CHAPTER 20 LOTTERY BOARD PROCUREMENT

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2000 PROCUREMENT SYSTEM

2000.1 In accordance with §4 of the "Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles For Charitable Purposes in the District of Columbia," D.C. Law 3-172 (D.C. Code §§2-2506(a) and 2-2536) (1994 Repl. Vol.), and the provisions of §104 of the D.C. Procurement Practices Act of 1985, D.C. Law 6-85 (D.C. Code §1-1181.4) (1992 Repl. Vol.), the District of Columbia Lottery and Charitable Games Control Board adopts the contracting and procurement regulations set forth in this chapter and agrees to be bound by those provisions of

Title 27 DCMR, Contracts and Procurements (hereafter, "Title 27 DCMR") promulgated by the Mayor of the District of Columbia and approved by the Council of the District of Columbia which are adopted and incorporated by reference in the provisions of this chapter.

2000.2 For purposes of this title, the formal title "Lottery and Charitable Games Control Board" and any abbreviated reference to "the Board" shall mean the board appointed under D.C. Code §2-2501 (1994 Repl. Vol.). The term "the Agency" when used in this title shall mean the independent agency of the government of the District of Columbia which operates under the authority and direction of the Board and under the direct administrative and management supervision of the Executive Director appointed in accordance with D.C. Code §2-2503 (1994 Repl. Vol.).

2000.3 Pursuant to D.C. Code §2-2503(e) (1994 Repl. Vol.), the Board delegates procurement authority to the Executive Director as provided in Chapter 21.

2000.4 No department, division, program, or employee of the Agency shall exercise any procurement or contracting authority other than the authority delegated by the Board under the provisions of this chapter.

2000.5 The Executive Director appointed pursuant to D.C. Code §2-2503 (1994 Repl. Vol.), shall appoint an employee of the Agency to direct and manage the daily procurement activities of the Agency. For purposes of this chapter, the Executive Director's designee under this subsection shall be called the Director of Procurement (hereafter, the "Director"), although this person may have a different title or designation with respect to his or her position as an employee of the Agency.

2000.6 The Director of Procurement shall be appointed by and shall report directly to the Executive Director. The Director of Procurement shall provide overall leadership in the implementation of the procurement regulations, shall coordinate all procurement activities of the Agency in accordance with this chapter, and shall implement a system of unified and simplified procurement procedures and forms.

2000.7 Whenever the provisions of this chapter are different from the provisions of Title 27 DCMR, the provisions of this chapter shall apply and shall be followed by the Agency.

2000.8 For purposes of this chapter, references to "the District" in Title 27 DCMR shall be changed under this chapter to read "the Agency," and the phrase "best interests of the District" shall be changed to read "best interests of the Agency."

2000.9 Except where specifically provided otherwise in this chapter, all references to the "Director" in Title 27 DCMR shall be interpreted for purposes of this chapter as referring to the Director of Procurement of the Agency and not to the Director of the D.C. Department of Administrative Services. Where the provisions of this chapter are intended to refer to the Director of the Department of Administrative Services, the reference shall use the full title or the term "Director, DAS."

2000.10 For purposes of this chapter, references to the "Corporation Counsel" in Title 27 DCMR shall be changed under this chapter to read the "counsel employed or retained by the Agency or the Corporation Counsel, as determined by the Executive Director."

AUTHORITY: Unless otherwise noted, the authority for this chapter is §4 of the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, D.C. Law 3-172, D.C. Code §2-2501 *et seq.* (1994 Repl. Vol.).

SOURCE: Final Rulemaking published at 36 DCR 6681 (September 22, 1989).

2001 GENERAL PROCUREMENT POLICIES

2001.1 Except as otherwise authorized under this chapter, all contracts let by the Agency shall be awarded by one (1) of the following methods:

(a) Competitive sealed bidding pursuant to Chapter 22;

(b) Competitive sealed proposals pursuant to Chapter 23;

(c) Sole source and emergency contracts pursuant to Chapter 24; or

(d) Small purchase procedures pursuant to Chapter 25.

2001.2 In accordance with D.C. Code §2-2536(b) (1994 Repl. Vol.), all contracts in excess of one thousand dollars ($1,000) awarded to any private business or other entity for the operation of any gambling form shall be awarded by competitive sealed bidding, pursuant to Chapter 22 of this title, or competitive sealed proposals, pursuant to Chapter 23 of this title, in accordance with the provisions of §§2200 and 2300, unless the use of sole source or emergency procurement procedures pursuant to Chapter 24 of this title is appropriate.

2001.3 Each contract or duty under this chapter shall impose an obligation of good faith in its performance or enforcement. For the purposes of this chapter, the term "good faith" shall mean honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

2001.4 Each determination required under this chapter shall be in writing and based upon written findings of the Agency employee making the determination. Each written determination and findings ("D&F") shall be retained in the official contract file.

2001.5 Except as provided in this chapter, a contract which is entered into in violation of this chapter is void, unless it is determined by the Board or by subsequent judicial review that good faith has been shown by all parties, and there has been substantial compliance with the provisions of this chapter.

2001.6 If a contract is void under §2001.5, a contractor that has entered into the contract in good faith and has not directly contributed to a violation or had knowledge of any violation of the provisions of this chapter prior to the awarding of the contract, shall be compensated for costs actually incurred.

2001.7 The procurement business of the Agency shall be conducted in a manner above reproach and, except as authorized by law, with complete impartiality and with preferential treatment for none.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6682 (September 22, 1989); as amended by Final Rulemaking published at 40 DCR 6963 (October 1, 1993).

2002 PROHIBITION AGAINST CONTINGENT FEES

2002.1 A contractor may not offer to pay any fee or other consideration that is contingent on the making of a contract.

2002.2 An employee of the Agency may not solicit or secure, or offer to solicit or secure, a contract for which the employee is paid or is to be paid any fee or other consideration contingent on the making of the contract between the employee and any other person.

