



PROCUREMENT GUIDELINES OF THE DISTRICT OF COLUMBIA COURTS

**APPROVED BY THE
JOINT COMMITTEE ON JUDICIAL
ADMINISTRATION
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AUGUST 13, 2003, AS AMENDED
MARCH 21, 2011, AS AMENDED
MARCH 31, 2017, AS AMENDED

The Procurement Guidelines of the District of Columbia Courts (Courts) serves as the Courts self binding guide for the acquisition of more than \$250,000,000.00 worth of goods, supplies and services annually. Its clauses reflect best practices in the procurement profession. Although, it is not meant to be a mirror image of the Federal Acquisition Regulation (FAR), like almost all state and local government procurement authority, the Courts Procurement Guidelines has its foundation built on the principles contained in the FAR. Thus, principles espoused in the FAR are the germination of many of the clauses in the Guidelines and the FAR is often used as a reference point for issues that are not directly addressed by our guidelines.

TABLE OF CONTENTS

PAGE

| | |
|---|-----------|
| <u>CHAPTER 1 - GENERAL PROCUREMENT PROVISIONS</u> | 01 |
| 100 PURPOSE AND APPLICATION | 01 |
| 101 AUTHORITY AND RESPONSIBILITY OF THE CONTRACTING OFFICER | 02 |
| 102 SOURCES OF SUPPLIES AND SERVICES | 02 |
| 103 CONTRACT-CLAUSES | 03 |
| 104 LOCAL, SMALL, AND DISADVANTAGED BUSINESS ENTERPRISE ACT | 04 |
| 105 PUBLICIZING PROCUREMENT ACTIONS | 04 |
| 106 SOLICITATIONS | 05 |
| 107 SPECIFICATIONS, STATEMENTS OF WORK, AND PURCHASE DESCRIPTIONS | 08 |
| 108 COMPETITIVE SEALED BIDS | 08 |
| 109 COMPETITIVE SEALED PROPOSALS | 11 |
| 110 COST OR PRICING DATA | 13 |
| 111 ANTI-COMPETITIVE PRACTICES AMONG OFFERORS | 13 |
| 112 ETHICS IN PUBLIC CONTRACTING | 15 |
| 113 GENERAL CONTRACTOR RESPONSIBILITY | 15 |
| 114 NOVATION AGREEMENTS | 17 |
| 115 FIXED ASSETS | 18 |
| | |
| <u>CHAPTER 2 - BUSINESS PREFERENCES</u> | 19 |
| 200 UTILIZATION OF PREFERRED CONTRACTORS | 19 |
| | |
| <u>CHAPTER 3 - SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES</u> | 20 |
| 300 USE OF SMALL PURCHASE PROCEDURES | 20 |
| 301 NON-COMPETITIVE SMALL PURCHASES | 21 |
| 302 COMPETITIVE SMALL PURCHASES | 21 |
| 303 DETERMINATION OF REASONABLE PRICE AND AWARD | 23 |
| 304 BLANKET PURCHASE AGREEMENTS | 23 |
| 305 IMPREST FUNDS | 25 |
| 306 PURCHASE ORDERS | 26 |
| 307 UNPRICED PURCHASE ORDERS | 26 |
| 308 MODIFICATION OF PURCHASE ORDERS | 27 |
| 309 TERMINATION AND CANCELLATION OF PURCHASE ORDERS | 27 |
| 310 GOVERNMENT-WIDE COMMERCIAL PURCHASE CARD | 27 |
| 311 SPECIAL DOCUMENTATION REQUIREMENTS | 28 |
| 312 FEDERAL SUPPLY SCHEDULES | 28 |
| | |
| <u>CHAPTER 4 - SOLE SOURCE AND EMERGENCY PROCUREMENTS</u> | 30 |
| 400 GENERAL PROVISIONS | 30 |

| | |
|---|-----------|
| 401 SOLE SOURCE PROCUREMENT | 30 |
| 402 SINGLE AVAILABLE SOURCE | 31 |
| 403 PREFERRED CONTRACTOR MARKET PROCUREMENTS | 32 |
| 404 SOLE SOURCE DETERMINATION AND FINDINGS | 33 |
| 405 SOLE SOURCE PROCUREMENT PROCEDURES | 33 |
| 406 EMERGENCY PROCUREMENTS | 34 |
| 407 EMERGENCY PROCUREMENT DETERMINATION AND FINDINGS | 35 |
| 408 EMERGENCY PROCUREMENT PROCEDURES | 35 |
| | |
| <u>CHAPTER 5 – DELIVERY AND PERFORMANCE</u> | 37 |
| 500 GENERAL PROVISIONS | 37 |
| 501 DELIVERY AND PERFORMANCE SCHEDULES | 37 |
| 502 IMPLEMENTATION OF DELIVERY AND PERFORMANCE SCHEDULES | 39 |
| 503 VARIATION IN QUANTITY: SUPPLY CONTRACTS | 39 |
| 504 VARIATION IN QUANTITY: CONSTRUCTION CONTRACTS | 40 |
| 505 SUSPENSION OF WORK | 40 |
| 506 STOP WORK ORDERS | 40 |
| 507 COURT DELAY OF WORK | 41 |
| | |
| <u>CHAPTER 6 - TYPES OF CONTRACTS</u> | 42 |
| 600 GENERAL PROVISIONS | 42 |
| 601 SELECTING CONTRACT TYPES | 42 |
| 602 FIXED-PRICE CONTRACTS | 43 |
| 603 FIXED-PRICE CONTRACTS WITH ECONOMIC PRICE ADJUSTMENTS | 44 |
| 604 FIXED-PRICE CONTRACTS WITH PROSPECTIVE PRICE REDETERMINATION | 45 |
| 605 COST-REIMBURSEMENT CONTRACTS | 46 |
| 606 DEFINITE-QUANTITY CONTRACTS | 47 |
| 607 TERM CONTRACTS | 47 |
| 608 ORDERING UNDER TERM CONTRACT | 48 |
| 609 TIME-AND-MATERIALS CONTRACT | 49 |
| 610 LABOR-HOUR CONTRACTS | 46 |
| 611 LETTER CONTRACTS | 50 |
| 612 NEGOTIATED SERVICES CONTRACTS | 51 |
| | |
| <u>CHAPTER 7 - CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS</u> | 52 |
| 700 GENERAL PROVISIONS | 52 |
| 701 SPECIFICATIONS | 52 |
| 702 ESTIMATE OF CONSTRUCTION COSTS | 53 |
| 703 NOTICE OF THE SCOPE OF CONSTRUCTION PROJECTS | 53 |
| 704 LIQUIDATED DAMAGES IN CONSTRUCTION CONTRACTS | 54 |
| 705 PRICING CONSTRUCTION CONTRACTS | 54 |
| 706 CONCURRENT PERFORMANCE OF CONSTRUCTION CONTRACTS | 55 |
| 707 CONSTRUCTION CONTRACTS WITH ARCHITECT-ENGINEER FIRMS | 55 |
| 708 INSPECTION AND SITE EXAMINATION OF DATA | 55 |
| 709 DISTRIBUTION OF PRE-SOLICITATION NOTICES | 56 |

| | |
|--|-----------|
| 710 COMPETITIVE SEALED BIDS FOR CONSTRUCTION | 56 |
| 711 NOTICE OF INTENT TO AWARD | 57 |
| 712 EVALUATION OF CONTRACTOR PERFORMANCE | 57 |
| 713 PRE-CONSTRUCTION CONFERENCE | 58 |
| 714 ARCHITECT-ENGINEER SERVICES | 58 |
| 715 ARCHITECT-ENGINEER SELECTION | 59 |
| 716 ARCHITECT-ENGINEER QUALIFICATIONS | 59 |
| 717 COST ESTIMATE FOR ARCHITECT-ENGINEER CONTRACTS | 60 |
| 718 NEGOTIATIONS OF ARCHITECT-ENGINEER CONTRACTS | 60 |
| 719 RELEASE OF INFORMATION | 61 |
| 720 LIABILITY FOR DESIGN ERRORS OR DEFICIENCIES | 61 |
| 721 DESIGN WITH FUNDING LIMITATIONS | 62 |
| 722 REDESIGN RESPONSIBILITY FOR DESIGN ERRORS OR DEFICIENCIES | 62 |
| 723 ARCHITECT-ENGINEER PERFORMANCE EVALUATION | 62 |
| | |
| <u>CHAPTER 8 - PROTESTS, DISPUTES AND CLAIMS</u> | 64 |
| 800 PROTESTS | 64 |
| 801 APPEALS OF PROTESTS | 65 |
| 802 FINAL DECISION ON PROTEST BY EXECUTIVE OFFICER | 65 |
| 803 CONTRACT DISPUTES | 66 |
| 804 CLAIMS AGAINST THE COURT | 66 |
| 805 CLAIMS FILED WITH THE EXECUTIVE OFFICER | 67 |
| 806 FINAL DECISION OF THE EXECUTIVE OFFICER | 67 |
| | |
| <u>CHAPTER 9 - GREEN PURCHASING</u> | 69 |
| 900 GREEN PURCHASING | 69 |
| | |
| <u>CHAPTER 10 - RESERVED</u> | 70 |
| | |
| <u>CHAPTER 11 - RESERVED</u> | 71 |
| | |
| <u>CHAPTER 12 - DEFINITIONS</u> | 72 |

DISTRICT OF COLUMBIA COURT SYSTEM

CHAPTER 1 - GENERAL PROCUREMENT PROVISIONS

SECTIONS

- 100 Purpose and Application
- 101 Authority and Responsibility of the Contracting Officer
- 102 Sources of Supplies and Services
- 103 Contract-Clauses
- 104 Local, Small, and Disadvantaged Business Enterprise Act
- 105 Publicizing Procurement Actions
- 106 Solicitations
- 107 Specifications, Statements of Work, and Purchase Descriptions
- 108 Competitive Sealed Bids
- 109 Competitive Sealed Proposals
- 110 Cost or Pricing Data
- 111 Anti-Competitive Practices Among Offerors
- 112 Ethics in Public Contracting

100 PURPOSE AND APPLICATION

- 100.1 The District of Columbia Courts Procurement Guidelines (the "Guidelines"), adopted by the Joint Committee on Judicial Administration, establish guidelines relating to the procurement, management, and control of supplies, services, and construction, as applicable under the authority of D.C. Code Section 11-1701(b)(3). These guidelines are not intended to confer any rights upon those attempting to establish procurement contracts with the D.C. Courts except as the guidelines expressly provide.
- 100.2 The Executive Officer shall be responsible for the procurement of necessary equipment, supplies and services for the Courts, pursuant to D.C. Code Section 11-1742; subject to applicable law, consistent with the general policies and directives of the Joint Committee on Judicial Administration and consistent with D.C. Code Sections 11-1702 and 11-1703; and subject to the supervision of the Chief Judges in their respective Courts, as provided in D.C. Code Title 11, Sections 1701, 1702 and 1703. These guidelines apply only to procurements solicited or entered into after the effective date of these guidelines, unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

101 AUTHORITY AND RESPONSIBILITY OF THE CONTRACTING OFFICER

- 101.1 The principal Contracting Officer for the District of Columbia Courts shall be the Executive Officer of the D.C. Courts.
- 101.2 (a) The Executive Officer may designate additional contracting officers. All contracting officers shall be experienced with the government procurement of supplies, services and construction.
- 101.2 (b) **No contracting officer may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, 31 U.S.C.1341), unless otherwise authorized by law (for example, multi-year contracts under D.C. Code § 11-1742a). Before executing any contract, the Contracting Officer shall** *(Revised March 31, 2017)*
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- (1) **obtain written assurance from the Budget and Finance Division that adequate funds available and** *(Revised March 31, 2017)*
 - (2) **obtain written assurance from the Office of the General Counsel of the legal sufficiency of (i) any contract with a value equal to or greater than one million dollars and (ii) any contract that does not provide that the provisions in Section 31 of the General Provisions for Use with Courts' Supply & Services Contracts (on the Unenforceability of Unauthorized Obligations) take precedence over any contractor documents or terms.** *(Revised March 31, 2017)*
- 101.3 **The Administrative Officer (designated by the Executive Officer) shall adopt operational procedures governing the internal functions of the offices which shall conform to these guidelines.**
- 101.3(a) **Contract Specialists shall be properly trained in the procurement guidelines and other related training as designated by the Contracting Officer. (New Section - March 21, 2011)**
- 101.3(b) **The Contracting Officer shall ensure that all court personnel involved in the procurement process are properly trained in critical areas of the procurement as determined by the Contracting Officer. (New Section - March 21, 2011)**
- 101.4 Any delegation of authority by the Executive Officer shall be in writing, and shall include a clear, written statement on the limitations of the authority being delegated. The Executive Officer is to file the delegations of authority with the Joint Committee on Judicial Administration. Such delegations shall remain in effect unless modified or until revoked in writing.
- 101.5 In no instance shall a **Contracting Officer** be delegated any greater contracting authority than that possessed by the delegating officer. *(revised March 31, 2017)*

- 101.6 Only a designated contracting officer is authorized to enter into, administer and terminate contracts. However, he/she may bind the Court only to the extent of the contracting authority set forth under subsection 101.4.
- 101.7 The name and official title of the **Contracting Officer** who signs the contract shall be typed, stamped or printed on the contract. *(revised March 31, 2017)*
- 101.8 The contracting officer shall ensure that the person signing for the contractor has the authority to bind the contractor.

102 SOURCES OF SUPPLIES AND SERVICES

102.1 The Court may satisfy requirements for supplies and services from or through the sources and publications listed below without solicitation:

- (1) General Service Administration (GSA) Schedules;**
- (2) Existing District of Columbia or Federal contracts;**
- (3) District of Columbia supply schedules;**
- (4) Federal Prison Industries (UNICOR);**
- (5) D.C. Department of Corrections, Industries Division; or other District of Columbia agencies; or**
- (6) Intergovernmental Agreements**

(revised March 31,2017)

103 CONTRACT-CLAUSES

103.1 Many supplies or services are acquired subject to supplier license agreements. These are particularly common in information technology acquisitions, but they may apply to any supply or service. For example, computer software and services delivered through the internet (web services) are often subject to license agreements, referred to as End User License Agreements (EULA), Terms of Services (TOS), or other similar legal instruments or agreements. Many of these agreements contain indemnification clauses or automatic renewal clauses that are inconsistent with Federal law and unenforceable, but which could create a violation of the Anti-Deficiency Act (31 U.S.C. §1341) if agreed to by the D.C. Courts. The following clause prevents such violations of the Anti-Deficiency Act, and automatically applies to any purchase, including those made with the purchase card:

Unenforceability of Unauthorized Obligations

- (a) **Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause:**
- (i) **Requiring the Court to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability; or**
 - (ii) **providing for renewal of the contract in a subsequent fiscal year without requiring affirmative action from the contracting officer (unless pursuant to the Court’s multiyear contracting authority), that would create an Anti-Deficiency Act violation (31 U.S.C. § 1341), the following shall govern:**
 - (1) **Any such clause is unenforceable against the Court.**
 - (2) **Neither the Court nor any Court authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Court or any Court authorized end user to such clause.**
 - (3) **Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.**

(revised March 31,2017)

103.1 (b) Paragraph (a) of this clause does not apply to indemnification by the Court that is expressly authorized by statute and specifically authorized under applicable Court regulations and procedures. *(Revised March 31, 2017).*

104 LOCAL, SMALL, AND DISADVANTAGED BUSINESS ENTERPRISE ACT

104.1 Section 104.1 Procurements made under this section shall be in accordance with the requirements___of the **Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, D.C. Official Code §2-18.01 et seq.(hereinafter the “Act”). Pursuant to Chapter 2, Section 2001 of these guidelines. (Revised March 21, 2011)**

105 PUBLICIZING PROCUREMENT ACTIONS

105.1 Procurement actions may be publicly advertised on the DC Courts web site, in a newspaper of general circulation, or in Commerce Business Daily. Other professional advertising sites may be used when it is considered appropriate. (Revised March 21, 2011)

105.2 The time between the issuance of the solicitation and the date set for bid opening or

receipt of initial proposals shall not be less than fifteen (15) calendar days, with a thirty day period being preferred, except as provided by Section 105.3

105.3 The requirements of solicitation advertising shall not apply to any of the following:

- (a) **Sole source procurement (Section 401);**
- (b) **Emergency procurement (Section 406); and**
- (c) **Small purchases (Section 300).**
- (d) **When a determination is made by the Contracting Officer.**
(Revised March 31, 2017)

106 SOLICITATIONS

106.1 Solicitations shall typically include a detailed statement of work or purchase description and specifications, clearly defined deliverables, instructions to bidders/offerors, standard contract clauses, terms and conditions and certification forms, as appropriate. Evaluation criteria shall be included in competitive sealed proposals. (Revised March 21, 2011)

106.2 A solicitation may include appropriate option clauses, approved by the Contracting Officer, if the resulting contract is intended to provide for the exercise of an option. Each solicitation containing an option provision shall state the basis of evaluation, either exclusive or inclusive of the option. Each solicitation shall state the period within which an option may be exercised and the period set in order to provide the contractor adequate lead time to ensure continuous production or services, and, when appropriate, shall inform bidders that the Court may exercise the option at the time of award. (Revised March 21, 2011)

106.3 A solicitation with option clauses may require that an option must be offered at prices no higher than those for the initial requirements in either of the following circumstances:

- (a) When the option quantities will not be evaluated for award purposes; or
- (b) When future competition for the option is not practical.

