

THE OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY RULEMAKING

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 13 of Title 27 of the District of Columbia Municipal Regulations (Contracts and Procurements). The rules amend section 1301.1 of Chapter 13 concerning notices of contract awards so as to be consistent with the small purchase limitations, thereby only requiring publication of notices of awards of contracts above the small purchase limit of \$500,000 for the Metropolitan Police Department (MPD) and the Office of the Chief Technology (OCTO), and above \$100,000 for all other agencies.

The rules were approved as emergency and proposed rules on August 2, 2005, and published in a Notice of Emergency and Proposed Rulemaking in the *D.C. Register* on September 16, 2005, at 52 DCR 8538. A subsequent Notice of Emergency Rulemaking was published in the *D.C. Register* on December 30, 2005, at 52 DCR 11299. On March 28, 2006, the Council of the District of Columbia approved, by resolution, the final rulemaking. The Office of Contracting and Procurement (OCP) will transmit the approved final rulemaking to the Office of Documents and Administrative Issuances for publication as soon as possible. No changes were made to the rules as proposed.

Since the emergency rules expired on March 30, 2006, action was taken on March 31, 2006, to adopt the following rules on an emergency basis effective on that date, pending publication of the final rules. Without these emergency rules, OCP will be required to publish notices of all awards of contracts for \$25,000 and above on the OCP Internet site established in accordance with section 303(c-1) of the PPA (D.C. Official Code §303.03(c-1) and section 1300.7 of Title 27, even though the small purchase rules are applicable to procurements up to \$500,000 for MPD and OCTO, and \$100,000 for other agencies. This rules conforms the publication requirement for contract awards to the small purchase limitations.

Adoption of these emergency rules to amend Chapter 13 is thus necessary for the immediate preservation of the public health, safety and welfare, by not requiring OCP to publish notices of every procurement \$25,000 and above for supplies and services. These emergency rules will remain in effect up to one hundred twenty (120) days from date of adoption, unless earlier superseded by another rulemaking notice or by publication of a Notice of Final Rulemaking in the *D.C. Register*.

CHAPTER 13

PUBLICIZING CONTRACT ACTIONS

Section 1301 is amended to read as follows:

1301 NOTICE OF CONTRACT AWARDS

- 1301.1 Notice of awards of contracts exceeding five hundred thousand dollars (\$500,000) for the Metropolitan Police Department and the Office of the Chief Technology Officer, and exceeding one hundred thousand dollars (\$100,000) for all other agencies, shall be published on the Internet site maintained in accordance with §1300.7, within a reasonable period of time after the contracts are awarded.

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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 amended rules on an emergency basis effective on that date, to 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 superseded those rules. Those rules were published in a

Notice Emergency Rulemaking in the *D.C. Register* on February 3, 2006, at 52 DCR 683. As the emergency rules expire on April 7, 2006, action was taken on April 7, 2006, to continue those rules on an emergency basis effective on that date.

Without these emergency rules, OCP will not be able to complete the two-step process to select a developer for the Anacostia Gateway Government center. 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 of the top-ranked 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.

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The rules were approved as emergency and proposed rules on November 21, 2005, and published in a Notice of Emergency and Proposed Rulemaking in the *D.C. Register* on December 30, 2005, at 52 DCR 11301. As the emergency rules expired on March 21, 2006, action was taken on March 20, 2006 to continue those rules on an emergency basis effective on that date. This Notice of Emergency Rulemaking changes the rules as proposed in *D.C. Register* on December 30, 2005, to include a new paragraph (g). Without these emergency rules, the Office of Contracting and Procurement will not be able to extend several city-wide contracts that are critical to the needs of District residents.

All these contracts provide services that impact the environment and welfare of District residents. Adoption of these emergency rules to amend Chapter 20 is thus necessary for the immediate preservation of the public peace, health, 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 up to one hundred twenty (120) days from the date of adoption, unless earlier superseded by another rulemaking notice or by publication of a Notice of Final Rulemaking in the *D.C. Register*.

SPECIAL CONTRACTING METHODS

Section 2005.6 is amended to read as follows:

2005 USE OF OPTIONS

2005.6 The basic period in a contract for services or supplies shall not exceed one (1) year, unless the contract is funded from an appropriation that is available for more than one (1) year or is a multiyear contract for which funds would otherwise be available for obligation only within the fiscal year for which appropriated pursuant to District law codified at D. C.

Official Code § 1-204.51(c). The total of the basic and option periods in a contract for services or supplies shall not exceed five (5) years except as follows:

- (a) a contract for city-wide telecommunications systems may exceed five years but shall not exceed ten years;
- (b) a contract for evidenced traffic violations systems provided to the Metropolitan Police Department may exceed five years but shall not exceed seven years and two months;
- (c) a contract for ticket processing provided to the Department of Motor Vehicles may exceed five years but shall not exceed seven years;
- (d) a contract for medical and mental health services provided to the Department of Corrections may exceed five years but shall not exceed six years;
- (e) a contract for any supplies or services may exceed five years where awards for recurring or continuing supply or service requirements may be delayed but shall not exceed five years and six months;
- (f) a contract for a Medicaid Management Information System (MMIS) provided for the Department of Health may exceed five years but shall not exceed seven years; and
- (g) a contract for program management or construction services provided to the Department of Parks and Recreation may exceed five years but shall not exceed six years.