2002.3 Each contract executed on behalf of the Agency shall contain the following prohibition against contingent fees:

> **"The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting *bona fide* employees or *bona fide* established commercial or selling agencies maintained by the contractor for the purpose of securing business. For any breach or violation of this warranty, the Lottery and Charitable Games Control Board shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee."**

2002.4 Each solicitation issued by the Agency shall include language giving prospective contractors notice of the prohibition in §2002.3.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6683 (September 22, 1989).

2003 NONDISCRIMINATION

2003.1 Each contract awarded by the Agency under this title shall contain provisions obligating the contractor not to discriminate against any employee or applicant for employment in any way that would constitute a violation of §211 of the District of Columbia Human Rights Act, D.C. Law 2-38 (D.C. Code §1-2512 (1992 Repl. Vol.)).

2003.2 Each contract awarded by the Agency under this title shall obligate the contractor to include a nondiscrimination clause, as described in §2003.1, in each subcontract awarded by the contractor except subcontracts for standard commercial supplies or raw materials.

2003.3 The contractor and subcontractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause in §251 of the District of Columbia Human Rights Act (D.C. Code §1-2522 (1992 Repl. Vol.)).

2003.4 Failure to include the required nondiscrimination clause in a contract may render that contract void *ab initio* at the election of the Executive Director. If a contract is cancelled under this subsection, any party shall be entitled to reasonable value of services performed and materials supplied.

2003.5 If a contractor willfully fails to comply with the nondiscrimination provisions in a contract, the Executive Director may, while the contract is still executory in part, compel continued performance of the contract, but the Agency shall be liable only for the actual cost of services performed and materials supplied from the date of willful noncompliance, and profits previously paid by the Agency under the contract shall be set off against the sums to become due as the contract is performed.

2003.6 If a subcontractor willfully fails to comply with nondiscrimination provisions in a subcontract, the contractor may void the contract and shall be liable only for the actual costs of the services performed and materials supplied.

2003.7 A person with information concerning violations of the requirements of this section shall inform the Director of Procurement.

2003.8 Upon receipt of information of an alleged violation, the Director shall inform the Executive Director and the Board, who may refer the matter to the Office of Human Rights in writing for investigation of the charges.

2003.9 If the Office of Human Rights concludes that the charges are valid, the Executive Director shall invoke the remedies set forth in this section, in addition to other remedies or action provided pursuant to Title III of the District of Columbia Human Rights Act.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6684 (September 22, 1989).

2004 [RESERVED]

2005 CERTIFIED MINORITY BUSINESS PREFERENCES

2005.1 Each sheltered market procurement shall be made in accordance with the provisions of this section and the provisions of the Minority Contracting Act of 1976 (D.C. Code §1-1141 *et seq.*) (1992 Repl. Vol.).

2005.2 The contracting officer shall review each proposed procurement to determine whether the procurement must be made from a required source under §2013 of this chapter. If the procurement is made from other sources under §2013.1(i), the contracting officer shall determine whether the procurement falls within the Agency sheltered market program established in accordance with Chapter 6 of Title 27 DCMR.

2005.3 If the procurement is made by competitive sealed bids or by competitive sealed proposals, the contracting officer may designate for the sheltered market the entire procurement or a portion of any subcontracting.

2005.4 Before a procurement is restricted to the sheltered market under §2005.3, the contracting officer shall determine whether there is a reasonable expectation that bids or offers will be obtained from at least two (2) responsible certified minority businesses and that an award can be made at a reasonable price.

2005.5 A contracting officer may make a procurement in the sheltered market on a sole source basis. The provisions of Chapter 24 applicable to sole source procurements in the sheltered market shall be followed.

2005.6 A contracting officer may make a procurement in the sheltered market on an emergency basis. The provisions of Chapter 24 applicable to emergency procurements shall be followed.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6685 (September 22, 1989).

2006 MBOC REVIEW OF PROCUREMENTS

2006.1 If the contracting officer is unable to make a determination of the availability of prospective certified minority contractors under §2005.4, the contracting officer may request the assistance of the Minority Business Opportunity Commission (the "MBOC"), in accordance with the provisions of this section.

2006.2 When submitting a request for assistance to the MBOC under §2006.1, the contracting officer shall request a recommendation from the MBOC regarding the feasibility of a sheltered market procurement and a list of minority businesses certified in the specific area of the procurement. The contracting officer shall request the MBOC to provide the recommendation and list of eligible minority businesses within ten (10) working days after the request is received.

2006.3 If the MBOC has not responded within ten (10) working days after receipt of the request, the contracting officer may proceed with the procurement based on the contracting officer's determination without further notice to the MBOC.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6685 (September 22, 1989).

2007 CANCELLATION OF A SHELTERED MARKET SOLICITATION

2007.1 If the contracting officer cancels a sheltered market solicitation for any reason, the contracting officer shall provide a copy of the determination to the Executive Director and the Board.

2007.2 If the service or supply is still required after the contracting officer cancels a sheltered market solicitation, the contracting officer may resolicit the requirement in the open market.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6687 (September 22, 1989).

2008 SHELTERED MARKET SUBCONTRACTING

2008.1 The contracting officer shall review each solicitation that has not been designated for the sheltered market to determine whether the sheltered market program established by the Board would apply to subcontracts that might be let under the proposed contract, in accordance with Chapter 6 of Title 27 DCMR.

2008.2 The contracting officer shall include in each solicitation for which a portion of the subcontracting is designated for the sheltered market a clause, approved by the Director, which sets forth the requirements for a sheltered market subcontracting plan, including the time limits for submitting the plan.

2008.3 Each certified minority business subcontracting plan shall include the following:

(a) A percentage goal for using certified minority businesses;

(b) The name of an individual employed by the bidder or offeror who will administer the sheltered market subcontracting program, and a description of the duties of the individual;

(c) A description of the efforts the bidder or offeror will make to ensure that certified minority businesses will have an equitable opportunity to compete for subcontracts;

(d) In subcontracts that offer further subcontracting opportunities, assurances that the bidder or offeror will include a clause, approved by the Director, that the sub-contractor will adopt a sheltered market plan similar to the plan in the contract;

(e) Assurances that the bidder or offeror will cooperate in studies or surveys that may be required by the contracting officer, and submit periodic reports to the contracting officer to allow the Agency to determine the extent of compliance by the bidder or offeror with the subcontracting plan;

(f) A description of the types of records the bidder or offeror will maintain to demonstrate compliance with the subcontracting plan, including establishing source lists; and

(g) A description of the bidder's or offeror's recent efforts to locate certified minority businesses and to award subcontracts to those businesses.

