



Washington Metropolitan Area Transit Authority

OFFICE OF PROCUREMENT AND MATERIALS (PRMT) BEST PRACTICES MANUAL (BPM)

January 24, 2024

Version: 8.0

REVISION HISTORY

Revision No.	Revision Date	Reviser/ Author	Document Section No. (if applicable) or N/A	Description of Changes
0	04/15/22	PRMT Policy Team/COUN	N/A	Initial Release.
1	08/22/22	PRMT Policy Team/COUN	8-5(a), 8-5(c) and 11-11(c).	- Section 8-5 (a) <i>“Contracting Officers are encouraged to use best value,”</i> but best value doesn’t apply when soliciting quotes” was removed. - Section 8-5(c) <i>“Also, in situations where less than three (3) quotes are received...”</i> - “Less” was changed to “fewer.” - Language from Section 11-11 (c) was deleted.
2	09/15/22	PRMT Policy Team/COUN	8-7, 17-2 (b), 17-5 (a), and 17-6 (a) and (c).	- References to “COFD” in discussions with bid protest procedures were removed and replaced with “decision on the protest”. - Language regarding vendor exceptions was added to Section 8-7.
3	10/11/22	PRMT Policy Team	11-11-4 (c)	The following was deleted from 11-11-4 (c): <i>“Contractors may be awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA’s period of performance.”</i>
4	01/18/23	COUN/PRMT Policy Team/SBPO	16-4 (e), 22-9 (d), and 7-2-5-2 (d)	Removed “proposal” from the last sentence in section 16-4 (e) and section 22-9 (d) where it was referenced with non-responsive.

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4 (continued)	01/18/23	COUN/PRMT Policy Team/SBPO	16-4 (e), 22-9 (d), and 7-2-5-2 (d)	Section 7-2-5-2 (d), added the “Procurement Review Committee”. Sections 17-2, 17-6, and 17-A, The Contracting Officer’s Final Decision (COFD) was removed and replaced with Protest Decision in sections.
5	07/05/23	Legal/Office of Procurement and Materials’ Policy Team	3-6, 3-7, 8-9, 9-31, 10-30, 11-10, 12-16, 13-21, 10-26 (c), and Checklists.	Language removed that requires certification by the Vice President relating to the Determination and Findings from 3-6 and 3-7. Sections 8-9, 9-31, 10-30, 11-10, 12-16, and 13-21 have been revised to reflect that contract files must be submitted to Policy 60 days from contract award. Added the timeframe for an unsuccessful proposer to submit a request for a debrief in section 10-26 (c). Minor updates were made to the Procurement Checklists.

Revision No.	Revision Date	Reviser/ Author	Document Section No. (if applicable) or N/A	Description of Changes
6	10/02/23	Office of Procurement and Materials' Policy Team/Legal	3-5 (c) and (d), 12-9, and 15-5 (d).	Section 3-5 (c), included language to the 1st bullet stating that the identity of third parties must be specified. Section 3-5 (d), added language relating to reconciling the ICE if the amount is "lower than" 10%. Section 11-2 (a)(1) iii, language relating to market research certification was removed. Section 12-9, replaced Standard Form 1421 with SF330. Section 15-5 (d), removed language about contacting the Small Business Administration for rejection of a Small Business offer because it was non-responsible.
7	10/26/23	Office of Procurement and Materials' Policy Team	4-24 (a) and (b), 17-3(b) and 19-4	Section 4-24 (a) updated PALT chart. Section 17-3(b) added 'Calendar' to clarify days to receive a Protest. Section 19-4(1)(2)(3)(4) updated Disputes clause.
8	01/24/24	Office of Procurement and Materials' Policy Team	Section 2-7 (b)	Section 2-7 (b) was added to recognize the Inspector General designation of Contracting Authority.

APPROVAL

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PREFACE

This Best Practices Manual (“BPM”) consolidates all Washington Metropolitan Area Transit Authority (“Authority” or “WMATA” or “Metro”) procurement procedures into a single volume. The implementing procedures issued by the General Manager/Chief Executive Officer (“GM/CEO”) and Chief Procurement Officer (“CPRO”) are intended to function as a complete guide to the Authority’s procurement process for procurement staff and interested Authority personnel. The BPM is a supplement to sound business judgment in procurement and contracting.

The BPM is issued in accordance with Policy Instruction 1.1/4 which authorizes a Procurement Manual and Departmental manuals to deal with matters affecting the entire Authority, but in areas of responsibility clearly within the authority of an Executive Vice President or GM Staff Office Director.

CHANGES TO THE BEST PRACTICES MANUAL

Only the GM/CEO and/or CPRO may make changes to the implementing procedures. Changes in Federal and/or local laws, the Federal Transit Administration’s (“FTA”) Master Agreement, Circulars 4220.1 and 5010.1 or other governing regulations and best practices may require changes, corrections, or additions to this BPM. Other proposed changes, corrections, or additions to the BPM should be sent to the CPRO. The CPRO will assign or coordinate as necessary the proposed changes or additions with the appropriate individuals or offices. If substantive changes are made to this BPM resulting from any of the above referenced actions, the proposed changes will be submitted for review to Counsel (“COUN”), Office of the Inspector General (“OIG”), Safety (“SAFE”), and Authority Transit Police (“MTPD”) as appropriate.

SAFETY MANAGEMENT

This document has been created in compliance with WMATA’s safety plan and safety policy. Any relevant hazards and risks associated with the processes within this document have been evaluated for safety and have appropriate mitigation strategies established as part of WMATA’s overall risk assessment management. This document is also subject to monitoring for safety risk mitigation adherence and safety performance. Lastly, this document has effective communication practices in place, including adequate safety training, to ensure competencies, and to solicit feedback from the affected employees. For further guidance on WMATA’s safety plan, visit SAFE’s intranet homepage.

VALUES AND GOVERNING PRINCIPLES OF AUTHORITY PROCUREMENT

Accountability

Taking ownership and being responsible to the Authority and our customers for our actions is essential to preserve the public trust and protect the public interest.

- Apply sound business judgment;
- Be knowledgeable of and abide by all applicable laws and regulations;
- Be responsible stewards of Authority funds;
- Maximize competition to the greatest extent practicable;
- Promote effective, economic, and efficient acquisition; and
- Use procurement strategies to optimize value to the Authority and our customers.

Ethics

Acting in a manner true to these values is essential to preserve the public's trust.

- Act and conduct business with honesty and integrity, avoiding even the appearance of impropriety; and
- Maintain consistency in all processes and actions.

Impartiality

Unbiased decision making and actions are essential to fairness.

- Be open, fair, impartial, and non-discriminatory in all procurements; and
- Treat vendors equitably, and without imposing unnecessary constraints.

Professionalism

Maintain high standards of job performance and ethical behavior.

- Continually contribute value to the organization;
- Continually develop as a professional through education, mentorship, innovation and partnerships; and
- Develop, support and promote the highest professional standards in all procurements.

Service

Always seek to assist our customers.

- Be a resource and partner to our customers;
- Develop and maintain relationships with customers; and

- Maintain a customer service focus while meeting the needs of the Authority.

Transparency

Policies and procedures that are accessible and understandable to demonstrate the responsible use of public funds.

- Be discrete in the release of confidential information;
- Maintain current and complete policies, procedures and records; and
- Provide timely access to procurement policies, procedures and records.

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1- PROCUREMENT CODE OF ETHICS

- I shall only seek or accept a position of employment when fully in accord with the professional principles applicable thereto, and when confident of possessing the qualifications to serve under those principles to the advantage of my employer.
- I shall endeavor to keep myself knowledgeable and current on the practices and issues related to my profession.
- I shall conduct myself in a professional manner that reflects the dignity and worth of the services rendered by my employment and the societal responsibilities assumed as a trusted public servant.
- I shall be governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of my employer and the public served.
- I shall neither seek nor accept any form of personal aggrandizement or profit through misuse of public or personal relationships.
- I shall identify and eliminate participation of any individual in operational situations where a conflict of interest may be involved.
- I shall not at any time or under any circumstances accept directly or indirectly, gifts, gratuities or other things of value from suppliers, which might influence or appear to influence the performance of my professional duties.
- I shall keep my governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.
- I shall handle all personnel matters on a merit basis.
- I shall neither seek nor dispense personal favors that are in conflict with my professional duties.
- I shall handle each administrative problem objectively and empathetically without discrimination.
- I shall subscribe to and support the professional aims and objectives of the Universal Public Procurement Certification Council.
- I shall not fail to report or conceal knowledge of potentially illegal activity by any staff, volunteer or vendor.

2– PROCUREMENT INTEGRITY AND CONTROL

2-1 PURPOSE AND SCOPE

- (a) The Washington Metropolitan Area Transit Authority (the “Authority” or “WMATA” or “Metro”) Procurement Policy, adopted by the Authority’s Board of Directors (“Board”), and the implementing procedures, approved by the General Manager/Chief Executive Officer (“GM/CEO”), established the Authority’s Procurement Procedures (“Procedures”). These Procedures apply to all procurement actions regardless of their funding source, including federal assistance funds, for contracts entered into by the Authority for supplies, equipment, and services (including construction), and the disposal of Authority equipment or supplies.
- (b) This Best Practices Manual (“BPM”) describes general procurement procedures which shall govern the solicitation, award and administration of all Authority contracts and purchases for supplies, services, equipment, and construction. The procedures in this BPM are not applicable to Special Agreements as defined in the Procurement Policy adopted by the Board, and employment contracts where there is an employer-employee relationship between the Authority and a person hired for a permanent or temporary position.
- (c) Integrated Procurement Management. By and through this Best Practices Manual, the Authority hereby establishes a system of Integrated Program Management pursuant to which all Authority personnel who participate in any way in the procurement process (Operations, Procurement and COUN) are charged with working in a coordinated manner, each taking ownership of and being accountable for the success of the procurement process and of individual procurements, to accomplish the following:
 - (1) Facilitate efficient operations and avoid having procurement processes pose an impediment to getting the job done; and
 - (2) Ensure that all procurements conducted by the Authority comply with applicable procurement laws and procedures.

In no instance shall Authority personnel fail to comply with applicable laws and procedures in order to facilitate operations. It is essential that all cognizant Authority personnel cooperate fully in procurement planning and in the implementation of individual procurements to provide for full compliance while at the same time maintaining efficient operations. Cognizant personnel from Operations, Procurement and COUN shall maintain the checks and balances that underlie their respective roles and are essential to the effective functioning of a procurement system and compliance with applicable laws and procedures.

2-2 REQUIREMENT OF GOOD FAITH

These procedures require that all parties involved in the negotiation, performance, or administration of Authority contracts act in good faith.

2-3 CONTROLS AND LIMITATIONS

All Authority personnel engaged in procurement activities shall take into account the requirements that are contained in all statutes, regulations, or guidance that apply to the funds, including grant funds, used in procurements. The statutes, regulations, and guidance that govern procurements, as applicable, include, but are not limited to: Section 73 of the Authority's Compact; FTA enabling legislation, 49 U.S.C. 5325(a); Common Grant Rule (49 C.F.R. 18.1 et seq; FTA Circular 4220.1; American Reinvestment and Recovery Act, Pub. L. 111-5 (Feb 17, 2009); and the FTA Master Grant Agreement. Circular 4220.1 provides for a procurement system certification of grantees whose procurement system and practices meet prescribed standards. Grantees that have an approved procurement system are subject to less Federal control than those who do not have a certified system. This BPM, including subsequent amendments, will include any controls that FTA requires when approving the Authority's procurement system or contracts.

2-4 INTEGRATED PROCUREMENT MANAGEMENT

(a) Individual Responsibilities and Authorities

- (1) *Board of Directors:* The Board is responsible for approving procurement policies; approving deviations from procurement policy; authorizing the GM/CEO to initiate, award and modify procurements consistent with the approved Authority operating and multi-year capital budgets; delegating contracting officer authority to the GM/CEO; authorizing the GM/CEO to delegate contracting officer authority and authority to approve procurement initiation, award, and modification activities to subordinate officials of the Authority.
- (2) *Chief Operating Officer:* The Chief Operating Officer has the responsibility and authority to provide such qualified operations personnel as are necessary to work in coordination with Procurement and COUN personnel to effectuate Integrated Procurement Management as set forth herein. The Deputy General Manager, Operations may delegate any or all of the foregoing authorities and responsibilities.
- (3) *General Counsel:* The General Counsel is responsible for: providing legal counsel regarding procurement matters within WMATA, including to the Chief Procurement Officer, contracting officers and others involved in the procurement process; assigning a cognizant attorney in the Office of General Counsel (COUN) for each WMATA procurement; reviewing and approving procurement policies and procedures within WMATA, and ensuring they are consistent with all applicable laws and

regulations and effectively fulfill the needs and purposes of WMATA; and ensuring appropriate legal review at all appropriate steps of procurement. The General Counsel may delegate within COUN any or all of the foregoing authorities and responsibilities. At least one attorney within the Office of the General Counsel shall have experience in procurement of information technology products and services.

- (4) *Chief Procurement Officer*. The Chief Procurement Officer (“CPRO”), and Head of Contracting Activity (“HCA”), with the approval of the GM/CEO, is responsible for developing and issuing procurement procedures to implement Board procurement policies; establishing a system to select, recommend, appoint, and delegate Contracting Officer authority; preparing quarterly reports for presentation by the GM/CEO to the Board, and acting in the appointed capacity as Contracting Officer. The CPRO may appoint authorized representatives for the purposes of assisting the Contracting Officers in providing technical guidance to the Contractor or otherwise assisting in the administration of the contract. In limited circumstances, Authority representatives may be delegated restricted contracting authority. On June 28, 1991, the GM/CEO delegated Contracting Officer authority to the Director, Office of Procurement (subsequently designated as Chief Procurement Officer), and thereby separated procurement from other functional responsibilities. Contracting Officer appointments shall describe any limitations on the authority of the appointee.

(b) Establishment and Maintenance of Integrated Procurement Management.

- (1) Procurement Review Committee. The Chief Operating Officer, Chief Procurement Officer and General Counsel (or their respective designees) each shall appoint a representative to a Procurement Review Committee, which shall be responsible and accountable for establishing and maintaining Integrated Procurement Management. The Chair of the Procurement Review Committee shall be the Chief Operating Officer or designee. A member of the Executive Leadership Team shall be invited to participate with the Procurement Review Committee when deliberating regarding a procurement within the area of responsibility of that member of the Executive Leadership Team. The Procurement Review Committee shall meet weekly and is specifically responsible for the following:
 - (i) Establishing such policies and procedures and working relationships as are necessary for Operations, Procurement and Counsel working in a coordinated manner, each taking ownership of and being accountable for the success of the procurement process and of individual procurements, to facilitate efficient operations and avoid having procurement processes pose an impediment to getting the job done, and ensure that all procurements conducted by the Authority comply with applicable procurement laws and procedures.
 - (ii) Review, discuss and determine Job Order Contract requests that exceed \$1 million in contract value.

- (iii) Continual improvement of the Authority's procurement policies and procedures to ensure they are appropriate to the purposes of Integrated Procurement Management set forth above.
 - (iv) Each organization provides the personnel and other resources, and establishes priorities, necessary to effective Integrated Procurement Management.
- (c) *FTA Review:* In accordance with FTA Circular 4220.1, FTA may conduct reviews of the procurement process or specific procurement actions.

2-5 BEST PRACTICES MANUAL AND ANNUAL TRAINING

- (a) The CPRO shall issue and maintain the BPM which shall include procurement procedures and guidelines.
- (b) The BPM shall include, but shall not be limited to, the following:
 - Procedures for implementing the Procurement Policy Statement.
 - Standard contract clauses and forms required by or to be used in implementing the provisions of the Procurement Policy Statement.
 - Description of the various Authority processes to be followed to accomplish the procurement function.
 - Explanations of procurement regulations and procedures with examples, when applicable.
 - Clarification and definition of the responsible role for all Authority offices involved in the procurement process.
 - Current FTA controls.
 - Required use of procurement checklists.
- (c) The CPRO shall establish a procedure for issuing modifications and revisions to the BPM which will enable Contracting Officers and other users to maintain a current compilation of the BPM.
- (d) *Procurement Training.* Under the direction and control of the GM/CEO, the Chief Procurement Officer shall prepare and implement an annual training plan for ensuring that procurement personnel and procurement attorneys in the Office of General Counsel (COUN) understand and adhere to applicable procurement policies and procedures, and are fully trained to perform their duties with regard to Authority procurements. Procurement personnel include all Contracting Officer Representatives, Contracting Officer Technical Representatives, and Project Managers. The training plan shall include the following elements:
 - The training should be presented by a combination of representatives of the Procurement Office and Office of the General Counsel.
 - The training shall be in the form of a slide presentation that addresses each chapter of the Best Practices Manual.
 - The training session(s) will be recorded in such a manner that anyone unable to attend the live training presentation will be able to watch an

- audiovisual recording of the presentation, including the slide show.
- All procurement personnel and procurement attorneys in the Office of General Counsel must sign a certificate after receiving the training that states that he/she listened to the entire presentation and the date on which that occurred.
- The Chief Procurement Officer will be responsible for maintaining each year's training program materials and signed certificates of attendance.

In addition, all procurement staff must obtain a procurement certification from an accredited and nationally known procurement organization such as: the National Contract Management Association (NCMA), the National Institute of Government Purchasing (NIGP), Universal Public Procurement Certification Council (UPPCC), the Federal Acquisition Institute (FAI), the Institute for Supply Management, the Defense Acquisition University (DAU), or the Defense Acquisition Workforce Initiative (DAWIA). The aforementioned organizations require educational standards, passing an exam, and continuous educational requirements in order to maintain said certification. Procurement certifications not listed above must be approved by the VP & CPRO.

