

**DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE AND SECURITIES REGULATION**

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Commissioner of the Department of Insurance and Securities Regulations, pursuant to the authority set forth in §§ 101 (9) and 125 of the Insurance Trade and Economic Development Act of 2000, effective April 3, 2001 (D.C. Law 13-265; D.C. Official Code §§ 31-2231.01 (9) and 31-2231.25), hereby gives notice of the adoption of emergency rules to be included in Title 26, Chapter 50 of the District of Columbia Municipal Regulations ("DCMR"). These rules were adopted on an emergency basis to prevent insurers from using weather related claims from Hurricane Isabel, which occurred on September 17-18, 2003, as grounds to non-renew or deny homeowners' insurance to District of Columbia residents. This emergency action is based upon the receipt of weather forecasts that contained hurricane warnings and predictions of extensive damage to property. The adoption of these rules is necessary for the immediate protection of the public welfare and justifies emergency action.

The Commissioner also gives notice of his intent to take final rulemaking action to adopt the proposed rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. These rules will provide the bases upon which insurers may properly non-renew homeowners' insurance, and use claims information from databases.

These emergency rules were adopted and became effective on September 17, 2003, and will expire 120 days after their effective date, or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first. If the effective date is declared invalid by a final and unappealable court order, then the emergency regulations shall be effective on the date of publication of this notice.

26 DCMR is amended by adding a new Chapter 50, Unfair Trade Practices, to read as follows:

5000 PERMISSIBLE REASONS FOR NON-RENEWAL AND USE OF CLAIMS HISTORY INFORMATION

5000.1 An insurer shall not refuse to renew a policy of homeowners insurance solely due to claim or loss frequency unless there have been two or more claims during the most recent three-year experience period. In counting the number of claims for the purpose of this subsection, the insurer shall not consider the first claim for a loss caused by a weather related event.

- 5000.2 For purposes of subsection 5000.1, the insurer shall not consider a claim that was reported to the agent or insurer for which no payment was made by the insurer.
- 5000.3 For purposes of subsection 5000.1, the insurer shall not consider a loss for which no claim for indemnification was submitted to an agent or insurer.
- 5000.4 For purposes of subsection 5000.1, an insurer shall not count any losses caused by a catastrophic event. A catastrophic event shall be any event that is declared an official emergency by the Mayor.
- 5000.5 An insurer shall not report any information related to losses or claims covered in subsections 5000.2, 5000.3, or 5000.4 of this section to the Comprehensive Loss Underwriting Exchange ("CLUE"), or other similar database.
- 5000.6 Every insurer shall provide a notice to its homeowners insurance policyholders describing how the insurer considers claims history in determining whether to renew the policy. Such notice may be on the declarations page or as a separate notice that accompanies the policy so long as the notice is conspicuous.

5001 USE OF CLAIMS HISTORY—NEW BUSINESS

- 5001.1 In determining whether to issue a homeowners' insurance policy on a property not previously owned by the applicant, an insurer shall not consider any claims history, including data from CLUE or other database, that occurred more than three years prior to the date of the application.

5002-5099 RESERVED

Persons desiring to comment on the emergency and proposed rulemaking may submit their comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be addressed to Leslie Johnson, Hearing Officer, Department of Insurance and Securities Regulation, 810 First Street, N.E., Room 701, Washington, DC 20002. Copies of the emergency and proposed rules may be obtained from the Department at the above address.

THE MAYOR OF THE DISTRICT OF COLUMBIA

NOTICE OF EMERGENCY RULEMAKING

The Chief Procurement Officer of the District of Columbia, pursuant to authority granted by sections 202(a) 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(a) and 2-302.04) (PPA), hereby gives notice of the re-adoption of the following emergency rules, amending Chapter 38 of Title 27 of the *District of Columbia Municipal Regulations (Contracts and Procurements)*. The rules will amend those sections of Title 27 *D.C. Municipal Regulations*, Chapter 38 which pertain to protests, claims and disputes in order to reflect the current provisions of the PPA.

A Notice of Emergency and Proposed Rulemaking to amend Chapter 38 was published in the *D.C. Register* on April 25, 2003 (50 DCR 3205), and the current emergency rules expired on August 6, 2003. No substantive changes have been made to the text of the proposed rules as published. The final rules to amend Chapter 38 have been submitted to the Council of the District of Columbia for its review pursuant to section 205(b) of the PPA (D.C. Official Code §2-302.05(b)), and may not become effective until expiration of the 60-day period for Council review or upon approval by Council resolution, whichever occurs first, and publication of a notice of final rulemaking in the *D.C. Register*. The rules are necessary to provide continuing authority to use the provisions in the amended Chapter 38 until the final rules are effective.

Without these emergency rules the Office of Contracting and Procurement will not be in compliance with the PPA. The public has a right to seek appropriate recourse for contractual disputes, and this regulation would foster the ability to seek such redress. This regulation would protect the public from an abrupt change in their rights, benefits, or status that, if left uncorrected, would cause undue harm or disadvantage. Adoption of these emergency rules, which allows Chapter 38 to continue to be in compliance with the PPA, is thus necessary for the immediate preservation of the public peace, health, safety, or welfare, in accordance with D.C. Official Code §2-505(c).

Therefore, to ensure that the amended Chapter 38 will continue to be in effect, action was taken on October 10, 2003 to adopt the following rules on an emergency basis. These rules will remain in effect for up to one hundred twenty (120) days from the date of adoption or until February 6, 2003, unless earlier superseded by another emergency or publication of a Notice of Final Rulemaking in the *D.C. Register*.

