

THE OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY RULEMAKING

The Chief Procurement Officer of the District of Columbia, pursuant to authority granted by sections 202 and 204 of the District of Columbia Procurement Practices Act of 1985, as amended, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code §§2-302.02 and 2-302.04)(PPA), and Mayor's Order 2002-207, dated December 18, 2002, hereby gives notice of the adoption of the following emergency rules, amending Chapter 22 of Title 27 of the *District of Columbia Municipal Regulations (Contracts and Procurements)*. The rules will amend Chapter 22 of Title 27 *D.C. Municipal Regulations* to reflect changes necessary to implement the *Debarment Procedures Emergency Amendment Act of 2003*, D.C. Act 15-153, effective October 15, 2003 (Act).

The rules establish the procedures for the Debarment and Suspension Panel (Panel) created by the Act and for the transmission of a debarment or suspension recommendation by the Chief Procurement Officer to the Panel. The rules apply to any debarment or suspension required to be re-heard by the Panel in accordance with the Act. Without these emergency rules, the Panel will not be able to conduct its required re-hearings of the suspended debarments or suspensions and issue its decisions within the timeframes established the Act. The debarment or suspension actions raise serious questions about the appropriateness of the District contracting with the companies in question because of convictions in connection with the performance of District contracts, affiliation with a convicted company, or submission of a false document in an effort to obtain a District contract. Adoption of emergency rules to establish these procedures to allow the Panel to conduct its required re-hearings is necessary for the immediate preservation of the public peace, health, safety, or welfare, in accordance with D.C. Official Code §2-505(c).

Action was taken on December 16, 2003, to adopt the following rules on an emergency basis effective on that date. These rules will remain in effect for up to one hundred twenty (120) days from the date of adoption, unless superseded by another rulemaking notice or by publication of a Notice of Final Rulemaking in the *D.C. Register*.

CHAPTER 22
CONTRACTORS

Chapter 22 is amended by adding a new section 2218 to read as follows:

2218 Debarment and Suspension Panel

- 2218.1 This section shall apply to any debarment or suspension that is required to be re-heard by the Debarment and Suspension Panel (Panel) in accordance with the *Debarment Procedures Emergency Amendment Act of 2003*, D.C. Act 15-153, effective October 15, 2003 (Act).
- 2218.2 For any debarment or suspension that the Panel re-hears, the Chief Procurement Officer (CPO) shall transmit to the Panel his prior debarment or suspension decision and any supporting documentation pertinent to his debarment or suspension proceeding.
- 2218.3 Upon receipt of the documentation specified in section 2218.2 from the CPO, the Chair of the Panel shall convene the Panel to conduct a re-hearing of the debarment or suspension in accordance with Title 27 *D.C. Municipal Regulations*, sections 2213 through 2217, except as provided in section 2218.4. The term "Director," as it appears in sections 2213 through 2217, shall mean the "Panel."
- 2218.4 For any debarment or suspension that the Panel re-hears, the period of time provided in section 2214.1(c) shall be shortened to fifteen (15) days after receipt of the notice.
- 2218.5 The Panel shall re-hear and decide, *de novo*, all debarments and suspensions required to be re-heard in accordance with this section and the Act.
- 2218.6 The attendance of at least five (5) members of the Panel shall constitute a quorum to re-hear a debarment or suspension.
- 2218.7 A majority vote of those present and voting shall be necessary and sufficient for any action taken by the Panel. Each Panel member in favor of the debarment or suspension decision of the Panel shall indicate his or her agreement with the decision by signing the decision.
- 2218.8 *Ex parte* communications, as defined in section 2299.1, shall be prohibited. Excluded from *ex parte* communications are those that:
- (a) are specifically authorized by law to be made on an *ex parte* basis;
 - (b) relate to the Panel's administrative functions or procedures; or

(c) are matters of public record.

A Panel member or staff member for the Panel who receives an *ex parte* communication prohibited by this section, shall immediately report its receipt to the Panel Chair and prepare a memorandum describing in detail the substance of the communication. The memorandum shall be placed in the debarment or suspension file, along with the actual communication if it is in written form. The Panel shall provide a copy of the memorandum to all parties.

2218.9 Panel members shall promptly advise the Chair of the Panel of any conflict of interest, or appearance thereof, relating to any debarment or suspension action under consideration by the Panel. Each member of the Panel shall disqualify himself or herself from acting on matters in which he or she has a conflict of interest, or the appearance thereof, in accordance with Chapter 18 of the District of Columbia Personnel Regulations.

Section 2299.1 is amended by adding the following definitions:

Debarment and Suspension Panel – the panel established by the *Debarment Procedures Emergency Amendment Act of 2003*, D.C. Act 15-153, effective October 15, 2003, consisting of the Chief Procurement Officer and a representative from the Office of the Chief Financial Officer, the Office of the Deputy Mayor for Planning and Economic Development, the Deputy Mayor for Operations, the Director of the Office of Labor Relations and Collective Bargaining, and from each agency which, in the judgment of the Mayor, would be directly and significantly affected by the proposed debarment.

Ex parte communications – any oral or written communication with the Panel, which excludes one or more parties to the case, concerning the merits of the case pending before the Panel, made by any persons directly or indirectly involved in the outcome of the case.