapter 13.
- 1611.4 The contracting officer shall utilize the two-step process set forth in section 1611.2 above on forms prescribed by the Director.
- 1611.5 The first step of the process shall consist of an RFQ inviting interested prospective

contractors to respond in writing with a statement of their qualifications to perform the required services, including financial and professional responsibility information. The RFQ shall provide, at a minimum:

- (a) A detailed description of the proposed AGGC site and the project;
  - (b) The District's intent of the project and the design;
  - (c) The selection process, schedule and criteria to be used by the District in determining which prospective contractors are qualified;
  - (d) Submission requirements and evaluation criteria that will be used to determine whether each prospective contractor is qualified; and
  - (e) A statement that only proposals from up to five offerors determined most qualified in the first step pursuant to subparagraphs (c) and (d) above will be selected to submit proposals in the second step.
- 1611.6 The contracting officer may conduct oral or written discussions with all prospective contractors who submitted responses to the RFQ.
- 1611.7 The contracting officer may provide the information submitted by all prospective contractors in response to the RFQ to an evaluation panel who may recommend to the contracting officer, based upon their analysis of the information according to the criteria set forth in the RFQ, whether or not the prospective contractor is among the up to five most qualified to proceed to the second step.
- 1611.8 The contracting officer shall determine the financial and professional responsibility of each prospective contractor that responds to the RFQ, and whether the prospective contractor is among the up to five most qualified to proceed to the second step.
- 1611.9 The second step of the selection process shall follow the competitive sealed proposal procedures consistent with the requirements of this chapter, except as follows:
- (a) The contracting officer shall issue an RFP only to up to five offerors who have been determined most qualified in the first step;
  - (b) The contracting officer shall ensure that an independent cost/benefit analysis of each proposal be completed; and
  - (c) The RFP shall not be advertised in newspapers or publicly posted.

## DISTRICT OF COLUMBIA BOARD OF EDUCATION

## NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Executive Director of the D.C. Board of Education (Board), pursuant to the authority set forth in D.C. Code, 2001 edition, Section 38-101, hereby gives notice of emergency and proposed rulemaking action taken by the Board at its January 18, 2006 Board meeting to amend Chapter 37 of the Board Rules, Title 5 of the D.C. Municipal Regulations, regarding procurement and negotiated services contracts. The revisions amend Section 3702.10 and add a new Section 3702.11. These revisions will do the following: 1) changes the Board contract approval level from \$100,000 to \$500,000, 2) requires the Superintendent to submit to the Board a monthly report listing all approved contract actions, 3) requires the Superintendent to certify that all contract actions comply with federal and local laws, and 4) requires the Superintendent to report monthly on compliance with the requirements of the "Small, Local, and Disadvantaged Business enterprise Development and Assistance Emergency Act of 2005."

The emergency is necessitated by the volume of contracting required in order to effectively manage the school system. DCPS is preparing to enter its heaviest contracting season in preparation for summer school and school openings; therefore there is a need for immediate relief from the \$100,000 threshold.

The emergency rulemaking will take effect immediately following Board approval and shall expire within 120 days or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first. The Board also gives notice of its intent to take final rulemaking action to adopt this proposed rulemaking in not less than thirty (30) days from the publication of this notice in the D.C. Register.

Amend Section 3702.10:

3702.10 Requests for **the acquisition and purchase of services and goods one valued** five hundred thousand dollars (\$100,000\$500,000) or more ~~not in the aggregate in value, other than for bulk purchases;~~ shall be submitted in advance to the Board of Education **for approval**. ~~If the Board does not, by a resolution approved by a majority of all members, indicate its disapproval of the purchase within (30) days of its submission to the Board, the request shall be deemed approved.~~ **Requests for the acquisition of services and goods valued between \$100,000 and \$499,999 that were not competitively solicited by the District of Columbia Public Schools shall be submitted to the Board of Education on a monthly basis, for informational purposes.**

Section 3702.12 is added:

**3702.12 The Superintendent will submit monthly to the Board of Education a listing of all contracts or agreements entered into by the District of Columbia Public Schools, which will include the following categories: contractor, contract amount, type of contract, source of funding, identify whether the contractor is a certified local, small, or disadvantaged business enterprise, type of procurement, period of performance, source of funding, number of bids received, description of contract, program office, performance measures, past performance evaluation (if applicable), and identification of subcontractors.**

Section 3702.13 is added

**3702.13 The Superintendent shall certify that all contracts or agreements valued at \$100,000 and above entered into by the District of Columbia Public Schools comply with applicable federal and District of Columbia laws.**

Section 3702.14 is added

**3702.14 The Superintendent shall certify monthly that the District of Columbia Public Schools complies with the requirements of the "Small, Local, and Disadvantaged Business Enterprise Development and Assistance Emergency Act of 2005," D.C. Code § 2-217.01 *et seq.***

Written comments on the proposed rulemaking are invited from interested citizens. Such comments should be addressed to Ms. Peggy Cooper Cafritz, President, District of Columbia Public Schools Board of Education, 825 North Capitol Street, N.E., Suite 9108, Washington, D.C. 20002. Copies of this rulemaking are available from the Office of the Board of Education by calling (202) 442-4289.