106.4 A solicitation that requires the offering of an option at prices no higher than those for the initial requirement shall specify the following:

- (a) That the Court will accept an offer containing an option price higher than the base price only if the acceptance does not prejudice any other offeror; and
- (b) That option quantities for additional supplies will be limited to not more than fifty percent (50%) of the initial quantity of the same contract line item. However, in unusual circumstances, the contracting officer may approve a greater percentage or quantity.

- 106.5 A solicitation or contract may express options for increased quantities of supplies or services in terms of the following:
- (a) A percentage of specific line items;
 - (b) An increase in specific line items; or
 - (c) An additional numbered line item identified in the option.
- 106.6 After issuance of a solicitation, but before the date and time set for receipt of bids/proposals, changes may be made in the solicitation to reflect any of the following:
- (a) Significant changes in quantity, specifications, or deliver schedules;
 - (b) The correction of defects or ambiguities;
 - (c) Any change in the closing/opening date for receipt of bid proposals; or
 - (d) any other appropriate purpose affecting the procurement.
- 106.7 In deciding which firms to notify of a change, the Contracting Officer shall consider the following: *(revised March 31, 2017)*
- (a) If proposals are not yet due, the amendment shall be sent to all firms that have received a solicitation or **posted on the DC Courts website;**
(revised March 31, 2017)
 - (b) If the time for receipt of proposals has passed but proposals have not yet been evaluated, the amendment shall be sent only to the responding offerors; and
 - (c) If the competitive range has been established, the amendment shall be sent only to those offerors within the competitive range.
- 106.8 If a change is so substantial that it warrants complete revision, the original solicitation shall be canceled and, at the contracting officer's discretion, a new one may be issued. The new solicitation shall have a new number and shall be issued to all firms originally solicited and to any firms added to the original list, and shall be advertised in accordance with the requirements of these guidelines.
- 106.9 Any amendments shall be distributed no later than three (3) business days prior to the bid opening or closing date to allow prospective bidders/offerors to consider the information in submitting their bid/offer.
- 106.10 Amendments to the solicitation shall be identified as such and shall require the bidder/offeror to acknowledge its receipt.

- 106.11 Any request for modification to a solicitation made by a prospective bidder/offeror and received after the time and date set for opening of bids/offers shall be considered late and may not be responded to by the Contracting Officer. *(revised March 31, 2017)*
- 106.12 If the original time and date set in the solicitation for receipt of bids/offers does not permit preparation of the bid/offer does not permit preparation of the bid/offer, an increase in the time for submission of the bids/offers maybe allowed. The Contracting Officer may increase the time for submission of the bids/offers **by U.S. Postal Service, electronic transmission**, telegraph, or telephone. The extension of time shall be confirmed in a subsequent written amendment. *(revised March 31, 2017)*
- 106.13 Prior to the opening of bids/proposals or after the opening but before the award, a solicitation may be canceled if is determined to be in the best interest of the Court.
- 106.14 When a solicitation is canceled, notice of cancellation shall be sent to all known prospective bidders/offerors to whom the solicitation has been furnished **and posted on the Courts' internet**. *(revised March 31, 2017)*
- 106.15 Any response to a solicitation received at the place designated in the solicitation after the exact time and date set for receipt of such shall be considered "late" unless any of the following apply:
- (a) It was sent by registered or certified mail not later than five (5) calendar days before the solicitation receipt date specified;
 - (b) It was sent by mail and it is determined that the late receipt was due solely to mishandling by the Court after receipt at the location specified;
 - (c) The bid/offer is the only solicitation received and it is received before the close of business on the bid opening date.
 - (d) Late submissions of proposals and bids from vendors will be considered if the receipt of the late bid or proposal is late due to the closure of the Court as a result of inclement weather or other causes. The bid/proposal must be received by the first day that the Court is reopened for business. *(Revised March 21, 2011)*
- 106.16 **Solicitations shall include fingerprint based criminal background check requirements for contractors providing or being considered for the provision of services on behalf of the District of Columbia Courts, if applicable in accordance with 28 U.S.C. § 534 and 42 U.S.C. § 5119a. (New Section - March 21, 2011)**
- 106.17 **Solicitations for contractors who work or will work directly with children shall also include requirements for Child Protection Registry checks, pursuant to D.C. Code § 4-1302.03(a-1)(1). (New Section - March 21, 2011)**

- 106.18 After the opening bids or receipt of proposals, the Contracting Officer shall review **the Systems for Award Management (SAM)** and shall also review **the SAM** before awarding any contracts. **The SAM website is: <https://www.sam.gov>.**
(revised March 31, 2017)
- 106.19 The Courts may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule. (revised March 31, 2017)**
- 106.20 Solicitations may be cancelled and all bids/Offerers rejected after receipt and before award when the Contracting Officer determines that any of the following apply:**
- (1) Inadequate or ambiguous specifications were cited in the solicitation;**
 - (2) Specifications have been revised;**
 - (3) The supplies or services being contracted for are no longer required;**
 - (4) The solicitation did not provide for consideration of all factors of cost to the Court, such as cost of transporting Court-furnished property to bidders' plants;**
 - (5) Bids/Offerers received indicated that the needs of the Courts can be satisfied by a less expensive article differing from that for which the bids were solicited;**
 - (6) All otherwise acceptable bids/offers received are at unreasonable prices, or only one bid/offer is received and the Contracting Officer cannot determine the reasonableness of the bid/offer price;**
 - (7) The bids/offers were not independently arrived at in open competition, were collusive, or were submitted in bad faith;**
 - (8) No responsive or responsible bid/offer has been received from a responsible bidder/offeror;**
 - (9) A cost comparison shows that performance by the Court is more economical;
or**
 - (10) For other reasons, cancellation is clearly in the public's interest.**

(Revised March 31, 2017)

107 SPECIFICATIONS, STATEMENTS OF WORK, PURCHASE DESCRIPTIONS AND BRAND NAME OR EQUAL PURCHASE DESCRIPTIONS (Revised March 21, 2011)

107.1 The **requestor** shall prepare and provide the Contracting Officer clearly stated specifications, detailed statements of work or purchase descriptions in a manner designed to promote competition to the maximum extent possible and shall include restrictive provisions or conditions only to the extent necessary to satisfy the minimum needs of the Court, or as required by law. (
Revised March 31, 2017)

107.1 (a) The Contracting Officer shall review and approve the requestors' submitted specifications, detailed statements of work or purchase descriptions if they are designed to promote competition to the maximum extent possible and include restrictive provisions or conditions only to the extent possible and include restrictive provisions or conditions only to the extent necessary to satisfy the minimum needs of the Court, or as required by law. (revised March 31, 2017)

107.2 Purchase descriptions shall reflect at least the minimum needs of the Court to meet those needs. Specifications and purchase descriptions may be stated in terms of the following:
(revised March 31,2017)

- (a) Function, so that a variety of products or services may qualify;
- (b) Performance, including specifications of the range of acceptable characteristics or the minimum acceptable standards;
- (c) Design requirements; or
- (d) **Brand name or equal purchase description. (Revised March 31, 2017)**

107.3 When authorized in accordance with this section, or when no applicable specification exists, a purchase description may be used. Each purchase description shall set forth the essential physical and functional characteristics of the materials or services required.

108 COMPETITIVE SEALED BIDS

108.1 Competitive sealed bidding (CSB) shall be the preferred procedure for the solicitation of bids for the procurement of supplies, services or construction when the following conditions exist:

- (a) **Award will be made based on conformance to the specifications and price or price-related factors, such as discounts, management, approach, schedule and transportation costs, F.O.B. Destination or F.O.B. Origin, or warranties. (Revised March 21, 2011)**
- (b) It is not necessary to conduct discussions with the responding bidders about their bids; and

- (c) There is a reasonable expectation of receiving more than one sealed bid.
- 108.2 A pre-bid conference may be held to brief prospective bidders after a solicitation has been issued, but before bids are submitted. The conference shall be announced to all prospective offerors known to have received a solicitation.
- 108.3 **Information provided at the pre-bid conference does not change the terms or amend the solicitation. (Revised March 21, 2011)**
- 108.4 To be considered for award, a CSB shall be required to comply with all the provisions of the solicitation.
- 108.5 Bids shall be submitted so that they will be received in the office designated in the solicitation not later than the exact time set for receipt of bids. Bids/offers are mailed at the risk of the bidder and the preferred method of delivery is hand delivery.
- 108.6 A bidder may modify or withdraw its bid by submitting a written notice. The notice shall be received in the office designated in the solicitation before contract award.
- 108.7 All bids, bid withdrawals and bid modifications **may** be opened publicly in the presence of one or more persons in addition to the person opening the bids at the time, date and place indicated in the solicitation. The name of each bidder, the bid price and such other information as is deemed appropriate by the contracting officer shall be read aloud or otherwise made available. *(revised March 31, 2017)*
- 108.8 After the opening of bids, the **Contracting Officer** shall examine each bid for mistakes.
- 108.9 For purposes of this section, a minor informality or irregularity is one that is merely a matter of form and not of substance. It also relates to some immaterial defect in an offer which can be corrected or waived without being prejudicial to other bidders.
- 108.10 Minor informalities or irregularities in bids submitted to the Court may be waived if the waiver of the deficiency is in the best interest of the Court.
- 108.11 In cases of mistakes or in cases where there is reason to believe that a mistake may have been made, the **Contracting Officer** shall request a verification of the bid and the suspected mistake. *(revised March 31, 2017)*
- 108.12 If the bidder alleges a mistake, the matter shall be processed before award in accordance with the following:
- (a) If the bidder submits a written notice of the alleged mistake within five business days;
 - (b) The authority to permit corrections of bids is limited to bids that, as submitted, are responsive to the solicitation and shall not be used to permit correction of bids to make them responsive;

- (c) Corrections of an apparent clerical mistake may be permitted before award; and
- (d) A bidder may be permitted to withdraw a low bid in either of the following circumstances:
 - (1) If a mistake is clearly evident on the face of the bid document but the intended bid is not similarly evident; or
 - (2) If the bidder submits evidence which clearly and convincingly demonstrate that a mistake was made.

108.13 When a bid is corrected or withdrawn, or the correction or withdrawal is denied, the contracting officer shall prepare a determination showing that the relief was granted or denied.

108.14 If a mistake in a bid is not discovered until after award, the mistake may be corrected by contract modification, if correcting the mistake would be favorable to the Court without changing the essential requirements of the specifications. (Revised March 21, 2011)

108.15 In addition to the cases contemplated in this section, or as otherwise authorized by law, if a mistake in a bid is not discovered until after award, one (1) of the following determinations shall be made:

- (a) To reform a contract to delete the items involved in the mistake or to reform a contract to increase the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original bid;
- (b) That no changes shall be made in the contract as awarded; or
- (c) To terminate a contract.

108.16 Determinations under this section shall be made only on the basis of clear and convincing evidence that a mistake was made by the contractor, and was so apparent as to have given the contracting officer notice of the probability of the mistake.

108.17 The Court shall include in the contract file a record of each determination made in accordance with this section, the facts involved, and the action taken.

109 COMPETITIVE SEALED PROPOSALS

109.1 If competitive sealed bidding is not appropriate, offers shall be solicited through the competitive sealed proposals (CSP) method.

109.2 A pre-proposal conference may be held to brief prospective offerors after a solicitation has been issued but before offerors are submitted. The conference shall be announced to

all prospective offerors known to have received a solicitation.

109.3 Attendees shall be informed of the following:

- (a) That remarks and explanations at the conference do not qualify or amend the terms of the solicitation; and
- (b) That the solicitation and specification remain unchanged unless the solicitation is amended in writing.

109.4 All competitive sealed proposals (CSPs) shall be received by the exact time and date set in the solicitation.

109.5 To be considered for award, a CSP shall be required to comply with all the provisions of the solicitation. Each solicitation shall include all of the evaluation criteria and the evaluation factors, including the relative importance of each factor. The price will be evaluated to determine price reasonableness. A statement shall be included in the solicitation that the contracting officer may conduct written or oral discussions with all offerors who submit proposals within a competitive range but that initial proposals may be accepted without such discussions. (Revised March 21, 2011)

109.6 The evaluation of each CSP shall be based on the evaluation factors established in the solicitation. Numerical rating systems may be used by the Court, but are not required. Factors not specified in the solicitation shall not be considered.

109.7 For purposes of this section, a minor informality or irregularity is one that is merely a matter of form and not of substance. It also relates to some immaterial defect in an offer which can be corrected or waived without being prejudicial to other offerors.

109.8 Minor informalities or irregularities in offers submitted to the Court may be waived if the waiver of the deficiency is in the best interests of the Court.

109.9 After the closing of proposal receipt, each shall be examined for mistakes.

109.10 In cases of mistakes or in cases where there is reason to believe that a mistake may have been made, a request shall be made from the **Contracting Officer** for a verification of the proposal and call attention to the suspected mistake. If the offeror alleges a mistake, the matter shall be processed before award under the following circumstances; *(revised March 31, 2017)*

- (a) The authority to permit corrections of proposals is limited to proposals that, as submitted, are responsible to the CSP and shall not be used to permit correction of proposals to make them **acceptable**; *(revised March 31, 2017)*
- (b) Corrections of an apparent clerical mistake may be permitted before award; or
- (c) An offeror may be permitted to withdraw a proposal in either of the following circumstances:

- (1) If a mistake is clearly evident on the face of the proposal document but the intended proposal is not similarly evident; or
- (2) If the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.
(revised March 31, 2017)

109.11 When a proposal is corrected or withdrawn or the correction or withdrawal is denied, the Contracting Officer shall prepare a determination showing that the relief was granted or denied.

109.12 When a mistake in a proposal is discovered after award, the mistake may be corrected by contract amendment if correcting the mistake would be favorable to the Court without changing the essential requirements of the specifications.

109.13 Determinations under this section shall be made only on the basis of clear and convincing evidence that a mistake was made by the contractor, and was so apparent as to have given the contracting officer notice of the probability of the mistake. The Court shall include in the contract file a record of each determination made in accordance with this section, the facts involved and the action taken.

109.14 The Court has the right to reject all proposals in whole or in part when it is determined that such action is in the best interest of the Court.

109.15 The competitive range shall be determined on the basis of price and other factors, in accordance with the evaluation criteria stated in the solicitation, and shall include all proposals that have a reasonable chance of being selected for award. If there is doubt as to whether a proposal is in the competitive range, the proposal shall be included.

109.16 Oral presentation or written clarification of technical information may be requested of the offeror.

109.17 Negotiations may be held with offerors determined to be in the competitive range.

109.18 If negotiations are not held, the following requirements shall be met:

- (a) All offerors must have been notified of the possibility that an award might be made without negotiation; and
- (b) The award must be made without further written or oral communications with any offeror.

109.19 Upon completion of negotiation, the contracting officer shall issue to all offerors within the competitive range a request for best and final offers.

109.20 After receipt of best and final offers, negotiations will only continue if in the best interests

of the Court.

109.21 Any offer submitted as best and final offer shall be considered complete and not subject to additional negotiation.

110 COST OR PRICING DATA

110.1 Bidders/offerors may be required to submit and certify cost or pricing data before award of contract.

110.2 Certification and submission of actual cost or pricing data shall not be required when it is determined that prices are:

- (a) Based on adequate price competition;
- (b) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
- (c) Set by law or regulation.

110.3 Price competition exists if two (2) or more responsible offerors make a responsive offer to a solicitation issued by the Court, and they compete independently for a contract to be awarded.

110.4 When cost or pricing data are required, each offeror submits a certificate that states that to the best of the contractor's knowledge and belief, the cost and/or pricing data are accurate, complete, and current as of a determined specified date.