2-6 AUTHORITY AND RESPONSIBILITIES OF CONTRACTING OFFICERS

- (a) *Authority:* Contracting Officers are authorized to enter into, administer, and terminate contracts. However, a Contracting Officer may bind the Authority only to the extent of the contracting authority delegated by the CPRO under §2-4 (a).
- (b) *Responsibilities:* Contracting Officers have wide latitude to exercise business judgment within the limitations prescribed herein and shall:
 - Make all determinations and findings required for their respective solicitations or contracts;
 - Ensure that contractors receive impartial, fair, and equitable treatment in accordance with the provisions specified herein;
 - Request and consider the advice of specialists in auditing, law, engineering, transportation, safety and fire protection, and other fields when necessary or appropriate to the exercise of the Contracting Officer's authority;
 - Ensure that for each contract, sufficient unencumbered funds are available for obligation, in accordance with § 5-20;
 - Ensure that prior to executing a contract, all applicable requirements have been met; and
 - Enter into contracts only in an amount that does not exceed the Contracting Officer's delegated authority. Purchases or contracts that would exceed the Contracting Officer's delegated authority shall be referred to a Contracting Officer with the proper level of authority.

2-7 DELEGATION AND REVOCATION OF CONTRACTING OFFICER AUTHORITY

- (a) *General:* The CPRO shall establish and maintain a system to designate Authority Contracting Officers. The system shall include procedures for the selection of Contracting Officers; delegation of Contracting Officer authority; and modification and termination of contracting authority.
- (b) *Office of Inspector General:* Section 30019 (d)(2)(B) of the Infrastructure Investment and Jobs Act of 2021 (the "Act") requires that the Board of Directors delegate Contracting Officer authority to the Inspector General. The Inspector General must exercise that authority: (i) in accordance with Compact Section 73, the Inspector General has approving authority for exceptions to policies and procedures and (ii) only as is necessary to carry out the duties of the Office of Inspector General.
- (c) *Selection:* When selecting an individual to become a Contracting Officer, the CPRO shall consider the following criteria:
 - The complexity and dollar value of the procurements to be assigned;
 - General experience, training, education, business acumen; judgment, character, and reputation;
 - Experience in Authority or public contracting and administration, commercial purchasing, or related fields;
 - Education or special training in business administration, law, accounting, engineering, or related fields;
 - Knowledge of applicable procurement laws, rules, and procedures, including the provisions of the Authority's Compact, and applicable Federal laws and regulations, and these procedures;
 - Specialized knowledge in particular contracting areas, such as construction, information systems and technology, rail and bus equipment, and other specialties; and
 - Satisfactory completion of procurement training courses pursuant to the level of Contracting Officer authority being granted.
- (d) *Delegation of Contracting Officer Authority:* Delegation shall be in writing and on a Certificate of Appointment, signed by the GM/CEO or CPRO to delegate the authority, and shall specify:
 - The activity or function authorized;
 - Any limitations or restrictions of the scope of delegated authority to be exercised (or the revised limitations or restrictions in any modification of the authority), including any limitations set forth in applicable laws and regulations;
 - Duration of the delegation; and
 - Delegation number.
- (e) Revocation of a Contracting Officer's appointment shall be in writing, unless the written delegation or modification of authority contains a provision for automatic termination or expiration. No revocation shall operate retroactively.
- (f) Any authority delegated may be suspended or revoked at any time and without prior approval of the GM/CEO.

- (g) Contracting Officers, may in their discretion, recommend to the Chief Procurement Officer authorized representatives to assist in the administration and management of specific aspects of a contract or project. Procedures regarding the issuance and control of designations for Contracting Officer Representatives (“COR”) and Contracting Officer Technical Representatives (“COTR”) are addressed in §18-21.

2-8 UNAUTHORIZED PROCUREMENTS

2-8A PURPOSE

- 1.01 To modify BPM Section 2-8 to establish a process regarding ratification of unauthorized procurement commitments found in the Best Practices Manual (BPM).
- 1.02 To clarify that unauthorized procurement commitments must be ratified.
- 1.03 To update the approval authority for a ratification action.

2-8B SCOPE

- 2.01 According to the BPM, Authority procurement actions and decisions may only be made by those Authority employees authorized to do so. (BPM 2-8). If an unauthorized procurement commitment is made, a ratification action must be initiated by the respective Program Office responsible for the procurement requirement in the form of a written request for processing to obtain final approval of the ratification by the Head of Contracting Activity, the Chief Procurement Officer and General Counsel.
- 2.02 No WMATA employee, contractor, agent, or consultant (collectively referred to as “personnel”) shall issue purchase orders, contracts (whether verbal or written) or an agreement to ratify an unauthorized procurement or commitment without:
 - (a) the approval of the Supervisor of the individual that committed the unauthorized commitment;
 - (b) written assurance from the OMBS or CFO that sufficient funding is available.
 - (c) the approval of the General Counsel or designee; and
 - (d) the approval of the Chief Procurement Officer (CPRO)
- 2.03 According to Board Resolution 2011-30, the Board of Directors has delegated unlimited procurement authority to the GM and the CPRO. The GM and CPRO may further delegate this authority. By virtue of this Policy Instruction, the GM hereby delegates to the CPRO the power to ratify unauthorized procurement commitments.

2-8C DEFINITIONS

- 2.04 **“Unauthorized Procurement Commitment”** refers to a procurement that is not binding solely because the WMATA personnel who made it lacked the authority to enter into a contract or agreement on behalf of The Authority. Only the GM, the CPRO, Contracting Officers, their delegates, or authorized Purchase Cardholders acting within the scope of their authority are authorized to enter into procurement agreements or make any modifications thereto on behalf of WMATA.
- 2.05 **“Ratification”** refers to the process of receiving formal written approval of an unauthorized procurement commitment.
- 2.06 **“Requesting Office”** means the department/office that is requesting ratification in which the unauthorized commitment was made.
- 2.07 **“Procurement Commitment”** refers to any promise to obligate WMATA funds and/or federal funds to purchase goods or services.

2-8D POLICIES AND PROCEDURES

- (a) WMATA is not bound by unauthorized procurement commitments unless they are ratified. Unauthorized procurement commitments made by WMATA personnel may only be ratified by the CPRO after receiving approval of funds availability and legal sufficiency approval.
- (b) In order to receive ratification, the Requesting Office must submit a ratification request, in the attached format to PRMT.
- (c) The OMBS or CFO may approve a ratification request after it has, in conjunction with the requesting office, identified funding sufficient to meet the costs of the procurement commitment, if ratified. Assuming the OMBS or CFO is able to identify such funding, then the OMBS or CFO shall certify that funding is available, the type of funding and forward the ratification request to the General Counsel for review of legal sufficiency.
- (d) The General Counsel will review the ratification request for completeness and legal sufficiency and compliance with this Amendment. If satisfied that the facts do not indicate any attempt to defraud the Authority or to engage the Authority in waste, abuse, or illegality; then the General Counsel may approve the ratification. In the alternative, the General Counsel may:
- (i) Refer the matter to the Office of the Inspector General for additional inquiry;
 - (ii) Approve the request with recommendations, reservations, or corrections, and forward it to the CPRO; and/or
 - (iii) Deny the request, provide a reason for the denial, and forward the

denial to theCPRO.

- (e) Ratification should not be viewed as an alternative to sound contracting procedures conducted by Office of Procurement and Materials (PRMT). The CPRO will review the ratification request. The CPRO may approve or deny the request for any reason that theCPRO believes is in the best interests of the Authority. However, unauthorized procurement commitments made to circumvent procurement statutes and regulations or to perpetuate fraud, waste and/or abuse may not be ratified. The CPRO must find that thecommitment resulted from an urgent or emergency need of the Authority, or from a reasonable mistake of fact on the part of WMATA personnel. The CPRO must also find that the contractor relied to its detriment on the apparent authority of the WMATA personnel making the unauthorized commitment.
- (f) Ratifications shall not be effected if the resulting contracting action would not otherwise be proper. Examples include instances when funds are not available for the obligation, unauthorized commitments made to perpetuate fraud, waste or abuse, or if WMATA wasotherwise prevented by law from acquiring the supplies delivered or the services provided.

2-8E RESPONSIBILITY

The following documentation is necessary in order to process a ratification in the Office of Procurement.

- (a) **Requesting Office.** This office is responsible for the completion of the process shown below. Completion of the requisite documentation is necessary for the CPRO and General Counsel's approval. However, completion of this documentation, itself does not require approval from either the CPRO or the General Counsel:
 - (i) A statement signed by the individual who made the unauthorized procurement commitment, or in the case where the person is no longer employed by WMATA, the statement shall be prepared by a person gathering the facts about the incident,describing the circumstances, including the reason that standard contracting/ procedures were not followed. The statement shall also identify the bona fide WMATA requirement which necessitated the commitment, the benefit(s) received by WMATA, its value, the relevant dates, and any other pertinent facts, as stated in the attached form. (See, Appendix "B").
 - (ii) Contractor supporting data, including original invoices and other documents that substantiate the transaction. In addition, PRMT may request that the contractor provide a letter explaining why the firm provided the product/service without a signed order or contract to authorize the procurement.
 - (iii) A complete purchase request to authorize funding for the unauthorized procurement commitment, certifying that funds are currently available; and

- (iv) Documentation verifying fairness and reasonableness of price, based on evaluation of actual costs incurred.

(b) **Chief Financial Officer/or OMBS Officer**

The OMBS or CFO is responsible for certifying the availability of funding in advance of approval of a ratification request. The OMBS or CFO will assist the requesting office in the identification, and if necessary, reprogramming, of funding to address the costs associated with the requested ratification.

The OMBS or CFO may refuse to certify a ratification request until funding has been identified sufficient to meet the costs associated with the request.

(c) **General Counsel.** This office is responsible for review and approval of the legal sufficiency of the ratification request documentation.

(d) **Office of Procurement.** The CO is responsible for review of any of the contractor's incurred costs according to the cost principles outlined in FAR part 31. After analyzing the documentation submitted by the Requesting Office, the CPRO, or a warranted contracting officer, will substantiate the following:

- (1) A valid requirement for the supplies/services existed at the time of the unauthorized commitment;
- (2) Supplies/services were provided to and accepted by WMATA. WMATA obtained or will obtain a benefit resulting from the unauthorized commitment;
- (3) Standard acquisition procedures could have been used for this acquisition;
- (4) The contracting action resulting from the ratification would have otherwise been proper if made by an authorized Contracting Officer, his delegate or an authorized Purchase Cardholder;
- (5) Funds are currently available to ratify the unauthorized procurement commitment
- (6) The price is fair and reasonable.
- (7) If approved, PRMT will prepare a proper contracting action. This action will include the following text:

STATEMENT OF RELEASE

In consideration of the (delivery/purchase/task order or contract) which is agreed to as complete payment for (supplies or services) provided on (date), the Contractor hereby releases WMATA from any and all liability for further claims attributable to such facts and circumstances giving rise to this (delivery/purchase/task order or contract).

- (8) If disapproved, PRMT shall consult with the Office of General Counsel (COUN) before further action is taken with the contractor.

2-8F ENFORCEMENT

The CPRO is responsible for the enforcement of this section. Violation of this policy regarding unauthorized procurement commitments for the first time will result in a written warning to all non-represented personnel involved. Non-represented personnel who become repeat offenders may be subject to any disciplinary action imposed by the CPRO, in consultation with the Department of Human Capital (HC) and the employee's supervisor, up to and including termination of employment. For represented personnel, the CPRO will consult with the appropriate union representative prior to imposing any discipline. Contractor personnel who engage in unauthorized procurement commitments may be subject to immediate termination.

2-8G RELATED POLICIES, REGULATIONS & RESOLUTIONS

- (a) Board Resolution 2011-30
- (b) Policy on Delegations for Written Agreements
- (c) Best Practices Manual

2-8H LIST OF APPENDICES, ATTACHMENTS OR FORMS

- (a) Determination Form for Determination to Ratify an Unauthorized Procurement Commitment
- (b) Create CLM Request for a Ratification Job Aid

DETERMINATION TO RATIFY AN UNAUTHORIZED COMMITMENT

Unauthorized commitment means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government. "Ratification," means the act of approving an unauthorized commitment by an official who has the authority to do so. For WMATA the ratification official is the Chief Procurement Officer.

Part I. Background (The person that committed the unauthorized action or the person doing the fact finding on this case shall describe the situation and actions that caused the unauthorized commitment.

1. Unauthorized Commitment (If known, enter the name and contact information for the individual who committed the unauthorized act.

2. Location: _____

3. Describe the service that was performed or the supply that was obtained: _____

4. Contracting Office: Washington Metropolitan Transit Authority Procurement

5. Unauthorized Commitment Amount: \$ _____

6. Vendor Name, Address, and Phone Number:

7. Contract Number: (Enter N/A or include contract number if the action is against an existing contract or a contract where the period of performance may have expired and work continued):

8. Period of Performance of the services or delivery date of the supply:

9. Reason for Unauthorized Commitment/Statement of Facts and Circumstances: (This should be a complete, yet concise description of the events related to the commitment. Provide all relevant details, including personnel involved and dates):

10. Describe whether there was a bona fide WMATA need for the supply or services and benefit received by WMATA:

11. Attach supporting documentation: Original invoices and other documents that substantiate the transaction, purchase description. Comment on whether you believe the price is fair and reasonable based on current market conditions or other factors such a previous purchase.

(Name and Signature)

Date

Part II. To be completed by Supervisor of the individual that committed the unauthorized action or of the individual completing the fact-finding report on this case:

1. Statement of Facts and Circumstances: (Comment on the factors cited in Part I above. State whether you concur with ratification of the act or non-concur with ratification.)

2. State what action(s) have been or should be taken to ensure this situation does not happen again.

3. Have prepared a valid purchase request in the amount of the unauthorized commitment being processed. Route the purchase request for review and approvals as done for routine PR processing.

(Name and Signature)

Date

Part III. To be completed by the OMBS delegate to the CFO or the CFO:

I certify funds ____ARE or ____ARE NOT available if the above action is ratified. Verify whether the funds available are ____Capital or ____Operating.

(Name and Signature)

Date

Part IV. Determination in Accordance with Information Required by the BPM (To be completed by the Contracting Officer):

1. Services/supplies have been provided to and accepted by WMATA or WMATA otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment.
Yes ☐ No ☐

2. Resulting contract would otherwise have been proper. Yes ☐ No ☐

3. Payment is recommended. Yes ☐ No ☐

5. Funds are available. Yes ☐ No ☐

6. The ratification is in accordance with all limitations described under WMATA procedures. Yes ☐ No ☐

Based on the information contained herein, ratification of this unauthorized commitment is recommended.

Recommended ☐ Not Recommended ☐

(Contracting Officer's Name and Signature)

Date

Part V. To be completed by the General Counsel or delegate:

Based on the information contained herein,

a. ☐ ratification IS ☐ IS NOT considered legally sufficient: Narrative comments:

b. ☐ ratification IS recommended: Narrative comments:

☐ IS NOT recommended: Narrative comments:

(Name and Signature)

Date

Part VI. To be completed by the WMATA Chief Procurement Officer (CPO)

Based on the information contained herein, I make the following determinations and findings:

- a. The purchase, if properly executed, would have been valid and benefit was received by WMATA.
- b. Prices for this ratification are considered fair and reasonable.
- c. Pursuant to my authority under BPM as amended by the GM delegation of ratification authority to the Chief Procurement Officer, and based on all factors cited in this document, ratification of the unauthorized commitment action is:

APPROVED ☐ DISAPPROVED ☐

I direct the Contracting Official, _____, to proceed with issuance of an appropriate contracting action to generate an award and move quickly to ensure payment to the supplier/service provider.

Chief Procurement Officer

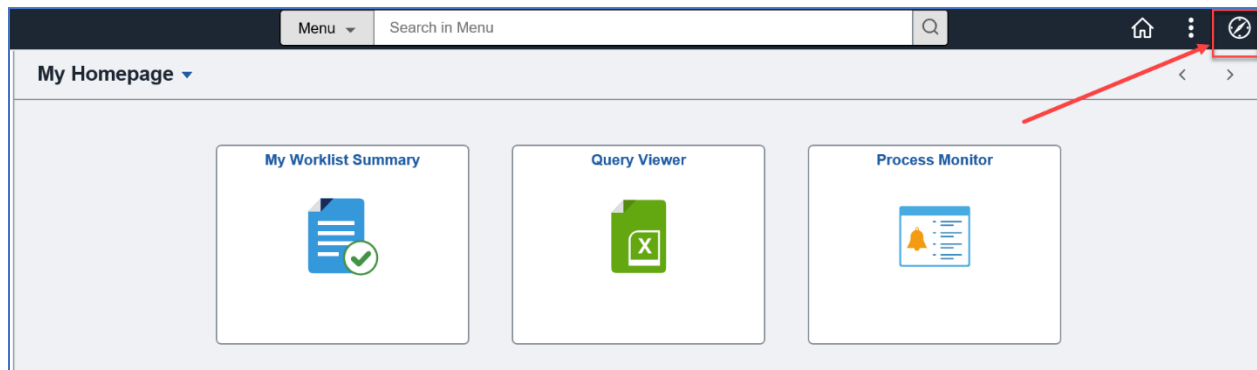
ATTACHMENT B

Introduction: This job aid demonstrates how to enter a procurement request for a ratification. The MOD OTHER request type is used for ratifications.

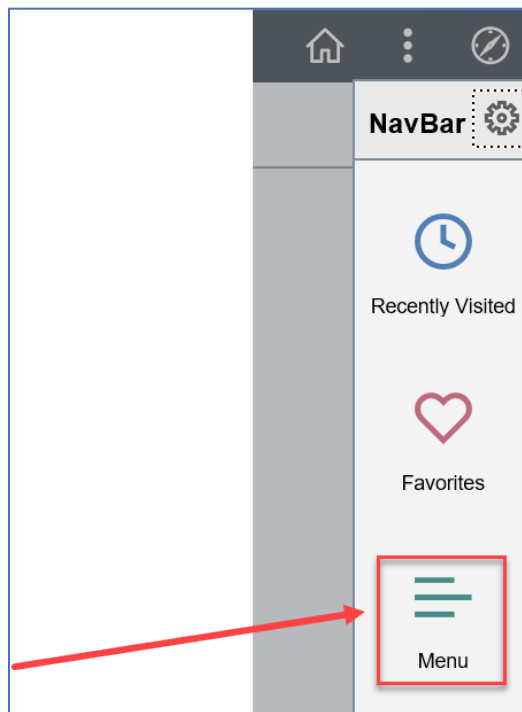
For a ratification, the Program requester enters the request, but Procurement marks it as a ratification. The table below outlines the ratification process.

