

---

**OFFICE OF THE CHIEF FINANCIAL OFFICER**

---

---

**NOTICE OF PROPOSED RULEMAKING**

---

The Office of the Chief Financial Officer ("OCFO"), established pursuant to Section 302 of the District of Columbia Financial Responsibility and Management Assistance Act ("CFO Act") of 1985 (Pub. L. 104-8) has independent procurement authority pursuant to the authority granted to the Chief Financial Officer by Section 424 of the District of Columbia Self-Government and Governmental Reorganization Act of 1973 (Pub. L. 83-198), as amended by Section 302 of the CFO Act, and the Procurement Reform Act of 1996 (D.C. Law 11-259), which exempts the Office of the Chief Financial Officer from the provisions of the Procurement Practices Act, as extended by Section 142 of the District of Columbia Appropriations Act of 1997 (Pub. L. No. 104-184), as further extended by Section 111(c) of the District of Columbia Appropriations Act of 2002 (Pub. L. No. 107-96), Section 409 of the 2002 Supplemental Appropriations Act (Pub. L. No. 107-206), and Section 2302 of the Emergency Wartime Supplemental Appropriations Act of 2003 (Pub. L. No. 108-11), Continuing Resolution dated September 28, 2004 (Pub. L. No. 108-309), and Section 336 of the District of Columbia Appropriations Act for Fiscal Year 2005 (Pub. L. No. 108-335) the following regulations, previously adopted by the District of Columbia Financial Responsibility and Management Assistance Authority, are published.

The District of Columbia Office of the Chief Financial Officer hereby gives notice of its intent to adopt the following regulations, previously adopted by the District of Columbia Financial Responsibility and Management Assistance Authority, as an amendment to Title 9 of the District of Columbia Municipal Regulations (DCMR) by adding chapters 80-85, in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The following regulations are the substance of the procurement regulations of the District of Columbia Financial Management Assistance Authority, which were adopted by the Chief Financial Officer pursuant to Financial Management Issuance 97-15 (CFO Order).

As provided in the CFO Order, except for Chapter 80, Section 800.1 below, all references to the "Authority" in the adopted regulations shall be substituted with the reference to the "Office of the Chief Financial Officer."

All references to the "Executive Director" in the adopted regulations shall be substituted with the reference to the "Chief Financial Officer."

All references to the "General Counsel" in the adopted regulations shall be substituted with the reference to the "General Counsel to the Chief Financial Officer."

All references to the "Chair" and "Vice Chair" shall be substituted with references to "Chief Financial Officer" and the "Director, Mission Support Center," respectively.

**8003**

**CHAPTER 80****INTRODUCTION****800 AUTHORITY**

800.1 The District of Columbia Financial Responsibility and Management Assistance Authority ("Authority") was established by Pub. L. 104-8. The Authority is an entity within, but independent from, the government of the District of Columbia ("District"). The Authority is not a department, agency, establishment or instrumentality of the United States government.

800.2 The Authority, through its Executive Director, is empowered to enter into contracts to carry out the Authority's statutory responsibilities.

800.3 The Authority is statutorily exempted from adhering to D.C. Code procurement provisions and, because the Authority is not an agency of the United States government, the Armed Services Procurement Act of 1847 and the Federal Property and Administration Service Act of 1849 do not apply to the Authority's contracting activities. Likewise, neither the Federal Acquisition Regulations nor the District of Columbia procurement regulations apply to the Authority's contracting activities.

800.4 These regulations are for the benefit of the Authority, and do not confer any rights or benefits on third parties. They are intended to permit the Authority to procure property and services efficiently and either at the least cost to, or representing the best value for, the Authority. Because of the nature of its mission, the Authority requires maximum flexibility in its procurement procedures. The Executive Director may at any time in his or her discretion waive applicability of any provision of these regulations with respect to a procurement or proposed procurement by the Authority, except Section C of this Chapter 1.

800.5 These regulations may be amended by the Authority at any time.

**801 CONTRACTING OVERVIEW**

801.1 The Authority is permitted "to accept, use and dispose of gifts, bequests and devises of services or property, both real and personal," in furtherance of its responsibilities. The Authority's procurement solicitations shall note the Authority's legal right to receive such donations.

801.2 The Authority's procurement will generally fall into one of the following categories:

- a. The Authority may contract for accounting, legal, financial, management, economic, and other professional, expert, and/or consulting services to support the Authority's statutory mission. The Authority may also from time to time contract for such services on behalf of District agencies when time or other circumstances make a procurement by an agency infeasible or a procurement by the Authority preferable.

b. The Authority may contract for services and property in support of its day-to-day operations, such as office space, office equipment, office supplies, library and printing services, general operations such as mail and messenger services, education and training services, temporary staff services, investigative services, banking services, data processing services, personnel services and administration, and insurance.

- 801.3 The Authority's contracting is, by statute, vested in the Executive Director, who may from time to time delegate specific contracting and procurement responsibility and authority to various members of the Authority's staff. When authority is delegated to a staff member to serve as Contracting Officer for a particular contract or category of procurement, the delegation shall be in writing. All references herein to the Executive Director shall be deemed to include any such delegations.
- 801.4 To accomplish its missions effectively, it is the Authority's intention to (a) proceed as expeditiously as possible with contractor selection and contract award; (b) ensure that contractors have no conflicts of interest that might hinder or appear to cause a bias in business judgment and advice to the Authority; and (c) monitor contractor performance and certify satisfactory performance prior to payment of any contractor invoice.
- 801.5 In selecting sources for its contracts, the Authority may, when consistent with obtaining the best value, give preferences to entities that (a) are based in or employ residents of the District of Columbia, (3) qualify as disadvantaged businesses. When written solicitation procedures are employed, any such preferences shall be clearly defined.