111 ANTI-COMPETITIVE PRACTICES AMONG OFFERORS

111.1 For the purpose of this section, an anti-competitive practice is a practice among offerors or potential offerors that reduces or eliminates competition or restrains trade. An anti-competitive practice can result from an agreement or understanding among competitors to submit collusive offers.

111.2 The contracting officer shall be alert and sensitive to conditions of the market place and may conduct studies of past procurements such as, but not limited to, the following:

- (a) A study of the history of a supply, service or construction item over a period of time sufficient to determine any significant patterns of changes;
- (b) A review of similar Court contract awards over a period of time; or
- (c) Consultation with outside sources of information, such as offerors who have competed for similar Court business in the past but who are no longer competing for such business.

111.3 When collusion or other anti-competitive practices are suspected among any offerors, a notice of the relevant facts shall be transmitted to the Office of the General Counsel, District of Columbia Courts. (Revised March 21, 2011)

112 ETHICS IN PUBLIC CONTRACTING

112.1 To achieve the purpose of this section, all employees and persons doing business with the Courts shall be required to observe the ethical standards prescribed herein. The Contracting Officer shall make available and disseminate to every person doing business with the Court and to every Court employee with procurement responsibilities, the requirements of this section.
(Revised March 21, 2011)

112.1 (a) As determined by the Contracting Officer, each Court employee with direct procurement responsibilities shall acknowledge in writing compliance with the ethical guidelines of this section and other established Court procurement policies and guidelines. (New Section - March 21, 2011)

112.1 (b) Ethical training in public contracting shall be provided to all procurement personnel and other Court employees with procurement responsibilities on a yearly basis. (New Section - March 21, 2011)

112.2 (a) It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement. An employee must disclose to the designated contracting officer any outside employment with a company that is doing business with the Courts. When a Court employee knows that he or she has an actual or potential conflict of interest, or when the Contracting Officer has determined that an actual or potential conflict of interest exists, such employee shall be disqualified from any involvement with that procurement. (Revised March 21, 2011)

112.2 (b) Unless a determination is made as provided herein, no officer or employee of the Courts shall benefit, in part or in whole, personally, financially or otherwise, from any contract executed by the Contracting Officer. Any such contract shall be deemed void, and no payment shall be made by the Courts or any officer thereof. The general provisions and procurement guidelines shall not be construed to extend to any contract to the extent a contract is made with a corporation for the corporation's general benefit. A Court employee shall not be a party in a contract with the Courts and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the Courts that there is compelling reason for contracting with the employee, such as when the Courts' needs cannot reasonably otherwise be met. (New Section - March 21, 2011)

- 112.3 It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a procurement.
- 112.4 It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor, or higher tier subcontractor, as an inducement for the award of a subcontract or order.
- 112.5 It shall be a breach of ethical standards for any employee, former employee or any other person knowingly to use confidential information for actual or anticipated personal gain. No employee or officer of the Court shall serve on the board of directors or other governing body (whether or not compensated) of any contractor with whom the Court has a current contractual relationship if the individual's responsibilities with the Court entail the letting or management of the contract.

113 GENERAL CONTRACTOR RESPONSIBILITY

113.1 To be determined responsible, a prospective contractor must –

- (a) Have adequate financial resources to perform the contract, or the ability to obtain them;**
- (b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;**
- (c) Have a satisfactory performance record. A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history;**
- (d) Have a satisfactory record of integrity and business ethics;**
- (e) Have the necessary organization, experience, accounting and operational controls, and technical skills or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors;**
- (f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and**
- (g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.**

(New Section - March 31, 2017)

113.2 When it is necessary for a particular acquisition or class of acquisitions, the Contracting Officer shall develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors. *(revised March 31, 2017)*

114 NOVATION AGREEMENTS

114.1 A request by a contractor to recognize a successor in interest shall be submitted in writing to the Contracting Officer. *(revised March 31, 2017)*

114.2 When a contractor asks the District of Columbia Courts to recognize a successor in interest, the contractor shall submit to the Contracting Officer three (3) signed copies of the proposed Novation Agreement and one (1) copy of each of the following:

- (a) A list of all affected contracts and purchase orders remaining unsettled between the transferor and the District of Columbia Courts showing for each the contract number and type, the name and address of the District of Columbia Court's contracting office, the total dollar value of each contract, as amended, and the remaining unpaid balance;
- (b) The opinions of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of the transfer;
- (c) Evidence of the transferee's capability to perform the contract(s);
- (d) The consent of sureties on all affected contracts if bonds are required, or a statement from the transferor that no bond is required;
- (e) Any other documents or evidence that the Contracting Officer deems appropriate. *(revised March 31, 2017)*

114.3 The Contracting Officer shall determine whether it is in the best interests of the District of Columbia Courts to recognize the proposed successor in interest. The Contracting Officer's decision shall include a determination of responsibility for the proposed successor. *(revised March 31, 2017)*

114.4 When it is in the best interest of the District of Columbia Courts not to concur in the transfer of a contract to another company, the original contractor shall remain under contractual obligation to the District of Columbia Courts, and the contract may be terminated for reasons of default if the original contractor does not perform. *(revised March 31, 2017)*

- 114.5** If recognizing a successor in interest to a District of Columbia Courts contract is consistent with the best interest of the District of Columbia Courts, the responsible Contracting Officer shall execute a Novation Agreement with the transferor and the transferee. *(revised March 31, 2017)*
- 114.6** The Novation Agreement shall contain the following requirements:
- (a)** The transferee assumes all of the transferor's obligations under the contract including those incurred in the past unless the Contracting Officer waives these obligations in writing after determining waiver to be in the best interest of the District of Columbia Courts;
 - (b)** That the transferor waives all rights under the contract against the District of Columbia Courts, except as otherwise provided in the Novation Agreement;
 - (c)** That the transferor guarantees performance of the contract by the transferee or provides a satisfactory performance bond; and
 - (d)** That nothing in the agreement shall relieve the transferor or transferee from compliance with any applicable law or regulation. *(revised March 31, 2017)*
- 114.7** The Office of General Counsel shall review a contractor's proposed Novation Agreement to determine its legal sufficiency before execution by the Contracting Officer. *(revised March 31, 2017)*
- 114.8** The Contracting Officer shall forward signed copies of the executed Novation Agreement to the transferor and transferee and retain a signed copy in the contract file. *(revised March 31, 2017)*
- 115** **FIXED ASSETS**
- 115.1** Property and Equipment (P&E) with a cost equal to or in excess of Twenty-Five Thousand Dollars (\$25,000) and a useful life of five (5) years are considered Fixed Assets of the Courts. *(revised March 31, 2017)*
- 115.2** Bulk purchased items with individual useful lives of at least two (2) years and an aggregate value of \$100,000 or more are considered Fixed Assets. *(revised March 31, 2017)*
- 115.3** Effective FY 2014, the estimated useful life of assets such as office furniture, office equipment, telecommunications equipment and audio/visual equipment is five (5) years and the estimated useful life of information technology equipment is three (3) years. *(revised March 31, 2017)*

CHAPTER 2 - BUSINESS PREFERENCES

200 UTILIZATION OF PREFERRED CONTRACTORS

- 200.1 If the Courts elects to participate under the Department of Local and Small Business Development's Certified Business Enterprise Program, vendors who qualify for additional points on proposals or price reduction on bids specified in such laws and regulations applicable to contract procurement by the executive branch of the D.C. government shall be afforded such points or price reductions in contract procurement activity by the D.C. Courts. (revised March 21, 2011).**
- 200.2 The **Contracting Officer** shall review each proposed procurement to determine whether the procurement could be made in accordance with Section 200.1. *(revised March 31, 2017)*
- 200.3 Before a procurement is restricted to a preferred contractor, the contracting officer shall make the following determinations:
- (a) That there is a reasonable expectation that bids or offers will be obtained from at least two (2) responsible certified preferred contractors; and
 - (b) That an award will be made at reasonable prices.

CHAPTER 3 - SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

SECTIONS

- 300 Use of Small Purchase Procedures
- 301 Non-Competitive Small Purchases
- 302 Competitive Small Purchases.
- 303 Determination of Reasonable Price and Award
- 304 Blanket Purchase Agreements
- 305 Imprest Funds
- 306 Purchase Orders
- 307 Unpriced Purchase orders
- 308 Modification of Purchase Orders
- 309 Termination and Cancellation of Purchase Orders
- 310 Government-wide commercial purchase card (Revised August 13, 2003)
- 311 Special documentation requirements (Revised August 13, 2003)

300 USE OF SMALL PURCHASE PROCEDURES

- 300.1 The small purchase procedures set for in the guidelines may only be used for the procurement of supplies, services, and other items when the total amount of the procurement does not exceed **“one hundred fifty thousand dollars (\$150,000).”** *(revised March 31, 2017)*
- 300.2 The 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 or other required source of supply.
- 300.3 The contracting officer shall not split a procurement totaling more than the Court's small purchase limitation into several purchases that are less than the limit in order to permit the use of the small purchase procedures.
- 300.4 A procurement requirement shall not be parceled, split, divided or purchased over a period of time in order to avoid the dollar limitations for use of small purchase procedures.
- 300.5 The contracting officer shall use the small purchase procedure that is most suitable, efficient and economical based on the circumstances of each procurement.

301 NON-COMPETITIVE SMALL PURCHASES

- 301.1 A procurement for an amount of “**three thousand five hundred dollars (\$3,500.00)**” or less is a micro-purchase and may be made without competitive quotations if the Contracting Officer or an individual delegated purchasing authority by the Contracting Officer considers the price to be reasonable. If the procurement is **\$3,500.00** or less the following shall apply: *(revised March 31, 2017)*
- (a) The use of the Government commercial purchase card shall be the preferred method to purchase and to pay for micro-purchases.
 - (b) Purchases at or below the micro-purchase threshold may be conducted using procedures outlined in this chapter or that which is described in the Courts’ SmartPay Program Guidelines, provided the purchaser is authorized and trained to use those methods.
- 301.2 Non-competitive small purchases shall be distributed equitably among suppliers. When practical, a quotation shall be solicited from a vendor other than the previous supplier before placing a repeat order.
- 301.2.(a) For purchases greater than the micro-purchase of \$3,500 and less than \$150,000, the Contracting Officer shall solicit written quotes from at least two (2) sources to promote competition to the maximum extent practicable and to ensure the purchase is in the best interests of the Courts.
- 301.3 The Contracting Officer shall take action to verify price reasonableness in the following instances: *(revised March 31, 2017)*
- (a) When the contracting officer suspects or has information (such as comparison to previous prices paid or personal knowledge of the item involved) to indicate that the price may not be reasonable; or
 - (b) When purchasing an item for which no comparable pricing information is readily available (such as an item that is not the same as, or is not similar to, other items that have been recently purchased on a competitive basis).
- 301.4 For purchases under the small purchase threshold, the contracting officer may solicit from one source if the Contracting Officer determines that the circumstances of the contract action deem only one source reasonably available (e.g. urgency, exclusive licensing agreements or industrial mobilization). (Revised August 13, 2003)

302 COMPETITIVE SMALL PURCHASES

- 302.1 For each purchase greater than ten percent (10%) of the small purchase limit, the contracting officer shall solicit written quotations from at least (3) sources to promote competition to the maximum extent practicable and to ensure that the purchase is in the best interests of the Court, considering price and other factors (including the administrative cost of the purchase). If practicable, two (2) sources not included in the previous solicitation for similar items shall be requested to furnish quotations. (Revised August 13, 2003).

- 302.1 (a) For purchases greater than the micro-purchases greater than the micro-purchase of **\$3,500 and less than \$150,000**, the Contracting Officer shall solicit written quotes from at least two (2) sources to promote competition to the maximum extent practicable and to ensure the purchase is in the best interests of the Courts. (*revised March 31, 2017*)
- 302.2 If the contracting officer determines that it is impractical under the circumstances to solicit more than two (2) sources (due to time constraints or lack of available sources), the contracting officer may solicit quotations from two (2) sources. In no instance shall the contracting officer solicit quotations from fewer than (2) sources unless there is only one source for the commodity.
- 302.3 If the contracting officer determines that the best interests of the Court indicate that quotations should be obtained from more than three (3) sources, the contracting officer may require the solicitation of additional quotations.
- 302.4 The contracting officer shall consider the following factors when deciding how many quotations will be solicited:
- (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 contractors' prices.
- 302.5 **The Contracting Officer or an individual delegated purchasing authority shall solicit quotations orally to the maximum extent practicable, if:** (Revised August 13, 2003)
- (1) The amount of the purchase is at or below small purchase threshold;
 - (2) The supplies are immediately available;
 - (3) One delivery and one payment will be made; and
 - (4) Its use is determined to be more economical and efficient than the use of a written quotation.
- 302.6 The Contracting Officer shall 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. (*revised March 31, 2017*)

302.7 The Contracting Officer shall maintain a small purchase source list (or lists if more convenient). The list shall indicate whether the business is one entitled to preferential treatment under Section 200. *(revised March 31, 2017)*

303 DETERMINATION OF REASONABLE PRICE AND AWARD

303.1 The contracting officer shall determine that the price to be paid to the successful offeror is fair and reasonable.

303.2 When only one (1) response is received to a request for quotations, or the price variance between multiple responses 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.

303.3 The determination that a proposed price is fair and reasonable may be based on either of the following:

(a) Competitive quotations; or

(b) Comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items, value analysis, the Contracting Officer's personal knowledge of the item being purchased, or any other reasonable basis. *(revised March 31, 2017)*

303.4 The Contracting Officer shall establish and maintain informal records of oral price quotations and include the record in the purchase file. The informal records shall consist of the names of the suppliers contacted and the prices and other terms conditions quoted by each. *(revised March 31, 2017)*

303.5 The contracting officer may limit written records of solicitations to notes or abstracts to show prices, delivery, references to printed price lists used, the vendor or vendors contacted, and other pertinent data.

303.6 The Contracting Officer shall retain records supporting small purchases for a minimum of three (3) years. *(revised March 31, 2017)*

303.7 The contracting officer shall notify unsuccessful suppliers only if requested.

304 BLANKET PURCHASE AGREEMENTS

304.1 A blanket purchase agreement (BPA) may be used as a simplified method of filling anticipated repetitive needs for supplies, services, or other items by establishing charge accounts with sources of supply.

- 304.2 The contracting officer may establish a BPA if one (1) or more of the following criteria apply:
- (a) There is a wide variety of items in a broad class of goods that are generally purchased, but the exact items, quantities and delivery requirements are not known in advance and may vary considerably;
 - (b) There is a need to provide commercial sources of supply for one (1) or more offices that do not otherwise have or need direct authority to purchase; or
 - (c) The administrative cost of writing numerous purchase orders can be avoided through the use of this procedure.
- 304.3 To the extent practical, BPA's for items of the same type, shall be placed concurrently with more than one (1) supplier. All competitive sources shall be given an equal opportunity to furnish supplies, services or other items under a BPA.
- 304.4 A BPA may be limited to furnishing individual items or commodity groups or classes or it may be unlimited for all items or services that the source of supply is in a position to furnish.
- 304.5 The Contracting Officer shall not use a BPA to authorize purchases that are not otherwise authorized by law and shall not purchase off a BPA to avoid the small purchase authority limitation. *(revised March 31, 2017)*
- 304.6 The existence of a BPA shall not justify procurement on a sole source basis.
- 304.7 When there is an insufficient number of vendors with BPA's to ensure maximum practicable competition for a particular purchase, the contracting officer shall do the following:
- (a) Solicit quotations from other sources and make the purchase as appropriate; and
 - (b) Establish additional BPA's to facilitate future purchases when recurring requirements for the same or similar items or services seem likely, when qualified sources are willing to accept a BPA or when it is otherwise practical to do so.
- 304.8 An individual BPA shall be considered terminated when the purchases under it equal its total dollar limitation or when its stated time period expires.
- 304.9 **The small purchase threshold limit is applicable to blanket purchase agreements (BPA). For purchases from \$3,500 and up to \$150,000, the Contracting Officer shall solicit written quotes from at least (2) sources to promote competition to the maximum extent practicable and to ensure the purchase is in the best interest of the DC Courts. *(revised March 31, 2017)***

305 IMPREST FUNDS

305.1 A cash purchase using imprest funds may be made when the transaction does not exceed one hundred fifty dollars if: – (Revised August 13, 2003)

- (1) The contractor does not accept government purchase orders; or
- (2) The contractor does not accept commercial credit cards.

305.2 The contracting officer shall specifically designate in writing persons authorized to make purchases using imprest funds.