Step 1 - Program	• Program creates a MOD OTHER Procurement Request and submits to Procurement. • Program notes in the request description that this is a ratification. • Program provides details of the ratification in the SOW. • Program does NOT mark the request as a Ratification. Procurement makes the final determination whether the request is a ratification.
Step 2 - Procurement	• Procurement marks the request as a Ratification and submits back to Program. • When Procurement marks the request as a Ratification, the system adds the Ratifications document to the request.
Step 3 - Program	• Program completes the Ratification document.

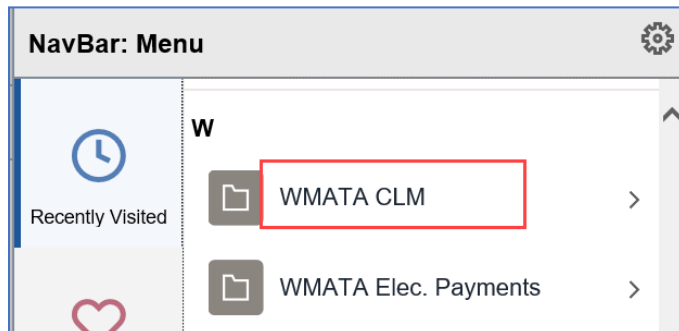
Step 1 - Program



Step	Action
1.	Begin navigating to the Pre-Solicitation page by clicking the NavBar .



Step	Action
2.	Click the Menu icon.



Step	Action
3.	Click the WMATA CLM menu item.



Step	Action
4.	Click the Pre-Solicitation menu item.

Menu > WMATA CLM

Pre-Solicitation

 Milestone Dashboard

 Pre-Solicitation

Step	Action
5.	Click the Pre-Solicitation menu item.

Pre-Solicitation

Find an Existing Value

Add a New Value

Business Unit: WMATA 

Procurement Request #: NEXT

Request Type: 

Expected Contract Value: 0.00

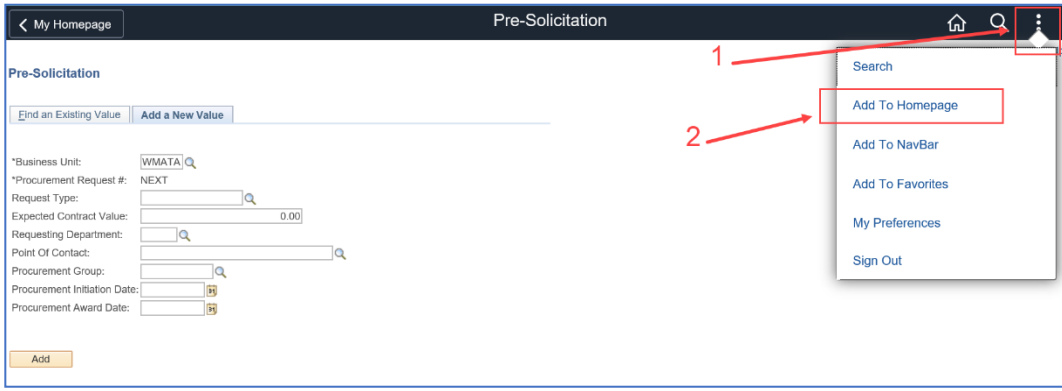
Requesting Department: 

Point Of Contact: 

Procurement Group: 

Procurement Initiation Date: 

Procurement Award Date: 

Step	Action
6.	The Pre-Solicitation page displays. Note: You can add the Pre-Solicitation to your Homepage by clicking the Actions > Add to Homepage menu items. Once the tile is on your Homepage, you can navigate to Pre-Solicitation with one click of the tile.  The screenshot shows the 'Pre-Solicitation' page. At the top, there is a navigation bar with a home icon, a search icon, and a user profile icon. A dropdown menu is open from the user profile icon, showing options: Search, Add To Homepage, Add To NavBar, Add To Favorites, My Preferences, and Sign Out. Red arrows indicate the sequence of actions: arrow 1 points to the user profile icon, and arrow 2 points to the 'Add To Homepage' option in the dropdown menu.

Pre-Solicitation

Find an Existing Value
Add a New Value

Business Unit:

WMATA

Procurement Request #:

NEXT

Request Type:

Expected Contract Value:

0.00

Requesting Department:

Point Of Contact:

Procurement Group:

Procurement Initiation Date:

Procurement Award Date:

Add

Step	Action
1.	Click Add .

Program

Procurement Request

Business Unit: WMATA Request Date: 12/28/2020 Procurement Request Status: Open
 Procurement Request #: NEXT Originator: Susan McDonough Procurement Package Status: Not Ready

*Title:

*Scope of Work Summary:
 This is a ratification.
 This is a ratification to a request for 30 new MTPD uniforms. An additional set of uniforms was needed and was added to the original request of 30 uniforms. See original request below.
 Original request:
 New uniforms are need to accommodate additional staff to the workforce in the past six months. The new uniforms must meet same specifications for exiting uniforms.

Required Dates

*Program Initiation Date:

*Requested Award date:

*Expected Contract Value: Funding Source:

*Request Type:

Modification Source:

Contract ID:

Plan ID:

Step	Action
2.	Enter a title in the Title field. The title should be a few words that capture what the request is for.
3.	Indicate this is a <u>ratification</u> in the Scope of Work Summary field. This field has a character requirement of 140-2,000 words.
4.	Enter a Program Initiation Date . This is the date the request package should be completed and ready for Procurement to process.
5.	Enter a Requested Award Date . This date is based on the Procurement Administrative Lead Time (PALT). Note: See a complete chart of PALT dates at the end of this document.
6.	Enter the total amount of the request in the Expected Contract Value field. Note: Be sure to be as accurate as possible with this amount. Once you save the request, this amount cannot be edited.
7.	Select MOD OTHER from the Request Type field.
8.	Select the applicable source document from the Modification Source field.

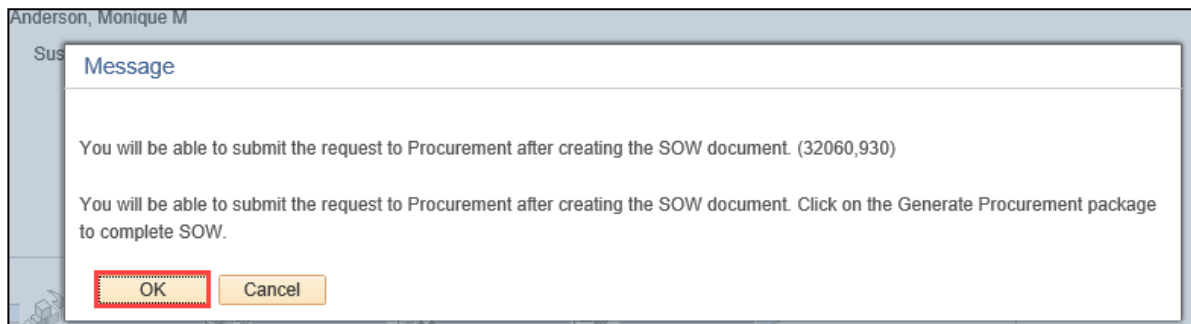
*Requesting Department:	MTPD	Metro Transit Police Dept
*Procurement Group:	MTPD	Metro Police Department
Procurement Manager:	E025757	Anderson, Monique M
Point Of Contact:	D047437	Susan McDonough
On Behalf of Department:		
*Commodity Code:	Goods	
*Requested Funding Type:	OPERATING	

Step	Action
9.	Enter a Requesting Department field.
10.	Enter the Procurement Group field.
11.	Enter the Point of Contact . This is someone who can work the mod on your behalf. The person must have the same requesting role as you.
12.	Leave the On Behalf of Department field blank.
13.	Select the Commodity Code .
14.	Select the Requested Funding Type . Note: If you select capital funds, you need to enter a Project ID .

Comment
MTPD Uniforms

Existing Comments
Save Cancel Generate Procurement Package Cancel Procurement Request Submit & Notify Pro

Step	Action
15.	Enter comments in the Comment field.
16.	Click Save .



Step	Action
17.	Click OK to accept the message.

Comment

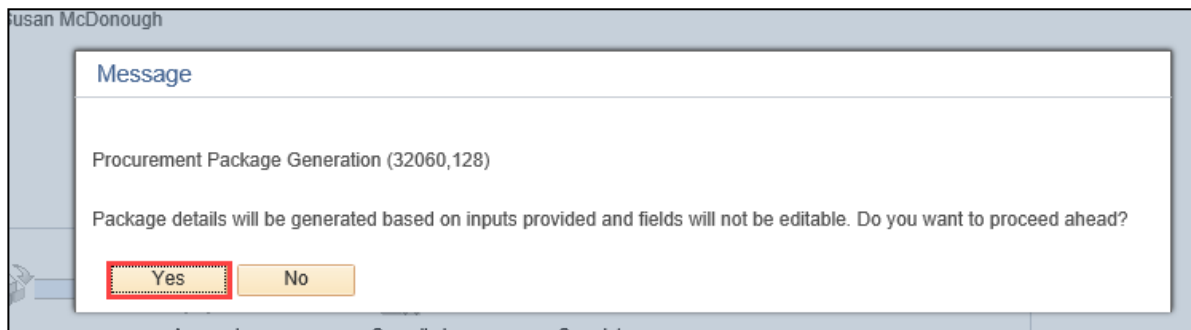


Existing Comments

[Susan McDonough 2020-12-17-08.42.34.000000]
MTPD Uniforms

Save Cancel **Generate Procurement Package** Cancel Procurement Request Submit & Notify Procur

Step	Action
18.	Click the Generate Procurement Package button. Note! Check your entries before generating the Procurement Package. Once the package is generated, most entries cannot be changed.



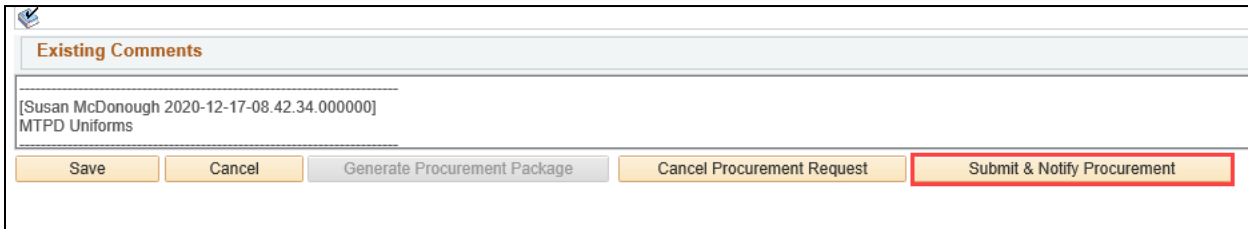
Step	Action
19.	Click Yes .

Procurement Package				
Description	Create/Modify	Reference number	Status	Last Updated
Scope, ICE Document	Create a Scope, ICE Document			
Requisition	Create a Requisition			
Insurance Requirement (by RISK)	Create an Insurance Requirement Document			
Refresh Use Refresh Button to refresh Procurement Package Values.				

Step	Action
20.	The next step is to create the Scope, ICE document for a MOD. See the Create Procurement Request Document – SCOPE, ICE job aid for these steps.

Procurement Package				
Description	Create/Modify	Reference number	Status	Last Updated
Scope, ICE Document	Modify Scope, ICE, SEP Document	SOW0008307	Draft	12/17/2020
Requisition	Create a Requisition			
Insurance Requirement (by RISK)	Create an Insurance Requirement Document			
Refresh Use Refresh Button to refresh Procurement Package Values.				

Step	Action
21.	After creating and submitting the SCOPE, ICE document, click Refresh To update the status to Draft .



Existing Comments

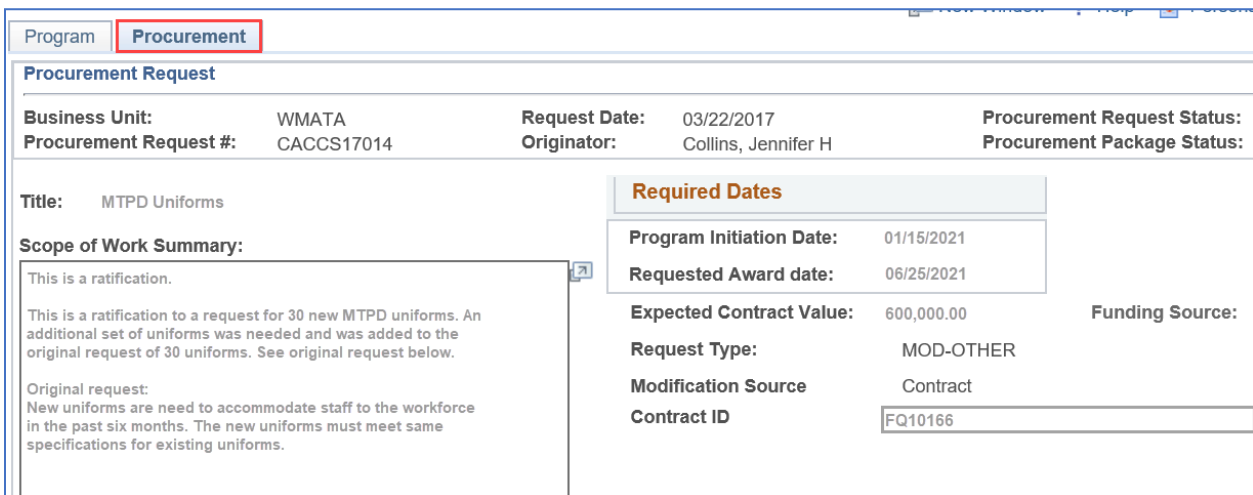
[Susan McDonough 2020-12-17-08:42:34.000000]
MTPD Uniforms

Save Cancel Generate Procurement Package Cancel Procurement Request **Submit & Notify Procurement**

Step	Action
22.	Click the Submit & Notify Procurement button.

Step 2 – Procurement

When Procurement receives the request, they mark the request as a Ratification from the Procurement tab. The two screens below show the fields Procurement completes.



Program **Procurement**

Procurement Request

Business Unit: WMATA Request Date: 03/22/2017 Procurement Request Status:
Procurement Request #: CACCS17014 Originator: Collins, Jennifer H Procurement Package Status:

Title: MTPD Uniforms

Scope of Work Summary:

This is a ratification.

This is a ratification to a request for 30 new MTPD uniforms. An additional set of uniforms was needed and was added to the original request of 30 uniforms. See original request below.

Original request:
New uniforms are need to accommodate staff to the workforce in the past six months. The new uniforms must meet same specifications for existing uniforms.

Required Dates

Program Initiation Date: 01/15/2021
Requested Award date: 06/25/2021

Expected Contract Value: 600,000.00 Funding Source:
Request Type: MOD-OTHER
Modification Source: Contract
Contract ID: FQ10166

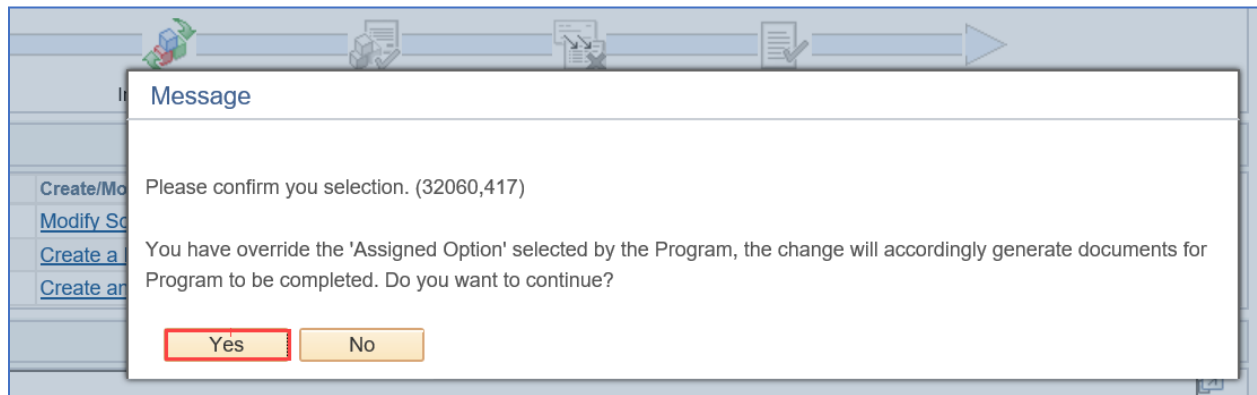
Step	Action
23.	Click the Procurement tab.

Contract Personnel		Assigned Options:
*Procurement Manager:	E013191	Stewart, Christopher
*Contract Administrator:	E013508	Blanton, Alicia
*Contract Manager:	E025757	Anderson, Monique M
*Contract Officer:	E025757	Anderson, Monique M
Socio-Economic Program - Procurement		Ratification ☒ Yes ☐ No Full and Open Competition ☐ Yes ☒ No Include RISK ☒ Yes ☐ No DOT Safety Sensitive (OHAW) Yes DOT Safety Sensitive Code Revenue Service

Step	Action
24.	Enter the Contract Administrator .
25.	Click the Contract Manager .
26.	Click the Contract Officer .
27.	Mark the “Yes” Ratification radio button.
28.	Mark the applicable option for Full and Open Competition .
29.	Mark the applicable option for Include RISK .
30.	Mark the applicable option for DOT Safety Sensitive (OHAW) .

Comment
Marking the request as a Ratification
Existing Comments
[Susan McDonough 2020-08-26-10.47.46.000000] Requesting additional funds
Pushback PRN Save Cancel Submit & Notify Program

Step	Action
31.	Enter comments in the Comment field.
32.	Click Save .
33.	Click the Submit & Notify Program field.



Step	Action
34.	Click Yes to confirm your selections in the Assigned Options section.

