

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 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 design, development, construction and management of a District office building to be known as the Anacostia Gateway Government Center ("AGGC"). Similar rules previously authorized a two-step selection process in which the first step was to solicit statements of qualifications from firms or combinations of firms prior to the issuance of a request for proposals for development, construction, and management of the AGGC. The first step of the solicitation has been completed. The proposed rules allow the contracting officer the flexibility of soliciting only for design, development, and construction of the AGGC in the second step. The AGGC is planned to have not less than 150,000 gross square feet of usable space and to be constructed on a District-owned site 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 were 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") served 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 of Emergency Rulemaking in the *D.C. Register* on February 3, 2006, at 52 DCR 683.

Action was taken on April 7, 2006 to continue those rules on an emergency basis effective on that date, and those rules were published in a Notice of Emergency Rulemaking in the *D.C. Register* on May 12, 2006 at 52 DCR 4011. Action was taken on August 3, 2006 to further continue those rules on an emergency basis. The emergency rules expired on December 1, 2006. Action was therefore taken on January 11, 2007 to adopt the following rules on an emergency basis, effective on that date.

Upon further review of the scope of work for the solicitation, OCP determined that it would be in the best interest of the District to allow the contracting officer the flexibility of soliciting only for design, development, and construction of the AGGC in the second step. Accordingly, action was taken on January 26, 2007, to adopt amended rules on an emergency basis effective on that date, to revise section 1611.9 of the rules adopted on January 11, 2007, and which superseded those rules. These rules were published in a Notice of Emergency Rulemaking in the *D.C. Register* on February 23, 2007 at 53 DCR 1695, and expired on May 26, 2007. Action was taken on June 5, 2007 to continue these rules on an emergency basis and those rules expired October 3, 2007. Action was taken on October 10, 2007 to continue these rules on an emergency basis and the emergency rules expired on February 7, 2008.

The rules were adopted as emergency and proposed rules on February 4, 2008 and published in the *D.C. Register* on March 21, 2008, at 55 DCR 2944. The current emergency rules expired on October 1, 2008. No changes have been made to the text of the proposed rules as published.

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*.

Adoption of these emergency rules to amend Chapter 16 is 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). Without these emergency rules, OCP will not be able to complete the two-step process to select a developer for the AGGC.

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;
 - (c) The RFP shall not be advertised in newspapers or publicly posted; and
 - (d) The contracting officer may issue an RFP that includes only design, development, and construction of the AGGC.