305.3 Each purchase using imprest funds shall be recorded in an imprest fund purchase form, approved by the Contracting Officer, which shall include a discreet imprest fund purchase number accounting data, identifying specific imprest fund account, the items or services purchased, the name of the person making the purchase and the purchase date. (Revised March 21, 2011)

305.4 The contracting officer or designee shall further document each purchase using imprest funds by including a record of receipt and acceptance of supplies and services by the Court, receipt of cash payment by the suppliers and the cash advances and reimbursements.

305.5 When using imprest funds, the contracting officer or designee may place orders to suppliers orally and without soliciting competition if prices are determined to be reasonable. The contracting officer shall distribute purchases equitably among suppliers, and shall solicit prompt payment discounts.

305.6 The contracting officer, or other employee authorized under Section 305.2, shall furnish a copy of the imprest fund purchase form to the imprest fund cashier with the following information annotated:

- (a) That an imprest fund purchase has been made;
- (b) The unit and extended prices;
- (c) The supplier's name and address; and
- (d) The anticipated delivery date.

305.7 The contracting officer shall require that the supplier include the following with each delivery:

- (a) An invoice packing slip, or other sales instrument;
- (b) The supplier's name and address;
- (c) A list and quantity of items;

- (d) The unit and extended prices; and
- (e) The trade discount, if any.

306 PURCHASE ORDERS

306.1 Each purchase order shall be issued on a form approved by the Contracting Officer. (Revised March 21, 2011)

306.2 Except as provided in Section 306, the Contracting Officer shall issue a purchase order on a fixed-price basis and shall not include economic price adjustment or redetermination provisions. *(revised March 31, 2017)*

306.3 Each purchase order shall include any trade and prompt payment discounts that are offered.

306.4 Each purchase order shall specify the quantity of supplies or services ordered.

306.5 When applicable, a purchase order shall provide that inspection and acceptance will be at destination. When inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to the point of receipt. Receiving reports shall be completed by the Contracting Officer or other designated Court Official immediately upon receipt and acceptance of material. *(revised March 31, 2017)*

306.6 Each purchase order shall contain a definite calendar date by which delivery of supplies or performance of services is required.

306.7 Distribution of copies of purchase orders shall be limited to those required for essential administration and transmission of contractual information.

306.8 If the Contracting Officer wants to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require written acceptance of the purchase order by the contractor.

307 UNPRICED PURCHASE ORDERS

307.1 The contracting officer shall use an unpriced purchase order only under the following circumstances:

- (a) When the transaction will not exceed the Court's small purchase limit;
- (b) When it is impractical to obtain pricing in advance of issuance of the purchase order; and
- (c) When the purchase is for repairs to equipment requiring disassembly to determine

the nature and extent of repairs material available from only one (1) source and for which cost cannot be readily established or supplies or services for which prices are known to be competitive but exact prices are not known.

- 307.2 The Contracting Officer shall issue each unpriced purchase order by using a written purchase order form and shall set a realistic dollar ceiling, either for each line item or for the total order. The dollar limitation shall be an obligation subject to adjustment when the firm price is established. *(revised March 31, 2017)*

308 MODIFICATION OF PURCHASE ORDERS

- 308.1 A purchase order may be modified by using a form approved by the Contracting Officer. Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number. (Revised March 21, 2011)**

- 308.2 The contracting officer may obtain a contractor's written acceptance of a purchase order modification if the written acceptance is determined by the Contracting Officer to be necessary to ensure the contractor's compliance with the purchase order as revised. *(revised March 31, 2017)*

309 TERMINATION AND CANCELLATION OF PURCHASE ORDERS

- 309.1 If a purchase order is to be terminated the contracting officer shall notify the contractor in writing that the purchase order has been cancelled, request the contractor's written acceptance of the cancellation and proceed in accordance with the provisions of Sections 309.2 and 309.3.

- 309.2 If the contractor accepts the cancellation and does not claim that costs were incurred as result of beginning performance under the purchase order, no further action shall be required and the purchase order shall be considered cancelled.

- 309.3 If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall treat the action as a termination.

310 GOVERNMENT-WIDE COMMERCIAL PURCHASE CARD. (NEW SECTION – AUGUST 13, 2003)

- 310.1 The Government-wide commercial purchase card is authorized for use in making and/or paying for purchases of supplies, services, or construction. The purchase card may be used by the Contracting Officer or other individuals delegated Purchasing Authority. The card may be used only for purchases that are otherwise authorized by law, regulation or guidelines.

- 310.2 The purchase card may be used to:

- (1) Make micro-purchases;
- (2) Place a task or deliver order (if authorized in the basic contract, basic ordering agreement, or blanket purchase agreement); or
- (3) Make payments, when the contractor agrees to accept payment by the card.

311 SPECIAL DOCUMENTATION REQUIREMENTS. (NEW SECTION – AUGUST 13, 2003)

311.1 Acquisitions conducted under the small purchase procedures are exempt from the requirements in Section 4, Sole Source Procurement Procedures.

312 FEDERAL SUPPLY SCHEDULES. (NEW SECTION – MARCH 21, 2011)

312.1. The procedures in Federal Acquisition Regulation (FAR) 8.405-1 shall be used when ordering Schedule contract supplies (products) and fixed-price services for specific tasks, when a Statement of Work (SOW) is not required, such as installation, maintenance, and repair. (New Section - March 21, 2011).

312.1 (a) Orders at or below the micro-purchase threshold of **\$3,500** may be placed with any GSA Schedule contractor that can meet the Court's needs. The ordering activity should attempt to distribute orders among Schedule contractors. (*revised March 31, 2017*)

312.1 (b) For orders over the micro-purchase threshold but not exceeding the GSA schedule maximum order threshold, the ordering activity shall survey at least three Schedule contractors, and request additional price reductions where appropriate. (New Section - March 21, 2011).

312.1 (c) For orders exceeding the GSA Schedule maximum order threshold or when establishing a BPA, in addition to following the procedures in Section 312.1(b), the ordering activity shall: review the pricelists of additional Schedule contractors based upon the initial evaluation, and seek price reductions from the Schedule contractors considered to offer the best value. (New Section - March 21, 2011).

312.2 (a) The procedures in Federal Acquisition Regulation (FAR) 8.405-2 shall be used when ordering Schedule contract services priced at hourly rates. The applicable services will be identified in Schedule publications and contractors' Schedule price lists. (New Section - March 21, 2011).

312.2 (b) For orders exceeding the micro-purchase threshold, but not exceeding the maximum order threshold, the ordering activity shall provide the Request for Quotations (RFQ) (including the SOW and evaluation criteria) to at least three Schedule contractors that offer services that will meet the Court's needs. The Courts shall request that contractors submit firm-fixed prices to perform the services identified in the SOW. (New Section - March 21, 2011).

312.2 (c) For orders exceeding the maximum order threshold or when establishing a BPA, in addition to meeting the requirements of section 312.2(b), the Courts shall provide the RFQ (including the SOW and evaluation criteria) to an appropriate number of additional Schedule contractors that offer services that will meet the needs of the Courts. When determining the number of additional Schedule contractors, the Courts may consider the complexity, scope and estimated value of the requirement and the market search results. **(New Section - March 21, 2011).**

CHAPTER 4 - SOLE SOURCE AND EMERGENCY PROCUREMENTS

SECTIONS

- 400 General Provisions
- 401 Sole Source Procurement
- 402 Single Available Source
- 403 Preferred Contractor Market Procurements
- 404 Sole Source Determination and Findings
- 405 Sole Source Procurement Procedures
- 406 Emergency Procurements
- 407 Emergency Procurement Determination and Findings
- 408 Emergency Procurement Procedures

400 GENERAL PROVISIONS

- 400.1 In each instance where the sole source or emergency procurement procedures are used, the contracting officer shall do the following:
- (a) Prepare a written determination and findings (D&F) justifying the procurement which specifically demonstrates that procurement by competitive sealed bids or competitive sealed proposals is not required; and
 - (b) Ensure that all of the steps required for the justification, documentation, and approval of the procurement are completed before the contract is awarded.

401 SOLE SOURCE PROCUREMENT

- 401.1 The contracting officer shall take reasonable steps to avoid using sole source procurement except in circumstances where it is both necessary and in the best interest of the Court. The contracting officer shall take action, whenever possible, to avoid the need to continue to procure the same supply, service or construction without competition.
- 401.2 If the only justification for using sole source procurement is based on the lack of sufficient time to complete the process of competitive sealed bids or competitive sealed proposals, the contracting officer shall not award a contract on a sole source basis unless a legitimate emergency, as defined in these guidelines, exists with respect to the need for the supply, service or construction being procured. Sole source procurement shall not be justified on the basis of any of the following circumstances:
- (a) The lack of adequate advance planning for the procurement of the required commodities, services or other items;
 - (b) Delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or

competitive procedures; or

- (c) Pending expiration of budget authority.

401.3 The **Contracting Officer** shall ensure that each sole source procurement is reviewed or approved by the **Contracting Officer in accordance with Section 406**. Each sole source procurement in an amount **\$3,500** or greater **shall be reviewed and approved by the Contracting Officer before solicitation.** (*revised March 31, 2017*)

402 SINGLE AVAILABLE SOURCE

402.1 The contracting officer may award a contract by using the noncompetitive negotiation procedures set forth in Section 405 upon making a determination and findings that there is only one (1) available source for a supply, service or construction.

402.2 When determining whether there is only (1) source for the requirement, the **Contracting Officer** shall consider whether there is a reasonable basis to conclude that the Court's minimum needs can only be satisfied by the supplies, services or construction proposed to be procured and whether the proposed contractor is the only source **available** capable of providing the required supplies, services, or construction. (*revised March 31, 2017*)

402.3 If the reason for making a procurement on a **single available source** basis is based on the particular source's ownership or control of limited rights in data, patent rights, copyrights or trade secrets applicable to the required supplies, services or construction, the Contracting Officer shall require that the written findings clearly demonstrate the need for the specific supplies, services or construction and that one (1) of the following applies: (*revised March 31, 2017*)

- (a) The requirements cannot be modified to allow procurement by competitive sealed bids or competitive sealed proposals; or
- (b) It is in the best interest of the Court to meet its requirements through procurement of the specific supplies, services, or construction, and that the proposed contractor is the only **available** source for specific supply, services or construction. (*revised March 31, 2017*)

402.4 The **Contracting Officer** may determine that **single available** negotiations are justified for the procurement of specific makes and models of technical equipment and parts if all of the following requirements are met:

- (a) The specific technical equipment or parts are being procured for standardization purposes, and that standardization of the equipment or parts is in the best interests of the Court;
- (b) The equipment or parts will be used to meet the Court's requirements for replacement parts or additional units that are compatible with existing Court equipment;
- (c) The existing equipment for which the parts or additional units are being procured

was obtained by the Court through the use of competitive procurement procedures, or was obtained through a separately justified and approved sole source procurement; and

- (d) No identical or compatible parts or equipment are available from any other source.
(revised March 31, 2017)

402.5 Justification for a **single available source** procurement shall cover all of the supplies, services, or construction being procured under a single contract. The justification of the **single available sources** procurement of some supplies, services or construction shall not be used to avoid competitive procedures for obtaining other commodities, services or construction which do not qualify for **single available sources** procurement under the same contract.
(revised March 31, 2017)

403 PREFERRED CONTRACTOR MARKET PROCUREMENTS

403.1 When a procurement has been designed for the preferred contractor market and only one (1) bid or proposal is received from a responsible, certified firm, the contracting officer shall not make an award to the proposed contractor unless the contracting officer determines that the proposed contractor qualifies as a sole source in accordance with these guidelines.

403.2 Review and approval of preferred contractor sole source procurement shall be conducted in accordance with Section 401.3.

403.3 If the contracting officer cannot justify procuring the supplies, services or construction from the single preferred vendor on a sole source basis or if the Executive Officer does not approve a sole source D&F for the contract under Section 106, the contracting officer shall do one (1) of the following:

- (a) Cancel the competitive sealed bids (CSBs) or competitive sealed proposals (CSPs) and reissue the solicitation on the open market;
- (b) In the case of a CSB, determine whether the bid price is competitive with the open market in accordance with the provisions of Section 403.4; or
- (c) In the case of a CSP, negotiate the contract with the preferred vendor using the negotiation procedures applicable under Section 403.5 through Section 403.7.

403.4 If the contracting officer is able to determine from price history or price analysis that the bid price offered on the CSB by the single preferred vendor is reasonably competitive with a price that might be obtained on the open market, the contracting officer may issue the contract based on a finding that the price offered is competitive and that issuing the contract is in the best interests of the Court.

403.5 Before attempting to negotiate a contract with the single preferred vendor under Section

403.3(c), the contracting officer shall establish a prenegotiation position based on a reasonable price and other terms under which the contract might be let in the open market.

403.6 The contracting officer shall negotiate with the preferred vendor on the basis of competitive price and contract terms in accordance with Section 403.5 and may award the contract if the price and other terms agreeable to the vendor are reasonably within the range of price and terms that could be obtained in the open market.

403.7 If the contracting officer is unable to negotiate a contract with the preferred vendor on the basis of reasonably competitive price and terms (in accordance with Sections 403.5 and 403.6), the contracting officer shall cancel the preferred vendor CSP and reissue the solicitation in the open market.

404 SOLE SOURCE DETERMINATION AND FINDINGS

404.1 When sole source procurement is proposed, the Contracting Officer shall prepare a written determination and findings (D & F) that sets forth the justification for the sole source procurement for all procurements in excess of three thousand five hundred (**\$3,500**). (*revised March 31, 2017*)

404.2 Each sole source D&F shall include the following:

- (a) Specific identification of the document as a sole source D&F;
- (b) The nature or description of the proposed procurement;
- (c) A description of the requirement, including the estimated value or cost;
- (d) An explanation of the unique nature of the procurement or other factors that qualify the requirement for sole source procurement;
- (e) An explanation of the proposed contractor's unique qualifications or other factors that qualify the proposed contractor as a sole source for the procurement;
- (f) A determination that the anticipated costs to the Court will be fair and reasonable;
and
- (g) Any other pertinent facts or reasons supporting the use of a sole source procurement.

405 SOLE SOURCE PROCUREMENT PROCEDURES

405.1 The contracting officer shall not be required to publicize a solicitation for a procurement made on a sole source basis.

405.2 The contracting officer may use a letter to request a proposal for a sole source

procurement.

- 405.3 If the Contracting Officer uses a letter to request a proposal for a sole source procurement, the Contracting Officer shall ensure that the letter is clear and concise as possible and does not include unnecessary verbiage or notices. The letter shall include a detailed Statement of Work or Specifications and all required clauses, representations, and certifications and information necessary for providing a proposal. (Revised March 21, 2011)
- 405.4 The contracting officer shall ensure that each sole source contract contains all of the required clauses, representations, and certifications.

406 EMERGENCY PROCUREMENTS

- 406.1 The **Contracting Officer** may approve a procurement on an emergency basis if the procurement is essential to the Court requirement to deal with an existing emergency condition as defined in Section 406.2. (*revised March 31, 2017*)
- 406.2 For purposes of an emergency procurement under this chapter, an "emergency condition" is a situation that creates an immediate need for supplies, services or construction which cannot be met through normal procurement methods, and the lack of which would seriously threaten one (1) or more of the following:
- (a) The health or safety of any person;
 - (b) The preservation or protection of property; or
 - (c) The continuation of necessary Court functions.
- 406.3 The justification for emergency procurement shall not be based solely on internal circumstances. In the absence of an emergency conditions an emergency procurement shall not be justified on the basis of any of the following circumstances:
- (a) The lack of adequate advance planning for the procurement of required supplies, services or construction;
 - (b) Delays in procurement caused by administrative delays, lack of sufficient procurement personnel or improper handling of procurement requests or competitive procedures; or
 - (c) Pending expiration of budget authority.
- 406.4 The emergency procurement of supplies or services shall be limited to quantities or time period sufficient to meet the immediate threat and shall not be used to meet long-term requirements.

- 406.5 The emergency procurement of services shall be limited to a period of not more than one hundred twenty (120) days.
- 406.6 If a long-term requirement for the supplies, services or construction is anticipated, the contracting officer shall initiate a separate non-emergency procurement action at the same time that the emergency procurement is made.
- 406.7 A contract procured on an emergency basis shall not be modified to expand the scope or extend the time of the procurement unless a limited number of the additional commodities, services or other items are needed to fill an on-going emergency requirement until regular procurement action procedures initiated under Section 406.6 can be completed.