Procurement Package

Description	Create/Modify	Reference number	Draft	Last Updated
Scope, ICE, SEP Document	Modify Scope, ICE, SEP Document	SOW0007625	Draft	08/10/2020
D&F Document	Create a Determination and Findings Document			
Requisition	Create a Requisition			
Insurance Requirement (by RISK)	Create an Insurance Requirement Document			
Ratification Document	Create Ratification Document			

Comment

Updating funds

Existing Comments

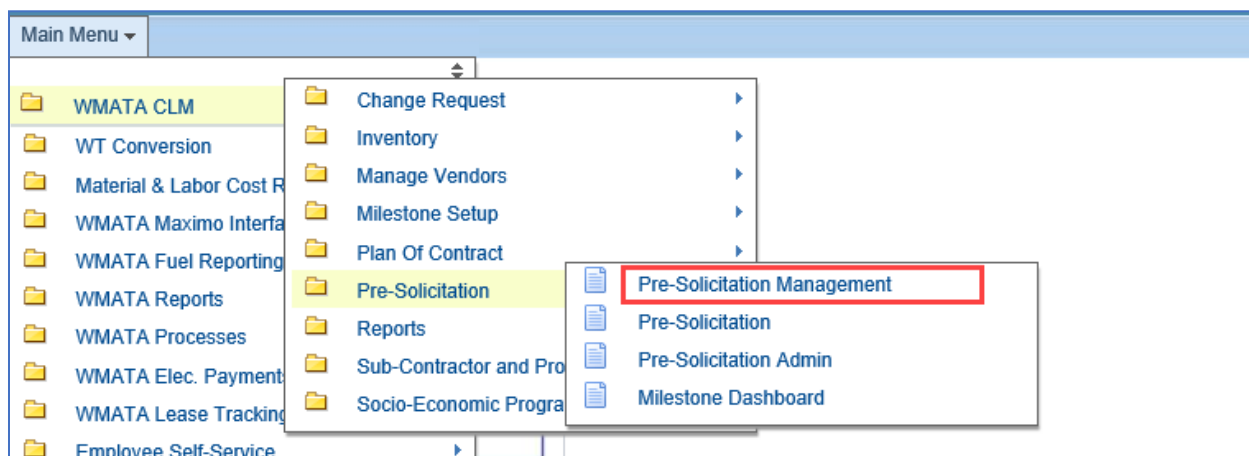
[Susan McDonough 2020-08-10-12.39.00.000000]
Updating funds

Pushback PRN Save Cancel Submit & Notify Program

Step	Action
35.	The Ratification document is now added to the Procurement Package. End of procedure.

Step 3 – Program

After Procurement marks the request as a Ratification, you need to access the request and complete the Ratification document.



Step	Action
1.	Navigate to the Pre-Solicitation Management page using this menu path: <i>Main Menu > WMATA CLM > Pre-Solicitation > Pre-Solicitation Management</i>

Pre-Solicitation Management

*Business Unit: Expected Contract Value: Originator:

Procurement Request #: Requesting Department: Funding Type:

Request Type: Point Of Contact: Contract ID:

Contract Type: Procurement Group: DOT Safety Sensitive (OH):

Procurement Request Status: Procurement Package Status: Include RISK:

Title (begins with): Contract Administrator: COTR:

Date Filters

Request From Date: To Date: Requested Award date: To Date:

Program Initiation Date: To Date:

Step	Action
2.	Enter search criteria to find the procurement request you need and click the Search button.

Results									
Procurement Request #	Title	Procurement Request Status	Procurement Package Status	Request Type	Funding Type	Requesting Department	Expected Contract Value	Originator	Point of Contact
CMTPD21015	MTPD Uniforms	In Process	Not Ready	MOD-OTHER	OPERATING	MTPD	600000.00	Susan McDonough	Susan McDonough
Find an Existing Value Add a New Value									

Step	Action
3.	Click the link for the procurement request you need.

Procurement Package				
Description	Create/Modify	Reference number	Status	Last Updated
Scope, ICE Document	Modify Scope, ICE, SEP Document	SOW0008307	Draft	12/17/2020
Requisition	Create a Requisition			
Insurance Requirement (by RISK)	Create an Insurance Requirement Document			
Ratification Document	Create Ratification Document			
Refresh Use Refresh Button to refresh Procurement Package Values.				

Step	Action
4.	Click the Create Ratification Document link to create the document.

Add a Document

Source Transaction: Ad Hoc
SetID: SHARE
Document Type: Ratification Template
Ad Hoc ID: NEXT

*Description: Payment on Contract

Add a Document

Step	Action
5.	Enter a description for the Ratification document.
6.	Click the Add a Document button.

Create Document

Source: Ad Hoc [Return to Document Search](#)

SetID: SHARE Ad Hoc ID: RTF0000003

Document Type: Ratification Template
Configurator ID: WT_CL_RATIFICATION Ratification Template

*Description: Payment on Contract

*Administrator: D047437 Susan McDonough

Sponsor:

*Begin Date: 12/17/2020 Expire Date:

*Approving Department: 18220

Create Document

Import Document

Save

[Internal Contacts/Signers](#)
[External Contacts/Signers](#)
[Document View Access](#)
[View Supporting Documents](#)

Step	Action
7.	Enter an approving department.
8.	Click Save .
9.	Click the Create Document button.

Document Management

Return to Document Search

SetID: SHARE

Ad Hoc ID: RTF0000003

Document Type: Ratification Template

Description: Payment on Contract

Administrator: Susan McDonough

Sponsor:

Department:

Begin Date: 12/17/2020

Expire Date:

Version: 0.00

Created On: 12/17/20 11:27AM

Status: Draft

Last Modified On: 12/17/20 11:27AM

Document Details

View and Edit Options:

Review and Approval:

Other Document Actions:

View Document

Route Internally

Send to Contacts

Edit Document

Preview Approval

Refresh Document

Submit for Approval

Recreate Document

Add Attachments/Related Documents

Create Document

Step	Action
10.	Click the Edit Document button.

Do you want to open or save **SHARE_RTF0000003_0.00.xml** from **f5pfspar.wmata.com**?

Open
Save

Step	Action
11.	Click Save to save the document to your computer.

Do you want to open or save **SHARE_RTF0000003_0.00.xml** from **f5pfspar.wmata.com**?

Open
Save

Step	Action
12.	Click Open to open the procurement record in Word. Note: - You need to open the document in Word. If Word is not the default program, please see the How to Resolve PS Document Opening Error job aid. - Do not change the xml file extension or the file name. Changing the xml or file name will cause the upload to error out.



Washington
Metropolitan
Area
Transit
Authority

Ratification Document

Project Title: MTPD Uniforms

PRN ID: CMTPD21015

Ratification ID: RTF0000003

Step	Action
13.	Update the ratification document as needed.

An unauthorized commitment means an agreement that is not binding solely because the person who made it lacked the authority to enter into that agreement on behalf of the Washington Metropolitan Area Transit Authority (WMATA). "Ratification," means the act of approving an unauthorized commitment by an official who has the authority to do so. For WMATA the ratification official is the Chief Procurement Officer.

Part I. Background (The person that committed has knowledge of the facts or the person doing the fact finding on this case shall describe the situation and actions that caused the unauthorized commitment.)

1. Unauthorized Commitment (If known, enter the name and contact information for the individual who committed the unauthorized act.)

2. Location

3. Describe the service that was performed or the supply that was obtained:

4. Contracting Office: Washington Metropolitan Transit Authority Procurement

Step	Action
14.	Above is an example of Page 1 of the Ratification Document cover page.

Part II. To be completed by Supervisor of the individual that committed the unauthorized action; person who has knowledge of the unauthorized action; or of the individual completing the fact-finding report on this case:

1. Statement of Facts and Circumstances: (Comment on the factors cited in Part I above. State whether you concur with ratification of the act or non-concur with ratification.)

2. State what action (s) have been or should be taken to ensure this situation does not happen again.

3. Have prepared a valid purchase request in the amount of the unauthorized commitment being processed. Route the purchase request for review and approvals as done for routine Procurement Requisition (PR) processing.

Step	Action
15.	Above is an example of Page 2 of the Ratification Document cover page.
16.	Save and close the document.

Document Management

SetID: SHARE
Document Type: Ratification Template
Description: Payment on Contract
Administrator: Susan McDonough
Sponsor:
Begin Date: 12/17/2020

Ad Hoc ID: RTF0000003
Department:
Expire Date:

Version: 0.00
Status: Draft

Created On: 12/17/20 11:27AM
Last Modified On: 12/17/20 11:44AM
Checked Out On: 12/17/20 11:44AM
Checked Out By: D047437

View and Edit Options:

View Document

Check In

Cancel Check Out

Review and Approval:
[Approval Details](#)
[Internal Contacts/Signers](#)
[External Contacts/Signers](#)
[Document View Access](#)

Other Do
[Generativ](#)
[View Sup](#)

Step	Action
17.	Click the Check In button.

Check In Document

Select the desired versioning option and enter a brief description describing the changes. Click the OK button to proceed and you will then be prompted to enter filename for where the file you are checking in resides.

SetID: SHARE Ad Hoc ID: RTF0000003

Version: ☐ Minor Version (0.01)
☒ Major Version (1.00)

*Comments:

OK Cancel

Step	Action
18.	Click OK .

Check In Document

? Help

C:\Users\C047437\Downloads\SHARE_RTF0000003_C Browse...

Upload Cancel

Step	Action
19.	Click the Browse button and select the Ratification document.
20.	Click Upload .

Document Management

Return to Document Search

SetID: SHARE
Ad Hoc ID: RTF0000003

Document Type: Ratification Template

Description: Payment on Contract

Administrator: Susan McDonough

Sponsor:
Department:

Begin Date: 12/17/2020
Expire Date:

Version: 1.00

Created On: 12/17/20 11:27AM

Document Details

Status: Draft

Last Modified On: 12/17/20 11:50AM

View and Edit Options:

View Document

Edit Document

Add Attachments/Related Documents

Review and Approval:

Route Internally

Preview Approval

Submit for Approval

Other Document Actions:

Send to Contacts

Refresh Document

Recreate Document

Step	Action
21.	You can submit the Ratification document once the SOW and Requisition are approved. End of procedure.

2-9 ORGANIZATIONAL CONFLICTS OF INTEREST

- (a) *Definition* An “organizational conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to WMATA, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. An organizational conflict of interest occurs when any of the following circumstances arise:
- i. *Lack of Impartiality or Impaired Objectivity* When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances. Such an organizational conflict of interest would occur, for example, if the service the contractor is to perform under a contract with WMATA might involve that contractor in evaluating its own performance or the performance of an affiliate under another WMATA contract.
 - ii. *Unequal Access to Information* The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract. Such an organizational conflict of interest would occur, for example, in the contractor’s service under a prior contract gave it access to nonpublic, proprietary information of a company competing with it for a subsequent contract. It merits note that relevant case law makes clear that no unfair competitive advantage is created by an offeror’s prior performance of a particular requirement. WMATA is under no obligation to equalize other offerors with an incumbent by providing information in the hands of the incumbent due to prior performance of the requirement.
 - iii. *Biased Ground Rules* During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements.
- (b) *Prohibition Against Organizational Conflicts of Interest:* WMATA shall analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the procurement process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award. In any instance in which WMATA first becomes aware of an organizational conflict of interest after contract award, it shall conduct a review to determine whether the organizational conflict of interest was reasonably foreseeable and should have been identified by the contractor prior to award. In an instance where WMATA first becomes aware of an organizational conflict of interest after award, the Chief Procurement Officer may in his/her discretion terminate the contract or, if reasonably possible, take appropriate steps to avoid, neutralize or mitigate such organizational conflict of interest.
- (c) *Identifying and Addressing Organizational Conflicts of Interest* The contracting officer and designated COUN attorney shall analyze every planned procurement to determine whether there is an opportunity for an actual or

apparent conflict of interest. The clause shown in the following subsection requiring offerors to identify any potential or actual organizational conflict of interest shall be included in all solicitations, absent a written determination by the contracting officer and the cognizant COUN attorney that there is no opportunity for an actual or apparent conflict of interest and such a clause is not necessary for the procurement. In any instance where a potential or actual organizational conflict of interest is identified, the procurement shall be reviewed by the Chief Procurement Officer and the General Counsel. The Chief Procurement Officer shall be responsible for ensuring that such organizational conflict of interest is appropriately avoided, neutralized or mitigated. The Chief Procurement Officer shall not act to address an organizational conflict of interest without concurrence from the General Counsel.

- (d) *Contract Clause Regarding Conflicts of Interest:* Contractors are expected to notify WMATA to what they believe to be potential conflicts of interest and to offer a workable solution. To alert contractors to and prevent conflicts of interest, Contracting Officers shall require that the following clause be inserted in all solicitations, absent a written determination by the contracting officer and the COUN attorney that there is no opportunity for an actual or apparent conflict of interest and such a clause is not necessary for the procurement:

CONFLICT OF INTEREST

In the event that a bidder/proposer believes that it or any of its potential subcontractors may have an organizational conflict of interest (a situation in which it may be perceived to enjoy an unfair competitive advantage, or which may impair its objectivity in performing the contract work), it shall notify the Contracting Officer in writing, identifying the nature and circumstances of the perceived conflict and proposing appropriate measures to eliminate or mitigate the situation. The Contracting Officer will review the circumstances and the proposed mitigation and notify the bidder/proposer accordingly, determining that no mitigation is required, or accepting the proposed measures, or recommending additional measures, or that the conflict cannot be mitigated. The failure of a proposer to identify such perceived conflicts may result in the proposer being disqualified from the competition, or any contract award being rescinded or terminated for default. Should a successful proposer identify after award a conflict which it could not reasonably have anticipated prior to award, it shall promptly notify the contracting officer, who shall consider steps to mitigate or eliminate the conflict. Should no such steps be feasible, the Contracting Officer may terminate the contract in accordance with the contractual provisions regarding termination for the convenience of the Authority.

2-10 STANDARDS OF CONDUCT

- (a) Authority procurements shall be conducted in a manner above reproach and, except as authorized by law, with complete impartiality and without preferential

treatment. The Compact (Article III Section 10) provides in part that no Director ("Director" as used in this Section refers to any member of the Authority's Board of Directors), Officer, or employee shall:

- Have a financial interest, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the Board or the Authority is a party; and
- In connection with services performed within the scope of his official duties, solicit or accept money or any other thing of value in addition to the compensation or expenses paid to him by the Authority.

(b) The Compact further provides that:

- Any director, officer or employee who shall willfully violate any provisions of this section shall, in the discretion of the Board, forfeit his office or employment; and
- Any contract or agreement made in contravention of this section may be declared void by the Board.

(c) It is the policy of the Authority that all personnel shall perform their official duties in such manner as to avoid even the appearance of a conflict of interest. No employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those previously listed has a financial or other interest in the firm considered for selection or award. This provision is applicable to individuals involved in any aspect of the acquisition lifecycle, including but not limited to serving on a Technical Evaluation Team (TET).

(d) No employee, officer, agent, or board member may solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. Policy/Instruction 7.8.10 ("P/I 7.8.10") establishes the Authority's Standards of Conduct and defines its policy on conflicts of interest, gratuities, negotiation for employment, post-Authority employment restrictions and related matters. This regulation applies to all Authority personnel in the exercise of their Authority duties. All procurement personnel must ensure that they complete the 7-8-10-3 (The Confidential Statement of Affiliations and Financial Interest) form on an annual basis and are familiar with and follow the requirements of P/I 7.8.10 as revised.

(e) Any violation of these standards may be cause for disciplinary action, including dismissal, if appropriate. In order to assure that contractors are put on proper notice, Contracting Officers shall insert, in all contracts, the General Provision articles titled "Officials Not to Benefit" and "Gratuities", which are prescribed in Chapter 23 – Procurement Forms and Provisions.

2-11 REPORTING OF SUSPECTED IMPROPER OR UNLAWFUL CONDUCT

(a) Contracting Officers shall report to the CPRO suspected improper or unlawful conduct in connection with procurement activities, including suspected anti-trust violations, as soon as practicable after discovery, including:

- Identical bids when the procurement is estimated to exceed the simplified acquisition threshold.
 - Bids containing evidence of anti-trust law violations. In this case, the CPRO shall consult with COUN as soon as practicable, to ascertain whether a reasonable basis exists for believing that collusion has occurred amongst any businesses, for purposes of defrauding the Authority. The CPRO should notify the Authority's Transit Police Department and the Office of the Inspector General after consulting with COUN.
- (b) Practices or events that may include violations of anti-trust laws include the following:
- The existence of an "industry price list" or "price agreement" to which a contractor refers in formulating its offer;
 - A sudden change from competitive bidding to identical bidding;
 - Simultaneous price increases or follow-the-leader pricing;
 - Rotation of bids or proposals, so that each competitor takes a turn in sequence as the low bidder, or so that certain competitors bid low only on some sizes of contracts and high on other sizes;
 - Division of the market, so that certain competitors bid low only for contracts solicited by certain agencies, or for contracts in certain geographic areas or on certain products, and bid high on all other contracts;
 - Establishment by competitors of a collusive cost or price estimating system;
 - The filing of a joint bid by two or more competitors when at least one of the competitors has sufficient technical capacity and/or productive capacity for performance, unless such joint bid is for the purpose of promoting the Authority's Disadvantaged Business Enterprise ("DBE") Program (Chapter 7).
 - Incidents suggesting direct collusion among competitors, such as the appearance of identical calculations or spelling errors in two or more competitive offers, or the submission by a single firm of offers for other firms; or
 - Assertions by employees or former employees, or competitors or proposers, that an agreement to restrain trade exists.

2-12 PROHIBITION AGAINST CONTINGENT FEES

- (a) "Improper influence", as used in this section, means any influence that induces or intends to induce an Authority employee or office to give consideration to or to act regarding an Authority contract on any basis other than the merits of the contract. To prevent the actual or attempted exercise of improper influence by a contractor, their agents or representatives upon Authority personnel for purposes of obtaining Authority contracts, each solicitation shall:
- Contain language giving notice to prospective contractors of the prohibition against contingent fee arrangements; and
 - Require contractor agreement to a covenant against contingent fees.
- (b) Contracting Officers shall not award any contract to a contractor that has made arrangements to pay a contingent fee or other consideration for soliciting or obtaining a contract unless the contingent fee arrangement is between contractors and their bona fide employees or agencies.