**802                    AVOIDANCE OF CONFLICTS OR IMPROPRIETY AND THE  
                          APPEARANCE OF CONFLICTS OR IMPROPRIETY**

- 802.1 The Authority intends to avoid even the appearance of conflict of interest or impropriety in connection with procurement. It therefore requires that any Member, officer or other employee of the Authority immediately report to the Executive Director or the General Counsel any significant connection which he or she may have to a potential or actual contractor when he or she becomes aware of that connection or the possible or actual contract. A "significant connection" includes any interest or relationship covered by DC Code Section 1-1461 or the Authority's Rules and Regulations Pertaining to Ethics and Conflicts of Interest, but also includes such relationships with extended family, close friends, former clients, former employers or employees and others as could create the appearance of conflicts of interest or impropriety.
- 802.2 In determining whether a relationship or connection is "significant" for this purpose and should be reported, a Member, Officer, or other employee should resolve any uncertainty or ambiguity in favor of disclosure. Disclosure cannot harm either the Authority's mission or reputation for ethical standards; failure to disclose can harm both, as well as the reputation of the individual.
- 802.3 When any such significant connection is reported, the Authority shall take appropriate steps to ensure that the connection cannot and does not taint the procurement process. These may include resoliciting a proposed procurement to add additional offerors, recusing the

individual Authority-related person from any role in the procurement process, or disqualifying the contractor or potential contractor.

## CHAPTER 81

### COMPETITION POLICY, SOURCE DEVELOPMENT, CONTRACTING METHODS, SOURCE SELECTION COMPLAINTS

#### 810 COMPETITION

- 810.1 The Authority prefers competition among potential vendors to ensure fair and reasonable prices and the best value for the Authority. To obtain adequate competition, and to treat vendors fairly and consistently, the Authority shall solicit and consider a sufficient number of offerors appropriate for the type and value of the particular procurement.
- 810.2 Although the Authority prefers competitive procurement, circumstances do occur when the use of noncompetitive procedures makes good business sense or promotes the Authority's missions. Such circumstances include some or all of the following:
- a. When competitive procurement is not cost effective;
  - b. When there is insufficient time to solicit competitive proposals;
  - c. For interim contracts to meet the Authority's needs in advance of a competitive procurement;
  - d. When an existing contractor offers benefits of historical expertise, and hence other contractors cannot perform as cost-effectively or as timely as the current contractor;
  - e. When, after investigation, only one firm is considered capable of meeting the Authority's requirements, such as when the services are so specialized that they demand an individual or firm with unusual or unique capabilities or experience.
- 810.3 Each such procurement shall be accompanied by a written justification of the use of noncompetitive procedures.
- 810.4 A noncompetitive contract exceeding \$100,000 on an annual basis shall be approved by the Chair or in his/her absence the Vice Chair.
- 810.5 The Authority shall endeavor to use generic descriptions for commercial products rather than describing a specific product, or a particular feature of a product, peculiar to one manufacturer. Items can be identified by using the brand name followed by the words "or equal."
- 810.6 When the contract being solicited by the Authority exceeds \$10,000 in value, each offeror shall certify that its offer has been arrived at independently, without any consultation, communication, or agreement with any other offeror or competitor for the purpose of restricting competition.

## 811 DEVELOPMENT OF POTENTIAL SOURCES

### 811.1 Objectives.

- a. To achieve the benefits of competition, the Authority shall endeavor to identify private sector firms with the qualifications needed by the Authority that are or may be interested in contracting with the Authority.
- b. The Authority encourages private sector firms to make their capabilities and qualifications known to the Authority either for unspecified future solicitations or in response to a specific solicitation.

### 811.2 The Authority shall publicize contracting opportunities when consistent with contracting goals and the time available.

- a. The Authority's goal in publishing its contracting opportunities is to make potential qualified sources aware of the Authority's requirements, to promote adequate competition, to maintain lists of potential sources for supplies and services, and to treat private sector firms fairly and consistently.
- b. In deciding the extent to which the Authority's contracting opportunities shall be publicized, the Executive Director shall consider the cost in both administrative time and actual dollars against potential effectiveness.
- c. Paid announcements of contracting opportunities may be placed in newspapers, trade journals, magazines, or other appropriate national or local media, the D.C. Procurement Digest and the Commerce Business Daily.
- d. Any such advertisement shall state the Authority's requirements and the minimum qualifications required, and request sufficient information from respondents to determine whether a firm is generally qualified to receive the solicitation. Responding firms meeting the minimum qualification requirements shall be placed on the solicitation list.

### 811.3 Members of the Authority and its staff are encouraged to share with the Executive Director information concerning any qualified potential competitors for the Authority's contracts.

### 811.4 As needed, the Executive Director may research additional sources using such tools as association directories and industry publications, or by contacting other entities which purchase similar products or services.

## 812 CONTRACTING METHODS

### 812.1 The Authority shall procure property and services in accordance with the following procedures:

- a. Chapter 2 sets forth procedures for noncompetitive contracting.
- b. Chapter 4 sets forth procedures to be used when placing orders under GSA Schedules.