2008.4 For each solicitation in which a portion of the subcontracting is designated for the sheltered market, the contracting officer shall require the low bidder or the apparently successful offeror to submit a sheltered market subcontracting plan.

2008.5 If the low bidder or apparently successful offeror does not submit a sheltered market subcontracting plan within the time limit set by the contracting officer in the solicitation, that bidder or offeror shall be ineligible for award.

2008.6 A contractor may establish a master subcontracting plan which contains all the elements required except percentage goals, subject to approval by the contracting officer. The contracting officer shall recognize the master subcontracting plan for a one (1) year period after approval.

2008.7 When incorporated in an individual contract, a master subcontracting plan shall apply to that contract throughout the life of the contract.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6687 (September 22, 1989).

2009 REVIEW AND ACCEPTANCE OF SUBCONTRACTING PLANS

2009.1 The contracting officer shall review each subcontracting plan for adequacy, ensuring that the required information, goals, and assurances are included.

2009.2 The contracting officer shall consider each plan in terms of the circumstances of the particular procurement, including the following:

(a) Previous involvement of certified minority businesses as prime contractors or subcontractors in similar procurements;

(b) Proven methods of involving certified minority businesses as subcontractors in similar procurements; and

(c) The previous success of methods the contractor intends to use to meet the goals and requirements of the plan, as evidenced by records maintained by contractors.

2009.3 If, in a procurement by competitive sealed bidding, a bidder does not submit a plan which incorporates the required elements set forth in §2008.3, the bidder shall be ineligible for award.

2009.4 If a plan, although responsive, reflects the bidder's intention not to comply with its obligations under the plan, the contracting officer may find the bidder nonresponsible.

2009.5 In competitive sealed proposals, the contracting officer shall determine whether the plan is acceptable based on the results of negotiation of the elements of the plan.

2009.6 In determining the acceptability of a proposed subcontracting plan, the contracting officer shall do the following:

(a) Evaluate the bidder's or offeror's past performance in awarding subcontracts for the same or similar supplies or services to certified minority businesses, or if information is not available on a specific type of supply or service, evaluate the bidder's or offeror's overall past performance;

(b) If the contract involves supplies or services that are particularly specialized or not generally available in the commercial market, consider the bidder's or offeror's current capacity to perform the work and the possibility of reduced subcontracting opportunities;

(c) Evaluate subcontracting potential, considering the nature of the supplies or services to be subcontracted, and the known availability of certified minority businesses in the geographical area where the work will be performed; and

(d) Evaluate the feasibility of the bidder's or offeror's proposed percentage goals.

2009.7 The contracting officer may request the MBOC to review a sheltered market subcontracting plan within five (5) working days of receipt of the plan by the MBOC and submit recommendations to the contracting officer. The recommendations shall be considered advisory in nature.

2009.8 When a solicitation requires submission of a subcontracting plan, the contracting officer shall ensure that an acceptable subcontracting plan is incorporated into and made a part of the contract.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6688 (September 22, 1989).

2010 THE EQUAL OPPORTUNITY FOR LOCAL, SMALL AND DISADVANTAGED BUSINESS ENTERPRISES ACT

2010.1 Agency solicitations and contracts which are issued or awarded under this title shall be consistent with the requirements of D.C. Law 9-217 (D.C. Code §1-1152 *et seq.* (1992 Repl. Vol.)) and the rules or regulations which are promulgated pursuant thereto including, but not limited to, provisions for set-asides, preferences, joint-ventures, subcontracting, and certification.

2010.2 The provisions of §2010.1 shall apply to Mayor's orders and issuances of any agency or officer of the government of the District of Columbia made pursuant to the Act or its implementation.

2010.3 Notwithstanding the provisions of §§2000.1 and 2000.7 of this chapter, where any statute, rule or regulation is referred to in this section, the reference shall be to its most recent amendment or version.

2010.4 For the purpose of this section, the "Act" shall mean the Equal Opportunity for Local, Small and Disadvantaged Business Enterprises Act of 1922, D.C. Law 9-217 (D.C. Code §1-1152 *et seq.* (1992 Repl. Vol.).

SOURCE: Final Rulemaking published at 41 DCR 3235 (June 3, 1994).

2011 CONTRACTING FOR SERVICES

2011.1 The provisions of §§1900 and 1901 of Title 27 DCMR shall apply to all contracts for the procurement of services, except as provided otherwise in this section.

2011.2 The provisions of §1900.2 shall not apply to procurement by the Agency. Requirements for competition and competitive procedures shall be governed by the provisions of this title.

2011.3 The provisions of §1901.1 shall not apply to procurement by the Agency. The determination whether to use expert and consultant services shall be based on the best interests of the Agency.

2011.4 In accordance with the provisions of D.C. Code §1-1110(4) (1992 Repl. Vol.), the Executive Director may waive the requirements for formal advertising under this title when the services under a contract are required to be performed by the contractor in person and are of a professional nature.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6688 (September 22, 1989).

2012 SPECIAL CONTRACTING METHODS

2012.1 Unless restricted in an appropriations act, a contract for supplies, services, or other items may be entered into for periods which extend beyond the fiscal year in which the contract is executed.

2012.2 Before the utilization of a multiyear contract, the Director of Procurement or his or her designee shall determine the following:

(a) That estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) That a multiyear contract will serve the best interests of the Agency, and will encourage effective competition or will otherwise promote economies in procurement by the Agency.

2012.3 Except for contracts authorized by law which are not subject to appropriations, if funds are not appropriated or made available for the continued performance in a subsequent year of a multiyear contract, the contract for the subsequent year shall be terminated, either automatically or in accordance with the termination clause of the contract, if any.

