

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

The Chief Procurement Officer of the District of Columbia, pursuant to authority granted by section 3 of the Excellence in Local Business Contract Grading Act of 2008, effective March 26, 2008 (D.C. Law 17-137; D.C. Official Code § 2-325.05 (2009 Supp.)) (Act) and Mayor's Order 2009-8 (dated January 29, 2009), hereby gives notice of the adoption of the following emergency rules to add a new section to Chapter 22 of Title 27 of the District of Columbia Municipal Regulations (Contracts and Procurements). This rulemaking adds a new section 2219 to Chapter 22 concerning procedures for declaring a contractor ineligible to apply for or work on any District contracts because it has received a final evaluation grade of F on a District contract.

These rules were adopted as emergency and proposed rules on February 3, 2010 and published in the *D.C. Register* on February 26, 2010, at 57 DCR 1783. The current emergency rules will expire on June 3, 2010. No changes have been made to the text of the proposed rules as published.

Without these emergency rules, the Office of Contracting and Procurement will not be able to declare ineligible those contractors who have already received a final evaluation grade of F on a District contract. Adoption of these emergency rules to amend Chapter 22 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 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 22 of Title 27 DCMR is amended by adding a new section 2219 to read as follows:

2219 INELIGIBILITY PROCEEDINGS UNDER THE EXCELLENCE IN LOCAL BUSINESS CONTRACT GRADING ACT OF 2008

- 2219.1 This section shall apply to contractor ineligibility proceedings in accordance with the Excellence in Local Business Contract Grading Act of 2008, effective March 26, 2008 (D.C. Law 17-137; D.C. Official Code § 2-325.04 *et seq.*) (2009 Supp.) (Act).
- 2219.2 Each contractor's performance shall be evaluated and graded after expiration or termination of each contract.
- 2219.3 A contractor may receive one of the following performance grades in a final evaluation letter:
- (a) A (Excellent), which shall have a numeric value of four-point-zero (4.0);

- (b) C (Satisfactory), which shall have a numeric value of two-point-zero (2.0); or
 - (c) F (Unsatisfactory), which shall have a numeric value of zero (0).
- 2219.4 If a contractor receives a final grade of F on a contract, the Director shall determine a cumulative grade by averaging all of the grades that the contractor has received on the performance of its contracts for the preceding twelve (12) month period. If the average grade for the preceding twelve (12) month period equals one-point-zero (1.0) or below, that cumulative grade shall be considered a grade of F, and the Director shall initiate ineligibility proceedings against the contractor.
- 2219.5 The Director shall initiate ineligibility proceedings against a contractor by notifying the contractor by certified mail, return receipt requested, of the following:
- (a) The contractor has received a grade of F as its cumulative grade;
 - (b) The contractor may, within fifteen (15) days after receipt of the notice, file a written appeal of the cumulative grade to the Director;
 - (c) If the contractor files a written appeal, the Director will review the cumulative grade and make a final written decision on the contractor's cumulative grade;
 - (d) In making its appeal, the contractor may submit in person, in writing, or through a representative, information and argument in opposition to the proposed cumulative grade of F, including any additional specific information that raises a genuine issue of fact; and
 - (e) If the contractor fails to file a written appeal within fifteen (15) days after receipt of the notice, the contractor will be subject to the same consequences of ineligibility as described in § 2212 for a one (1)-year period, which shall commence on the sixteenth (16th) day after the date of the notice.
- 2219.6 The Director shall include a copy of the final evaluation letter and the contractor evaluation(s) for which the contractor received a grade of F with the notice provided pursuant to § 2219.5.
- 2219.7 If the contractor timely files an appeal with the Director, the Director shall issue his final decision on the matter within fifteen (15) days after receipt of the contractor's appeal. The Director shall base his decision on the facts as found together with any information and argument submitted by the contractor.
- 2219.8 If the Director in his final decision decides not to change the contractor's cumulative grade of F, the Director shall notify the contractor by certified mail, return receipt requested. The final written decision shall include:

- (a) A copy of the final written decision;
 - (b) Notice to the contractor of its right to appeal the final decision to the Contract Appeals Board (CAB) within thirty (30) days after receipt of the final decision;
 - (c) A statement that the contractor will be subject to the same consequences of ineligibility as described in § 2212 of this chapter for a one (1)-year period; and
 - (d) The ineligibility period shall commence on the thirty-first (31st) day after the date of the final written decision if the contractor chooses not to appeal the final decision, or the day after the CAB dismisses or denies the contractor's appeal.
- 2219.9 If the Director in his final decision decides to change the cumulative grade of F, the Director shall notify the contractor of his decision by certified mail, return receipt requested.
- 2219.10 A contractor who has received a cumulative grade of F shall remain eligible to apply for or work on any District contract until the CAB appeal process has been concluded.
- 2219.11 The Director shall ensure that ineligible contractors are included on the consolidated list of debarred, suspended, and ineligible contractors maintained pursuant to § 2211.