### 812.2 Simplified Contracting.

- a. Simplified contracting procedures may be used when appropriate to the nature of the goods or services to be provided and/or the value of the procurement is not expected to exceed \$100,000:
- b. For contracts under \$25,000, a minimum of three qualified sources shall be solicited if available; and
- c. For contracts between \$25,000 and \$100,000, a minimum of five qualified sources shall be solicited if available.

### 812.3 Procedures. Chapter 4 sets forth the procedures for simplified contracting.

### 812.4 Formal Contracting.

- a. In formal contracting, firms having the ability to provide the required services or goods are solicited for comprehensive proposals. Technical proposals are evaluated by a Technical Evaluation Panel ("TEP"). Cost proposals are evaluated by the Executive Director. Subsequent to these evaluations, negotiations may be conducted with one or more firms to ensure that the Authority and the firm have a mutual understanding of what is required and what is being proposed. Award is made to the firm offering the Authority the best value, with regard to technical and price goals.
- b. Chapter 5 sets forth procedures that shall be used for formal contracting.

### 812.5 Task Order Agreements.

- a. The Authority may establish task order agreements to facilitate ordering common, recurring services or property when the exact quantity or timing of the need for those services is not known at the time the agreement is entered into. Task order agreements are written instruments of understanding that contain terms and conditions applying to future task orders.
- b. Chapter 6 sets forth the procedures governing task order agreements.

## 813 ISSUE RESOLUTION

813.1 In his or her discretion, the General Counsel of the Authority may review source selection decisions or any other issue associated with a procurement undertaken by the Authority, at the request of the Executive Director, the Authority, any competitor for the procurement, or any party interested in the procurement.

813.2 The Authority's Executive Director may reconsider a source selection decision or any other issue associated with a procurement upon consultation with the General Counsel when an issue is raised to the General Counsel. The decision of the Executive Director with respect to any issue associated with an Authority procurement shall be final and not subject to protestor review.

**CHAPTER 82**  
**GENERAL PROCEDURES FOR DEVELOPING A PROCUREMENT**

**820 REQUESTING INITIATION OF CONTRACT ACTION**

A member of the Authority's staff, or a duly authorized official of a District office or agency who has identified a need to procure supplies or services, may propose that the Executive Director initiate a procurement action. The proposal need not be in writing, but shall be sufficiently detailed to enable the Executive Director to determine (1) whether the procurement is appropriate to the Authority's missions and (2) whether sufficient unobligated appropriated funds are available to support the procurement. Such information may include:

820.1 A description of the services or supplies required, the required delivery or performance date(s), and any special contract terms needed such as unusual payment procedures.

820.2 Listings of both minimum and desirable qualifications or features of the supplies or services.

820.3 An estimate of the range of expected prices for the services or supplies being requested.

820.4 A description of suggested sources such as prequalified companies or availability from the GSA Schedules.'

820.5 For consulting or other services, identification of the individuals within the Authority who would monitor and evaluate the performance of the contractor.

820.6 Where applicable, suggested evaluation criteria for written proposal evaluation.

**821 PREPARING STATEMENTS OF WORK AND OTHER PROCUREMENT DOCUMENTS**

821.1 The Executive Director shall designate one or more members of the Authority's staff, or request the applicable District office or agency, to prepare a statement of work (SOW) for the requirement and other appropriate procurement documents. The Executive Director may require the SOW to be prepared prior to or after the decision to initiate a procurement action.

821.2 The SOW establishes the scope of services that a contractor shall provide, and also provides a basis for the contractor's preparation of technical and cost proposals where written proposals are required. In the awarded contract, the SOW also operates as the standard for measuring the contractor's performance and effectiveness.

821.3 A SOW shall include a thorough description of the required services and expected results, including the minimum standards that shall be met, company and individual qualification necessary to perform the work, deliverable times and a schedule for delivery, and standards by which the contractor's performance shall be measured.

821.4 Upon receipt of all necessary information, the Executive Director may initiate an appropriate procurement.

821.5 All procurement documents, including contract terms and conditions, shall be approved by the General Counsel.

## CHAPTER 83

### SIMPLIFIED CONTRACTING PROCEDURES

#### 830 OVERVIEW

830.1 These procedures are designed to permit prompt and simplified contract award and purchases consistent with the principles of adequate competition and fair and consistent treatment of offerors.

830.2 The procedures set forth in this Chapter shall be used when: (a) the Requirement for supplies or services is appropriate for these procedures and/or is not expected to exceed a total value of \$100,000; or (b) purchases are to be made from a GSA Schedule.

830.3 The Executive Director shall determine whether a particular request for supplies or services is of the type appropriate for the use of the simplified procedures set forth herein.

#### 831 COMPETITION

831.1 Competition shall be obtained to the maximum extent practicable given the nature of the procurement, the required time for delivery of the supplies or services, and the number of readily available sources. In order to maximize competition for simplified procurements, the Authority shall use relevant standard commercial publications, including but not limited to trade publications, telephone directories, and/or newspaper advertisements, that can assist in identifying companies which may be able to provide the types of supplies or services needed by the Authority.

831.2 Where necessary due to time constraints or other considerations, competition may be restricted to (1) sources listed on a solicitation list maintained by the Authority, or (2) sources that have existing task order agreements under the procedures outlined in Chapter 6. Where appropriate, a negative evaluation of a company's past performance may be considered in restricting sources for a particular category of goods or services under these procedures. Noncompetitive contract awards shall not be made unless authorized in accordance with the procedures set forth in Chapter 2.