2012.4 Unless otherwise provided for in the contract, the effect of termination is to discharge both the Agency and the contractor from future performance of the contract, but not from their existing obligations. The contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

2012.5 The provisions of Chapter 20 of Title 27 DCMR shall apply to procurement by the Agency, except as provided in this section.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6689 (September 22, 1989).

2013 REQUIRED SOURCES OF SUPPLIES AND SERVICES

2013.1 Except for the procurement of utility services, or as authorized under this chapter or by law, the Agency shall satisfy requirements for supplies and services from or through the sources and publications listed in this subsection in descending order of priority:

(a) Existing inventories maintained by the Agency;

(b) Excess from other District agencies or federal agencies, as long as the excess items are readily available without cost or at a lower cost than any other source;

(c) Existing requirements contracts executed by the Agency or other District requirements contracts which, pursuant to agreement between the Executive Director and the Director, DAS, or other District procurement official, include the Agency as a using agency;

(d) To the extent of the minimums required under the applicable term contract, existing indefinite quantity contracts executed by the Agency or other District indefinite quantity contracts which, pursuant to agreement between the Executive Director and the Director, DAS or other District procurement official, include the Agency as a using agency;

(e) Procurement lists of products and services available from the Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped;

(f) Federal supply schedules, to the extent that the items available meet the minimum requirements of the Agency and can be obtained at prices lower than can be obtained with a new contract;

(g) District of Columbia Department of Corrections, Industries Division;

(h) Federal Prison Industries, Inc.; and

(i) Other sources, including open and sheltered market commercial sources, and educational and nonprofit institutions.

2013.2 The provisions of Chapter 21 of Title 27 DCMR shall apply to procurement by the Agency, except as provided otherwise in this section.

2013.3 The requirements of §2103.1 of Title 27 DCMR shall apply to the Director, DAS and shall not apply to the Director of Procurement; Provided, that the Director of Procurement shall attempt to obtain information from the Director, with respect to the availability of supplies and services to the Agency under District term contracts.

2013.4 The provisions of §2105.2 of Title 27 DCMR shall not apply to procurement by the Agency.

2013.5 Exceptions to requirements for purchasing from handicapped and prison sources under §2112 of Title 27 DCMR may be granted by the Director of Procurement, in accordance with the provisions of §2112 of Title 27 DCMR.

2013.6 The provisions of §2115 of Title 27 DCMR relating to procurement of printing services shall not apply to procurement by the Agency.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6690 (September 22, 1989).

2014 CONTRACTORS

2014.1 The provisions of Chapter 22 of Title 27 DCMR shall apply to procurement by the Agency, except as provided otherwise in this section or in §2015 of this chapter.

2014.2 The requirements of §§2220 through 2222 of Title 27 DCMR may be waived under §2222.9 of Title 27 DCMR by the Director of Procurement.

2014.3 In all contracts where the integrity, security, or reliability of the operations of the Agency may be affected, the contracting officer shall include, as special requirements for contractor responsibility in accordance with §2201 of Title 27 DCMR, the eligibility requirements set forth in D.C. Code §2-2528 (1994 Repl. Vol.), and shall require all prospective contractors to certify compliance with those requirements.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6691 (September 22, 1989).

2015 DEBARMENT AND SUSPENSION

2015.1 Upon the recommendation of the Executive Director, the Board may debar a business for cause from consideration for award of contracts or subcontracts by the Agency. The debarment shall not be for a period of more than three (3) years.

2015.2 Upon the recommendation of the Executive Director, the Board may suspend a business from consideration for award of contracts if there is probable cause for debarment.

2015.3 The Board shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended business involved of its right to judicial review.

2015.4 The decision of the Board issued under §2015.3 shall be final and conclusive unless fraudulent. The filing of a judicial appeal by the debarred or suspended business shall not stay the decision.

2015.5 Unless otherwise indicated in the decision issued under §2015.3, the debarment or suspension shall also constitute a debarment or suspension of all affiliates of

the contractor or subcontractor and businesses in which they have a substantial financial interest.

2015.6 Causes for debarment or suspension related to criminal activity shall include, but are not limited to, the following:

(a) Conviction of a criminal offense incident to obtaining or any attempt to obtain a public or private contract, or subcontract, or in the performance of the contract or subcontract;

(b) Conviction under District or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity which currently affects the contractor's responsibility as an Agency contractor; or

(c) Conviction under District, federal, or state antitrust statutes arising out of the submission of bids or proposals.

2015.7 The Board may also debar or suspend a business for violation of contract provisions of a character that is regarded by the Board to be sufficiently serious to justify debarment action, as follows:

(a) Willful failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;

(b) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms or conditions of one (1) or more contracts. Failure to perform or unsatisfactory performance caused by acts beyond the control of a contractor shall not be considered to be basis for debarment; or

(c) A false assertion of minority status as defined in the Minority Contracting Act of 1976, D.C. Law 1-95.

2015.8 The Board may also suspend or debar a contractor for any other cause the Board determines to be sufficiently serious and compelling to affect responsibility as a contractor, including the following:

(a) Debarment by another District or federal governmental entity for cause; or

(b) Any cause which would be grounds for disqualification for a suppliers license under D.C. Code §2-2528 (1994 Repl. Vol.).

2015.9 The Director of Procurement shall obtain lists of debarred and suspended businesses from the Director, DAS and shall inform the Director, of any debarments or suspensions effected by the Agency, in accordance with §§2210 and 2211 of Title 27 DCMR.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6691 (September 22, 1989).

2016 DELIVERY AND PERFORMANCE

2016.1 The Director of Procurement (the "Director") may inspect the plant or place of business of a contractor or any subcontractor under any contract awarded or to be awarded by the Agency.

2016.2 The Director of Procurement may undertake an audit of the books and records pertaining to the contract of any of the following:

(a) Any business which has submitted cost or pricing data pursuant to the requirements of this title;

(b) Any prime contractor awarded a contract under competitive sealed proposals or a subcontract other than a firm-fixed-price contract; or

(c) Any contractor providing professional services to the Agency if the contract price is more than twenty-five thousand dollars ($25,000).