- (c) If a Contracting Officer has reason to believe that a prospective contractor is or has been involved in a contingent fee arrangement, the Contracting Officer shall inform the CPRO, in writing, including any evidence or documentation of the alleged agreement. If the CPRO determines that a prospective contractor has entered into an agreement to pay a prohibited contingent fee, the Contracting Officer shall notify the prospective bidder that it is no longer eligible for award of the contract. If the CPRO determines that the contractor has already paid a prohibited contingent fee under an existing contract, the Contracting Officer shall terminate such existing contract or take other appropriate remedial action.
- (d) To prevent contingent fees, Contracting Officers shall require that the following clause be inserted in the Representations, Certifications, and Acknowledgements section of all solicitation documents:

COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose for securing business. For breach or violation of this warranty, the Authority shall have the right to annul this Contract without liability or in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee. By submission of this [bid or proposal] the [bidder or proposer] certifies, and in the case of a joint [bid or proposal], each party thereto certifies as to its own organization, that in connection with this procurement:

- (a) It [] has, [] has not, employed or retained any company or persons (other than a full-time, bona fide employee working solely for the [bidder or proposer]) to solicit or secure this contract, and
- (b) It [] has, [] has not, paid or agreed to pay any company or person (other than a full-time, bona fide employee working solely for the [bidder or proposer]) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract.

2-13 REVOLVING DOOR RESTRICTION

- (a) *General:* Contracting Officers must give notice to contractors that they are not to offer employment to any officer or employee of the Authority who has been involved, directly or indirectly, in any matter of financial interest to the contractor until at least one year after the officer or employee has ceased employment with the Authority. This restriction may be waived by the CPRO if the Authority officer or employee has ceased involvement in or responsibility for the matter; or if the Authority officer or employee has been subject to a reduction in force.

- (b) The following clause shall be inserted in all Authority contracts:

EMPLOYMENT RESTRICTION WARRANTY

- a) The Contractor warrants that it will not offer employment to any officer or employee of the Washington Metropolitan Area Transit Authority ("Authority") who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least one year after the officer or employee has ceased involvement in or responsibility for the matter.
- b) The Contractor further warrants that it will not employ any Authority officer or employee who has had direct responsibility for any matter of financial interest to the Contractor within the year prior to the retirement or termination of the officer or employee until at least one full year after such officer or employee has left the employment of the Authority.
- c) The one-year requirement described in this provision may be waived at the discretion of the Chief Procurement Officer, if the Authority employee or former employee has been subject to a Reduction in Force; in such case the Contracting Officer will provide the Contractor with a letter to that effect.
- d) If a waiver is granted, or if a former officer or employee of the Authority is eventually hired, the Contractor shall be responsible for ensuring that the former officer or employee is not directly involved in negotiating or otherwise dealing with the Authority on any particular matter over which such employee had responsibility during his or her period of employment at the Authority.
- e) Should the Contractor fail to comply with paragraphs a), b) or d) above, the Contracting Officer shall have the right to withhold payment under this Contract in an amount not to exceed 2% of the total Contract amount as liquidated damages to the Authority, such withholding to be in addition to any other withholding under this Contract. Further, the Authority shall consider such violation in evaluating the Contractor's responsibility in connection with the award of any other Authority Contract.

2-14 CONTRACTOR EMPLOYEE CRIMINAL BACKGROUND CHECK

WMATA, as a direct recipient of FTA funds, shall require that each of its safety-sensitive contractors and their agents fully comply with 49 C.F.R. Parts 655 and 40, and oversee the drug and alcohol testing programs of its safety-sensitive contractors. Additionally, pursuant to WMATA Policy Instruction 11.3/4, WMATA requires that all contractor employees and candidates for employment undergo and pass criminal background screenings before being eligible to work on WMATA's property and facilities.

WMATA contractors shall contract with or engage a reputable third-party vendor to

conduct criminal background screenings of all contractor personnel who will have access to WMATA's customers, WMATA's property, or WMATA's information in connection with its contract. This requirement also applies to contractors who engage with the general public on WMATA's behalf.

WMATA contractors shall screen for criminal convictions, all contractor personnel who will have access to WMATA's customers, the general public, WMATA's property, or WMATA's information and who work on a WMATA contract during each calendar year within the contract's period of performance, taking into consideration: (1) the nature of the services or work being performed under the contract with particular regard for the individual's access to, and interaction with, WMATA's customers, property, and confidential information; (2) the nature or gravity of the offense or conduct resulting in a criminal conviction; and (3) the time that has lapsed since the conviction and/or completion of the sentence. The contractor will provide certification that it conducted these screenings to the Contracting Officer's Technical Representative (COTR) on a quarterly basis, on a form provided.

The Contractor shall submit to the COTR a list of all employees and agents who will require Contractor access badges not less than 7 days prior to the date on which access will be required.

The contractor shall determine that all contractor personnel working on a WMATA contract during the calendar year passed the contractor's criminal background screening and will be in good standing and otherwise fit to work on the contract.

The contractor shall ensure it has not obtained or otherwise been made aware of any information about any contractor personnel working on a WMATA contract that contradicts or otherwise impacts the contractor's determination that such persons passed the contractor's criminal background screening and/or are fit to work on a WMATA Contract.

The Contractor will flow this requirement down to all of its subcontractors who will have access to WMATA's customers, the general public, WMATA's property, or WMATA's information within the contract's period of performance.

The COTR performs oversight during the contract's period of performance to ensure that the safety-sensitive contractor: 1) complies with the DOT/FTA regulations on all contracts that may involve FTA funds; 2) complies with WMATA Policy Instruction 11.3/4 on all contracts that may involve safety-sensitive functions; 3) ensure the Criminal Background Screening Certification (Quarterly) and Certification Required for all Safety-Sensitive Contracts are included in all FTA funded and WMATA safety-sensitive contracts; and 4) enforce sanctions for non-compliance.

2-15 PROCUREMENT RECORD AND CHECKLISTS

Contract Administrators must assemble all relevant written records for all procurements. These requirements are addressed in greater detail in chapters 8 through 13. The records will be collected into a single file and placed into the Authority's record keeping system. To ensure all relevant procurement processes are followed and all required documents are included in the procurement record file, the appropriate checklist (refer to Appendix A for checklists) must be completed by the

Contracting Officer to ensure that the proper procurement processes have been followed, all considerations relevant to the procurement process have been addressed, and all components of the procurement file shall be assembled no later than 30 days after contract award. The procurement record and checklist must be reviewed by the contract manager and procurement manager. Following the review, the contract manager and the procurement manager must sign the checklist. Following this review, the procurement record including the completed checklist will be reviewed by the assigned COUN attorney to ensure legal sufficiency of the procurement.

At the conclusion of the review process, the procurement record is received for placement in the Authority's filing system; the record must be checked to ensure that:

- The contract checklist has been prepared and checked by the appropriate PRMT management and COUN;
- The procurement record includes all relevant documentation including, but not limited to, the rationale for the method of procurement, selection of contract type, and contractor selection, basis for contract price, the independent cost estimate, cost or price analysis, and evidence that the System for Award Management ("SAM"), formerly the Excluded Parties List System ("EPLS") search was successfully conducted in the file; and
- The contract manager, procurement manager and COUN attorney have signed the contract checklist.

If any of these requirements have not been met, the procurement file must be returned to the Contract Administrator for completion prior to its acceptance into the record keeping system.

2-16 ACCESS TO PEOPLESOFT PROCUREMENT APPLICATIONS

(a) *General*

The Office of Procurement and Materials is the owner of all procurement related data. Access to create, view or modify any of the procurement data must be approved by Procurement. The processes and procedures listed in this section must be followed to obtain access to the PeopleSoft Financials and Supply Chain Management (FSCM) modules.

(b) *Data & Technology Management*

All request for access to PeopleSoft Financials and Supply Chain Management (FSCM) must have user roles assigned, approved and provisioned by Data & Technology Management.

(c) *Metro IT Security*

Once the user role(s) have been provisioned by Data & Technology Management, Metro IT Security will create the users account, set-up the requested roles for access to PeopleSoft FSCM.

(d) *Implementing Procedures*

The following steps list the process for obtaining access to PeopleSoft FSCM components:

- The user must submit a "PeopleSoft-Fin Access Request Form" from

Metroweb under Applications > PeopleSoft – FIN > PeopleSoft-FIN Access Request Form.

- The user must complete the form including their current office information and actions to be performed in the system.
- All Access Request Forms will process through an electronic approval workflow and must be approved by the user's Director.
- An email will be sent to the Data Owners within the functional area with requested details after the user's department Director Approval.
- The Functional Area Data Owner will notify the user of any training requirements that needs to be completed prior to requesting specific role assignments from Metro IT Security.
- If the user requires training, the identified training must be completed before the request form can be processed.
- When training has been completed, the Functional Area Data Owner will approve the request form and forward the request to Metro IT Security to set-up the user profile with the specific role(s) access.
- Once access to PeopleSoft FSCM is completed, an email notification will be sent from Metro IT Security informing the user the set-up process is complete.

(e) *Maintaining User Roles and Responsibilities*

In the event an employee has a job change, an IAM request must be submitted to remove existing user roles and request new user role be assigned to perform their new job functions in PeopleSoft FSCM. The form will be processed in the same manner listed in the Implementing Procedures.

(f) *Workflow Reassignments*

In the event a workflow reassignment needs to occur due to the current approver being unavailable (e.g., leave, sick, etc.), resigned, terminated, Program Office must send an email to procadmin@wmata.com specifying the affected workflow action and provide the replacement employee to temporarily assign to ensure that the routing of existing documents continues without interruption.

(g) *Termination & Resignations*

- In the event an employee is terminated or resigns, HC will inform Metro IT Security requesting immediate access removal and the former employee will not be able to access PeopleSoft FSCM components.
- Metro IT Security will remove access to on-demand and scheduled actions and inform the Workflow Administrator so any workflow reconfiguration can be accomplished.
- If the former employee has any Approver roles, the Program Office must send an email to procadmin@wmata.com specifying the affected workflow action and provide the replacement employee to temporarily assign to ensure that the routing of existing documents continues without interruption.
- Once Metro IT Security removes a specific role(s) from the employee, the user will not be able to access those specific PeopleSoft FSCM components.

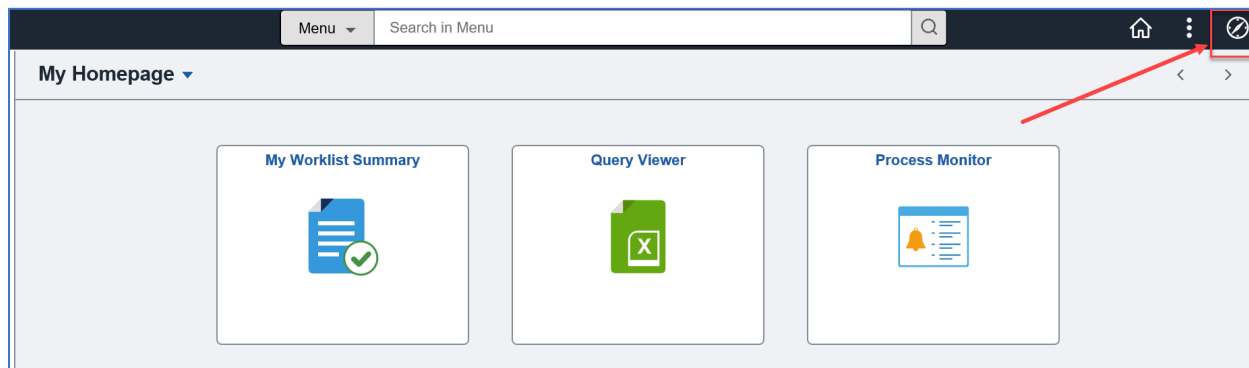
2-17 PLAN OF CONTRACTS

- (a) *General* All procurement actions greater than \$250,000 (on an absolute values basis) including new procurement actions, modifications to existing contracts and exercising contract options are included in the Plan of Contracts (“POC”). The POC is updated annually as part of the ongoing procurement planning process. The POC is updated in one of two ways either annually through the budget development process or on an individual procurement action basis.
- (b) *Additions to the POC During the Annual Budget Process* In the annual budget process Users, Project Managers and Program Offices may enter procurement actions for the coming fiscal year regardless of funding source. For capital funded projects multi-year funding information may be included as appropriate. This process allows new procurement actions to be entered separately from contract modifications and options.

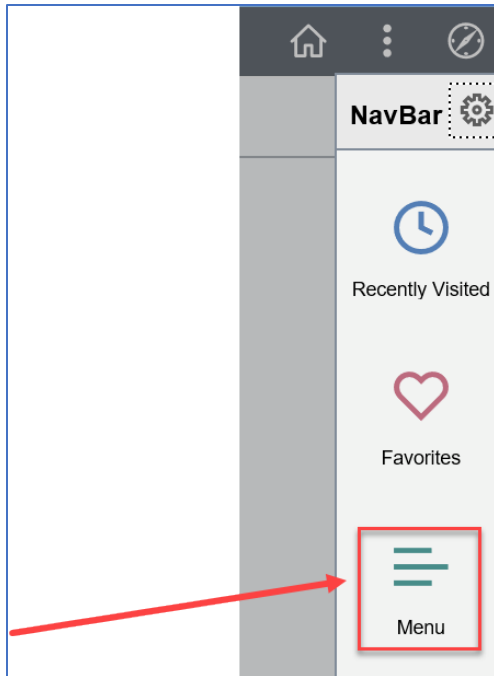
The Plan of Contracts can be created in 3 different ways:

1. Create Plan of Contract from scratch.
2. Create Plan of Contract by copying existing Plan of contract.
3. Create Plan of Contract by extending Plan of Contract for following year.

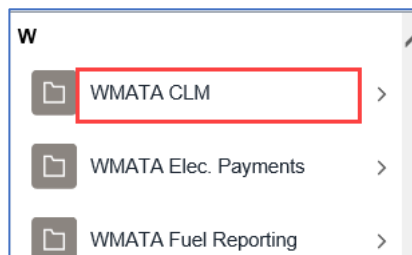
1. Create new Plan of Contract from scratch.



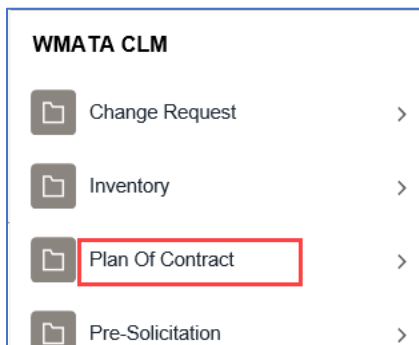
Step	Action
1.	Begin navigating to the Plan of Contract page by clicking the NavBar .



Step	Action
2.	Click the Menu icon.



Step	Action
3.	Click the WMATA CLM menu item.

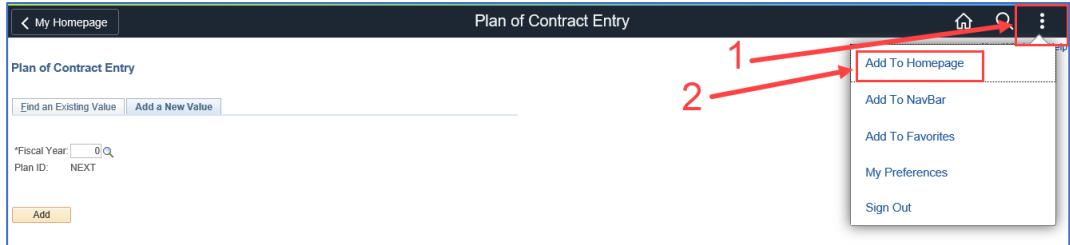


Step	Action
4.	Click the Plan Of Contract menu item.



Step	Action
5.	Click the Plan of Contract Entry menu item.

The screenshot shows the "Plan of Contract Entry" form. At the top, there are two buttons: "Find an Existing Value" and "Add a New Value". The "Add a New Value" button is highlighted with a red box and labeled with a red circle 'a'. Below these buttons, there is a section for "*Fiscal Year:" with a dropdown menu showing "2022". The dropdown is highlighted with a red box and labeled with a red circle 'b'. Below the dropdown, there is a "Plan ID:" field with the text "NEXT". At the bottom left, there is an "Add" button highlighted with a red box and labeled with a red circle 'c'.

Step	Action
6.	a) Click on Add a New Value tab. b) Enter the Fiscal Year. c) click Add. Note: You can add the Plan of Contract Entry to your Homepage by clicking the Actions > Add to Homepage menu items. 

Plan Of Contract

Fiscal Year: 2022 Plan ID #: NEXT *Project Request: **a** New Request Type: New Plan Status: Open

*Title: **b** Supplier Portal Upgrade - Test

*Summary: **c** Supplier Portal Upgrade - Test

*Funding Type: Funding Source: ☐ Non-Competitive Copy From Existing Plan

General Information Project Stage: Procurement Manager: *Point Of Contact: E007158 Collings, Sherrie Lee *Requesting Dept: Project Sponser: Contract Manager: Commodity Code: OMBS Specialist:	Organization Information *Department: Level1: Level2: Level3: Level4:								
Important Dates *Procurement Initiation Date: *SPPM Approved Date: *Estimated Project Start Date: FY Year: *Estimated Award Date: *Estimated SOW Date:	Account Information Account: Level1: Level2: Level3: Level4:								
Contract Information Master Contract: Contract ID: Vendor ID:	Estimated Project Duration Years Months ☐ Publish Start Date End Date								
Project ID Personalize Find View All First 1 of 1 Last <table border="1"> <thead> <tr> <th>Project ID</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>1</td> <td></td> </tr> </tbody> </table>	Project ID	Description	1		Amount Budgeted Amount: Total Committed Amount: Total Uncommitted Amount:				
Project ID	Description								
1									
Comments Find View All First 1 of 1 Last Comment By Entered By Entered Datetime	Estimates Total Contract Value: *Base Years: Total Out Yr Value: Option Years: Year in Progress: <table border="1"> <thead> <tr> <th>Fiscal Year</th> <th>Prior Year Expense \$</th> <th>Current FY Estimate \$</th> </tr> </thead> <tbody> <tr> <td>1</td> <td></td> <td></td> </tr> </tbody> </table>	Fiscal Year	Prior Year Expense \$	Current FY Estimate \$	1				
Fiscal Year	Prior Year Expense \$	Current FY Estimate \$							
1									
Attached Documents Find View All First 1 of 1 Last <table border="1"> <thead> <tr> <th>Attached File</th> <th>Description</th> <th>View</th> <th>Attachment By</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Attached File	Description	View	Attachment By					
Attached File	Description	View	Attachment By						

Step	Action
7.	a) Enter the Project Status as “New”. b) Provide the Title for the Plan of Contract. c) Provide the Summary for the Plan of Contract. Note: 1. When you select Project status as “New”, Request Type will get auto populated with “New” value. 2. All fields with the asterisk (*) are required fields.

