

THE OFFICE OF CONTRACTING AND PROCUREMENT**NOTICE OF EMERGENCY RULEMAKING**

The Chief Procurement Officer of the District of Columbia (CPO), pursuant to authority granted by sections 202, 204 and 321 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, 2-302.04 and 2-303.21 (2006 Repl.)) (PPA), Mayor's Order 2002-207 (dated December 18, 2002) and Mayor's Order 2009-42 (dated March 25, 2009), hereby gives notice of the adoption of the following emergency rules to amend Chapter 18 of Title 27 of the District of Columbia Municipal Regulations (Contracts and Procurements).

The rules amend sections 1800-1803 of Chapter 18 concerning small purchase procedures. The rules authorize the use of small purchase procurement procedures only for procurements not exceeding \$100,000 for all departments, agencies, instrumentalities, and employees under the procurement authority of the Office of Contracting and Procurement (OCP), including the Office of the Chief Technology Officer and the Metropolitan Police Department.

These rules were adopted as emergency and proposed rules on March 30, 2009 and published in the *D.C. Register* on April 24, 2009, at 56 DCR 3212. The current emergency rules will expire on July 28, 2009. No changes have been made to the text of the proposed rules as published.

Without these emergency rules, OCP will not be able to follow Mayor's Order 2009-42 (dated March 25, 2009). Adoption of these emergency rules to amend Chapter 18 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 replace those currently in effect, and remain in effect for up to one hundred twenty (120) days from the date of adoption or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first. The CPO has submitted the rules to the Council of the District of Columbia for a sixty (60) day period of review pursuant to subsection 205(b) of the PPA (D.C. Official code § 2-302.05(b)), and will take final rulemaking action upon completion of the 60-day review period or when the Council approves the rules by resolution before the end of the review period.

CHAPTER 18**SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES**

Sections 1800 - 1803 are amended to read as follows:

1800 USE OF SMALL PURCHASE PROCEDURES

1800.1 The small purchase procedures set forth in this chapter may only be used for the procurement of supplies, services and other items when the total of the

procurement does not exceed one hundred thousand dollars (\$100,000) in accordance with §321 of the District of Columbia Procurement Practices Act of 1985, as amended, effective February 27, 1998 (D.C. Law 12-50; D.C. Official Code § 2-303.21 (2006 Repl.)) (Act) and Mayor's Order 2009-42 (dated March 25, 2009).

- 1800.2 A contracting officer shall not use small purchase procedures when the requirement can be met by using a requirements contract, an indefinite quantity contract, a federal supply schedule, the D.C. Supply Schedule or other required source of supply as set forth in chapter 21 of title 27 DCMR.
- 1800.3 A contracting officer shall not use small purchase procedures when the procurement requirement is initially estimated to exceed one hundred thousand dollars (\$100,000), even though the resulting award does not exceed one hundred thousand dollars (\$100,000).
- 1800.4 A contracting officer shall not split a procurement totaling more than one hundred thousand dollars (\$100,000) into several purchases that are less than the limit in order to permit the use of small purchase procedures.
- 1800.5 A contracting officer shall use the small purchase procedure that is most suitable, efficient and economical based on the circumstances of each procurement.

1801 NON-COMPETITIVE SMALL PURCHASES

- 1801.1 A contracting officer may make a procurement for an amount of five thousand dollars (\$5,000) or less without obtaining competitive quotations.
- 1801.2 A contracting officer shall distribute non-competitive small purchases equitably among suppliers.

1802 COMPETITIVE SMALL PURCHASES

- 1802.1 Except as provided in §1802.2, in order to promote competition to the maximum extent practicable, and to ensure that the purchase is in the best interest of the District government, considering price and other factors (including the administrative cost of the purchase), a contracting officer shall solicit quotations as follows:
- (a) For each procurement of goods and services in an amount greater than five thousand dollars (\$5,000) and less than or equal to twenty-five thousand dollars (\$25,000), the contracting officer shall obtain at least three (3) oral quotations from vendors for the goods and services to be purchased;
 - (b) For each procurement of goods and services for more than twenty-five thousand dollars (\$25,000) and less than or equal to one hundred thousand dollars (\$100,000), the contracting officer shall obtain at least three (3) written quotations from vendors for the goods and services to be purchased; and
 - (c) The contracting officer shall, unless the award is to take into consideration factors other than price or price-related factors, award the contract to the vendor providing the lowest priced quotation for the goods or services solicited.

- 1802.2 If the contracting officer determines that it is impractical under the circumstances to obtain the number of quotations required under §1802.1 due to time constraints, lack of available sources, or other factors set forth in §1802.4, or if the contracting officer, despite a good faith effort, is unable to obtain the required number of quotations, the contracting officer may obtain quotations from fewer vendors than required in §1802.1. The contracting officer must document his or her attempts to obtain the required number of quotations.
- 1802.3 If the contracting officer determines that the best interest of the District or other factors set forth in §1802.4 indicate that quotations should be obtained from more than the number of sources required under §1802.1, the contracting officer shall obtain additional quotations.
- 1802.4 In determining whether or not to obtain quotations from more or fewer vendors than required in §1802.1, the contracting officer shall consider the following factors:
- (a) The nature of the item or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or if it is relatively non-competitive;
 - (b) Information obtained in making recent purchases of the same or similar item;
 - (c) The urgency of the proposed purchase;
 - (d) The dollar value of the proposed purchase; and
 - (e) Past experience concerning specific contractor prices.
- 1802.5 For procurements in excess of the amounts specified in §1801, a contracting officer may award a small purchase solicitation on a sole source basis when the contracting officer determines that one of the conditions in section 305(a) of the Act is satisfied, in accordance with chapter 17 of title 27 DCMR.
- 1802.6 A contracting officer may orally solicit quotations for procurements valued at twenty-five thousand dollars (\$25,000) or less. However, a contracting officer shall use a written solicitation in the following circumstances:
- (a) When the contracting officer determines that obtaining oral quotations is not considered economical or practical; or
 - (b) When extensive specifications are involved.
- 1802.7 A contracting officer shall, to the greatest extent practicable under the circumstances, maximize competition for small purchases and shall not limit solicitations to suppliers of well known and widely distributed makes or brands, or solicit on a personal preference basis.

1803 DETERMINATION OF REASONABLE PRICE AND AWARD

- 1803.1 The contracting officer shall determine that the price to be paid to the successful offeror is fair and reasonable.
- 1803.2 When only one (1) response is received to a request for competitive quotations, or

the price variance between multiple responses is so great that it reflects a lack of adequate competition, the contracting officer shall include a statement in the contract file giving the basis for the determination of a fair and reasonable price.

- 1803.3 The determination that a proposed price is fair and reasonable may be based on the following:
- (a) Competitive quotations;
 - (b) Comparison of the proposed price with (i) prices found reasonable on previous purchases, (ii) current price lists; (iii) catalogs, (iv) advertisements or (v) similar items;
 - (c) Value analysis;
 - (d) The contracting officer's personal knowledge of the item being purchased; or
 - (e) Any other reasonable basis.
- 1803.4 The contracting officer shall establish and maintain records of oral and written price quotations and include the record in the purchase file. The records shall consist of the names of suppliers contacted and the prices and other terms and conditions quoted by each.
- 1803.5 The contracting officer's records of solicitations shall include, at a minimum, notes of abstracts to show prices, delivery, references to printed price lists used, the vendor or vendors contacted, and other pertinent data.
- 1803.6 The contracting officer shall retain records supporting small purchases for a minimum of three (3) years.