407 EMERGENCY PROCUREMENT DETERMINATION AND FINDINGS

- 407.1 When an emergency procurement is proposed, the contracting officer shall prepare a written determination and findings (D&F) that sets forth the justification for the emergency procurement.
- 407.2 Each emergency procurement D&F shall include the following:
- (a) The nature or description of the proposed procurement action;
 - (b) A specific citation to the applicable provisions of this chapter;
 - (c) A description of the emergency;
 - (d) A description of the requirement, including the estimated value or cost;
 - (e) A description of the efforts made to ensure that proposals or offers are received from as many potential sources as possible under the circumstances, or a sole source justification in accordance with the provisions of Section 404;
 - (f) A determination that the anticipated costs to the Court will be fair and reasonable;
and
 - (g) Any other pertinent facts or reasons supporting the procurement on an emergency basis.

408 EMERGENCY PROCUREMENT PROCEDURES

- 408.1 The contracting officer shall not be required to publicize the solicitation of a procurement made on an emergency basis.
- 408.2 The contracting officer shall attempt to solicit offers or proposals from as many potential

contractors as possible under the emergency condition. An emergency procurement shall not be made on a sole source basis unless the emergency D&F includes justification for the sole source procurement, in accordance with Section 404.

- 408.3 A contracting officer may use a letter or a verbal request to solicit proposals for an emergency procurement.
- 408.4 If a letter request is used, the contracting officer shall ensure that the letter is as clear and concise as possible and does not include unnecessary verbiage or notices. A letter request shall only contain the data and information necessary for providing a proposal.
- 408.5 The contracting officer shall ensure that each emergency procurement contract contains the required clauses, representations, and certifications.
- 408.6 Each emergency procurement shall be reviewed by the Executive Officer on a post-execution basis in accordance with Chapter 1.
- 408.7 The contracting officer shall ensure that proper records of each emergency procurement are maintained.

CHAPTER 5 - DELIVERY AND PERFORMANCE

SECTIONS

- 500 General Provisions
- 501 Delivery and Performance Schedules
- 502 Implementation of Delivery and Performance Schedules
- 503 Variation in Quantity: Supply Contracts
- 504 Variation in Quantity: Construction Contracts
- 505 Suspension of Work
- 506 Stop Work Orders
- 507 Court Delay of Work

500 GENERAL PROVISIONS

- 500.1 The time of delivery or performance is an essential contract element and shall be clearly stated in each solicitation.
- 500.2 The contracting officer shall ensure that a delivery or performance schedule is realistic and meets the requirements of the procurement.
- 500.3 Except when clearly unnecessary, a solicitation shall inform bidders or offerors of the basis on which their bids or proposals will be evaluated with respect to time of delivery or performance.

501 DELIVERY AND PERFORMANCE SCHEDULES

- 501.1 When establishing a contract delivery or performance schedule for supplies or services, the contracting officer shall consider applicable factors, including the following:
 - (a) Urgency of need;
 - (b) Production time;
 - (c) Market conditions;
 - (d) Transportation time;
 - (e) Industry practices;
 - (f) Capabilities of certified preferred contractors;
 - (g) Time for obtaining and evaluating bids or offers and awarding contracts; and
 - (h) Time for contractors to comply with any condition precedent to contract performance.

- 501.2 When scheduling the time for completion of a construction contract, the contracting officer shall consider applicable factors, such as the following:
- (a) The nature and complexity of the project;
 - (b) The construction seasons involved;
 - (c) The required completion date;
 - (d) The availability of materials and equipment;
 - (e) The capacity of the contractor to perform; and
 - (f) The use of multiple completion dates.
- 501.3 In any contract, different completion dates may be established for separable items of work.
- 501.4 When multiple completion dates are used, the contracting officer shall evaluate requests for extension of time with respect to each item, and shall modify the affected completion dates when appropriate.
- 501.5 The contracting officer may establish contract delivery or performance schedules on the basis of any of the following:
- (a) A specific calendar date or dates;
 - (b) A specific period or periods from the date of the contract;
 - (c) A specific period or periods from the date agreed upon by the parties and set forth in the contract for actual commencement of performance on the contract; or
 - (d) In contracts containing indefinite delivery provisions such as term contracts or federal supply schedules, a specific time for delivery after receipt by the contractor of each individual order issued under the contract.
- 501.6 When establishing dates for performance or delivery, the contracting officer shall take into account factors pertaining to the ability of the contractor to actually begin performance, such as time for receipt of notice by the contractor of the contract award or acceptance by the Court, or the time for receipt by the contractor of an executed contract.
- 501.7 The time specified for contract performance shall not be curtailed to the prejudice of the contractor because of delay by the Court in giving notice of award or acceptance.

502 IMPLEMENTATION OF DELIVERY AND PERFORMANCE SCHEDULES

- 502.1 The contracting officer shall mail or otherwise furnish to the contractor the executed contract, notice of award, or notice of acceptance of proposal not later than the date of the contract, or as soon thereafter as possible.
- 502.2 If the delivery or performance schedule is based on the date of the contract, the contracting officer shall mail or otherwise furnish the executed contract or actual notice of contract execution not later than one (1) working day following the date of the contract.
- 502.3 If procurement is by competitive sealed bids and a bid offers delivery or performance based on the date the contractor receives the contract or notice of award, the contracting officer shall evaluate the bid by adding five (5) days to account for time for delivery of the notice or executed contract.
- 502.4 If the offered delivery or performance date computed with mailing time is later than the delivery or performance date required by the competitive sealed bid, the bid shall be considered nonresponsive and shall be rejected.

503 VARIATION IN QUANTITY: SUPPLY CONTRACTS

- 503.1 A fixed-price supply contract may authorize Court acceptance of a variation in the quantity of items if the variation is caused by conditions of loading, shipping, packing, or by allowances in manufacturing processes.
- 503.2 Except as provided in Section 503.3, any permissible variation shall be stated as percentage. The variation may be an increase, a decrease, or a combination of both.
- 503.3 Contracts for subsistence items may use other applicable terms of variations in quantity.
- 503.4 There shall be no standard or usual variation percentage.
- 503.5 The overrun or underrun permitted in each contract shall be based upon the normal commercial practices of a particular industry for a particular item, and the permitted percentage shall be no larger than is necessary to afford a contractor reasonable protection.
- 503.6 The permissible variation shall not exceed plus or minus ten percent (10%), unless a different limitation is established by the contracting officer.
- 503.7 In establishing the permissible variations, the contracting officer shall consider the quantity of items to which the percentage variation applies.
- 503.8 Contractors shall be responsible for delivery of the specified quantity of items in a fixed-

price contract, within allowable variations, if any.

504 VARIATION IN QUANTITY: CONSTRUCTION CONTRACTS

- 504.1 Construction contracts may authorize a variation in estimated quantities of unit-priced items.
- 504.2 When the variation between the estimated quantity and the actual quantity of a unit-priced item is more than plus or minus fifteen percent (15%), an equitable adjustment in the contract price shall be made upon demand of either the contracting officer or the contractor. The contracting officer shall base the adjustment on the increase or decrease in the contractor's costs due to the variation in quantity.
- 504.3 If the Contractor requests an extension of time because quantity variations increase the time necessary for completion of the contract, the contracting officer may grant such a request if it is in the best interest of the Court.
- 504.4 Pursuant to a request in accordance with Section 504.3, the contracting officer may extend the time limit based on a determination that an extension would be in the best interest of the Court.

505 SUSPENSION OF WORK

- 505.1 Contracts may include a standard clause approved by the Executive Officer, which permits the Contracting Officer to suspend work under a construction or architect-engineer contract for a reasonable period of time.

506 STOP WORK ORDERS

- 506.1 Contracts may include a standard clause approved by the Executive Officer, which permits the contracting officer to issue a stop-work order, when appropriate, if work stoppage is required to protect the best interest of the Court in circumstances such as advancement in the state-of-the-art production, engineering breakthroughs or realignment of programs.
- 506.2 As soon as feasible after a stop-work order is issued, but before its expiration, the contracting officer shall take appropriate action to do one (1) of the following:
- (a) Terminate the contract;
 - (b) Cancel the stop-work order; or
 - (c) If necessary, extend the period of the stop-work order.

507 COURT DELAY OF WORK

- 507.1 Contracts may include a standard clause approved by the Executive Officer, which permits the contractor to submit a written claim for equitable adjustment of the contract price to the contracting officer, based on increases in the cost of performance due to work delays, if the Court unreasonably delays the work.
- 507.2 The contracting officer shall retain in the file a record of all negotiations leading to any equitable adjustment, along with related cost or pricing data.

CHAPTER 6 - TYPES OF CONTRACTS

SECTIONS

- 600 General Provisions
- 601 Selecting Contract Types
- 602 Fixed-Price Contracts
- 603 Fixed-Price Contracts with Economic Price Adjustments
- 604 Fixed-Price Contracts with Prospective Price Redetermination
- 605 Cost-Reimbursement Contracts
- 606 Definite-Quantity Contracts
- 607 Term Contracts
- 608 Ordering under Term Contracts
- 609 Time-and-Materials Contracts
- 610 Labor-Hour Contracts
- 611 Letter Contracts
- 612 Negotiated Services Contracts

600 GENERAL PROVISIONS

- 600.1 The contracting officer shall use the types of contracts described in this chapter for all types of procurements, except as otherwise provided for certain small purchases under Chapter 3.
- 600.2 The contracting officer shall select the type of contract that is most appropriate to the circumstances of each procurement, in accordance with the provisions of these guidelines.
- 600.3 In procurements by other than competitive sealed bids, the contracting officer may negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

601 SELECTING CONTRACT TYPES

- 601.1 When procurement is by competitive sealed bids, the contracting officer shall use either a firm-fixed-price contract or a fixed-price contract with economic price adjustment. The type of contract to be used shall be determined prior to solicitation, and the solicitation shall inform bidders of the type of contract that will be used.
- 601.2 Except when procurement is by competitive sealed bids under Section 601.1, the contracting officer may use any type of contract approved for use under these guidelines, or combination of types, that will promote the best interests of the Court.

- 601.3 The contracting officer shall use a firm-fixed-price contract when the risk involved is minimal (or can be predicted with an acceptable degree of certainty) and when fair and reasonable basis for firm-fixed pricing does not exist, the contracting officer may consider other contract types, or combination of types, that will appropriately link profit to contractor performance, except as limited by Section 601.1.
- 601.4 Except as limited in Section 601.1, when deciding which contract type (or combination of types) to use, the contracting officer shall give preference to contract types in the following order:
- (a) Fixed-price;
 - (b) Cost-plus-fixed-fee;
 - (c) Cost-reimbursement;
 - (d) Time and Materials; and
 - (e) Other types.
- 601.5 The contracting officer shall avoid continued use of a cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.
- 601.6 The contracting officer shall include documentation in each contract file to show why the particular contract type was selected, except for the following procurements:
- (a) Small purchases other than cost-reimbursement contracts; and
 - (b) Repetitive Purchases on a firm-fixed-price basis.

602 FIXED-PRICE CONTRACTS

- 602.1 Fixed-price contracts may provide for a firm price or, in appropriate cases, an adjustable price.
- 602.2 Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price shall be subject to adjustment only by operation of contract clauses, approved by the Executive Officer, providing for equitable adjustment or other revision of the contract price under stated circumstances.
- 602.3 A firm-fixed-price contract shall provide for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.
- 602.4 A firm-fixed-price contract shall be used for acquiring commercial products or

commercial-type products, or for acquiring other supplies or services, on the basis of reasonably definite functional or detailed specifications if the contracting officer can establish fair and reasonable prices at the outset, including the following circumstances:

- (a) When there is adequate price competition;
- (b) When there are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis;
- (c) When available cost or pricing information permits realistic estimates of the probable costs of performance; and
- (d) When performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm-fixed-price contract.

603 FIXED-PRICE CONTRACTS WITH ECONOMIC PRICE ADJUSTMENTS

603.1 The contracting officer shall not use a fixed-price contract with economic price adjustment unless the contracting officer determines that it is necessary to protect the contractor and the Court against fluctuations in labor or material costs, or to provide for contract price adjustment in the event of changes in the contractor's established prices.

603.2 A fixed-price contract with economic price adjustment shall provide for upward and downward revision of the stated contract price upon the occurrence of certain contingencies that are specifically defined in the contract.

603.3 An economic price adjustment may be one (1) of the following general types:

- (a) Adjustment based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items in the contract;
- (b) Adjustment based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance; or
- (c) Adjustment based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.

603.4 The Contracting Office may use a fixed-price contract with economic price adjustment when the following factors are applicable:

- (a) There is a serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance; and
- (b) Contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract.

- 603.5 Price adjustments based on established catalog prices shall be restricted to industry-wide contingencies. Industry-wide contingencies shall be those affecting a particular industry as a whole, and shall not depend upon circumstances within the contractor's control.
- 603.6 Price adjustments based on labor and material costs shall be limited to contingencies beyond the contractor's control.
- 603.7 When establishing the base level from which an adjustment will be made, the contracting officer shall ensure that contingency allowances are not duplicated by inclusion in both the base price and the adjustment requested by the contractor under the economic price adjustment clause approved by the Executive Officer.
- 603.8 In contracts that do not require submission of cost or pricing data, the contracting officer shall obtain adequate information to establish the base level from which an adjustment will be made and may require verification of data submitted.

604 FIXED-PRICE CONTRACTS WITH PROSPECTIVE PRICE REDETERMINATION

- 604.1 The Contracting Officer may use a fixed-price contract with prospective price redetermination in procurements of quantity production or services for which it is possible to negotiate a fair and reasonable firm-fixed-price for an initial period, but not for subsequent periods of contract performance as provided in Section 604.4.
- 604.2 The Contracting Officer shall not use a fixed-price contract with prospective price redetermination unless all of the following apply:
- (a) The Contracting Officer has determined that the conditions for use of a firm-fixed-price contract are not present;
 - (b) The contractor's accounting system is adequate for price redetermination;
 - (c) The prospective pricing periods can be made to conform with the operation of the contractor's accounting system; and
 - (d) There is reasonable assurance that price redetermination actions will take place promptly at the specified times.
- 604.3 When the contracting officer uses a fixed-price contract with prospective price redetermination, the initial period shall be the longest period for which it is possible to negotiate a fair and reasonable firm-fixed-price. Each subsequent pricing period shall be at least twelve (12) months.
- 604.4 A fixed-price contract with prospective price redetermination may provide for a ceiling price based on evaluation of the uncertainties involved in performance and their possible cost impact. The ceiling price shall provide for assumption of a reasonable proportion

of the risk by the contractor and, once established, may be adjusted only by operation of provisions for an equitable adjustment or other revision of the contract price under stated circumstances.

604.5 When a fixed-price contract with prospective price redetermination is used, the contracting officer shall include an appropriate clause approved by the Executive Officer.

605 COST-REIMBURSEMENT CONTRACTS

605.1 The Contracting **Officer** shall use a cost-reimbursement contract only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. **(Revised March 21, 2011)**

605.2. The Contracting **Officer** may use a cost-reimbursement contract when all of the following circumstances apply: **(Revised March 21, 2011)**

- (a) The contractor's accounting system is adequate for determining costs applicable to the contract;
- (b) Appropriate Court surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used; and
- (c) The contracting officer determines, in writing, that the use of a cost-reimbursement type contract is likely to be less costly than any other type, or it is impractical to obtain supplies or services of the kind or quality required without the use of this contract.

605.3 Each cost-reimbursement contract shall contain the following:

- (a) A clause, approved by the Executive Officer, indicating that only those costs determined by the contracting officer to be reasonable will be reimbursable; and
- (b) A clause, approved by the Executive Officer, establishing a stated price ceiling.

605.4 The Contracting **Officer** may use a cost contract for facilities contracts. **(Revised March 21, 2011)**

605.5 The contracting officer may use a cost-sharing contract when the contractor agrees to absorb a portion of the costs.

605.6 The contracting officer may not use a cost-plus-incentive-fee contract or cost-plus-award-fee contract.

605.7 The contracting officer may use a cost-plus-fixed-fee contract when contracting for efforts that, might otherwise present too great a risk to the contractor such as when the contract is for a study and the level of effort is unknown. The contract shall include a

clause, approved by the Executive Officer, setting a maximum allowable fee.

605.8 A cost-plus-fixed-fee contract may be in either a completion form or term form. When using the completion form, the contracting officer shall describe the scope of work by stating a definite goal or target and specifying an end product. When using the term form, the contracting officer shall describe the scope of work in general terms and obligate the contractor to devote a specified level of effort for a stated time period.