Plan Of Contract

Fiscal Year: 2022 Plan ID #: NEXT *Project Request: New *Request Type: New Plan Status: Open

*Title: Supplier portal upgrade- Test

*Summary: Supplier portal upgrade- Test

*Funding Type: Operating a ☐ Non-Competitive Copy From Existing Plan

General Information

Project Stage:

Procurement Manager:

*Point Of Contact: E007158 Collings, Sherrie Lee

*Requesting Dept: PRMT b

Project Sponsor:

Contract Manager:

Commodity Code:

OMBS Specialist:

Organization Information

*Department:

Level1: Level2:

Level3: Level4:

Account Information

Account:

Level1: Level2:

Level3: Level4:

Important Dates

*Procurement Initiation Date:

*Estimated Project Start Date: FY Year:

*Estimated Award Date:

*Estimated SOW Date:

Contract Information

Master Contract:

Contract ID:

Vendor ID:

Project ID Personalize | Find | View All | First 1 of 1 Last

Project ID	Description
1	

Amount

Budgeted Amount: Total Committed Amount: Total Uncommitted Amount:

Estimates

Total Contract Value: *Base Years:

Total Out Yr Value: Option Years:

Year in Progress:

Fiscal Year	Prior Year Expense \$	Current FY Estimate \$
1		

Comments Find | View All First 1 of 1 Last

Comment By:

Entered By:

Entered Datetime:

Attached Documents Find | View All First 1 of 1 Last

Attached File	Description	View	Attachment By	Attached By

Step	Action
8.	General information - Select Funding Type from the dropdown. - Select the Requesting Dept.

Plan Of Contract

Fiscal Year: 2022 Plan ID #: NEXT *Project Request: New *Request Type: New Plan Status: Open

*Title: Supplier portal upgrade - Test

*Summary: Supplier portal upgrade - Test

*Funding Type: Operating ☐ Non-Competitive [Copy From Existing Plan](#)

General Information	Organization Information
Project Stage: Procurement Manager: *Point Of Contact: E007158 Collings, Sherrie Lee *Requesting Dept: PRMT Procurement and Materials Project Sponsor: Contract Manager: Commodity Code: OMB S Specialist: E041340 Tatiana N. Bowie	*Department: Level1: Level2: Level3: Level4: Account Information Account: Level1: Level2: Level3: Level4: Estimated Project Duration: Years Months ☐ Publish Start Date End Date Amount Budgeted Amount: Total Committed Amount: Total Uncommitted Amount: Estimates: Total Contract Value: *Base Years: Option Years: Total Out Yr Value: Year in Progress: Fiscal Year Prior Year Expense \$ Current FY Estimate \$ 1

Important Dates

*Procurement Initiation Date: 04/15/2022 a

*Estimated Project Start Date: 05/02/2022 b

*Estimated Award Date: 04/29/2022 c

*Estimated SOW Date: 04/11/2022 d

Contract Information

Master Contract:
 Contract ID:
 Vendor ID:

Project ID Personalize Find View All First 1 of 1 Last

Project ID	Description
1	

Comments Find View All First 1 of 1 Last

Comment By
 Entered By
 Entered Datetime

Attached Documents Find View All First 1 of 1 Last

Attached File	Description	View	Attachment By

Step	Action
9.	Important Dates (these are estimate dates) a) Provide the Procurement Initiation Date. b) Provide the Estimated Project Start Date. c) Provide the Estimated Award Date. d) Provide the Estimated SOW Date.

Plan Of Contract

Fiscal Year: 2022 Plan ID #: NEXT *Project Request: New *Request Type: New Plan Status: Open

*Title: Supplier portal upgrade - Test

*Summary: Supplier portal upgrade - Test

*Funding Type: Operating ☐ Non-Competitive Copy From Existing Plan

General Information

Project Stage:

Procurement Manager:

*Point Of Contact: E007158 Collings, Sherrie Lee

*Requesting Dept: PRMT Procurement and Materials

Project Sponsor:

Contract Manager:

Commodity Code:

OMBS Specialist: E041340 Tatiana N. Bowie

Organization Information

*Department: 74100 PRMT Procurement Adm

Level1: IBOP Level2: PRMT

Level3: Level4:

Account Information

Account:

Level1: Level2:

Level3: Level4:

Estimated Project Duration

Years Months

☐ Publish Start Date End Date

Amount

Budgeted Amount: Total Committed Amount: Total Uncommitted Amount:

Estimates

Total Contract Value: *Base Years:

Total Out Yr Value: Option Years:

Year in Progress:

Fiscal Year	Prior Year Expense \$	Current FY Estimate \$
1		

Contract Information

Master Contract:

Contract ID:

Vendor ID:

Project ID

Personalize | Find | View All | First 1 of 1 Last

Project ID	Description
1	

Comments

Find | View All | First 1 of 1 Last

Comment By
Entered By
Entered Datetime

Attached Documents

Find | View All | First 1 of 1 Last

Attached File	Description	View	Attachment By

Step	Action
10.	Department Information Select the Department (Cost Center) number from the available options by clicking the magnifying glass. Note: Department hierarchy will get auto populated.

Plan Of Contract

Fiscal Year: 2022 Plan ID #: NEXT *Project Request: New *Request Type: New Plan Status: Open

*Title: Supplier portal upgrade - Test

*Summary: Supplier portal upgrade - Test

*Funding Type: Operating ☐ Non-Competitive [Copy From Existing Plan](#)

General Information Project Stage: Procurement Manager: *Point Of Contact: E007158 Collings, Sherrie Lee *Requesting Dept: PRMT Procurement and Materials Project Sponsor: Contract Manager: Commodity Code: OMBS Specialist: E041340 Tatiana N. Bowie	Organization Information *Department: 74100 PRMT Procurement Adm Level1: IBOP Level2: PRMT Level3: Level4:						
Important Dates *Procurement Initiation Date: 04/15/2022 *Estimated Project Start Date: 05/02/2022 FY Year: *Estimated Award Date: 04/29/2022 *Estimated SOW Date: 04/11/2022	Account Information Account: 50303140 SVS-PRO-OTHER CONSULTANTS Level1: NON_PERSONNEL Level2: SERVICES Level3: SERVICES_ALLOCABLE Level4:						
Contract Information Master Contract: Contract ID: Vendor ID: Project ID Personalize Find View All First 1 of 1 Last <table border="1"> <thead> <tr> <th>Project ID</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>1</td> <td></td> </tr> </tbody> </table>	Project ID	Description	1		Estimated Project Duration Publish Years Months ☐ Publish Start Date End Date		
Project ID	Description						
1							
Amount Budgeted Amount: Total Committed Amount: Total Uncommitted Amount: \$1,133,952.300	Estimates Total Contract Value: *Base Years: Option Years: Total Out Yr Value: Year in Progress: <table border="1"> <thead> <tr> <th>Fiscal Year</th> <th>Prior Year Expense \$</th> <th>Current FY Estimate \$</th> </tr> </thead> <tbody> <tr> <td>1</td> <td></td> <td></td> </tr> </tbody> </table>	Fiscal Year	Prior Year Expense \$	Current FY Estimate \$	1		
Fiscal Year	Prior Year Expense \$	Current FY Estimate \$					
1							
Comments Find View All First 1 of 1 Last Comment By Entered By Entered Datetime							
Attached Documents Find View All First 1 of 1 Last <table border="1"> <thead> <tr> <th>Attached File</th> <th>Description</th> <th>View</th> <th>Attachment By</th> <th>Attached By</th> </tr> </thead> <tbody> </tbody> </table>	Attached File	Description	View	Attachment By	Attached By		
Attached File	Description	View	Attachment By	Attached By			

Step	Action
11.	Account Information Select the Account (Expense account) number from the available options by clicking the magnifying glass. Note: Accounts categories will get auto populated based on provided account number. Also, Budgeted Amount will be shown based on the funding available under the provided account number. Budgeted Amount – Shows the amount allotted for a particular account for the entire fiscal year that which the department should plan for. Total Committed Amount- Shows the total amount committed for a particular budget category based on planned expenses (i.e. services). Total Uncommitted Amount – Shows the total amount uncommitted for a particular budget category against the allotted budget based on planned expenses (i.e. services).

*Funding Type: Operating ☐ Non-Competitive Copy From Existing Plan

General Information

Project Stage:

Procurement Manager:

*Point Of Contact: E007158 Collings, Sherrie Lee

*Requesting Dept: PRMT Procurement and Materials

Project Sponsor:

Contract Manager:

Commodity Code:

OMBS Specialist: E041340 Tatiana N. Bowie

Organization Information

*Department: 74100 PRMT Procurement Adm

Level1: IBOP Level2: PRMT

Level3: Level4:

Account Information

Account: 50303140 SVS-PRO-OTHER CONSULTANTS

Level1: NON_PERSONNEL Level2: SERVICES

Level3: SERVICES_ALLOCABLE Level4:

Estimated Project Duration

Years Months

☐ Publish Start Date End Date

Important Dates

*Procurement Initiation Date: 04/15/2022

*Estimated Project Start Date: 05/02/2022 FY Year:

*Estimated Award Date: 04/29/2022

*Estimated SOW Date: 04/11/2022

Amount

Budgeted Amount: Total Committed Amount: Total Uncommitted Amount:

\$1,133,952.300

Contract Information

Master Contract:

Contract ID:

Vendor ID:

Estimates

Total Contract Value: \$1,000,000.000 a Years: 2 b

Total Out Yr Value: Option Years: 3 c

Year in Progress: 1 d

Fiscal Year	Prior Year Expense \$	Current FY Estimate \$	Approved Funding
1 2022		\$200,000.000	e
2 2023		\$200,000.000	
3 2024		\$200,000.000	
4 2025		\$200,000.000	
5 2026		\$200,000.000	

Project ID

Personalize | Find | View All | First 1 of 1 Last

Project ID	Description
1	

Comments

Find | View All | First 1 of 1 Last

Comment By

Entered By

Entered Datetime

Attached Documents

Find | View All | First 1 of 1 Last

Attached File	Description	View	Attachment By
		View	Attached By
			Attached Datetime

Save Cancel Submit

Step	Action
12.	Estimates - Provide the Total Contract Value for the project including all base years and option years. - Provide the Base Years – total number of base years in project. - Provide the Option years – total number of option years in project. - Provide the year that is in progress for the contract in the Year in Progress field. - Enter the Fiscal year and Current FY Estimates for each year. Note: For all previous Fiscal years, provide the value in Prior Year Expense column as that has already been used. For current and all future year, provide value in Current FY Estimate.
13.	Click Save .

Plan Of Contract Entry x Plan Of Contract Entry x Plan Of Contract Search x +

caappsdev03.wmata.com:8171/psp/pfspar/EMPLOYEE/ERP/c/WT_CL_POC_MN.WT_CL_POC_MGNT.GBL

FIN Jazz Kronos Tableau Server kiteworks PS Instances Metroweb VDI MDO

Plan Of Contract Management

Plan Of Contract

Fiscal Year: 2022 Plan ID #: NEXT *Project Request: New *Request Type: New

*Title: Supplier portal upgrade - Test

*Summary: Supplier portal upgrade - Test

*Funding Type: Operating Non-Competitive Copy From Existing Plan

General Information

Project Stage: Procurement Manager: *Point Of Contact: E007158 Collings, Sherrie Lee

*Requesting Dept: PRMT Procurement and Materials

Project Sponsor: Contract Manager: Commodity Code: OMB's Specialist: E041340 Tatiana N. Bowie

Important Dates

*Procurement Initiation Date: 04/15/2022

*Estimated Project Start Date: 05/02/2022 FY Year:

*Estimated Award Date: 04/29/2022

*Estimated SOW Date: 04/11/2022

Contract Information

Master Contract: Contract ID: Vendor ID:

Project ID Personalize Find View All First 1 of 1 Last

Project ID Description

1

Organization Information

*Department: 74100 PRMT Procurement Adm

Level1: IBOP Level2: PRMT

Level3: Level4:

Account Information

Account: 50303140 SVS-PRO-OTHER CONSULTANTS

Level1: NON_PERSONNEL Level2: SERVICES

Level3: SERVICES_ALLOCABLE Level4:

Estimated Project Duration Publish

Years Months Start Date End Date

Amount

Budgeted Amount: Total Committed Amount: Total Uncommitted Amount:

\$1,133,952,300

Estimates

Total Contract Value: \$1,000,000,000 *Base Years: 2

Total Out Yr Value: Option Years: 3

Fiscal Year Prior Year Expense \$ Current FY Estimate \$ Year in Progress: 1

1 2022 200,000

Comments Find View All First 1 of 1 Last

Comment By Entered By Entered Datetime

Attached Documents Find View All First 1 of 1 Last

Attached File Description View Attachment By

Step	Action
14.	To add extra line to add more fiscal years: a) Click on +. b) Enter the count of line you want to add. c) Click ok

Plan Of Contract

Fiscal Year: 2022

Plan ID #: PL20220840

*Project Request: New
*Request Type: New
Plan Status: Open

*Title: Supplier portal upgrade - Test
*Summary: Supplier portal upgrade - Test

*Funding Type: Operating
Non-Competitive

General Information

Project Stage:
Procurement Manager:
*Point Of Contact: E007158 Collings, Sherrie Lee
*Requesting Dept: PRMT Procurement and Materials
Project Sponsor:
Contract Manager:
Commodity Code:
OMBS Specialist: E041340 Tatiana N. Bowie

Organization Information

*Department: 74100 PRMT Procurement Adm
Level1: IBOP Level2: PRMT
Level3: Level4:

Account Information

Account: 50303140 SVS-PRO-OTHER CONSULTANTS
Level1: NON_PERSONNEL Level2: SERVICES
Level3: SERVICES_ALLOCABLE Level4:

Estimated Project Duration

Years Months
Publish
Start Date End Date

Amount

Budgeted Amount: Total Committed Amount: Total Uncommitted Amount:
\$1,133,952.300

Estimates

Total Contract Value: \$1,000,000.000 *Base Years: 2
Option Years: 3
Total Out Yr Value: Year in Progress: 1

Fiscal Year	Prior Year Expense \$	Current FY Estimate \$	Approved Funding
1 2022		\$200,000.000	
2 2023		\$200,000.000	
3 2024		\$200,000.000	
4 2025		\$200,000.000	
5 2026		\$200,000.000	

Contract Information

Master Contract:
Contract ID:
Vendor ID:

Project ID

Personalize Find View All
First 1 of 1 Last

Project ID	Description
1	

Add Comments And Attachments

Comments
Find View All First 1 of 1 Last

Comment By
Entered By
Entered Datetime

Step	Action
15.	Once saved, Plan ID will get generated.