831.3 On a semi-annual basis, the Executive Director shall review all purchases and awards made in accordance with these simplified contracting procedures to ensure that selection of sources is unbiased and has provided opportunity for a reasonable number of qualified firms to participate in the Authority's procurements.

#### 832 METHODS FOR SOLICITATION

The Executive Director may use any of the following methods to solicit sources for participation in a particular procurement:

832.1 Verbal quotations may be solicited by telephone or electronic communication for procurement of supplies or services under \$10,000, if the award will be made solely on the basis of price and if at least three sources will be solicited. When this solicitation method is used, the solicitor shall record the name and telephone number of each company solicited and the name of the individual contacted, the date of the telephone or electronic communication contact, and all information provided in response to the solicitation (price, delivery schedule, particular features of supplies, etc.). A brief rationale for source selection shall be included.

832.2 Written solicitations shall be used for all procurements for which verbal quotations are deemed to be inappropriate. The solicitation may be sent to offerors via electronic communications when available. All written solicitations may be advertised in publications appropriate to obtain maximum practicable competition. Written solicitations shall include, at a minimum:

- a. A functional description of the supplies or services sought, including, where necessary, a statement of work describing the scope of the work to be performed;
- b. A description of the overall proposal submission requirements including page limitations, and the due date, time, and place (including provisions for submission of proposals via electronic communication);
- c. A delivery schedule for the supplies or services;
- d. A description of required proposal contents, such as an offeror's experience, management, and financial resources, key personnel qualifications, and ability to comply with schedule and technical requirements; and
- e. A brief explanation of the evaluation criteria and basis for award.

832.3 A comparison of published information available through trade publications, catalogs, or other market research tools. Verbal or written confirmation of price, availability, and quality shall be made prior to execution of the contract, and records shall be kept of information consulted and comparisons made.

832.4 Use of existing task order agreements in accordance with the procedures described in Chapter 6.

### **833 EVALUATION AND AWARD**

833.1 Evaluation of verbal offers and source selection shall be made by the Executive Director.

833.2 When written proposals are submitted, they shall be evaluated by two or more individuals designated by the Executive Director as the Evaluation Team. The Evaluation Team shall document the basis for its initial recommendation for award, including a brief description of how the selected proposal fulfilled the evaluation criteria stated in the solicitation, the reasonableness of the proposed price, and why the recommended proposal offers the best value of all proposals received. The Executive Director shall review the recommendation and make the final determination for award.

833.3 Prior to award, informal negotiations may be conducted with the selected potential contractor where needed to clarify or verify information contained in the proposal or in published information such as catalogs.

833.4 Prior to award, the Executive Director shall conduct a business reference check concerning the potential contractor's business and financial status and shall otherwise determine the responsibility of the potential contractor.

833.5 After obtaining approvals as required, the Executive Director shall notify the successful offeror that it has been selected for award and shall execute all contract documentation. The Executive Director shall promptly notify unsuccessful offerors of the award decision.

## CHAPTER 84 FORMAL CONTRACTING

### 840 OVERVIEW

840.1 This chapter addresses the competitive contracting process to be used for services or property where the size or the nature of the procurement requires complex evaluation procedures.

#### 840.2 Applicability

- a. The procedures set forth in this chapter are mandatory for contracting actions that can be expected to result in the Authority's expenditure of \$500,000 or more on an annual basis.
- b. These procedures may also be used for competitive contracting actions estimated at less than \$500,000, and as an alternative to the simplified procedures set forth in Chapter 4, when complex evaluation procedures are considered appropriate.

#### 840.3 Best- Value Determination

- a. The procedures set forth in this chapter are aimed at ensuring that the Authority obtains the best value for the services or goods it acquires. In seeking the best value, the Authority aims to obtain the most favorable combination of:

- (1) Features and characteristics of the offered services or goods;
- (2) Acceptable contractor capabilities;
- (3) Delivery or performance terms and conditions; and
- (4) The cost to the Authority.

- b. Determining best value is a two-step process. The first step involves establishing, prior to solicitation, the evaluation structure for technical, cost, and other factors that will identify the firm that offers the best value for the requirement. The second step involves comparing the competing proposals to determine how well or how poorly each proposal measures up to these criteria.

- c. When a quality level consistent with a standard industry practice is acceptable, cost may be the controlling factor. However, some Authority requirements will be better satisfied by improved quality of service or product performance. In these cases, cost may be given less weight than technical considerations.

## 841 PRE-SOLICITATION ACTIVITIES

### 841.1 Evaluation Structure

- a. The Executive Director shall develop evaluation criteria which are consistent with SOW requirements and the Authority's goals with respect to the particular procurement. General ground rules for developing evaluation criteria follow:
- b. The relative ranking of estimated costs or price to technical shall be described either by narrative description (i.e., cost is less important than technical) or by formulas assigning weights to cost and technical scores.
- c. Evaluation criteria shall be developed for the specific requirements of each contract, to predict which of the offerors is most qualified to perform under the contract. Therefore, criteria shall be chosen that will require the offeror to provide evidence of ability to perform. These criteria shall address the following topics:
  - (a) Understanding of the requirements;
  - (b) Management ability;
  - (c) Commitment to quality;
  - (d) Key personnel (qualifications and experience);
  - (e) Resources and facilities; and
  - (f) Similar prior experience.
- d. An offeror's price or estimated cost can appropriately be considered in a technical evaluation. For example, the makeup of a cost proposal can provide added insight into the evaluation of an offeror's understanding of the requirements. If an offeror's total proposed cost falls far short of the probable cost of essential elements of the Authority requirement, the offeror's understanding of what the Authority is seeking is called into question.