605.9 When using a cost-plus-fixed-fee contract, the completion form shall be preferred over the term form whenever the work, or specific milestones for the work, can be defined well enough to permit development of estimates within which the contractor can be expected to complete the work. The term form shall not be used unless the contractor is obligated by the contract to provide a specific level of effort within a definite time period.

606 DEFINITE-QUANTITY CONTRACTS

606.1 The contracting officer may use a definite-quantity contract when it can be determined in advance that a specific quantity of supplies or services will be required during the contract period and the supplies or services are regularly available or will be available after a short lead time.

607 TERM CONTRACTS

607.1 The contracting officer may use a term contract (either a requirements contract or an indefinite-quantity contract) when the exact quantities of supplies or services are not known at the time of contract award. Term contracts shall be subject to the provisions of this section and Section 501 of Chapter 5.

607.2 A term contract may also specify maximum or minimum quantities that the Court may order under each individual order and the maximum that the Court may order during a specified period of time.

607.3 The contracting officer may use a requirements contract when the contracting officer anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services.

607.4 The contracting officer shall include the following in each contract and solicitation for a requirements contract:

- (a) A realistic estimate of the total quantity that will be ordered, based on the most current information available; and
- (b) A clause, approved by the Executive Officer, stating that the estimate is not a representation to a bidder, offeror or contractor, that the estimated quantity will actually be required or ordered or that conditions affecting the requirements will be stable or normal.

- 607.5 If feasible, a requirements contract shall state the maximum limit of the contractors obligation to deliver and the Court's obligation to order.
- 607.6 For requirements contracts, the contracting officer shall execute the contract without the obligation of funds. Funds shall be obligated by the Court at the time orders are issued under the contract.
- 607.7 The contracting officer executing orders under a requirements contract shall obligate funds when each individual order is issued. The contracting officer may order from a requirements contract within the limits of the budget authority for the items or services covered by the contract, within the limits of their contracting authority.
- 607.8 The contracting officer may use an indefinite-quantity contract when the contracting officer cannot pre-determine, above a specified minimum, the precise quantity of supplies or services that will be required during the contract period, and the contracting officer determines that it is inadvisable to commit the Court for more than a minimum quantity.
- 607.9 An indefinite-quantity contract shall require the Court to order and the contractor to furnish at least the stated minimum quantity of supplies or services. The contractor shall also be required to furnish, if and as ordered, any additional quantities, not to exceed a stated maximum.
- 607.10 For indefinite-quantity contracts, the contracting officer shall ensure that the contract obligates the amount of budget authority needed to cover the Court's minimum required order under the contract.

608 ORDERING UNDER TERM CONTRACTS

608.1 Each order placed under a term contract shall contain the following information:

- (a) Date of the order;
- (b) Contract number and an order number;
- (c) Item number, description, quantity, and unit price;
- (d) Delivery or performance date;
- (e) Place of delivery or performance;
- (f) Packaging, packing, and shipping instructions, if any;
- (g) Accounting and appropriations data; and
- (h) Any other pertinent information.

609 TIME-AND-MATERIALS CONTRACT

- 609.1 A time-and materials contract may be used only after the contracting officer determines in writing that no other type of contract is suitable, and only if the contract includes a ceiling price that the contractor exceeds at its own risk.
- 609.2 The contracting officer shall document the contract file to justify the reasons for and the amount of any subsequent change in the ceiling price.
- 609.3 A time-and-materials contract may be used only when it is not possible at the time of executing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of certainty.
- 609.4 A time-and-materials contract shall include direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, profit and materials required at cost.
- 609.5 The contracting officer shall provide supervision of contractor performance when a time-and-materials type contract is used.
- 609.6 When the nature of the work to be performed requires the contractor to furnish material that it regularly sells to the general public in the normal course of its business, the contract may provide for charging material on a basis other than cost if the following factors apply:
- (a) The total estimated contract price does not exceed seventy-five thousand dollars (\$75,000), or the estimated price of material charged does not exceed twenty percent (20%) of the estimated contract price;
 - (b) The material to be charged is identified in the contract;
 - (c) No elements of profit on material charged is included as profit in the fixed hourly, labor rates; and
 - (d) The contract provides that the price to be paid for the material shall be based on an established catalog or list price in effect when material is furnished, less all applicable discounts to the Court, and that in no event shall the price exceed the contractor's sales price to its most-favored customer for the same item in like quantity, or the current market price, whichever is lower.

610 LABOR-HOUR CONTRACTS

- 610.1 When materials are not required, the contracting officer may use a labor-hour contract, a variation of the time-and-materials contract.

610.2 The use of labor-hour contract shall be in accordance with the provisions of Section 609.

611 LETTER CONTRACTS

611.1 A letter contract may be used only after the Contracting Office determines, in writing, that no other type of contract is suitable.

611.2 A letter contract shall not commit the Court to a definitive contract in excess of the funds available at the time the letter contract is executed.

611.3 A letter contract shall not be entered into without competition, except as provided for in Chapter 4.

611.4 A letter contract shall not be amended to satisfy a new requirement unless the new requirement is inseparable from the existing contract. Any amendments shall be subject to the same requirements as a new letter contract.

611.5 The contracting officer may use a letter contract when the Court's interests demand that the contractor be given a binding commitment so that work can start immediately and executing a definite contract is not possible in sufficient time to meet the requirement. Each letter contract shall be as complete and definite as possible under the circumstances and shall include clauses approved and required by the Executive Officer.

611.6 When a letter contract is executed, the contracting officer shall include a price ceiling for the anticipated definitive contract. The price ceiling shall not be exceeded. Each letter contract shall also include a clause, approved by the Executive Officer, indicating the maximum liability of the Court under the letter contract.

611.7 The maximum liability to the Court shall be the estimated amount necessary to cover the contractor's requirement for funds before execution of the definitive contract. However, the maximum liability of the Court shall not exceed fifty percent (50%) of the overall price ceiling for the term of the definitive contract.

611.8 In procurements by other than competitive sealed bids, a letter contract shall contain a negotiated schedule for execution of the definitive contract, including dates for submission of the contractor's price proposal, cost or pricing data (if required), a date for start of negotiations, and a target date for execution of the definitive contract.

611.9 The contracting officer shall execute a definitive contract within one hundred and twenty (120) days after the date of execution of the letter contract or before completion of fifty percent (50%) of the work to be performed, whichever occurs first. The contracting officer may authorize an additional period if the additional period is approved in writing by the Executive Officer.

611.10 In procurements by other than competitive sealed bids, if the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement regarding price or fee, the contractor shall be required to continue the work and the

Contracting Office may, with the approval of the Executive Office, determine a reasonable price or fee.

611.11 Prior to execution of a letter contract, the contracting officer shall ensure that funds are encumbered for obligation in the amount of the maximum Court liability for the term of the letter contract.

611.12 For purposes of review and approval of letter contracts, in accordance with Section 106 of Chapter 1, and for purposes of contracting authority, the contracting officer shall use the estimated cost of the definitive contract for determining the meanings and level of review and approval required.

612 NEGOTIATED SERVICES CONTRACTS

612.1 These contracts are negotiated with vendors for providing services such as, but not limited to, training and consultant services.

612.2 Proposals shall be solicited from the maximum number of qualified services, consistent with the nature of and requirements for the services to be procured, to the end that the procurement will be made to the best advantage of the Court, price and other factors considered.

612.3 A CSP for services shall allow a reasonable time for vendors to submit their proposals.

612.4 Upon receipt of the proposals, they will be reviewed by the Contracting Officer who shall appoint a committee of in-house personnel familiar with procurement practices and the service area; a recommendation for award will be made **to the Contracting Officer** by the committee. *(revised March 31, 2017)*

612.5 Each negotiated services contract shall identify a Contract Administrator who shall be responsible for the contract. The contractor shall submit monthly invoices to the Contract Administrator for certification of receipt of services.

612.6 Contracts in which the total number of services to be accomplished can only be estimated, e.g. training, shall include the following clause:

"It is impossible to predetermine the exact quantity of services required hereunder during the contract term. Therefore, the expenditures under this contract are estimated. This estimate is based upon previous services and on the best knowledge of the Court. Lesser amounts than that specified herein may be spent as determined by the Court's needs during the term of this contract. Greater amounts shall be authorized in contract amendments to meet the needs of the Courts."

CHAPTER 7 - CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

SECTIONS

- 700 General Provisions
- 701 Specifications
- 702 Estimate of Construction Costs
- 703 Notice of the Scope of Construction Projects
- 704 Liquidated Damages in Construction Contracts
- 705 Pricing Construction Contracts
- 706 Concurrent Performance of Construction Contracts
- 707 Construction Contracts with Architect-Engineer Firms
- 708 Inspection and Site Examination of Data
- 709 Distribution of Pre-Solicitation Notices
- 710 Competitive Sealed Bids for Construction
- 711 Notice of Intent to Award
- 712 Evaluation of Contractor Performance
- 713 Pre-Construction Conference
- 714 Architect-Engineer Services
- 715 Architect-Engineer Selection
- 716 Architect-Engineer Qualifications
- 717 Cost Estimate for Architect-Engineer Contracts
- 718 Negotiations of Architect-Engineer Contracts
- 719 Release of Information
- 720 Liability for Design Errors or Deficiencies
- 721 Design within Funding Limitations
- 722 Redesign Responsibility for Design Errors or Deficiencies
- 723 Architect-Engineer Performance Evaluation

700 GENERAL PROVISIONS

- 700.1 Contracts for construction shall be awarded in accordance with the provisions of this chapter and other applicable provisions under the District of Columbia Courts Procurement Guidelines (Guidelines).
- 700.2 Contracts for architect-engineer services shall be awarded in accordance with the provisions of Section 714 through Section 723 of these guidelines.
- 700.3 In any instance where the provisions of this chapter are inconsistent with other provisions of these guidelines, the applicable provisions of this chapter shall take precedence and control the process for the award of a construction or architect-engineer contract.

701 SPECIFICATIONS

- 701.1 Where applicable, the contracting officer shall ensure that references in specifications conform to widely recognized standards for specifications promulgated by governments,

industries, and technical societies.

701.2 When "brand name or equal" descriptions are necessary, specifications shall clearly identify and describe the particular physical functional or other characteristics of the brand name items that are considered essential to satisfying the requirements.

702 ESTIMATE OF CONSTRUCTION COSTS

702.1 An estimate of construction cost shall be prepared for each proposed contract and for each proposed contract modification estimated to exceed five thousand dollars (\$5,000).

702.2 The estimate shall be prepared for the proposed contract or contract modification by a contractor or Court employee under the direction of the contracting officer.

702.3 The Court estimate or request for an estimate, shall be forwarded to the contracting officer with the request for preparation of the contract solicitation.

702.4 Each estimate shall be prepared in detail, as though the Court were competing for the contract.

702.5 Access to information concerning the Court estimate shall be limited to Court personnel whose official duties require knowledge of the estimate.

702.6 The overall amount of the Court estimate shall not be disclosed, except as otherwise permitted by the Guidelines.

703 NOTICE OF THE SCOPE OF CONSTRUCTION PROJECTS

703.1 Any pre-solicitation notices and each solicitation shall state the approximate scope of the construction requirements in terms of physical characteristics and estimated price range.

703.2 In no event shall the notice of the scope of a project disclose the Court's estimate of costs.

703.3 Unless narrower price ranges are specified by the contracting officer, the estimated price shall be described in terms of one (1) of the following price ranges:

- (a) Less than \$5,000;
- (b) Between \$5,000 and \$100,000;
- (c) Between \$100,000 and \$250,000;
- (d) Between \$250,000 and \$500,000;
- (e) Between \$500,000 and \$1,000,000;
- (f) Between \$1,000,000 and \$5,000,000;

- (g) Between \$5,000,000 and \$10,000,000; or
- (h) More than \$10,000,000, in increments of \$5,000,000 or more, as deemed appropriate by the contracting officer.

704 LIQUIDATED DAMAGES IN CONSTRUCTION CONTRACTS

- 704.1 In all construction contracts estimated to exceed seventy-five thousand dollars (\$75,000), the contracting officer shall include a liquidated damages clause approved by the Executive Officer.
- 704.2 The provisions of this section shall apply to all liquidated damages clauses included in construction contracts.
- 704.3 When liquidated damages clauses are required or used, if different completion periods for separate parts or stages of the work are specified in the contract, the contracting officer shall include a provision, approved by the Executive Officer, providing for liquidated damages for delay of or failure to perform each separate part or stage of the work compensating the Court for damages incurred.
- 704.4 The contracting officer shall base the minimum amount of liquidated damages on the estimated cost of inspection and superintendence for each day of delay in completion.
- 704.5 Whenever the Court would suffer other specific losses due to failure of the contractor to complete the work on time, the contracting officer shall also include in the contract the amount of these specific losses.
- 704.6 If liquidated damages are used in a contract, the contracting officer shall include an appropriate, reasonable rate or rates of liquidated damages.

705 PRICING CONSTRUCTION CONTRACTS

- 705.1 Unless otherwise authorized under this chapter, the contracting officer shall use firm-fixed price contracts to procure construction.
- 705.2 A contract may be priced on a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work), on a unit-price basis (when a unit price is paid for a specified quantity of work units), or a combination of both methods.
- 705.3 The contracting officer shall use lump-sum pricing in preference to unit pricing except when any one (1) of the following circumstances exist:
 - (a) Large quantities of work (such as excavation, grading, paving, building outside utilities, or site preparation) are involved which cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial

contingency;

- (b) Estimated quantities of work required may change significantly during construction;
or
- (c) Bidders would have to expend unusual effort to develop adequate estimates.

705.4 If an economic price adjustment provision is customary in contracts for the type of work being procured, or when omission of an adjustment provision would preclude a significant number of firms from submitting bids or would result in bidders including unwarranted contingencies in proposed prices, fixed-price contracts with economic price adjustments may be used in accordance with the applicable provisions of Chapter 6.

706 CONCURRENT PERFORMANCE OF CONSTRUCTION CONTRACTS

706.1 Because of potential labor and administrative problems, cost-plus-fixed-fee, or other types of contracts with cost variation or cost adjustment features shall not be permitted concurrently at the same work site with firm-fixed-price, lump-sum, or unit-price contracts without the prior written approval of the Executive Officer.

707 CONSTRUCTION CONTRACTS WITH ARCHITECT-ENGINEER FIRMS

707.1 Except as provided in Section 707.2, the contracting officer shall not award a contract for the construction of a project to the firm that designed the project or its subsidiaries or affiliates without the prior written approval of the Executive Officer.

707.2 If a proposed construction contract will use a design build or turnkey method of construction, the contracting officer may award the construction contract to an affiliate of the architect-engineer firm that designed the project without prior approval by the Executive Officer.

708 INSPECTION AND SITE EXAMINATION OF DATA

708.1 The contracting officer shall make appropriate arrangements for prospective bidders to inspect the work site and to have the opportunity to examine data available to the Court which may provide information concerning the performance of the work, such as boring samples, original boring logs, and records and plans of previous construction. The data should be assembled in a single place and made available for examination.

708.2 The solicitation shall notify bidders of the time and place for the sight inspection and data examination.

708.3 If it is not feasible for bidders to inspect the site or examine the data on their own, the solicitation shall designate an individual who will show the site or data to the bidders.

708.4 The contracting officer shall make available to all bidders in the same manner significant

site information and the work performance data, including information regarding any utilities to be furnished during construction.

708.5 The contracting officer shall keep a record of the identity and affiliation of each bidder's representative who inspects the site or examines the data.

709 DISTRIBUTION OF PRE-SOLICITATION NOTICES

709.1 The contracting officer may distribute pre-solicitation notices in a manner designed to reach as many prospective bidders as practicable.

709.2 The contracting officer may send pre-solicitation notices to organizations that maintain, without charge to the public, display rooms for the benefit of prospective bidders, sub-contractors, and material suppliers.

710 COMPETITIVE SEALED BIDS FOR CONSTRUCTION

710.1 A competitive sealed bid (CSB) for construction shall allow a reasonable time for bidders to prepare and submit their bids, but in no event less than thirty (30) days.

710.2 In determining what is a reasonable time, the contracting officer shall consider the construction season and the time necessary for bidders to inspect the site, obtain sub-contract bids, examine data concerning the work and prepare estimates based on plans and specifications.

