

**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.

Action was taken on October 19, 2005, to adopt the following rules on an emergency basis effective on that date. Without these emergency rules, the Office of Contracting and Procurement will not be able to commence procedures to solicit and evaluate information from qualified prospective contractors through publication and issuance of an 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 those offerors determined 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 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 in the second step only proposals from offerors determined responsible pursuant to subparagraphs (c) and (d) above may be considered for award.
- 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 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 it is 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 those prospective contractors who have been determined qualified in the first step;
  - (b) An independent cost/benefit analysis of each proposal shall be required; and
  - (c) The RFP shall not be advertised in newspapers or publicly posted.

**D.C. OFFICE OF PERSONNEL****NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with section 502 of Title V, Disciplinary Actions, of D.C. Law 15-194, the Omnibus Public Safety Agency Reform Amendment Act of 2004 (Act), effective September 30, 2004 (D.C. Act 15-463; 51 DCR 9406), hereby gives notice of the adoption of the following emergency rules. These emergency rules amend Chapter 16, General Discipline and Grievances, of Title 6 of the District of Columbia Municipal Regulations, to add language implementing the provisions of the Act. Specifically, the Act provides that, with some noted exceptions, no corrective or adverse action against an employee of the Fire and Emergency Medical Services Department (FEMSD) or Metropolitan Police Department (MPD), including firefighters and police officers, respectively, shall be commenced more than ninety (90) days, not including Saturdays, Sundays, or legal holidays, after the date that the FEMSD or MPD knew or should have known of the act or occurrence allegedly constituting cause for the corrective or adverse action. Accordingly, section 1601 of the chapter has been amended to add a new section 1601.9 implementing the provisions of the Act. Additionally, and at the request of the Chief of the FEMSD, section 1601.5 of the chapter has been amended to add new language stating that the provisions of the chapter shall apply to uniformed members of the FEMSD at the rank of Battalion Fire Chief and above who are in the Career Service. The utilization of emergency rules is the only available means to immediately notify FEMSD and MPD employees covered under this chapter of the provisions of the Act and implement its provisions. Therefore, to ensure the welfare of the public, action was taken on August 9, 2005 to adopt the following rules on an emergency basis effective November 15, 2005. These emergency rules will remain in effect for up to one hundred twenty (120) days from August 9, 2005, unless superseded earlier by another rulemaking notice.

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with section 502 of Title V, Disciplinary Actions, of D.C. Law 15-194, the Omnibus Public Safety Agency Reform Amendment Act of 2004 (Act), effective September 30, 2004 (D.C. Act 15-463; 51 DCR 9406), hereby gives notice of the intent to adopt the following proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. Specifically, the Act provides that, with some noted exceptions, no corrective or adverse action against an employee of the Fire and Emergency Medical Services Department (FEMSD) or Metropolitan Police Department (MPD), including firefighters and police officers, respectively, shall be commenced more than ninety (90) days, not including Saturdays, Sundays, or legal holidays, after the date that the FEMSD or MPD knew or should have known of the act or occurrence allegedly constituting cause for the corrective or adverse action. Accordingly, this rulemaking would amend section 1601 of the chapter to add a new section 1601.9 implementing the provisions of the Act. Additionally, and at the request of the Chief of the FEMSD, this rulemaking would amend

section 1601.5 of the chapter to add new language stating that the provisions of the chapter shall apply to uniformed members of the FEMSD at the rank of Battalion Fire Chief and above who are in the Career Service. Upon adoption, these rules will amend Chapter 16, General Discipline and Grievances, of Title 6 of the District of Columbia Municipal Regulations, published at 34 DCR 1845 (March 20, 1987), and amended at 37 DCR 8297 (December 21, 1990), 46 DCR 7208 (September 10, 1999), 47 DCR 7094 (September 1, 2000), 49 DCR 11781 (December 27, 2002), 50 DCR 3185 (April 25, 2003), and 51 DCR 7951 (August 13, 2004).

## CHAPTER 16

### GENERAL DISCIPLINE AND GRIEVANCES

*Section 1601.5 is amended to read as follows:*

- 1601.5 (a) Any procedures for handling corrective or adverse actions involving uniformed members of the Metropolitan Police Department, or of the Fire and Emergency Medical Services Department (FEMSD) at the rank of Captain or below provided for by law, or by regulations of the respective departments in effect on the effective date of these regulations, including but not limited to procedures involving trial boards, shall take precedence over the provisions of this chapter to the extent that there is a difference.
- (b) The provisions of this chapter shall apply to uniformed members of the FEMSD at the rank of Battalion Fire Chief and above who are in the Career Service.

*A new section 1601.9 is added to read as follows:*

- 1601.9 Notwithstanding any other provision of this chapter, and in accordance with the provisions of section 502 of Title V, Disciplinary Actions, of D.C. Law 15-194, the Omnibus Public Safety Agency Reform Amendment Act of 2004 (D.C. Act 15-463; 51 DCR 9406), the following will apply to all corrective and adverse actions against any employee, uniformed and non-uniformed, of the Fire and Emergency Medical Services Department (FEMSD) or Metropolitan Police Department (MPD):
- (a) No corrective or adverse action against any employee, uniformed and non-uniformed, of the FEMSD or MPD will be commenced more than ninety (90) days, not including Saturdays, Sundays, or legal holidays, after the date that the FEMSD or MPD knew or should have known of the act or occurrence allegedly constituting cause for the corrective or adverse action.

- (b) If the act or occurrence allegedly constituting cause for the corrective or adverse action is the subject of a criminal investigation by the MPD, the Office of the United States Attorney for the District of Columbia, or the Office of the Attorney General for the District of Columbia, or an investigation by the Office of Police Complaints, the ninety-day (90-day) period for commencing a corrective or adverse action under section 1601.9 (a) of this section shall be tolled until the conclusion of the investigation.

Comments on these proposed regulations should be submitted, in writing, to Ms. Lisa R. Marin, SPHR, Director of Personnel, 441 4<sup>th</sup> Street, N.W., Suite 300S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.