### 841.2 Standards

- a. For each variable criterion, quantitative standards shall be established prior to solicitation that enable evaluators to determine the degree to which an offeror possesses the attributes called for by the criterion. Standards provide uniformity to the evaluation process. They enable evaluators to determine to what degree an offer meets a criterion and therefore how the offeror's proposal shall be scored.
- b. Standards shall be expressed as a numerical range; The lowest standard in the range represents the minimum acceptable compliance; any offeror not meeting the minimum standard receives no points for that particular criterion. Successively higher standards shall be established as appropriate. For example, for a variable criterion to be used in evaluating the key personnel proposed by firms whose professional members are not normally certified by a committee of peers, three years experience might be established as a minimum standard for all key personnel. Additional points might be awarded if a given number or proportion of the key personnel possess ten years experience or more.

### 841.3 The Scoring System

- a. The relative importance of each of the individual technical evaluation criteria shall be analyzed and each criterion given a rank and weight.
  - (1) Rank each criterion shall be assigned one of the following ranks:
    - (a) Most important;
    - (b) More important; or
    - (c) Important
  - (2) Weight. A numerical weighting system, indicating the relative weight to be accorded each rank shall be established.
  
- b. During the evaluation process, each technical criterion shall be assessed and assigned a score based on the evaluator's assessment of the proposal's promise of meeting the evaluation criteria.

841.4 Developing the Solicitation List

- a. The Executive Director shall determine whether to use a source list or advertising to obtain competition, based on the time available for procurement and the services or goods provided.
  
- b. Normally a minimum of five sources shall be selected from a solicitation list to ensure adequate competition and fair and consistent treatment of offerors. Selection shall be based on the following criteria:
  - (1) Each firm solicited is believed to have the specific qualifications to reasonably carry out the services requested; and
  - (2) The same firms shall not repeatedly compete against one another.

841.5 Source Selection Plan

- a. A source selection plan shall be developed for each projected contract award over \$1,000,000 employing competitive procedures when price and price-related factors are not the only basis for proposal evaluation and contractor selection. For projected contract awards between \$100,000 and \$1,000,000, a formal source election plan is not required. However, the evaluation structure, including the evaluation criteria used, shall be fully documented.
- b. The source selection plan's contents shall reflect the nature of the requirement. The plan provides guidelines and a control mechanism for conduct of the source evaluation and selection process. At a minimum, the plan should:
  - (1) Describe the services to be contracted for in a statement of work that includes a performance or delivery schedule;
  - (2) Identify those individuals, if known at that time, who will be members of the Technical Evaluation Panel (TEP) and their respective responsibilities;
  - (3) Describe the proposal evaluation criteria and the standards for evaluating proposals against the criteria, to ensure each evaluator's ability to apply the criteria and standards independently;
  - (4) State the importance of each technical criterion relative to other technical criteria;
  - (5) State the relative weight to be given to the technical criteria relative to the cost criteria and method of scoring; and

(6) Describe any other elements of the selection procedures to be used by the Technical Evaluation Panel (TEP), such as site visits or pre-award surveys.

#### 841.6 Technical Evaluation Panel

- a. A TEP shall be established to provide technical expertise for the development of the source selection plan and evaluation structure and to implement it.
- b. The size and membership of the TEP depend upon the magnitude and complexity of the proposed contract. The TEP shall consist of at least three voting members, one of whom is designated chairperson. The Authority may appoint outside consultants as TEP members. The General Counsel shall provide advice to the TEP, and may also serve on the TEP. If any circumstances exist that may cast doubt on a member's ability to evaluate proposals objectively, that member shall alert the General Counsel to the need for resolution of the potential conflict of interest
- c. The TEP shall evaluate the technical proposals against the stated evaluation criteria in a timely manner, and provide the evaluation results to the Executive Director, who shall evaluate and rank the cost proposals. The TEP receives a copy of cost proposals only after completing its technical evaluation; the panel's sole purpose in reviewing cost proposals is to determine whether the technical proposal is credible in light of the proposed costs. The TEP accomplishes its function by following a structured system based on technical criteria and standards for use in evaluating proposals against those criteria.

### 842 SOLICITATION PREPARATION AND DISTRIBUTION

#### 842.1 The solicitation shall include:

- a. A description of the Authority's requirements;
- b. The evaluation criteria established for the procurement and their relative importance;
- c. Minimum qualifications, if any, required of offerors;
- d. Instructions as to how, where and when to submit proposal; and any particular submission requirements such as resumes or list of references; and
- e. Terms and conditions of the proposed contract.

#### 842.2 Offerors' Conference and Offerors' Questions.

- a. It is sometimes necessary to hold an offerors' conference, prior to proposal submission, to provide clarification on matters of interest. Such a conference shall be held as early as feasible in the solicitation sufficiently in advance of the closing date for the submission of proposal; to allow offerors to reflect the information disseminated in their proposal.
- b. In addition to the potential offerors who shall be notified reasonably in advance of the conference, the conference shall be attended by the Authority personnel needed to give potential offerors a clear and complete understanding of the Authority's requirements.

#### 842.3 Offerors' Questions.

When an offerors' conference is not required, interested firms shall be invited to submit all questions in writing. The Authority shall respond to such questions in a timely manner, and responses shall be sent to all firms on the solicitation list

#### 842.4 Solicitation Amendments.

- a. The Executive Director shall issue an amendment to a solicitation when necessary to make changes in the solicitation.
- b. Solicitation amendments shall be sent to all firms who received initial solicitations, and shall clearly communicate all changes.