Plan Of Contract

Fiscal Year: 2022 Plan ID #: PL20220840 *Project Request: New *Request Type: New Plan Status: Open

*Title: Supplier portal upgrade - Test

*Summary: Supplier portal upgrade - Test

*Funding Type: Operating ☐ Non-Competitive

General Information

Project Stage:

Procurement Manager:

*Point Of Contact: E007158 Collings, Sherrie Lee

*Requesting Dept: PRMT Procurement and Materials

Project Sponsor:

Contract Manager:

Commodity Code:

OMBS Specialist: E041340 Tatiana N. Bowie

Organization Information

*Department: 74100 PRMT Procurement Adm

Level1: IBOP Level2: PRMT

Level3: Level4:

Account Information

Account: 50303140 SVS-PRO-OTHER CONSULTANTS

Level1: NON_PERSONNEL Level2: SERVICES

Level3: SERVICES_ALLOCABLE Level4:

Estimated Project Duration

Years Months

☐ Publish Start Date End Date

Amount

Budgeted Amount: Total Committed Amount: Total Uncommitted Amount:

\$1,133,952.300

Estimates

Total Contract Value: \$1,000,000.000 *Base Years: 2

Option Years: 3

Total Out Yr Value: Year in Progress: 1

Fiscal Year	Prior Year Expense \$	Current FY Estimate \$	Approved Funding
1 2022		\$200,000.000	+ -
2 2023		\$200,000.000	+ -
3 2024		\$200,000.000	+ -
4 2025		\$200,000.000	+ -
5 2026		\$200,000.000	+ -

Contract Information

Master Contract:

Contract ID:

Vendor ID:

Project ID Personalize | Find | View All | First 1 of 1 Last

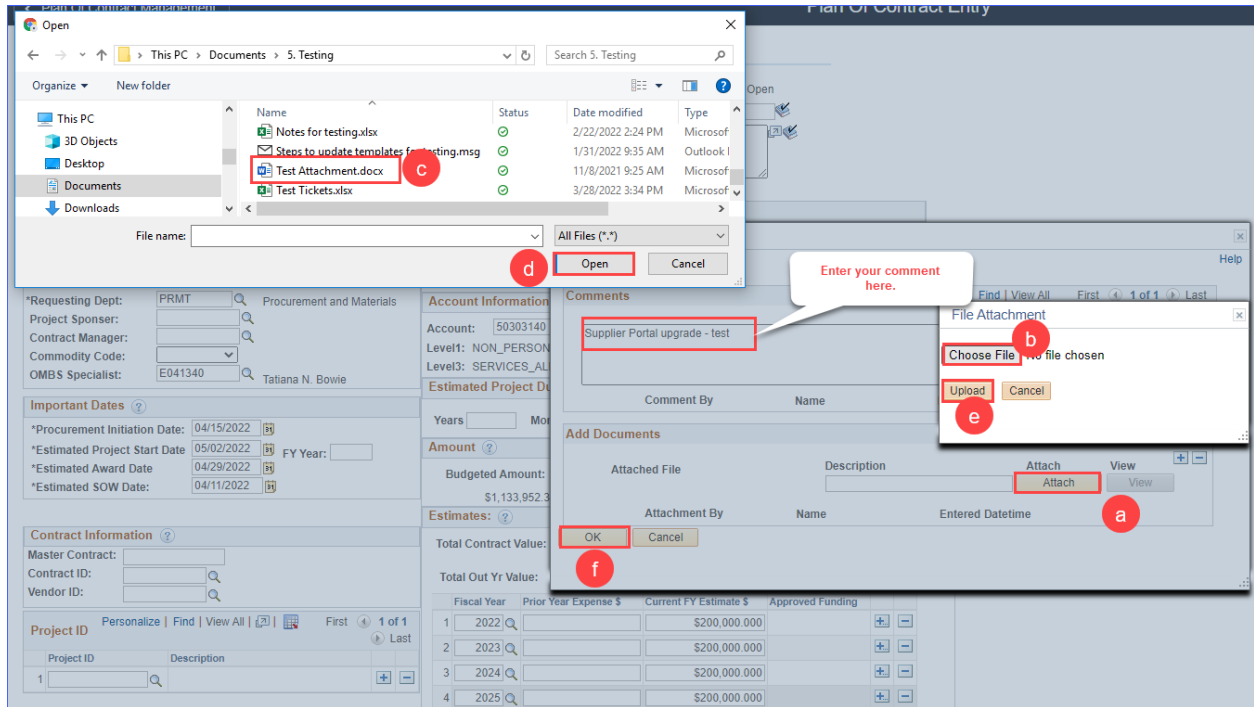
Project ID	Description
1	

Add Comments And Attachments

Comments

Comment By
Entered By
Entered Datetime

Step	Action
16.	To add any comments and attachment to the plan of contract: Click Add Comments and Attachments.



Step	Action
17.	Enter the Comment in the comment box.
18.	To add a attachment: - Click Attach. - Click Choose File. - Select the file. - Click Open. - Click Upload. - Click OK.

Plan Of Contract Management
Plan Of Contract

Plan Of Contract

Fiscal Year: 2022 Plan ID #: PL20220840 *Project Request: New *Request Type: New Plan Status: Open

*Title: Supplier portal upgrade - Test

*Summary: Supplier portal upgrade - Test

*Funding Type: Operating

☐ Non-Competitive

General Information

Project Stage:
Procurement Manager:
*Point Of Contact: E007158 Collings, Sherrie Lee
*Requesting Dept: PRMT Procurement and Materials
Project Sponsor:
Contract Manager:
Commodity Code:
OMBS Specialist: E041340 Tatiana N. Bowie

Organization Information

*Department: 74100 PRMT Procurement Adm
Level1: IBOP Level2: PRMT
Level3: Level4:

Account Information

Account: 50303140 SVS-PRO-OTHER CONSULTANTS
Level1: NON_PERSONNEL Level2: SERVICES
Level3: SERVICES_ALLOCABLE Level4:

Estimated Project Duration

Years Months
☐ Publish

Amount

Budgeted Amount: Total Committed Amount: Total Uncommitted Amount:
\$1,133,952.300

Estimates

Total Contract Value: \$1,000,000.000 *Base Years: 2
Option Years: 3
Total Out Yr Value: Year in Progress: 1

Fiscal Year	Prior Year Expense \$	Current FY Estimate \$	Approved Funding
1 2022		\$200,000.000	
2 2023		\$200,000.000	
3 2024		\$200,000.000	
4 2025		\$200,000.000	
5 2026		\$200,000.000	

Important Dates

*Procurement Initiation Date: 04/15/2022
*Estimated Project Start Date: 05/02/2022 FY Year:
*Estimated Award Date: 04/29/2022
*Estimated SOW Date: 04/11/2022

Contract Information

Master Contract:
Contract ID:
Vendor ID:

Project ID

Personalize Find View All
1 of 1

Project ID	Description
1	

Add Comments And Attachments

Comments

Supplier Portal upgrade - test

Comment By
Entered By
Entered Datetime

Attached Documents

est_Attachment.docx

View

Attachment By
Attached By
Attached Datetime

Save Cancel Submit

Step	Action
19.	a) Click Save. b) Click Submit. Note: - Once submitted, the Plan of Contract will be routed to OMBS for an approval. - Program can make changes to the Plan of contract till Plan Status is "Open". Once it gets approved by OMBS, program will no longer be able to make any changes. - After the approval, Program can still use comments and attachments box fields to further communicate with OMBS.

Page | 63

	End of procedure.

2. Create Plan of Contract by copying existing Plan of contract. You can create Plan of contract by copying all information the existing Plan of contract.

Step	Action
	Repeat steps 1 to 6 listed above for creating the Plan of Contract from scratch.

Plan Of Contract

Fiscal Year: 2022 Plan ID #: NEXT *Project Request: *Request Type: Plan Status: Open

*Title:

*Summary:

*Funding Type: Funding Source: ☐ Non-Competitive

Copy From Existing Plan

General Information

Project Stage:
Procurement Manager:
*Point Of Contact: E007158 Collings, Sherrie Lee
*Requesting Dept:
Project Sponsor:
Contract Manager:
Commodity Code:
OMBS Specialist:

Organization Information

*Department:
Level1:
Level2:
Level3:
Level4:

Account Information

Account:
Level1:
Level2:
Level3:
Level4:

Estimated Project Duration:
Years Months ☐ Publish Start Date End Date

Amount

Budgeted Amount: Total Committed Amount: Total Uncommitted Amount:

Contract Information

Master Contract:
Contract ID:
Vendor ID:

Estimates

Total Contract Value: *Base Years:
Total Out Yr Value: Option Years:
Year in Progress:

Fiscal Year Prior Year Expense \$ Current FY Estimate \$

Project ID

Personalize | Find | View All | First 1 of 1 Last

Project ID Description

Comments

Find | View All First 1 of 1 Last

Comment By
Entered By
Entered Datetime

Attached Documents

Find | View All First 1 of 1 Last

Attached File Description View Attachment By
Attached By
Attached Datetime

Save Cancel Submit

Step	Action
7.	Click Copy from Existing Plan .

*Fiscal Year: 2022 Plan ID: Project ID: Contract ID: Funding Type: [v]
 Title (begins with): Funding Department: PID:
 Search Clear Cancel

Step	Action
8.	a) Enter the Fiscal Year . b) Enter any search criteria like Plan ID, Title etc. to list specific plan of contract.
9.	Click Search .

*Fiscal Year: 2022 Plan ID: PL20220839 Project ID: Contract ID: Funding Type: [v]
 Title (begins with): Funding Department: PID:
 Search Clear Cancel

Select	Fiscal Year	Plan ID	Title	Requesting Department	Contract ID	PID	PID Description	Funding Type	Plan Status	Project ID
☒	2022	PL20220839	Bus Cleaning	BUS	CQ17098			OPR	Submitted	

Copy

Step	Action
10.	Click the check box .
11.	Click Copy .

Message

Do you want to Copy Attachments as well? (32060,911)

if "Yes" it will include the same attachments, if "No" it will exclude the attachments and takes you to Entry page.

Yes No

Step	Action
12.	Select Yes or NO. Note: If selected Yes, all the attachments will get copied from the existing plan of contract to the new plan of contract.

Plan Of Contract

Fiscal Year: 2022 Plan ID #: NEXT *Project Request: Existing *Request Type: Exercise Base Year Plan Status: Open

*Title: Bus Cleaning

*Summary: Bus Cleaning

*Funding Type: Operating Funding Source: Non-Competitive Copy From Existing Plan

General Information

Project Stage: Procurement Manager: E047632 Jontae M Rice

*Point Of Contact: E007158 Collings, Sherrie Lee

*Requesting Dept: BUS

Project Sponsor: BMNT Bus Maintenance, Office of

Contract Manager:

Commodity Code:

OMBS Specialist:

Organization Information

*Department: 32310 BUS BMNT Bus Maint Adm

Level1: COO Level2: BUS

Level3: BMNT Level4: BMNT ADM

Account Information

Account: 50305060 SVS-CONT MT-BLD GRDS EQU

Level1: NON_PERSONNEL Level2: SERVICES

Level3: SERVICES_ALLOCABLE Level4:

Estimated Project Duration: Publish Start Date End Date

Years Months ☐ Publish

Amount

Budgeted Amount: Total Committed Amount: Total Uncommitted Amount:

\$2,308,662.600 \$5,280,384.260 \$-2,971,721.660

Estimates:

Total Contract Value: \$10,466,157.650 *Base Years: 1

Total Out Yr Value: Option Years: 2

Year in Progress: 3

Fiscal Year	Prior Year Expense \$	Current FY Estimate \$
1 2021	\$2,543,274.300	
2 2022		\$2,640,192.130
3 2023		\$2,719,397.890

Contract Information

Master Contract: Interior Bus Cleaning Services

Contract ID: CQ17098

Vendor ID: 5189600000 Hands On, LLC

Project ID Personalize Find View All First 1 of 1 Last

Project ID	Description
1	

Comments Find View All First 1 of 1 Last

Comment By Entered By Entered Datetime

Attached Documents Find View All First 1 of 1 Last

Attached File	Description	View	Attachment By	Attached By	Attached Datetime
		View			

Save Cancel Submit

Step	Action
13.	Select the Project Request "New" or "Existing". Select the Request Type based on what you want to do exercising base year, exercising option year, modifications, new or task orders. Click Save. Once saved Plan ID will get generated. Notes:

1. All the information from the existing plan of contract will be get copied to the new plan of contract. Change the fields that you would like to change and then save and submit the plan of contract for OMBS approval.
2. Repeat steps 15 to 18 listed above under creating the Plan of Contract from scratch to add any comments and attachments to the new plan of contract.

Plan Of Contract

Fiscal Year: 2022
Plan ID #: PL20220841
*Project Request: Existing
*Request Type: Exercise Base Ye
Plan Status: Open

*Title: Bus Cleaning
*Summary: Bus Cleaning

*Funding Type: Operating
Funding Source:
Non-Competitive

General Information

Project Stage:
Procurement Manager: E047632 Jontae M Rice
*Point Of Contact: E007158 Collings, Sherrie Lee
*Requesting Dept: BUS
Project Sponsor: BMNT Bus Maintenance, Office of
Contract Manager:
Commodity Code:
OMBS Specialist:

Organization Information

*Department: 32310 BUS BMNT Bus Maint Adm
Level1: COO Level2: BUS
Level3: BMNT Level4: BMNT ADM

Account Information

Account: 50305060 SVS-CONT MT-BLD GRDS EQU
Level1: NON_PERSONNEL Level2: SERVICES
Level3: SERVICES_ALLOCABLE Level4:

Estimated Project Duration

Years Months
Publish
Start Date End Date

Amount

Budgeted Amount: Total Committed Amount: Total Uncommitted Amount:
\$2,308,662.600 \$5,280,384.260 \$-2,971,721.660

Estimates

Total Contract Value: \$10,466,157.650 *Base Years: 1
Total Out Yr Value: Option Years: 2
Year in Progress: 3

Fiscal Year	Prior Year Expense \$	Current FY Estimate \$
1 2021	\$2,543,274.300	
2 2022		\$2,640,192.130
3 2023		\$2,719,397.890

Contract Information

Master Contract:
Contract ID: CQ17098 Interior Bus Cleaning Services
Vendor ID: 5189600000 Hands On, LLC

Project ID

Personalize Find View All
First 1 of 1 Last

Project ID	Description
1	

Add Comments And Attachments

Comments

Find View All First 1 of 1 Last

Comment By
Entered By
Entered Datetime

Attached Documents

Find View All First 1 of 1 Last

Attached File	Description	View	Attachment By	Attached By	Attached Datetime
		View			

Save Cancel Submit

Step	Action
14.	Click Submit .
	End of procedure.

3. Create Plan of Contract by extending Plan of Contract for following year.

Step	Action
	Repeat steps 1 to 4 listed above for creating the Plan of Contract from scratch.

Menu > WMATA CLM

Plan Of Contract

- Plan Of Contract Entry
- Plan Of Contract Search**

Step	Action
5.	Click the Plan of Contract Search menu item.

Plan Of Contract Management

*Fiscal Year: **2022** POC #: _____ Requesting Department: _____ POC Request: _____ Project ID: _____
 Funding Type: _____ Contract: _____ Project Owner: _____ Plan Status: _____ PID: _____
 Title (begins with): _____ Project Sponsor: _____ Request Type: _____ OMBS Specialist: _____

Date Filters

Procurement Initiation From Date: _____ To Date: _____ Procurement Award From Date: _____ To Date: _____

Organization Information

Department: _____
 Level 1: _____ Level 2: _____ Level 3: _____ Level 4: _____

Account Category

Account: _____
 Cat1: _____ Cat2: _____ Cat3: _____ Cat4: _____

Search **Clear**

Add a New Plan Of Contract

Step	Action
6.	Enter the Fiscal year you want to extend the plan of contract from. Click Search .

Plan Of Contract Management

Fiscal Year: 2022

POC #:

Requesting Department:

POC Request:

Project ID:

Funding Type:

Contract:

Project Owner:

Plan Status:

PID:

Title Begins with:

Project Sponsor:

Request Type:

OMB'S Specialist:

Procurement Initiation From Date:

To Date:

Procurement Award From Date:

To Date:

Organization Information

Department:

Account:

Level 1:

Level 2:

Level 3:

Level 4:

Cat1:

Cat2:

Cat3:

Cat4:

Search

Clear

Plan Of Contract List

Fiscal Year	Plan ID #	Title	Plan Status	Requesting Department	Project ID	Contract ID	PID	PID Description	Funding Type	Project Sponsor	Total Value	Total Out To Value	Base Years	Option Years	Budgeted Amt	Current YR Est Amt	Prior Expense Amount for FY	Total Expenses	FY Expense	Fiscal Year	Plan ID #	
2022	PL20220001	Sign Language contract	Approved	ACCS		NEW			OPR	ACCS	\$50,000.000					\$50,000.000				2022	PL20220001	
2022	PL20220002		Approved	ACCS		CO12013			OPR	ADAP	\$81,950.000						\$81,950.000			2022	PL20220002	
2022	PL20220003	Sign Language	Approved	ACCS					OPR	ADAP	\$61,152.000							\$61,152.000			2022	PL20220003
2022	PL20220004	Braille Transcription	Approved	ACCS					OPR	ADAP	\$10,000.000							\$10,000.000			2022	PL20220004
2022	PL20220005	Mystery Rider	Approved	ACCS					OPR	ADAP	\$14,000.000							\$14,000.000			2022	PL20220005
2022	PL20220006	AAC Refreshments	Approved	ACCS					OPR	ADAP	\$27,824.750							\$27,824.750			2022	PL20220006
2022	PL20220007	Staff Augmentation	Approved	ACCS					OPR	ADAP	\$148,088.000							\$148,088.000			2022	PL20220007
2022	PL20220008	Ridership forecast	Approved	ACCS					OPR	ADAP	\$25,368.000							\$25,368.000			2022	PL20220008
2022	PL20220009	Abilities Role	Approved	ACCS		CO17005			OPR	ADAP	\$7,393.735.000							\$7,393.735.000			2022	PL20220009
2022	PL20220010	Abilities Role	Approved	ACCS		CO17005			OPR	ADAP	\$3,557.785.000							\$3,557.785.000			2022	PL20220010
2022	PL20220011	Sign Language	Approved	ACCS		NEW			OPR	ADAP	\$100,000.000							\$25,000.000			2022	PL20220011
2022	PL20220012	Ridership forecast	Approved	ACCS		NEW			OPR	ADM	\$75,000.000							\$75,000.000			2022	PL20220012
2022	PL20220013	Awards ceremony	Approved	ACCS					OPR	AGMA	\$3,000.000							\$3,000.000			2022	PL20220013
2022	PL20220014	Travel Training	Approved	ACCS		CO17106A			OPR	ELIG	\$1,099,637.000							\$222,288.000			2022	PL20220014
2022	PL20220015	Travel Training	Approved	ACCS		CO17106B			OPR	ELIG	\$2,974,100.000							\$626,788.000			2022	PL20220015
2022	PL20220016	Laminates for ID Cards	Approved	ACCS					OPR	ELIG	\$110,000.000							\$110,000.000			2022	PL20220016
2022	PL20220017	Laminates for ID Cards	Approved	ACCS					OPR	ELIG	\$73,858.000							\$73,858.000			2022	PL20220017
2022	PL20220018	Visually Impaired Travel Training	Approved	ACCS					OPR	ELIG	\$65,000.000							\$65,000.000			2022	PL20220018
2022	PL20220019	Functional Assessment	Approved	ACCS		CO16030			OPR	ELIG	\$1,439,614.020							\$1,439,614.020			2022	PL20220019
2022	PL20220020	Marketing Products	Approved	ACCS					OPR	ELIG	\$51,734.000							\$51,734.000			2022	PL20220020

Step	Action
7.	Select the Plan ID you want to extend the plan of contract from.