2016.3 Books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the contract and shall be made available within three (3) work days, excluding Saturdays, Sundays, and holidays, to the Director upon his or her written request.

12016.4 The provisions of Chapter 23 of Title 27 DCMR shall apply to procurement by the Agency, except as provided otherwise in this section.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6693 (September 22, 1989).

2017 TYPES OF CONTRACTS

2017.1 The cost-plus-a-percentage-of-cost contract system of contracting shall not be used by the Agency.

2017.2 No cost-reimbursement contract may be awarded under this title unless it is determined in writing that the contract is likely to be less costly to the Agency than any other type of contract, or that it is impracticable to obtain supplies or services of the kind or quality required except under this type of contract.

2017.3 All cost-reimbursement contracts shall contain a provision that only costs determined in writing to be reimbursable by the contracting officer, in accordance with cost principles set forth in §2027 of this chapter and Chapter 33 of Title 27 DCMR, shall be reimbursable.

2017.4 Subject to the limitations of §§2017.1 and 2017.2 of this section, any type of contract which will promote the best interests of the Agency may be used.

2017.5 The provisions of Chapter 24 of Title 27 DCMR shall apply to procurement by the Agency, except as provided in this section.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6693 (September 22, 1989).

2018 SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

2018.1 Specifications for the procurement of goods, whenever possible, shall contain standards for energy efficiency.

2018.2 Specifications for the acquisition of all motor fleet and mobile equipment shall include life cycle or total ownership costs among factors to be considered in the evaluation of bids and proposals.

2018.3 The provisions of Chapter 25 of Title 27 DCMR shall apply to procurement by the Agency, except as provided in this section.

2018.4 The Director of Procurement shall be responsible for preparation and revision of standard specifications for supplies, services, and other items procured by the Agency. The Director is authorized to use specifications developed and issued by the Director of the Department of Administrative Services, in accordance with §2500.6 of Title 27 DCMR, and may modify those specifications as needed to meet the specific needs of the Agency.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6694 (September 22, 1989).

2019 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

2019.1 In all construction contracts estimated to exceed fifty thousand dollars ($50,000), the Director of Procurement shall ensure that contract clauses regarding the following are included:

(a) Termination for the convenience of the Agency;

(b) Termination for default;

(c) Liquidated damages;

(d) Excuses for nonperformance;

(e) Changes orders;

(f) Differing site conditions from those indicated in the specifications;

(g) Suspension of work; and

(h) Disputes.

2019.2 Each supplemental agreement, change order, or adjustment in contract price shall be subject to prior written approval by the Director of Procurement, who shall certify the availability of funding authority and describe the effect of the modification, change, or adjustment on the project budget or total construction cost.

2019.3 If the certification required under §2019.2 discloses a resulting increase in the project budget or total construction cost, there shall be no modification, change, or adjustment unless sufficient funding authority is made available or the scope of the project is adjusted to permit completion of the project within the project budget.

2019.4 The provisions of Chapter 26 of Title 27 DCMR shall apply to procurement by the Agency, except as provided in this section. The provisions of the construction regulations shall apply to non-capital construction, including renovations and major repairs.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6694 (September 22, 1989).

2020 BONDS, OTHER SECURITY, AND INSURANCE

2020.1 A form of bid security, performance bond, and payment bond shall be required for all construction contracts estimated to exceed one hundred thousand dollars ($100,000). The Director of Procurement may require any of these types of security for construction projects that are less than one hundred thousand dollars ($100,000).

2020.2 Bonds or other security shall be payable to the Agency and shall be executed on forms prescribed by the Director of Procurement, and shall be filed with the Director of Procurement.

2020.3 The Director of Procurement shall furnish a certified copy of a payment bond or other security to any person making application who submits an affidavit that the person has supplied labor or materials for which payment has not been made, or that the person is being sued on any bond or other security.

2020.4 A certified copy of the bond or other security shall be *prima facie* evidence of the contents, execution, and delivery of the bond or other security as applicable.

2020.5 Applicants shall pay for the certified copies and the fees set by the Director of Procurement to cover the costs of preparation.

2020.6 Nothing in this section shall prohibit the Director of Procurement from requiring a performance bond or any other type of security, in addition to the types of security described in this section, in circumstances other than those set forth in this section and Title 27 DCMR.

2020.7 The provisions of Chapter 27 of Title 27 DCMR shall apply to procurement by the Agency, except as provided in this section.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6695 (September 22, 1989).

2021 SUBCONTRACTING

2021.1 The provisions of Chapter 28 of Title 27 DCMR shall apply to procurement by the Agency, except as provided in this section.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6696 (September 22, 1989).

2022 - 2024 [RESERVED]

2025 PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION

2025.1 Information which has been designated as confidential or proprietary by a business, in accordance with Chapter 31 of Title 27 DCMR, and which has been submitted by that business as part of its response to a procurement solicitation by the Agency, shall be treated in a confidential manner by the Director of Procurement and all other employees of the Agency.

2025.2 Information which has been designated as confidential or proprietary by a business and submitted to the Agency under §2025.1 shall be disclosed only to employees of the Agency or District government for use in the procurement process and shall not be disclosed to any other person or party without the prior written consent of that business.

2025.3 The provisions of Chapter 31 of Title 27 DCMR shall apply to procurement by the Agency, except as provided otherwise in this section.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6696 (September 22, 1989).

2026 CONTRACT FINANCING AND FUNDING

2026.1 The provisions of Chapter 32 of Title 27 DCMR shall apply to procurement by the Agency, except as provided otherwise in this section and §2033 of this chapter.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6696 (September 22, 1989).

2027 CONTRACT COST PRINCIPLES

2027.1 A contractor or offeror shall submit cost or pricing data and shall certify that, to the best of the contractor's or offeror's knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of a mutually determined and specified date, before entering into the following:

(a) Any contract awarded through competitive sealed proposals or through sole source procurement; or

(b) Any change order or contract modification.