842.5 When it is necessary to cancel a solicitation in its entirety, notice in writing shall be sent to every firm that received an initial solicitation.

### 843 PROPOSAL EVALUATION

Upon receipt of a proposal, the Executive Director shall log the proposal in and distribute the technical response to the TEP for evaluation. Proposals from offerors not solicited by the Authority may be considered at the discretion of the Executive Director. Proposals received after the date and time set forth in the solicitation may be considered only in the event the Executive Director determines that so doing is in the best interest of the Authority.

#### 843.1 Technical Evaluation

- a. Each technical proposal shall be reviewed by a TEP to determine if it meets the requirements of the solicitation.
- b. Individual proposals shall be evaluated against the evaluation criteria and shall not be compared one against another. Additionally, evaluators may consider information that was not expressly mentioned in the solicitation but that logically bears on the criteria listed. They may consider any information from any source, not merely information contained in the proposal, provided that such information is verified and documented. Each TEP member shall rate the proposal in accordance with the pre-established scale.
- c. After the individual TEP members have completed and documented their evaluations, the TEP shall meet as a group to discuss the strengths and weaknesses of each proposal. The goal of this meeting is to reach a consensus - a team position - on the merits and deficiencies of each proposal, relative to the evaluation criteria, and to agree on an overall ranking to each proposal.
- d. The TEP chairperson shall issue the Final TEP Report to the Executive Director. The report shall reflect the consensus reached at the TEP consensus meeting or the basis upon which the TEP chairperson made a decision if a consensus could not be reached. All TEP members must sign, and all copies of the technical reports and cost proposals that were in the possession of TEP members shall be provided as report attachments.

#### 843.2 Cost/Price Evaluation

(1) The Elements. Cost/price evaluation includes:

- (a) The predetermined weighting that reflects the importance of total price or estimated cost to the Authority versus technical merit;
  - (b) The realism of a proposed cost or price and its correlation with the technical proposal;
- and

- (c) When fair and adequate price competition is obtained, comparison among proposed prices and to the Authority's estimates is generally adequate to verify that the prices offered are reasonable; and
  - (d) In the case of a proposal offering not a fixed price but an estimated cost of performance, an analysis shall be made of the realism of the estimated cost.
- (2) When a single offer is received in response to a competitive solicitation or when the contract will not have a fixed price, the Executive Director shall verify the reasonableness and realism of the price/costs offers. Techniques for doing so include:
- (a) Comparison of previously proposed costs and previous contract costs against currently proposed costs for the same or similar service or product in comparable quantities;
  - (b) Comparison of proposed costs with the Authority's cost estimates;
  - (c) Application of rough yardsticks (such as dollars per pound, per specific type of data or paperwork processed, or other unit) to highlight significant inconsistencies that warrant additional inquiry; and
  - (d) Comparing an offeror's estimates to historical performance.

## 844 SELECTION

### 844.1 Proposal Verification

- a. For a contract with a total estimated price greater than \$500,000, the Authority shall verify the accuracy of salient representations made by the firm to compare proposal resources with actual resources. Forms of verification, including discussions with firm's clients and interviews with key personnel, may be undertaken.
- b. Where appropriate, the Executive Director and/or one or more TEP members may perform on-site visits to evaluate that an offeror's capabilities are as presented in its technical proposals. The primary focus of the site visit is verification of the contractor's capacity and resources to perform the work.
- c. For the purposes of obtaining information on which to base financial capacity assessments, the Executive Director may require final candidates to submit additional financial information, as needed, unless they provided sufficient information in their initial proposal.

### 844.2 Selection Process.

- a. Following initial evaluation of proposals, the Executive Director shall determine the approach to be followed in selecting one or more firms for contract award. One of the three following approaches may be used.
- b. A contract may be awarded on the initial ranking that results from technical and cost evaluations of the proposals without further discussions or negotiations.
- c. Firms may be selected based on competitive range determination, and discussions may be held with, and best and final offers (BAFOs) solicited from, only those firms in the competitive range.
- d. Negotiations may be conducted with one or more firms, simultaneously or sequentially. This approach should be used when the requirement is complex or of high dollar value.

### 844.3 Award Based on Negotiations

a. After considering the TEP report and any other findings, the Executive Director may select, for negotiations, one or more qualified offerors whose proposal(s) appear to represent the best value to the Authority.

1. The goal of negotiations is for the Authority and a final candidate to resolve differences of opinion regarding technical, management, or pricing terms and conditions that were not resolved with existing information. Negotiations shall be conducted in good faith and within generally accepted business practices. All negotiations sessions shall be fully documented by the Authority.

2. This method saves offerors with no likely chance of being selected the additional expense of discussions, negotiations, and preparation of written BAFOs.

3. If the technical and cost evaluation clearly identifies a firm that is superior to others, only that candidate shall be selected for negotiations. If there are several firms with closely similar scores, negotiations shall be initiated with the closely related firms. An offeror need not have a fully acceptable proposal to qualify for negotiations, provided the Executive Director believes that its proposal can be made fully acceptable during the negotiations.

b. The Executive Director shall promptly notify, in writing, those offerors who will not be included in the negotiations process.

c. Request for Negotiated Final Offers

(1) A request for a negotiated offer shall state that negotiations are concluded and provide any candidate an opportunity to submit negotiated final offers by confirming cost, technical, or other terms and conditions agreed upon. A submission date and time that allow a reasonable opportunity for submission of written negotiated offers shall be included.