710.3 The contracting officer shall insure that each CSB for construction includes the following information, when applicable:

- (a) The appropriate wage determination as issued by the U.S. Department of Labor; or if the CSB must be issued before the wage determination is received, a notice that the schedule for minimum wage rates to be paid under the contract will be issued as an amendment to the CSB ;
- (b) The scope of the proposed construction project;
- (c) The period of performance;
- (d) Information concerning any facilities, such as utilities, office space, and warehouse space, to be furnished during the construction period;
- (e) Arrangements for bidders to inspect the site of and examine the data concerning performance the work;
- (f) Any special qualifications or experience requirements that will be considered;
- (g) Any special instructions concerning bids, alternate bids, and awards; and
- (h) Any instructions concerning reporting requirements.

710.4 The contracting officer shall send CSBs to prospective bidders upon request.

711 NOTICE OF INTENT TO AWARD

711.1 Each notice of intent to award shall include the following:

- (a) The identity of the prospective contractor;
- (b) The prospective contractor's bid;
- (c) The award price;
- (d) A statement notifying the prospective contractor that all required performance and payment bonds must be properly executed by the prospective contractor and sureties and returned to the contracting officer by the prospective contractor within the time specified in the CSB, or if no time period is specified in the CSB, within ten (10) days after the bond forms are presented by the Court to the prospective contractor for signature;
- (e) A statement notifying the prospective contractor that the required contract form must be properly executed by the prospective contractor and returned to the contracting officer by the prospective contractor within the time period specified in the CSB, or, if no time period is specified in the CSB within ten (10) days after the Court contract form is presented by the Court to the prospective contractor for signature; and
- (f) A statement that a notice to proceed will be issued, contingent upon the contracting officer's receipt of executed performance and payment bonds and executed contracts form that is in compliance with the requirements of the CSB in the Guidelines.
- (g) A statement that the Court may rescind the notice of intent to award at any time prior to approval of a formal written contract signed by the prospective contractor and contracting officer.

712 EVALUATION OF CONTRACTOR PERFORMANCE

712.1 The Contract Administrator shall evaluate contractor performance and prepare a performance report for each construction contract of ten thousand dollars (\$10,000) or more in the following circumstances:

- (a) When any element of performance was either unsatisfactory or outstanding;

- (b) When the contract was terminated for default; or
- (c) When the contract was terminated for the convenience of the Court.

712.2 The Contract Administrator shall prepare the evaluation performance report at the time of final acceptance of the work, at the time of contract termination, or at other times determined appropriate by the contracting officer.

712.3 If the Contract Administrator concludes that a contractor's overall performance was unsatisfactory, the contracting officer shall advise the contractor in writing that a report of unsatisfactory performance is being prepared and shall state the basis for the report.

712.4 If, after receiving the Contract Administrator's report, the contractor submits any written comments, the Contract Administrator shall include them in the report, consider them in resolving any alleged factual discrepancies, and make any appropriate changes in the report. The contracting officer shall include the performance report in the contract file.

713 PRE-CONSTRUCTION CONFERENCE

713.1 The contracting officer may conduct a pre-construction conference to inform the contractor about the labor standards provisions of the contract and other pre-construction matters deemed appropriate by the contracting officer.

714 ARCHITECT-ENGINEER SERVICES

714.1 The contracting officer shall publicize all requirements for architect-engineer services, and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services required at fair and reasonable prices.

714.2 If the Court accepts funding assistance for a project from a federal or other source, and a condition of assistance is that a nonprice competitive procedure for selection of architect-engineers that differs from the procedures specified in this section, a modified architect-engineer selection procedure, approved by the Administrative Officer, may be used.

714.3 The contracting officer shall select a contractor for architect-engineer services in accordance with the provisions of this section rather than the solicitation or source selection procedures specified elsewhere in the Guidelines.

714.4 Compliance with the provisions of Sections 714 through 723 of these guidelines shall constitute a competitive procedure for the procurement of architect-engineer services.

714.5 The contracting officer shall evaluate each potential contractor based on the following criteria:

- (a) Professional qualifications necessary for satisfactory performance of the required services;
- (b) Specialized experience and technical competence in the type of work required;
- (c) Capacity to accomplish the work in the required time;
- (d) Past performance on contracts with the Court, other governmental entities, and private industry in terms of cost control, quality of work, and compliance with performance schedules; and
- (e) Acceptability under other appropriate evaluation criteria.

714.6 When the use of design competition is approved by the Executive Officer, the contracting officer may evaluate firms on the basis of their conceptual design of the project.

714.7 Design competition may be used-in the following circumstances:

- (a) When unique situations exist involving prestigious projects, such as the design of memorials or structures of unusual national or local significance;
- (b) When sufficient time is available for the production and evaluation of conceptual designs; and
- (c) When the design competition, with its costs, will substantially benefit the project.

715 ARCHITECT-ENGINEER SELECTION

715.1 The contracting officer, with the advice of appropriate technical and staff representatives, will make the final selection.

715.2 The final selection shall be a listing, in order of preference, of the firms considered most highly qualified to perform the work.

716 ARCHITECT-ENGINEER QUALIFICATIONS

716.1 To be considered for an architect-engineer contract, a firm shall file an appropriate architect-engineer qualification data form with the Administrative Officer.

716.2 The office maintaining the architect-engineer qualification data files shall classify each firm with respect to the following:

- (a) Location;
- (b) Specialized experience;

- (c) Professional capabilities; and
- (d) Capacity, with respect to the scope of work that the firm can undertake.

716.3 The Office maintaining qualifications data files shall review and update each file at least once each year. The process shall include the following:

- (a) Encouraging firms to submit annually an updated statement of qualifications and performance report;
- (b) Reviewing and updating each firm's classification;
- (c) Recording any contract awards made to each firm in the preceding year;
- (d) Ensuring that the file contains a copy of each pertinent performance evaluation report;
 - (e) If no longer **pertinent**, discarding any material that has been updated within the previous three (3) years; and (**Revised March 21, 2011**)
- (f) Posting the date of the review file.

717 COST ESTIMATE FOR ARCHITECT-ENGINEER CONTRACTS

717.1 An independent Court estimate of the cost of architect-engineer services shall be prepared by or under the direction of the contracting officer before commencing negotiations in accordance with Section 718 for each proposed contract or contract modification estimated to exceed ten thousand dollars (\$10,000).

717.2 Access to information concerning the Court estimate shall be limited to Court personnel whose official duties require knowledge of the estimate. The overall amount of the Court's estimate shall not be disclosed except as permitted by the Guidelines.

717.3 The contracting officer may make an exception to Section 717.2 during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Court estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price. The overall amount of the Court's estimate shall not be disclosed.

718 NEGOTIATIONS OF ARCHITECT-ENGINEER CONTRACTS

718.1 The contracting officer (or designee) shall first attempt to negotiate a contract with the highest rated qualified firm for the required services at a price which the contracting officer determines in writing to be fair and reasonable to the Court.

- 718.2 The contracting officer shall inform the firm that no construction contract may be awarded to the firm that designed the project, except as provided in Section 707.2.
- 718.3 The contracting officer shall ensure that the firm has a clear understanding of the scope of work, specifically, the essential requirements involved in providing the required services, and shall determine whether the firm will make available the necessary personnel and facilities to perform the services within the required time.
- 718.4 The contracting officer shall limit the firm's subcontracting to firms agreed upon during negotiations or through a formal contract modification.
- 718.5 If a mutually satisfactory contract cannot be negotiated, the contracting officer shall notify the firm that negotiations are terminated. The contracting officer shall then initiate negotiations with the next rated qualified firm on the list. This procedure shall be continued until a mutually satisfactory contract has been negotiated.

719 RELEASE OF INFORMATION

- 719.1 After final selection has taken place under Section 715, the contracting officer may release information identifying the highest rated architect-engineer firm with which a contract will be negotiated.
- 719.2 If negotiations are terminated without awarding a contract to the highest rated firm, the contracting officer may release that information and state that negotiations will be undertaken with another named architect-engineer firm.

720 LIABILITY FOR DESIGN ERRORS OR DEFICIENCIES

- 720.1 All architect-engineering contracts shall contain a clause approved by the Executive Officer which provides that the architect-engineer contractor shall be responsible for the professional quality, technical accuracy, and coordination of all services required under its contract, and that the architect-engineer contractor shall be liable to the court for costs resulting from errors or deficiencies in designs furnished under its contract.
- 720.2 When modification of a construction contract is required because of an error deficiency in the services provided under an architect-engineer contract, the contracting officer shall consider the extent to which the architect-engineer contractor may be liable.
- 720.3 If the contracting officer determines that the firm is liable, and the recoverable cost will exceed the administrative cost involved or collection is otherwise in the best interests of the Court, the contracting officer shall initiate procedures to collect the amount due.
- 720.4 The contracting officer shall include in the contract file a written statement of the reasons for the decision whether to recover costs from the firm.

721 DESIGN WITH FUNDING LIMITATIONS

- 721.1 The Court may require the architect-engineer contractor to design the project so that construction costs will not exceed a contractually specified dollar limit. The amount of the construction funding limitation shall be established during negotiations between the firm and the contracting officer.
- 721.2 In negotiating the funding limitation amount, the contracting officer shall make available to the firm the information upon which the Court has based its initial construction estimate and subsequently acquired information that may affect the construction costs.
- 721.3 The architect-engineer firm shall be solely responsible for redesigning the project within funding limitations if no responsive proposal is received from a responsible contractor that is within the dollar limit specified by the architect-engineering contract.
- 721.4 If an architect-engineer firm's design fails to meet the contractual limitation on construction cost and the Executive Officer determines that the firm should not redesign the project, the contracting officer shall place a written statement of the reasons for that determination in the contract file.

722 REDESIGN RESPONSIBILITY FOR DESIGN ERRORS OR DEFICIENCIES

- 722.1 All architect-engineer contracts shall provide a clause approved by the Executive Officer which provides that the architect-engineer shall make necessary corrections at no cost to the Court if the designs, drawings, specifications, or other items or services furnished by the firm contain any errors, deficiencies, or inadequacies.
- 722.2 If the contracting officer does not require a firm to correct errors, the contracting officer shall include a written statement of the reasons for that decision in the contract file.

723 ARCHITECT-ENGINEER PERFORMANCE EVALUATION

- 723.1 The Contract Administrator shall prepare a performance evaluation report for contracts of more than ten thousand dollars (\$10,000) and may prepare a report for contracts of ten thousand dollars (\$10,000) or less.
- 723.2 The Contract Administrator shall prepare a performance report after final acceptance of the work or after contract termination, as appropriate.
- 723.3 If the Contract Administrator concludes that firm's overall performance is unsatisfactory, the contracting officer shall advise the firm in writing that a report of unsatisfactory performance is being prepared and shall state the basis for the report.
- 723.4 If, after receiving the Contract Administrator's report, the firm responds with any written comments, the Contract Administrator shall include them in the report, and consider them in resolving any alleged factual discrepancies, and make any appropriate changes in

the report.

723.5 The contracting officer shall review each performance report for accuracy and reasonableness.

723.6 The contracting officer shall include the performance evaluation report in the contract file, and shall send a copy to the office responsible for maintenance of the firm's qualification data. The office shall retain the report for least six (6) years after the date of the report.

CHAPTER 8 - PROTESTS, DISPUTES AND CLAIMS

SECTIONS

- 800 Protests
- 801 Appeals of Protests
- 802 Final Decision of Protest by Executive Officer
- 803 Contract Disputes
- 804 Claims Against the Court
- 805 Claims Filed with Executive Officer
- 806 Final Decision of the Executive Officer

800 PROTESTS

- 800.1 Protests may be submitted by interested parties to the Contracting Officer.
- 800.2 Protests shall be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier.
- 800.3 Protests shall include the following information:
 - (i) Name, address and telephone number of the protester.
 - (ii) Solicitation or contract number.
 - (iii) Detailed statement of the legal and factual grounds for the protest, including copies of relevant documents.
 - (iv) Request for a ruling by the Contracting Officer.
 - (v) Statement as to the form of relief requested.
- 800.4 Protests shall be concise, and logically presented to facilitate review by the Contracting Officer. Failure to comply with any of the above requirements may be grounds for dismissal of the protest.
- 800.5 A protestor is required to furnish a copy of its complete protest to the official or location designated in the solicitation so it is received no later than one (1) work day after the protest is filed with the Contracting Officer. The Contracting Officer may dismiss the protest if the protestor fails to furnish a complete copy of the protest within one (1) work day.
- 800.6 Immediately after receipt of a protest, the Contracting Officer shall give notice of the protest to the contractor if the award has been made, or, if no award has been made, to all parties who appear to have a substantial and reasonable prospect of receiving award if the protest is denied. The Contracting Officer shall notify such parties of the protest.
- 800.7 Upon receipt of a protest, the contracting officer shall notify the Executive Officer of the

protest and immediately begin compiling the information if it becomes necessary for a report to be issued to the Executive Officer.

800.8 If the protest is not resolved by mutual agreement, the Contracting Officer shall issue a final written decision within forty-five (45) calendar days after the receipt of the protest. The Contracting Officer's written decision shall do the following:

- (a) Grant or deny the protestor's claim, in whole or in part;
- (b) Give the reasons for the Contracting Officer's decision; and
- (c) Specifically indicate that the written document is the Contracting Officer's final decision.

800.9 The Contracting Officer's protest decision shall be delivered or mailed by certified mail, return receipt requested, to the contractor, and a copy shall be maintained in the contract file.

800.10 Each Court solicitation shall contain a clause that provides for resolution of protests in accordance with the provisions of this chapter.

801 APPEALS OF PROTESTS

801.1 If a contractor's protest against the Court is not resolved to the satisfaction of the contractor under Section 800, the contractor may appeal to the Executive Officer within ten (10) calendar days after the receipt of the Contracting Officer's final written decision.

801.2 The contractor's protest appeal shall be in writing, shall be delivered in person or mailed by certified mail, return receipt requested, to the Executive Officer, and shall contain at least the following:

- (a) A description of the basis of the protest;
- (b) Any data or other information in support of the protest; and
- (c) A copy of the Contracting Officer's written decision or a statement that no written decision was received.

802 FINAL DECISION ON PROTEST BY EXECUTIVE OFFICER

802.1 The decision of the Executive Officer shall be final and no further appeals shall be granted.

802.2 The written final decision of the Executive Officer shall include the following:

- (a) A description of the protest;

- (b) Reference to the pertinent solicitation or contract terms;
- (c) A statement of the factual areas of agreement and disagreement;
- (d) A determination granting or denying the protest, in whole or in part, with the reasons for the determination; and
- (e) If all or any part of the protest is determined to be valid, a determination of the relief to be granted.

803 CONTRACT DISPUTES

- 803.1 The Court shall attempt to resolve all disputes arising under or relating to contracts by mutual agreement after informal discussions between the contractor and the Contracting Officer.
- 803.2 Each Court contract shall contain a disputes clause that provides for resolution of disputes in accordance with the provisions of this chapter.
- 803.3 Any dispute arising under or relating to a contract, which is not resolved by informal discussions between the Contracting Officer and the contractor, may be treated as a claim and pursued under the appropriate provisions of this chapter.

804 CLAIMS AGAINST THE COURT

- 804.1 Contractors shall attempt to resolve all disputes by discussion and agreement with the Contracting Officer before filing a written claim.
- 804.2 If a contractor is unable to resolve a dispute arising under or relating to a contract through informal discussions, the contractor may file a written claim with the Contracting Officer in accordance with this section.
- 804.3 The contractor's claim shall be in writing, shall be delivered in person or mailed by certified mail, return receipt requested, to the Contracting Officer, and shall contain at least the following:
- (a) A description of the claim and the amount in dispute;
 - (b) Any data or other information in support of the claim;
 - (c) A brief description of the contractor's efforts to resolve the dispute prior to filing the claim; and
 - (d) The contractor's request for relief or other action by the Contracting Officer.

804.4 If the claim is not resolved by mutual agreement, the Contracting Officer shall issue a written decision on the claim within sixty (60) calendar days after the receipt of the claim. The Contracting Officer's written decision shall do the following:

- (a) Grant or deny the contractor's claim, in whole or in part;
- (b) Give the reasons for the Contracting Officer's decision;
- (c) Inform the contractor of the right to seek further redress by requesting an informal hearing and decision by the Administrative Officer; and
- (d) Specifically indicate that the written document is the Contracting Officer's final decision.

804.5 The Contracting Officer's decision shall be delivered or mailed by certified mail, return receipt requested, to the contractor, and a copy shall be maintained in the contract file.

805 CLAIMS FILED WITH THE EXECUTIVE OFFICER

805.1 If a contractor's claim against the Court is not resolved to the satisfaction of the contractor under Section 804, the contractor may file the claim with the Executive Officer within thirty (30) calendar days after the receipt of the Contracting Officer's written decision.