2027.2 Each contract, change order, or modification under which a cost and price certificate is required shall contain a provision that the price, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the contractor furnished cost or price information which, as of the date specified in §2027.1, was inaccurate, incomplete, or not current.

2027.3 The provisions of §§2027.1 and 2027.2 shall not be applicable to contracts for which the price negotiated is based on established catalogue or market prices of commercial items sold in substantial quantities to the general public, or to items or services for which the price is set by law or regulations.

2027.4 The provisions of Chapter 33 of Title 27 DCMR shall apply to procurement by the Agency, except as provided otherwise in this section.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6696 (September 22, 1989).

2028 - 2029 [RESERVED]

2030 CONTRACT MODIFICATIONS

2030.1 The provisions of Chapter 36 of Title 27 DCMR shall apply to procurement by the Agency, except as provided otherwise in this section.

2030.2 The provisions of §3600.6 of Title 27 DCMR shall not apply to procurement by the Agency. Review of modifications of contracts shall be in accordance with the provisions of §2102 of Chapter 21 of this title.

2030.3 The provisions of §3604.4 of Title 27 DCMR shall not apply to procurement by the Agency. Cost analysis shall be done in accordance with the provisions of §2027 of this chapter.

2030.4 The provisions of §3604.6 of Title 27 DCMR shall not apply to procurement by the Agency. Disputes which arise in connection with Agency contracts shall be resolved in accordance with the provisions of §2033 of this chapter.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6697 (September 22, 1989).

2031 TERMINATION OF CONTRACTS

2031.1 The Director of Procurement may terminate without liability to the Agency any contract and may deduct from the contract price or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid in violation of this chapter or the applicable provisions of the Title 27 DCMR, in any of the following circumstances:

(a) The contractor has been convicted of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract;

(b) There has been any breach or violation of any provision of this chapter or applicable provisions of Title 27 DCMR; or

(c) There has been any breach or violation of the contract provision against contingent fees.

2031.2 If a contract is terminated pursuant to this section, the contractor may be paid only the actual costs of the work performed to the date of termination, plus termination costs, if any, and shall refund all profits or fixed fees realized under the contract.

2031.3 The provisions of Chapter 37 of Title 27 DCMR shall apply to procurement by the Agency, except as provided otherwise in this section.

2031.4 The provisions of §§3705.4 and 3705.6 of Title 27 DCMR shall apply to procurement by the Agency; Provided, that the determination letter required shall inform the contractor of appeal rights and procedures available to the contractor under the disputes clause of the contract and under the provisions of this chapter and Chapter 38 of Title 27 DCMR as modified by this chapter.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6698 (September 22, 1989).

2032 PROTESTS OF SOLICITATIONS AND AWARDS

2032.1 All protests of solicitations or awards shall be filed with the Contract Appeals Board, in accordance with the provisions of D.C. Code §1-1189.8 (1992 Repl. Vol.), and the rules of the Contract Appeals Board as set forth in Title 27 DCMR.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6698 (September 22, 1989).

2033 CLAIMS AND DISPUTES

2033.1 Disputes arising out of or pertaining to contracts shall be resolved, If possible, in accordance with §§3801.1 through 3801.3 of Title 27 DCMR.

2033.2 A claim by the Agency against a contractor arising under or relating to a contract shall be the subject of an informal hearing and decision by the Executive Director, or a claims officer designated under this section, who shall issue the decision in writing, and shall mail or otherwise furnish a copy of the decision to the contractor. Claims shall be filed in accordance with §3802 of Title 27 DCMR.

2033.3 The Executive Director's decision shall be supported by reasons and shall inform the contractor of the contractor's rights as provided in this title. Specific findings of fact are not required, but, if made, shall not be binding in any subsequent proceeding.

2033.4 The provisions of this section shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District government agency is specifically authorized to administer, settle, or determine. Further, this section shall not authorize the Executive Director or a claims officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

2033.5 Nothing in this section shall prohibit the Director of Procurement from including a clause in contracts requiring that 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 Executive Director.

2033.6 All claims by a contractor against the Agency arising under or relating to a contract shall be in writing and shall be submitted to the Executive Director for an informal hearing and decision in accordance with §§3803 through 3806 of Title 27 DCMR.

2033.7 The Executive Director may appoint a claims officer to hear a claim against the Agency, in accordance with the provisions of §3806 of Title 27 DCMR. The claims officer shall be an employee of the Agency.

2033.8 For purposes of this section, all references in Chapter 38 of Title 27 DCMR to provisions of the D.C. Procurement Practices Act shall be read as references to this section.

2033.9 The Executive Director shall issue a decision on any submitted claim of fifty thousand dollars ($50,000) or less within sixty (60) days from the receipt of a written request from a contractor that a decision be rendered within that period, except as provided otherwise in §3806 of Title 27 DCMR.

2033.10 Within ninety (90) days of receipt of a claim over fifty thousand dollars ($50,000), the Executive Director shall issue a decision, 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, except as provided otherwise in §3806 of Title 27 DCMR.

2033.11 Any failure by the Executive Director to issue a decision on a contract claim within the required time period shall be considered to be a denial of the claim, and shall authorize the commencement of an administrative appeal on the claim.

2033.12 The decision of the Executive Director shall be final and not subject to review unless an administrative appeal is filed with the Contract Appeals Board in accordance with D.C. Code §1-1189.4 (1992 Repl. Vol.), and the applicable rules of the Contract Appeals Board set forth in Title 27 of the *D.C. Municipal Regulations.*

SOURCE: Final Rulemaking published at 36 DCR 6681, 6698 (September 22, 1989).

2034 [RESERVED]

2035 QUALITY ASSURANCE

2035.1 The provisions of Chapter 40 of Title 27 DCMR shall apply to procurement by the Agency, except as provided otherwise in this section.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6700 (September 22, 1989).

2036 USE OF BOARD PROPERTY AND SOURCES BY CONTRACTORS

2036.1 The provisions of Chapter 41 of Title 27 DCMR shall apply to procurement by the Agency, except as provided otherwise in this section.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6700 (September 22, 1989).