Note: No (2) in original document

(3) If the Executive Director determines that the revised offers have an effect on technical requirements or may alter the TEP's initial analysis of cost realism, further TEP evaluation may be required.

#### 844.4 Award Based on Competitive Range Determination and Discussions

a. Determination of Competitive Range

(1) The determination is made on the basis of technical, cost, and other factors as stated in the solicitation. The competitive range shall include all proposals that have a reasonable chance of being selected for award;

(2) When there is doubt as to whether a firm should be included within the competitive range, that firm shall be included. The Executive Director shall provide to the TEP a list of offerors in the competitive range, and shall promptly notify those offerors that have been eliminated from competition.

b. Discussions.

(1) The goal of discussions is to assure the Authority that the final candidates understand and can achieve the requirements of the Authority's solicitation.

(2) The Authority shall:

(a) Advise the offeror of deficiencies in its proposal;

- (b) Attempt to resolve any uncertainties concerning the offeror's proposal; and
- (c) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information on other offerors' proposals or the evaluation process.

(3) The Authority shall not:

- (a) Help an offeror bring its proposal up to the level of other proposals through successive discussion opportunities;
- (b) Disclose technical information pertaining to one proposal that results in improvement of an competing proposal;
- (c) Indicate to an offeror a price that it must meet to obtain further consideration; or
- (d) Furnish information about other offerors' proposed costs.

c. The extent of discussions is determined on a case-by-case basis but shall provide all parties with an equal opportunity for improvement. Each offeror shall be given a reasonable opportunity to support, clarify, correct, improve, or revise its proposal.

d. A best and final offer (BAFO) is a revision to the original cost and technical proposals that reflects the firm's best offer to the Authority. After discussions with all offerors in the competitive range have concluded, the Executive Director shall solicit BAFOs from all offerors in the competitive range.

(1) The request shall state that discussions are concluded and give notice of the opportunity to submit BAFOs by revision cost proposal, technical proposal, or other-terms and conditions of the original proposals. A common cutoff date and time reasonable opportunity for submission of written BAFOs shall be provided.

(2) After receipt of BAFOs the Executive Director shall not reopen discussions unless it is clearly necessary in the Authority's interest to do so, or when available information is not adequate for contractor selection and award.

(3) After the close of discussions and the receipt of BAFOs, the TEP shall reconvene to consider only the changes that are brought about by the BAFOs.

844.5 The Executive Director shall determine the best value to the Authority based on the stated technical evaluation criteria and the offeror's price, considering all rankings, ratings, or other information by the TEP. Decisions shall be supportable, documented and reasonable, based on the evaluation factors.

#### **Section 845 Contract Award**

845.1 The Executive Director shall prepare a memorandum detailing the procurement and the rationales for the source selection. For procurements in excess of \$1,000,000 on an annual basis, the memorandum shall be provided to the Chair for review and approval.

845.2 Notification of Unsuccessful Offerors/Debriefings

a. Following contract award the Executive Director shall send a timely written notice of the award to all unsuccessful offerors who continued to participate in the procurement.

b. A request for a debriefing made within a reasonable time after notice of award by an unsuccessful offeror may be accommodated by the Executive Director in his or her discretion. The purpose of the debriefing is to inform the unsuccessful offeror why its proposal was not selected, to emphasize areas in which improvements may enhance its chances of receiving future contracts from the Authority, and to provide the offeror with an understanding of the general basis for selection of the successful offeror.

## CHAPTER 85

### TASK ORDER AGREEMENTS

#### 850 OVERVIEW

##### 850.1 Scope

(a) Task Order Agreements. A task order agreement is a contracting method intended for repetitive requirements. The Authority identifies recurring needs and prepares a general statement of work for the required services or goods. Firms are solicited and agreements are established with one or more firms that have the qualifications and capability to meet the Authority's anticipated future needs.

(b) Task Order. When needs covered by the agreement arise, the Authority prepares a SOW and an abbreviated solicitation process occurs with one or more of the contractors previously awarded a task order agreement. A task order is awarded to the successful firm. Multiple task orders may be issued, on an as-needed basis.

(c) Term. It is the Authority's policy to establish task order agreements for an initial term of one year, or less, with a maximum of two one-year renewable options. Task orders need not be completed within that time frame, but both parties must execute the task order before expiration of the final term of the task order agreement.

#### 851 PROCEDURES FOR ESTABLISHING TASK ORDER AGREEMENTS

851.1 The use of task order agreements reduces processing lead time when meeting future repetitive Authority requirements. It is appropriate to set up task order agreements when the Authority anticipates repetitive needs within a general service or goods category, and the number of occasions, and the exact period of time, the service will be required is not known.

##### 851.2 Procedures.

a. The Executive Director shall establish task order agreements for repetitive services or goods with as many firms as is necessary to ensure the advantages of adequate competition, while satisfying the requirements of each task order in a timely manner, and ensure an adequate supply of contractors to meet overall requirements.

b. Task order agreements may be established by either simplified or formal contracting procedures.