805.2 The contractor's claim shall be in writing, shall be delivered in person or mailed by certified mail, return receipt requested, to the Executive Officer, and shall contain at least the following:

- (a) A description of the claim and the amount in dispute;
- (b) Any data or other information in support of the claim; and
- (c) A copy of the Contracting Officer's written decision or a statement that no written decision was received.

806 FINAL DECISION OF THE EXECUTIVE OFFICER

806.1 The written decision of the Executive Officer shall include the following:

- (a) A description of the claim or dispute;
- (b) Reference to the pertinent contract terms;
- (c) A statement of the factual areas of agreement and disagreement;
- (d) A determination granting or denying the claim, in whole or in part, with the reasons for the determination; and

- (e) If all or any part of the claim is determined to be valid, a determination of the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted.

806.2 The Executive Officer shall deliver or mail (by certified mail, return receipt requested) a copy of the final decision to the contractor, and shall provide a copy to the Contracting Officer for inclusion in the contract file.

CHAPTER 9 - GREEN PURCHASING (New Section - March 21, 2011).

SECTION

900 GREEN PURCHASING

- 900.1 The Courts shall utilize cost-effective acquisition of environmentally preferable products, services and bio-based products and employ acquisition strategies that affirmatively implement the utilization of environmentally preferable products and services (based on EPA-issued guidance).**
- 900.2 The Courts shall seek to reduce the need for special material processing (including special handling, storage, treatment, and disposal); while promoting the use of nonhazardous materials.**
- 900.3 The Court shall promote cost-effective waste reduction when creating plans, drawings, specifications, standards, and other product descriptions authorizing material substitutions, extensions of shelf-life, and process improvements.**

CHAPTER 10 - RESERVED

CHAPTER 11 - RESERVED

CHAPTER 12 - DEFINITIONS

1200.1 The following terms as used in these guidelines shall have the meanings ascribed:

Affiliate - an individual or firm that controls, is controlled by, or is under common control with another individual or firm.

Allocable costs - a cost is considered allocable if the goods or services involved are chargeable or assignable to a particular cost objective (e.g., a specific function, project, or department) in accordance with relative benefits received or other equitable relationship.

Allowable costs - a cost is considered allowable if the charge is reasonable and allocable, given consistent treatment through application of generally accepted accounting principals, and conforms to the terms and conditions set forth in the contract.

Amendment - any change to a solicitation issued by the contracting officer.

Award Information - information regarding the name of the contractor and the amount of the contract award.

Bid bond - a bid security in the form of a bond.

Bid security - a form of guarantee assuring that the bidder or offeror will not withdraw a bid or proposal within the period specified for acceptance and will execute a written contract and furnish required bonds or other security, including any necessary coinsurance or reinsurance agreements, within the time specified in the solicitation, unless a longer time is allowed by the contracting officer, after receipt of the specified forms.

Bidder/offeror - an individual, corporation, or other business entity which submits a bid or proposal to provide goods or services to the Court for a stated price in response to a procurement solicitation issued by a contracting officer.

Bilateral contract modification - a contract modification that is signed by the contractor and the contracting officer.

Blanket Purchase Agreement - a pre-contractual agreement with a vendor that establishes a charge account for supplies or services which allows the Court to make small purchases without the issuance of a purchase order for each individual purchase.

Claim - a written demand or written assertion by the Court or a contractor seeking as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

Commercial -Type Products - a product such as an item, material, component, subsystem or system, sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices.

Competitive range - range determined on the basis of cost or price and other factors that were stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award.

Competitive sealed bids (CSB) - the solicitation vehicle for the procurement of supplies, equipment, services, or construction. The CSB method is used when the award can be made on the basis of specifications and price-related factors and it is not necessary to conduct discussions with bidders after bid opening. No alterations in the bid, including price, may be made after bid opening.

Competitive sealed proposals (CSP) - the solicitation vehicle for the procurement of goods or services when the CSB method is not appropriate. The CSP method is used when discussions with competing offerors and judgmental evaluations of offers are in the best interests of the Court.

Contract Administrator - the individual or individuals, other than the contracting officer, responsible for overseeing the progress of a contract after it is awarded.

Contract award - a documented and executed agreement between the Court and a contractor by which specific goods, supplies, equipment, or services are procured for a stated price, under specified terms and conditions.

Contracting Officer - an employee of the Courts officially designated as a "contracting officer" and so authorized to enter into contract agreements with outside parties and sign purchase orders and other contract related documents on behalf of the Courts. No other Court employee is authorized to do so. The Executive Officer is the principal Contracting Officer for the Court.

Cost-reimbursement contract - a contract which provides for payment of allowable costs incurred in the performance of a contract, to the extent prescribed in the contract. This type of contract establishes an estimate of total cost for the purpose of obligating funds, and establishes a ceiling which the contractor may not exceed (except at its own risk) without prior approval of, or subsequent ratification by the Administrative Officer.

Cost-sharing contract - a cost-reimbursement type contract in which the contractor receives no fee and is reimbursed only for an agreed upon portion of its allowable costs.

Cost-plus-fixed-fee contract - a cost-reimbursement type contract which provides for the payment of a fixed fee to the contractor. The fixed fee, once negotiated, does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or services to be performed under the contract.

Cost contract - a cost-reimbursement contract in which the contractor receives no fee.

Cost or pricing data - factual information concerning the cost of labor, material, overhead, and other cost components which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

Costs - the amount paid or charged for something. Cost does not include the contractor's profit.

Court - where the term Court is used in these guidelines it shall mean the applicable District of Columbia Court.

Court-furnished property - property in the possession of or directly acquired by the Court and subsequently made available to the contractor.

Court property - all property owned by or leased to the Court or acquired by the Court under the terms of the contract, including Court-furnished property.

Cure notice - a notice in writing in which the contracting officer specifies a contractor's failure to perform some provision of the contract or failure to make sufficient progress on contract performance so as to endanger performance of the contract. The notice includes a period of time in which the contractor will be allowed to cure the failure.

Date of Contract - the date on which the contract is signed by the contracting officer.

Debarment - action taken by the Administrative Officer to exclude a contractor from Court contracting and Court approved subcontracting for a reasonable, specified period. A contractor so excluded is "debarred."

Definite-quantity contract - a contract that provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries to be scheduled at designated locations.

Definitive contract - the contract executed pursuant to letter contract commitment.

Depreciation - a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. Useful life refers to the prospective period of economic usefulness in a particular contractor's operations as distinguished from physical life, as evidenced by the actual or estimated retirement and replacement practice of the contractor.

Design Competition - that part of the architect-engineer solicitation which relates to the requirement for a conceptual design only.

Direct costs - costs of direct material and labor, and variable overhead incurred in satisfying the performance of work or in the delivery of goods specified in the contract.

Dispute - A contractual controversy between the Courts and a vendor who contends that they have been improperly treated in the procurement process.

Emergency procurement - an emergency procurement involves life, death, or disability, equipment damage or failure, including procurement of an item necessary to preserve or protect the health or safety of litigants, probationers, employees, and visitors, or to correct unforeseen damage to Court property requiring immediate attention.

Evaluation factors - technical and/or cost criteria used in evaluating whether a bid/offer is responsible and rating the capabilities and qualifications of the bidder/offeror's response to the solicitation. Where there are multiple factors, they are assigned a relative weight to produce an overall evaluation score for each bid/offer.

Facilities - property used for production, maintenance, research, development, or testing. The term includes plant equipment and real property, but does not include material. When used in a facilities contract, the term includes all property provided under the contract.

Facilities contract - a contract under which Court facilities are provided to a contractor or subcontractor by the Court for use in connection with performing one (1) or more related contracts for supplies or services.

Field work authorization (FWA) - written directive issued to contractors to proceed with work not actually included in the original scope of work but reasonably related to the work set forth in the original contract.

Firm - any individual, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture and engineering

Firm-fixed-price contract - a fixed-price contract that provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This type of contract places maximum risk and full responsibility for all costs and resulting profit or loss upon the contractor, and provides maximum incentive for the contractor to control cost and perform effectively.

Fixed-price contract with economic price adjustment - a fixed-price contract that provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies that are specifically defined in the contract.

Government-wide commercial purchase card - a purchase card, similar in nature to a commercial credit card, issued to authorize Court personnel to use to acquire and to pay for supplies, equipment and services.

Imprest Fund - a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from the Fiscal Officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for very small purchases.

Imprest Fund Cashier - the individual responsible for dispensing monies from an imprest fund.

Indefinite-quantity contract - a contract that provides for an indefinite quantity, within written stated limits, of specific supplies or services to be furnished during a fixed period, with deliveries to be scheduled by placing orders with the contractor. The contract requires the Court to order and the contractor to furnish at least a stated minimum of supplies or services.

Indirect costs - indirect costs are costs that are not readily identifiable with a particular contract cost objective, but nonetheless are necessary to the performance of the work or delivery of the

goods specified in the contract. An example of indirect costs is general and administrative expenses.

Individual surety - a natural person, as distinguished from a business entity, who is liable for the entire penal amount of the bond.

Inspection - examining and testing supplies, services, or construction to determine whether they conform to contract requirements. This includes, when appropriate, examination and testing of raw materials, components, and intermediate assemblies.

Insurance - a contract which provides that, for a stipulated consideration, the insurer undertakes to indemnify the insured party against certain risk of loss, damage, or specified liability.

Insurance administration expenses - the contractor's costs of administering an insurance program, which may include the cost of operating an insurance or risk management department, processing claims, actuarial fees, and service fees paid to insurance companies, trustees, or technical consultants.

Interested party - An actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

Invention - any device, process, design, or other discovery that is or may be patentable or otherwise protectable under Title 35 of U.S. Code.

Labor-hour contract - a contract that is a variant of the time-and materials type contract differing only in that materials are not supplied by the contractor.

Letter contract - a written preliminary contractual instrument that authorized the contractor to begin immediately manufacturing or delivering supplies or performing services. A letter contract is always associated with a definitive contract, and a letter contract by itself cannot be the sole document used for a complete procurement.

Letter contract maximum liability - the amount over which the Contractor cannot be liable if the letter contract is terminated. This amount shall not exceed fifty percent (50%) of the overall contract price ceiling.

Liquidated damages - a sum stipulated and agreed to by contract as compensation for losses resulting from a breach of contract.

Material - property that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. The term includes assemblies, components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract.

Material costs - costs of items such as raw materials, parts, sub-assemblies, components, and manufacturing supplies, whether purchased or manufactured by the contractor.

Medical and human care services - services provided by professionals whose occupations are subject to licensure under the D.C. Health Occupations Revisions Act of 1985, D.C. Code Section 2-3301 et seq (1995 Supp.).

Minor informality or irregularity - some immaterial defect in a bid or variation of a bid from the exact requirements of the CSB that can be corrected or waived without being prejudicial to other bidders. 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.

Mistakes - mistakes are clearly evident errors such as typographical errors in extending unit prices, transposing errors, and arithmetical errors.

Multiyear contract - a contract for a period covering more than one (1) fiscal year but not more than five (5) fiscal years.

Nonrecurring costs - those production costs which are generally incurred on a one-time basis and include costs such as plant or equipment relocation, plant rearrangement, pre-production engineering, initial spoilage and rework, and specialized work force training.

Notice of intent to award - a written notice to the apparent awardee advising of intent to award the contract contingent upon the execution of required bonds and the formal contract, and the obtaining of all necessary approvals.

Novation - although the transfer of a Court contract is prohibited by law, the Court may, if it is in its best interest, recognize a third party as the successor in interest to a Court contract, when the third party's interest in the contract arises out of the transfer either of all the assets of the contractor, or of all of that part of the contractor's assets involved in the performance of the contract.

Option - a unilateral right in a contract under which, for a specified time, the Court may elect to purchase additional quantities or services called for by the contract, or may elect to extend the term of the contract.

Partial termination - the termination of a part, but not all, work that has not been completed and accepted under a contract.

Payment bond - a bond that ensures payment as required by law to all persons supplying labor or material in the performance of the work provided for in the contract.

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

Personal property - property of any kind or interest in property except real property and records of the Court.

Plans and specifications - drawings, text, and other descriptions of the physical or functional

characteristics required for and preliminary to the construction.

Plant equipment - personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose.

Preventive maintenance - maintenance performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences.

Price - the amount the Court anticipates it will pay the contractor for full performance under the terms of a contract, including costs and profit.

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

Price ceiling - an amount established during negotiations or at the discretion of the contracting officer which constitutes the maximum that may be paid to the contractor for performance of a contract.

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

Project manager - the individual assigned by the contracting officer responsible for the on-site management of a project after a contract is executed.

Proprietary information - information, including a formula, patterns, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Prospective price redetermination - a contract type which provides for a firm-fixed-price for an initial period of contract deliveries or performance and for a redetermination of the price for subsequent periods of performance and at a stated time or times during performance.

Purchase Order - an offer by the Court to buy certain supplies, services, or other items from commercial sources, upon specified terms and conditions that detail descriptions of the goods or services procured.

Quotation - a citation of price and delivery terms or a period of performance by a contractor in response to a contracting officer's request.

Real property - land and rights in land, group improvements, utility distribution systems, and buildings and other structures. The term does not include foundations and other work necessary for installing plant equipment.

Receiving Report - written documentation of supplies delivered or services performed as noted by the contracting officer or other authorized Court personnel.

Recurring cost - the production costs that vary with the quantity being produced, such as labor and materials.

Reinsurance - a transaction which provides that a surety, for a consideration, agrees to indemnify another surety against loss which the latter may sustain under a bond which it has issued.

Requirements contract - a contract that provides for the filling of all actual purchase requirements for specific supplies or services during a specified contract period, with deliveries to be scheduled by placing orders with the contractor as required.

Responsible bidder/offeror - a bidder/offeror that demonstrates the capability and qualifications to provide the goods or services requested in the Court's solicitation.

Responsive bidder/offeror - a bidder/offeror who submits a bid/proposal that conforms in all material aspects to the Court's solicitation for goods or services.

Settlement agreement - a written agreement in the form of a modification to a contract, settling all, or a severable portion of a settlement proposal.

Settlement proposal - a proposal for effecting settlement of a contract, terminated in whole or in part, submitted by a contractor or subcontractor to the contracting officer.

Show cause notice - a notice in which the contracting officer notifies the contractor in writing of the possibility of a termination for default. The notice calls the contractor's attention to the contractual liabilities if the contract is terminated for default, and requests the contractor to show cause why the contract should not be terminated for default.

Small Purchase - a procurement of supplies, services, or other items in an aggregate amount not exceeding the small purchase authority limitations set forth in these guidelines

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Sole source procurement - an award for the procurement of goods, supplies, equipment, or services to the only known capable supplier, upon determination that the procurement is warranted due to the unique nature of the requirement, proposed supplier, or market conditions.

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

Specification - a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met.

Standard - a document that establishes engineering and technical limitations and applications of items, materials, processes, methods, designs, and engineering practices. It includes any related criteria deemed essential to achieve the highest practical degree of uniformity in materials or products, or interchangeability of parts. Standards may be used in specifications, competitive sealed bids, competitive sealed proposals, and contracts.

Stop-Work Order - a written document issued by the contracting officer advising a contractor to cease work.

Subcontractor - any supplier, distributor, vendor, or firm which furnishes supplies, services, or construction to or for a prime contractor or another subcontractor.

Supplemental agreement - a bilateral contract modification.

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

Suspension - action taken by the Administrative Officer to disqualify a contractor temporarily from Court contracting and Court approved subcontracting. A contractor so disqualified is "suspended".

Target price - an amount established by the contracting officer during negotiations to encourage the contractor to control contract costs. The contractor's final profit varies inversely with the final cost of the contract.

Term contract - a requirements contract or an indefinite-quantity contract.

Termination for convenience - the exercise of the Court's right to terminate, completely or partially, a contract when it is in the best interest of the Court.

Termination for default - the exercise of the Court's contractual right to terminate, completely or partially, a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.

Testing - the element of inspection that determines the properties or elements, including functional operation of supplies or their components, by the application of established scientific principles and procedures.

Time-and- materials contract - a type of contract that provides for the procurement of supplies or services on the basis of direct labor hours at specified fixed hourly rates (which includes wages, overhead, general and administrative expenses, and profits) and material at cost.

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

Unilateral contract modification - a contract modification that is signed only by the contracting officer.

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.

Warranty - a promise or affirmation given by a contractor to the Court regarding the nature, usefulness, or condition of the supplies, services, or construction furnished under a contract.