CHAPTER 38

PROTESTS, CLAIMS AND DISPUTES

3800 PROTESTS

- 3800.1 In accordance with the provisions of §903 of the District of Columbia Procurement Practices Act of 1985 (Act) (D.C. Official Code §2-309.03), as amended, all protests shall be filed with the District of Columbia Contract Appeals Board (which has original jurisdiction to decide all protests of solicitations or awards), in accordance with chapter 1 of this title.
- 3800.2 Each solicitation issued by the District shall inform prospective bidders or offerors that protests must be filed in accordance with the provisions of §908 of the Act (D.C. Official Code §2-309.08), as amended, and the rules of the Contract Appeals Board.

3801 CONTRACT DISPUTES

- 3801.1 District agencies shall attempt to resolve all disputes arising under or relating to contracts by mutual agreement after informal discussions between the contractor and the contracting officer.
- 3801.2 Each District contract shall contain a disputes clause, approved by the Chief Procurement Officer ("CPO"), that provides for resolution of disputes in accordance with the provisions of this chapter.
- 3801.3 Any dispute arising under or relating to a contract which is not resolved by informal discussions between the contracting officer and the contractor pursuant to §3801.1 may be treated as a claim and pursued under the appropriate provisions of the Act and this chapter.
- 3801.4 Claims by the District government against a contractor shall be decided by the contracting officer in accordance with §803 of the Act (D.C. Official Code §2-308.03) and §3802 of this chapter.
- 3801.5 Claims by a contractor against the District government shall be filed with and decided by the contracting officer in accordance with §805 of the Act (D.C. Official Code §2-308.05) and §3803 of this chapter.

3802 CLAIMS BY DISTRICT GOVERNMENT AGAINST CONTRACTORS

- 3802.1 All claims by the District government against a contractor arising under or relating to a contract shall be decided by the contracting officer. The contracting officer shall send the written decision regarding the claim to the contractor.
- 3802.2 The contracting officer's written decision shall do the following:
- (a) Provide a description of the claim or dispute;
 - (b) Refer to the pertinent contract terms;

- (c) State the factual areas of agreement and disagreement;
 - (d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
 - (e) Indicate that the written document is the contracting officer's final decision; and
 - (f) Inform the contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- 3802.3 The decision of the contracting officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced as authorized by §904 of the Act, as amended (D.C. Official Code §2-309.04).
- 3802.4 The authority contained in this section shall not apply to a claim or dispute for penalties or forfeitures by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.
- 3802.5 This section shall not authorize the contracting officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- 3802.6 Pending final decision of an appeal, action, or final settlement, the contractor shall proceed diligently with performance of the contract in accordance with the decision of the contracting officer.
- 3803 CLAIMS BY CONTRACTORS AGAINST DISTRICT GOVERNMENT**
- 3803.1 Contractors shall attempt to resolve all disputes by discussion and agreement with the contracting officer before filing a written claim.
- 3803.2 If a contractor is unable to resolve a dispute arising under or relating to a contract through informal discussions, the contractor may file a written claim with the contracting officer in accordance with this section.
- 3803.3 The contractor's claim shall be in writing, shall be delivered in person or mailed by certified mail, return receipt requested, to the contracting officer, and shall contain at least the following:
- (a) A description of the claim and the amount in dispute;
 - (b) Any data or other information in support of the claim;
 - (c) A brief description of the contractor's efforts to resolve the dispute prior to filing the claim; and
 - (d) The contractor's request for relief or other action by the contracting officer.
- 3803.4 The contracting officer may meet with the contractor in a further attempt to resolve the claim by agreement.
- 3803.5 If the claim is not resolved by mutual agreement, the contracting officer shall issue a written decision on any submitted claim of \$50,000 or less within sixty (60) calendar days from receipt of a written request from a contractor that a decision be rendered within that period.
- 3803.6 The contracting officer shall issue a written decision on any claim over \$50,000 within

ninety (90) calendar days of receipt of such a claim, whenever possible taking into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.

- 3803.7 The contracting officer's written decision shall do the following:
- (a) Provide a description of the claim or dispute;
 - (b) Refer to the pertinent contract terms;
 - (c) State the factual areas of agreement and disagreement;
 - (d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
 - (e) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
 - (f) Indicate that the written document is the contracting officer's final decision; and
 - (g) Inform the contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- 3803.8 The contracting officer's decision shall be delivered or mailed by certified mail, return receipt requested, to the contractor, and a copy shall be maintained in the contract file.
- 3803.9 Any failure by the contracting officer to issue a decision on a claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board, as authorized by §904 of the Act, as amended (D.C. Official Code §2-309.04).
- 3803.10 If a contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the contractor, the contractor shall be liable to the District government for an amount equal to the unsupported part of the claim in addition to all costs to the District government attributable to the cost of reviewing that part of the contractor's claim.
- 3803.11 Liability under §3803.10 shall be determined within 6 years of the commission of the misrepresentation of fact or fraud.
- 3803.12 The decision of the contracting officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the contractor as authorized by §904 of the Act (D.C. Official Code §2-309.04).
- 3803.13 Pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the decision of the contracting officer.

3899 DEFINITIONS

- 3899.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Claim - a written demand or written assertion by the District or a contractor seeking, as a matter of

right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

Person – any natural person, corporation, firm, association, organization, partnership, business, or trust.

CPO or Chief Procurement Officer - the Chief Procurement Officer of the Office of Contracting and Procurement.