2037 FREEDOM OF INFORMATION AND PRIVACY

2037.1 The provisions of Chapter 42 of Title 27 DCMR shall apply to procurement by the Agency, except as provided otherwise in this section.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6700 (September 22, 1989).

2038 PROCUREMENT TRAINING

2038.1 The provisions of Chapter 45 of Title 27 DCMR shall apply to procurement by the Agency, except as provided otherwise in this section.

2038.2 The Director of Procurement may utilize programs established by the Director, under Chapter 45 of Title 27 DCMR to meet the requirements of this section.

2038.3 The provisions of §§4500.5 and 4501 of Title 27 DCMR shall not apply to procurement by the Agency.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6700 (September 22, 1989).

2099 DEFINITIONS

2099.1 The definitions set forth in the portions of Title 27 DCMR incorporated by reference in this chapter shall apply to the terms and phrases used in this chapter and the applicable Title 27 DCMR provisions, except where those definitions are superseded by the provisions of this chapter or are inconsistent with this title.

2099.2 When used in Chapters 20 through 25 of this title, the following terms and phrases shall have the meanings ascribed:

Acquisition - the obtaining by contract of property, supplies, and services by and for the Agency through purchase or lease, whether the supplies or services are already in existence or must be developed, demonstrated, and evaluated, and includes establishment of needs, a description of requirements to satisfy needs, the solicitation of sources, award of contracts,

contract financing, contract administration and performance, and those technical and management functions directly related to the process of fulfilling Agency needs by contract.

Apparent clerical mistake - clerical or typographical mistake apparent on the face of a bid or proposal.

Best interests of the Agency - courses of action that result in the most favorable position within the market for goods and services, or will maximize the achievement of other policies of the Board as expressed in the rules and policies of the Board or other existing laws.

Bid bond - a form of security assuring that the bidder will not withdraw a bid within the period specified for acceptance and will execute a written contract within the time specified in the bid.

Bid sample - an example of a product furnished by a bidder to show the characteristics of the product offered in a bid.

Blanket purchase agreement - a pre-contractual agreement with a vendor that establishes a charge account for supplies or services which allows the Agency to make small purchases without the issuance of a purchase order for each individual purchase. Payments are made on a monthly basis.

Board - see §2000.2 of this chapter.

Bond - a written instrument executed by a contractor (principal) and a second party (surety or sureties) to assure the fulfillment of the contractor's obligations to a third party (an obligee or the Agency). If the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee.

Business - any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted.

Certified minority business - any firm certified in accordance with the provisions of the Minority Contracting Act of 1976, effective March 29, 1977, D.C. Law 1-95, D.C. Code §1-1141 *et seq.* (1992 Repl. Vol.).

Clarification -. communication with an offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal. It is achieved by explanation or substantiation, either in response to Agency inquiry or as initiated by the offeror.

Competitive bid basis - as this term is used in D.C. Code §2-2536 (1994 Repl. Vol.), and implemented in this title, the solicitation and award of contracts by using competitive sealed bidding or competitive sealed proposals, in accordance with the provisions of Chapters 22 and 23 of this title.

Competitive bidding - the offer of prices by individuals or firms competing for a contract, privilege, or right to supply any specified services or materials.

Competitive sealed proposals - a process which includes the submission of sealed written technical and price proposals from two (2) or more sources and a written evaluation of each

proposal in accordance with evaluation criteria which consider price, quality of the items, performance, and other relevant factors. The contract award is made on the basis of the evaluations, or on the basis of evaluations followed by negotiations.

Contract - all types of mutually binding agreements covered by this chapter, which, except as authorized, are in writing.

Contract modification - a written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. The term "contract modification" includes actions such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.

Contracting officer - the Executive Director, Director of Procurement, or any other Agency official who is vested with the authority to execute contracts on behalf of the Agency.

Contractor - any person that enters into a contract with the Agency.

Contribution - a concept, suggestion, or idea presented to the Agency for its use with no indication that the source intends to devote any further effort to it on the Agency's behalf.

Conviction of a felony - includes entering a plea of guilt to a felony charge, as well as conviction by a jury or court.

Cooperative purchasing - procurement conducted by the Agency with, or on behalf of, a neighboring jurisdiction.

Cost analysis - the review and evaluation of the separate cost elements and proposed profit of an offeror's or contractor's cost or pricing data and the judgmental factors applied in projecting from the data to estimated costs, in order to form an opinion on the degree to which the proposed costs represent what the contract should cost, assuming reasonable economy and efficiency.

Cost or pricing data - all facts as of the time or price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include factors such as vendor quotations; nonrecurring costs; information on changes in production methods or purchasing volume; data supporting projections of business prospects and objectives and related operational costs; and unit cost trends, such as those associated with labor efficiency, make-or-buy decisions, estimated resources to attain business goals, and information on management decisions that could have a significant bearing on cost.

Cost-plus-incentive-fee contract - a type of contract that specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula.

Cost-reinbursement contract - a contract under which the Agency reimburses the contractor for those contract costs, within a stated ceiling, which are recognized as allowable and allocated in accordance with cost principles, and a fee, if any.

Data - recorded information, regardless of form or characteristics.

Deficiency - any part of a proposal that fails to satisfy the Agency's requirement.

Descriptive literature - information (such as cuts, illustrations, drawings, and brochures) which shows the characteristics or construction of a product or explains its operation.

Designee - a duly authorized representative of a person holding a superior position.

Director - the Director of Procurement of the Agency.

Director, DAS - the Director of the Department of Administrative Services, established by Mayor's Order 84-52, dated March 2, 1984.

Discussion - any oral or written communication between the Agency and an offeror (other than communications conducted for the purpose of minor clarification), whether or not initiated by the Agency, that involves information essential for determining the acceptability of a proposal or provides the offeror an opportunity to revise or modify its proposal.

Employee - an individual receiving a salary from the Agency or a nonsalaried individual performing personal services for the Agency, other than an independent contractor.