**852 TASK ORDERS****852.1 Method of Solicitation of Task Orders**

- a. Task order agreements shall not be used to avoid the Authority's preference for adequate competition. When appropriate, all task order agreement contractors shall be solicited for each task order. If this is not administratively cost effective, some type of fair and consistent selection shall be used.
- b. The request for a task order proposal shall describe the task order requirement, include the statement of work, and describe the type of proposal required from the contractor and the time frame for its submission. Elements of a task order proposal shall normally include:
  - (1) Management plan, outlining the contractor's technical approach, if appropriate;
  - (2) Schedule of performance for completing the task;
  - (3) Listing of key personnel who will be assigned to the task, with resumes if required; and
  - (4) A cost proposal which will either be a fixed-priced offer or a time-and-materials offer with a ceiling amount.
- c. Contractors shall normally be required to provide a written task order proposal within five business days from receipt of the request.

**852.2 Task Order Contents. All task orders, at a minimum, shall:**

- (a) Incorporate terms and conditions of the task order agreement;
- (b) Contain or incorporated a SOW for the specific task to be performed;
- (c) Specify milestones with a schedule of deliverables;
- (d) State a period of performance.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the Register. Comments should be filed with the Office of the Chief Financial Officer, Office of Contract and Procurements, 841 North Capitol Street NE, 8th Floor, Washington, DC 20019. Comments of the proposed rules should be sent in writing to the address stated above.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1333 H STREET, N.W., SUITE 200, WEST TOWER  
WASHINGTON, D.C. 20005

NOTICE OF PROPOSED RULEMAKING

FORMAL CASE NO. 1042, IN THE MATTER OF THE APPLICATION OF  
WASHINGTON GAS LIGHT COMPANY FOR A CERTIFICATE OF  
AUTHORITY AUTHORIZING IT TO ISSUE DEBT SECURITIES AND  
PREFERRED STOCK

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Sections 2-505, 34-502 and 34-503 (2001) of the District of Columbia Code,<sup>1</sup> that it intends, in not less than thirty (30) days from the date of publication of this Notice in the D.C. Register ("publication date"), to take final action on the application of Washington Gas Light Company ("WGL" or "Company") for a certificate of authority to issue debt securities and preferred stock.<sup>2</sup>

2. WGL seeks expedited review of its Application pursuant to Chapter 35 of the Commission's Rules of Practice and Procedure.<sup>3</sup> Pursuant to Section 3501.4, any party objecting to the expedited handling of the application must file an objection within 30 days of the publication in the *D.C. Register*. Responses to objections shall be filed within thirty-five (35) days of the publication date.<sup>4</sup> Where no objection is filed, the Commission must determine within 30 days of the date of publication whether to handle the application through the expedited procedure.<sup>5</sup> In accordance with these rules, if no objection to the application is filed and the Commission takes no action on the application within forty (40) days after the publication date, then the application shall be deemed approved.<sup>6</sup>

3. WGL, which filed its Application on July 29, 2005, is seeking authority to issue and sell one or more series of debt securities or preferred stock in an aggregate amount not to exceed \$377,600,000 during the three-year period beginning October 1, 2005.<sup>7</sup> WGL indicates in its Application that it plans to use the proceeds from the financing for four

<sup>1</sup> See D.C. Code §§ 2-505 (a), 34-502 and 34-503 (2001).

<sup>2</sup> *Formal Case No. 1042, In the Matter of the Application of Washington Gas Light Company for a Certificate of Authority Authorizing it to Issue Debt Securities and Preferred Stock ("F.C. 1042")*, filed July 29, 2005 ("WGL Application").

<sup>3</sup> 15 DCMR §3500 et seq. (2000).

<sup>4</sup> *Id.* at §3501.5.

<sup>5</sup> *Id.* at §3501.7.

<sup>6</sup> *Id.* at §3501.9.

<sup>7</sup> *F.C. 1042*, WGL Application at 1.

primary purposes: (1) refunding of maturing long-term debt; (2) advance refunding of higher coupon long-term debt as market conditions permit; (3) for general corporate purposes, including capital expenditures, acquisition of property, working capital requirements and retirement of short-term debt; (4) and reimbursement of funds expended for any of those purposes.<sup>8</sup>

4. WGL's Application and supporting documentation are on file with the Commission and may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m. Monday through Friday. Copies of the Application are available, upon request, at a per-page reproduction fee.

5. Any person objecting to the expedited handling of the Application shall file an objection in writing with the Commission, directed to Freda A. James, Acting Commission Secretary, at the above address, within 30 days of the publication of this Notice in the *D.C. Register*. The objection shall state clearly the reasons for which the Application should not be handled through the expedited procedure. A copy of the objection shall be served on the Company, directed to Douglas V. Pope, Attorney, Washington Gas Light Company, 101 Constitution Avenue, N.W., Washington, D.C. 20080. A copy of the objection also shall be served on the Office of the People's Counsel of the District of Columbia at 1133-15<sup>th</sup> St., N.W., Washington, D.C. 20005. Responses to objections shall be filed with the Commission within 35 days of the publication date. A copy of the response shall be served on the objecting party and the Office of the People's Counsel. If an objection is filed, the Commission shall determine, within 15 days after the period for filing an objection has expired, whether to handle the Application through the expedited procedure.

6. Any person desiring to comment on the Application should do so in writing and direct those comments to Freda A. James, Acting Commission Secretary, at the above address, and shall set forth therein the specific grounds for each comment. Any such representation must be made on or before 30 days after publication of this notice in the *D.C. Register*. Any replies to such comments shall be made no later than 35 days after publication of this Notice, after which time the Commission will take final rulemaking action on WGL's Application.

---

<sup>8</sup> *Id.* at 2.