

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

The Chief Procurement Officer of the District of Columbia, pursuant to authority granted by 23 U.S.C. §101, 23 CFR §636, sections 202 and 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 §§ 2-302.02 and 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 to Chapter 16 concerning solicitations utilizing a two-step procurement process. The purpose of this two-step process is to select a contractor whose offer will provide the best value to the District. Similar rulemaking was recently proposed concerning solicitations for design, development, construction and management of the Anacostia Gateway Government Center and the design and construction of the 11<sup>th</sup> Street Bridge project.

In the first step, prospective contractors will be evaluated based on statements of their qualifications to perform the requirements of the solicitation 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) serves to maximize competition and dialogue between the District and contractor community as well as to facilitate determination of the purpose and timing of the project and corresponding issuance of the RFP. The District may also award a stipend to certain unsuccessful offerors for the design and construction of federally funded projects that have submitted responsive proposals complying with the conditions of the RFP.

These rules were adopted as emergency and proposed rules on April 22, 2009 and published in the *D.C. Register* on May 15, 2009, at 56 DCR 3998. The current emergency rules expired on August 20, 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 conduct a two-step process to select contractors to design and construct projects with federal stimulus funds. 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 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 16

## PROCUREMENT BY COMPETITIVE SEALED PROPOSALS

*Chapter 16 is amended by adding a new section 1632 to read as follows:*

**1632 TWO-STEP SOLICITATIONS**

**1632.1** The contracting officer may use a two-step solicitation process when he determines that this method will provide the best value to the District. Notwithstanding the provisions of § 1602, the purpose of this section is to adopt a two-step procurement method. 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.

**1632.2** 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) who possess the expertise to assemble the labor and capital necessary for the completion of the procurement, (ii) to manage all components of the procurement, (iii) to complete the procurement in a timely manner while serving the District's stated policy objectives; 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.

**1632.3** The contracting officer shall give public notice of the RFQ in accordance with Chapter 13.

**1632.4** The contracting officer shall utilize the two-step process set forth in section 1632.2 above on forms prescribed by the Director.

**1632.5** 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 project;
- (b) The District's intent of the project;
- (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) Unless otherwise provided in accordance with §1632.10, 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.

**1632.6** The contracting officer may conduct oral or written discussions with all prospective contractors who submitted responses to the RFQ.

**1632.7** 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.

**1632.8** 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.

**1632.9** 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; and
- (c) The RFP shall not be advertised in newspapers or publicly posted.

**1632.10** The maximum number of offerors that will be selected to receive an RFP shall not exceed five unless the contracting officer determines, prior to the RFQ, that a number greater than five is in the District's best interest and is consistent with the objectives of that particular solicitation.

**1632.11** The contracting officer, in his discretion, may pay a stipend solely from federal funds for design and construction procurements that are funded, or partially funded, with funds provided by the U.S. Department of Transportation, Federal Highway Administration, to one or more unsuccessful offerors that have submitted responsive proposals complying with the conditions of the RFP. The stipends may be used to compensate an unsuccessful offeror for a portion of their proposal development costs, the use of information contained in their proposal, and to encourage competition. The contracting officer shall determine the number and amount of the stipend(s), if any. If an unsuccessful offeror accepts a stipend, the District shall be authorized to retain the right to use ideas and information from the design documents and technical drawings in its proposal.