Established catalogue price - the price included in the most current catalogue, price list, schedule, or other form that is regularly maintained by the manufacturer or supplier of an item; is either published or available for inspection by customers; states prices at which sales are currently or were last made to a significant number of buyers constituting the general public for that item; and states discontinued prices at which sales are currently or were last made to state, local, or federal agencies.

Evaluated bid price - the dollar amount of a bid after bid price adjustments are made under objective criteria, set forth in the IFB, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, and residual value.

Excess supplies - any supplies other than expendable supplies having a remaining useful life but which are no longer required by the using agency.

Expendable supplies - all tangible supplies other than nonexpendable supplies.

Fixed-price contract - a contract where the price is not subject to any adjustment on the basis of the contractor's cost experience in the performance of the contract.

Fixed-price-incentive contract - a contract that provides for adjusting profit and establishes the final contract price by a formula based on the relationship of final negotiated price to total target cost. The final price is subject to a target ceiling that is negotiated at the outset.

Gambling form - a lottery, numbers game, or any other game of chance which is operated directly by the Agency or under a contract for operation awarded by the Agency. For purposes of this title, the tern "gambling form" does not include charitable games operated under a license issued by the Agency.

Imprest fund - a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time-to-time in making payment in cash for very small purchases.

Invitation for bids (IFB) - all documents, whether attached or incorporated by reference, utilized for soliciting bids using the competitive sealed bid method of procurement pursuant to Chapter 22.

Local trading area - the Greater Washington Metropolitan Statistical Area as defined by the Greater Washington Research Center or any successor entity recognized by the Director of Procurement.

Lowest evaluated bid price - the lowest bid price after considering all price related factors, including but not limited to, trade discounts and price penalty for businesses having business interests in the Republic of South Africa or Namibia.

Master subcontracting plan - a subcontracting plan containing the elements specified in §2008.3 of this chapter, except percentage goals.

Minor informality or irregularity - some immaterial defect in a bid or proposal or a variation of a bid or proposal from the exact requirements of the IFB or RFP that can be corrected or waived without being prejudicial to other bidders or offerors. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the requirement.

Negotiation - contracting by the competitive sealed proposals method set forth in Chapter 23.

Nonexpendable supplies - all tangible supplies having an original acquisition cost of over one hundred dollars ($100) per unit and a probable useful life of two (2) years or more.

Payment bond - a bond to assure payment to all persons supplying labor or material in the performance of the work provided in the contract.

Performance bond - a bond to secure performance and fulfillment of the contractor's obligations under the contract.

Person - any business entity, individual, union, committee, club, or other organization or group of individuals.

Postmark - a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. or Canadian Postal Service.

Price - cost plus any fee or profit applicable to the contract type.

Price analysis - the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

Price history - a chronological record of prices previously paid for a particular supply, service, or construction item.

Principal office - the primary office, based upon the totality of the business activities, in which routine and essential business functions occur, to include at least three (3) of the following:

(a) Bookkeeping and other record keeping;

(b) Payroll maintenance;

(c) Receipt of business telephone calls;

(d) Storage of books and records; or

(e) Directing, controlling, and coordinating of activities and policies by officers, principals, and managers.

Procurement - acquisition.

Procurement request - a document which requests that a contract be obtained for a specified need, and may include, but is not limited to, the technical description of the requested items, delivery schedule, transportation criteria for evaluation of solicitees, suggested sources of supply, and information supplied for the making of any required written determination and finding.

Purchase order - an offer by the Agency to buy certain supplies services, or other items from commercial sources upon specified terms and conditions, the aggregate amount of which does not exceed the small purchase limit.

Quotation - a citation of price and delivery terms or a period of performance by a contractor in response to a contracting officer's request on procurements of ten thousand dollars ($10,000) or less.

Receiving report - written documentation of supplies delivered or services performed as noted by the contracting officer.

Request for proposals (RFP) - all documents, whether attached or incorporated by reference, utilized for soliciting proposals pursuant to Chapter 23.

Responsible bidder or offeror - a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

Responsive bid or offer - a bid or offer that conforms in all material respects to the invitation for bids or request for proposals.

Responsive bidder or offeror - a person who has submitted a bid or offer which conforms in all material respects to the invitation for bids or request for proposals.

Services - the rendering, by a contractor, of its time and effort rather than the furnishing of a specific product other than reports which are merely incidental to the required performance of services.

Sheltered market procurement- a process by which contracts or subcontracts are designated, before solicitation of bias or proposals, for competition among minority business enterprises on the basis of competitive sealed bids or competitive sealed proposals.

Small purchase - a procurement of supplies, services, or other items in an aggregate amount not exceeding ten thousand dollars ($10,000).

Sole source - where a single source in a competitive marketplace can fulfill the specifications of a contract or is found, for a justifiable reason, to be most advantageous to the Agency for the purpose of contract award.

Solicitation - any attempt, verbal or in writing, to obtain a proposal or bid from one (1) or more contractors.

Specification - any description of physical or functional characteristics, or of the nature of a supply, service, or other item. The term "specification" may include a description of any requirement for inspecting, testing, or preparing a supply, service, or other item for delivery.

Supplemental agreement - any contract modification which is accomplished by the mutual action of the parties.

Supplies - all property subject to this chapter.

Surety - a business legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation.

Technical analysis - the examination and evaluation by personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management of proposed quantities and kinds of materials, labor, processes, special tooling, facilities, and associated factors set forth in a proposal.

Telegraphic bid - a bid or amendment to a bid furnished by telegraph or mailgram.

Term contract - a contract established for a period of time for bulk purchase of certain common-use items.

Trade discount - a price allowance or deduction, usually as a percentage, allowed to different classes of customers.

Two-step sealed bidding - a method of contracting designed to obtain the benefits of competitive sealed bidding when adequate specifications are not available.

Unpriced purchase order - an order for supplies, services, or other items, the price of which is not established at the time of issuance of the order.

Unsolicited proposal - a written proposal that is submitted to the Agency on the initiative of the submitter for the purpose of obtaining a contract with the Agency and that is not in response to a solicitation.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6701 (September 22, 1989).