Plan Of Contract

Fiscal Year: 2022 Plan ID #: PL20220001 Project Request: New Request Type: New Plan Status: Approved

Title: Sign Language contract
Summary: Sign Language contract

Funding Type: Operating ☐ Non-Competitive **Extend Plan to Year 2023**

General Information Project Stage: Procurement Manager: *Point Of Contact: Requesting Dept: ACCS Access Services, Department of Project Sponsor: ACCS Access Services, Department of Contract Manager: Commodity Code: OMBS Specialist:	Organization Information *Department: Level1: Level2: Level3: Level4: Account Information Account: Level1: Level2: Level3: Level4: Estimated Project Duration Years Months ☐ Publish Start Date End Date Amount Budgeted Amount: Total Committed Amount: Total Uncommitted Amount: Estimates Total Contract Value: \$50,000.000 Base Years: Total Out Yr Value: Option Years: Year in Progress: <table border="1"> <thead> <tr> <th>Fiscal Year</th> <th>Prior Year Expense \$</th> <th>Current FY Estimate \$</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>2022</td> <td>\$50,000.000</td> </tr> </tbody> </table>	Fiscal Year	Prior Year Expense \$	Current FY Estimate \$	1	2022	\$50,000.000
Fiscal Year	Prior Year Expense \$	Current FY Estimate \$					
1	2022	\$50,000.000					

Important Dates
 *Procurement Initiation Date:
 *Estimated Project Start Date FY Year:
 *Estimated Award Date
 *Estimated SOW Date:

Contract Information
 Master Contract:
 Contract ID: NEW
 Vendor ID:

Project ID Personalize | Find | View All | First 1 of 1 Last

Project ID	Description
1	

Add Comments And Attachments

Comments Find | View All | First 1 of 1 Last
 NEW
 Comment By
 Entered By
 Entered Datetime

Attached Documents Find | View All | First 1 of 1 Last
 Attachment By

Step	Action
8.	Click the Extend Plan to Year 2023 .

Do you want to Copy Attachments as well? (32060,911)

if "Yes" it will include the same attachments, if "No" it will exclude the attachments and takes you to Entry page.

Yes No

Step	Action
9.	Select Yes or NO . Note: If selected Yes, all the attachments will get copied from the existing plan of contract to the new plan of contract.

Plan Of Contract

Fiscal Year: 2023 Plan ID #: PL20220001 *Project Request: Existing *Request Type: Exercise Option Plan Status: Open

*Title: Change the new title here.

*Summary: Test summary

*Funding Type: Operating Non-Competitive

General Information

Project Stage: Procurement Manager: *Point Of Contact: *Requesting Dept: ACCS Access Services, Department of Project Sponsor: ACCS Access Services, Department of Contract Manager: Commodity Code: OMBS Specialist:

Organization Information

*Department: Level1: Level2: Level3: Level4:

Account Information

Account: Level1: Level2: Level3: Level4:

Estimated Project Duration: Years Months Publish Start Date End Date

Amount

Budgeted Amount: Total Committed Amount: Total Uncommitted Amount:

Estimates:

Total Contract Value: \$50,000.000 *Base Years: Option Years: Total Out Yr Value: Year in Progress:

Fiscal Year Prior Year Expense \$ Current FY Estimate \$

1 2022 \$50,000.000

Contract Information

Master Contract: Contract ID: NEW Vendor ID:

Project ID Personalize Find View All First 1 of 1 Last

Project ID Description

1

Add Comments And Attachments

Comments Find View All First 1 of 1 Last

NEW Comment By Entered By Entered Datetime

Attached Documents Find View All First 1 of 1 Last

Attached File Description View Attachment By

Step	Action
10.	a) Change the Project Request to “Existing” from the dropdown menu. b) Select the Request type. c) If needed, make the changes to Title and Summary field. Note: 1.Fiscal year field will get auto populated as you extend the existing plan of contract to next fiscal year. 2. Plan ID will remain same for the extended Plan of year to 2023.

caappsdev03.wmata.com:8171 says

Enter number of rows to add:

1

OK Cancel

Plan Of Contract

Fiscal Year: 2023 Plan ID #: PL20220001 *Project Request: Existing *Request Type: Exercise Option

Title: Change the new title here.

Summary: Test summary

Funding Type: Operating Non-Competitive

General Information

Project Stage: Procurement Manager: *Point Of Contact: Requesting Dept: ACCS Access Services, Department of Project Sponsor: ACCS Access Services, Department of Contract Manager: Commodity Code: OMBS Specialist:

Organization Information

*Department: Level1: Level2: Level3: Level4:

Account Information

Account: Level1: Level2: Level3: Level4:

Estimated Project Duration

Years Months Publish Start Date End Date

Amount

Budgeted Amount: Total Committed Amount: Total Uncommitted Amount:

Estimates

Total Contract Value: \$50,000.000 *Base Years: Option Years: Total Out Yr Value: Year in Progress:

Fiscal Year	Prior Year Expense \$	Current FY Estimate \$
1 2022		\$50,000.000

Project ID

Project ID	Description
1	

Comments

NEW

Attached Documents

Step	Action
11.	Click on "+" sign to add a row. Provide the number of rows and click Ok.

Plan Of Contract

Fiscal Year: 2023 Plan ID #: PL20220001 *Project Request: Existing *Request Type: Exercise Option Plan Status: Open

*Title: Change the new title here.

*Summary: Test summary

*Funding Type: Operating ☐ Non-Competitive

General Information

Project Stage:
 Procurement Manager:
 *Point Of Contact:
 *Requesting Dept: ACCS Access Services, Department
 Project Sponsor: ACCS of Access Services, Department
 Contract Manager:
 Commodity Code:
 OMB's Specialist:

Organization Information

*Department:
 Level1:
 Level3:
 Level2:
 Level4:

Account Information

Account:
 Level1:
 Level3:
 Level2:
 Level4:

Estimated Project Duration

Years Months

Publish

☐ Publish Start Date End Date

Amount

Budgeted Amount: Total Committed Amount: Total Uncommitted Amount:

Important Dates

*Procurement Initiation Date:
 *Estimated Project Start Date: FY Year:
 *Estimated Award Date:
 *Estimated SOW Date:

Contract Information

Master Contract:
 Contract ID: NEW
 Vendor ID:

Estimates

Total Contract Value: \$50,000 *Base Years: 1
 Option Years: 1
 Total Out Yr Value: Year in Progress: 2
 Fiscal Year Prior Year Expense \$ Int FY Estimate \$ Approved Funding
 1 2022 \$30,000.00 \$50,000.00
 2 2023 20,000

Project ID

Personalize | Find | View All | First | 1 of 1 | Last

Project ID Description
 1

Add Comments And Attachments

Comments

Find | View All | First | 1 of 1 | Last

NEW
 Comment By
 Entered By
 Entered Datetime

Attached Documents

Find | View All | First | 1 of 1 | Last

Attached File Description View Attachment By
 Attached By

Step	Action
12.	a) Update the Year in Progress with the value of actual year in progress. b) Update the Prior Year Expense column with the money used under previous fiscal year. c) Provide the current Fiscal Year with the Expense Estimate in the newly added row for the extended fiscal year.

Plan Of Contract

Fiscal Year: 2023 Plan ID #: PL20220001 *Project Request: Existing *Request Type: Exercise Option Plan Status: Open

*Title: Change the new title here.

*Summary: Test summary

*Funding Type: Operating ☐ Non-Competitive

General Information

Project Stage:

Procurement Manager:

*Point Of Contact:

*Requesting Dept: ACCS Access Services, Department of

Project Sponsor: ACCS of Access Services, Department of

Contract Manager:

Commodity Code:

OMDS Specialist:

Organization Information

*Department:

Level1: Level2:

Level3: Level4:

Important Dates

*Procurement Initiation Date:

*Estimated Project Start Date: FY Year:

*Estimated Award Date:

*Estimated SOW Date:

Account Information

Account:

Level1: Level2:

Level3: Level4:

Estimated Project Duration: Years: Months: **Publish** ☐ Publish Start Date: End Date:

Amount

Budgeted Amount: Total Committed Amount: Total Uncommitted Amount:

Estimates

Total Contract Value: \$50,000,000 *Base Years: 1

Total Out Yr Value: Option Years: 1

Year in Progress: 2

Fiscal Year	Prior Year Expense \$	Current FY Estimate \$	Approved Funding
1 2022	\$30,000,000	\$50,000,000	+ -
2 2023		\$200,000,000	+ -

Project ID Personalize Find View All First 1 of 1 Last

Project ID	Description
1	

Add Comments And Attachments

Comments Find View All First 1 of 1 Last

Test

Comment By
Entered By
Entered Datetime

Attached Documents Find View All First 1 of 1 Last

Attached File	Description	View	Attachment By
		View	Attached By Attached Datetime

Step	Action
13.	Make any other required changes, if needed, to the fields like general information, important dates, contract information, organization information and account information. Click Save. Notes: 1. Plan ID will remain same for the extended Plan of contract year to 2023. 2. Repeat steps 15 to 18 listed above under creating the Plan of Contract from scratch to add any comments and attachments to the plan of contract.

Plan Of Contract

Fiscal Year: 2023 Plan ID #: PL20220001 *Project Request: Existing *Request Type: Exercise Option Plan Status: Open

*Title: Change the new title here.

*Summary: Test summary

*Funding Type: Operating ☐ Non-Competitive

General Information

Project Stage:

Procurement Manager:

*Point Of Contact:

*Requesting Dept: ACCS Access Services, Department of

Project Sponser: ACCS of Access Services, Department of

Contract Manager:

Commodity Code:

OMBS Specialist:

Organization Information

*Department:

Level1: Level2:

Level3: Level4:

Account Information

Account:

Level1: Level2:

Level3: Level4:

Estimated Project Duration

Years Months

☐ Publish Start Date End Date

Amount

Budgeted Amount: Total Committed Amount: Total Uncommitted Amount:

Estimates

Total Contract Value: \$50,000.000 *Base Years: 1

Option Years: 1

Total Out Yr Value: Year in Progress: 2

Fiscal Year	Prior Year Expense \$	Current FY Estimate \$	Approved Funding
1 2022	\$30,000.000	\$50,000.000	
2 2023		\$200,000.000	

Contract Information

Master Contract:

Contract ID: NEW

Vendor ID:

Project ID

Personalize Find View All First 1 of 1 Last

Project ID	Description
1	

Add Comments And Attachments

Comments

Find View All First 1 of 1 Last

Test

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14.	Click Submit to route the plan of contract for OMBS approval.
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2-18 ACCOUNTABILITY STANDARDS

- (a) The following standards will be used for Procurement Office Staff to assure accountability for proper performance of their duties:
- Makes proper choice of contract type.
 - Uses full and open competition, except where valid exception applies.
 - Avoids unduly restrictive products or services descriptions.
 - Performs appropriate cost/price analyses for contract awards.
 - Fully documents the procurement file.
 - Assures the absence of an organizational conflict of interest.
 - Creates a complete solicitation with appropriate clauses and evaluation criteria.
 - Assures that independent cost estimates have been performed prior to proposal submission.
 - Makes awards only to responsible contractors.
 - Avoids out-of-scope modifications.
 - Performs cost/price analyses for modifications.
 - Works effectively with the Program Office and counsel.
 - Completes the Office of Procurement and Materials' Contract Administrator Exit Assessment prior to separation of employment from Metro.
- (b) Counsel assigned to oversee procurement functions will be evaluated pursuant to the following criteria to assure accountability:
- Performs appropriate review function at each milestone for counsel involvement in the procurement.
 - Assures use of full and open competition, except where valid exceptions apply.
 - Confirms proper choice of contract type.
 - Confirms that descriptions of products or services being acquired are not unduly restrictive.
 - Assures that independent cost estimates and appropriate cost/price analyses are carried out.
 - Confirms that the procurement file has been properly documented.
 - Confirms reasonableness of determination that an organizational conflict of interest does not exist or has been mitigated.
 - Reviews and approves checklists applicable to the procurements.
 - Confirms that a responsibility determination preceded the award.
 - Confirms that solicitations are complete, with appropriate clauses and evaluation criteria.
 - Confirms reasonableness of selection decision.
 - Approves modifications only when within scope and after appropriate cost/price analysis.
 - Works effectively with the Program Office and Procurement Office.

2-19 REVIEW OF PROCUREMENTS BY THE OFFICE OF GENERAL COUNSEL

The General Counsel shall be responsible for ensuring appropriate legal review at all appropriate steps of a procurement. The Chief Procurement Officer also shall have responsibility for ensuring that procurement personnel seek the involvement of counsel at appropriate junctures. The General Counsel and the Chief Procurement Officer shall develop and implement written procedures to give effect to the foregoing.

3 – PROCUREMENT PLANNING AND METHODS

3-1 PURPOSE AND SCOPE

- (a) This chapter provides general guidelines regarding the generation and specification of the procurement requirement, and for selecting the appropriate procurement method and contracting approach.
- (b) In carrying out the procedures identified in this chapter, all aspects of an effective procurement process involve the need for good communications between the Authority's Program Offices and Procurement. These communications must include an understanding of the respective roles and responsibilities of all of the Authority's offices involved in the procurement initiation, solicitation and award processes.

3-2 RESPONSIBILITIES

- (a) *Program Office.* The Program Office is responsible for developing specifications, providing an independent cost estimate, applicable justifications, competition time frames, and determining delivery dates subject to management approvals established by the Board and GM/CEO. The Program Office, or lead Program Office when coordination of procurements requirements between multiple Authority offices is required, must be identified when the procurement actions are initiated.
- (b) *Contracting Officer.* The assigned Contracting Officer is responsible for analyzing the Program Office's specifications and supporting information, including any necessary justifications, selecting the proper procurement methodology, determining contract terms, ascertaining the reasonableness of the cost/price analysis, and preparing, issuing and awarding the solicitation.
- (c) *Ancillary Offices.* In addition to the Program Office and procurement responsibilities, other Authority offices will be consulted or engaged during the procurement process based on their functional responsibilities, i.e., General Counsel, Budget, Safety, DBE and OIG.

3-3 ADVANCE PROCUREMENT PLANNING

- (a) *General* Advance procurement planning begins as soon as a Program Office identifies a need. Normally, this is well in advance of the fiscal year in which contract award is required. The goal of procurement planning is to ensure that the Authority meets its need(s) in the most effective, economical and timely manner consistent with Authority policy. The procurement planning process shall not preclude a prompt response to valid priority and emergency procurement actions. Advance procurement planning is necessary in order to allow adequate time for:

- Conducting market research;
 - Evaluating commercially available solutions, including industry standard terms and conditions;
 - Reviewing requirements and obtaining clarifications to avoid duplicative goods or services;
 - Finding the business solution that best meets the customer's needs;
 - Developing and issuing the solicitation, including the development of evaluation criteria specific to the procurement;
 - Vendors to prepare and submit bids or proposals;
 - Evaluation of the bids or proposals and award of a contract; and
 - Performance and/or delivery by the contractor.
- (b) *Acquisition Method Consideration.* The CPRO will work with Vice Presidents and Office Directors in identifying acquisition methods and planning major procurements that form part of the Authority's budget. Vice Presidents and Office Directors should ensure that their staff considers the various acquisition methods that may be used for their program requirements when planning major projects. In support of the procurement planning process, Project Managers must submit procurement planning information to the Procurement Planning Forum established by the CPRO. Generally, in the first quarter of every year, the CPRO will issue a call for a list of the required procurement actions for the coming fiscal year. This list, also known as the Plan of Contracts ("POC"), will be due in line with the Authority's annual budget process. This list allows the Procurement Planning Forum to plan its activities and dedicate its staff to meet the needs of the Program Offices.
- (c) *Lease/Buy Considerations* To assist in the determination of the most practical and economical means of obtaining the required supplies or equipment, the Program Office shall, when appropriate, prepare an analysis of lease versus purchase alternatives. This analysis may include the consideration of alternatives, including the availability of surplus property of the Authority or other units of government to determine the most economical means of acquisition of supplies or equipment. If applicable, such an analysis shall be documented in the procurement file.

3-4 SPECIFICATION, PURCHASE DESCRIPTION AND STATEMENT OF WORK

- (a) *General* Specifications, purchase descriptions, and statements/scopes of work ("SOW") describe the physical, functional, or performance characteristics of the Authority's equipment, supplies, services and construction requirements. The specification shall include a clear and accurate description of the technical requirements for the material, product, or service to be procured. The specification, purchase description, or SOW forms the foundation of the procurement process and is a critical element in every phase of the procurement's lifecycle. Any of these means of describing the Authority's requirements should be prepared in a way that promotes full, fair and open competition, and includes, as appropriate, requirements for inspection, testing, or preparation of the supplies, services or construction for delivery or

performance. In addition to becoming the portion of the contract that defines the delivery or performance requirement, the specification, purchase description, or SOW:

- Serves as the basis for the evaluation criteria in a competitive procurement, or the negotiations in a sole source procurement; and
- Serves as the baseline against which progress and subsequent contract modifications are compared during contract performance and dispute resolution.

(b) *Responsibility for Preparation and Submission of Procurement Requests.* The Program Office is responsible for preparing the specification, purchase description, or SOW and submitting it to procurement with their purchase request. Specifications and SOWs must not be developed by a contractor or their affiliate who has an economic interest in the outcome of the contract or project (see § 3-2 (a)).

(c) *Contracting Officer Compliance Review.* The Contracting Officer, or other assigned procurement personnel, may assist the Program Office as they develop the specification, purchase description, or SOW to ensure that provisions pertaining to the General or Special Provisions of the contract are incorporated into the appropriate contract clauses. The Contracting Officer or other procurement personnel will also identify any omissions, need for clarification, or additional information requirements in the specification, purchase description or SOW prior to the solicitation being issued. In addition, the Contracting Officer will review the solicitation document for the following:

- *Equipment and Supplies:* Plans, drawings, specifications or purchase descriptions for equipment and supplies procurements shall only include the quantities necessary to meet the minimum needs of the Authority. They shall be free of restrictive features or limiting factors to the extent practicable to maximize competition. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase, but not for the purpose of evading micro purchase or simplified acquisition ceilings. Design specifications shall describe how an item is to be made. Performance specifications shall, at a minimum, describe what the item must do and allow manufacturers to design the item within the specified parameters of form, fit and function. These documents must also include any special packaging or marking requirements. For equipment or supplies that have a limited shelf life, the marking requirements must include an expiration or "Use By" date prominently printed on the outside of the product's packaging. The plans, drawings, specifications, or purchase descriptions must also include the procedure by which it will be determined that the requirements of the equipment or supplies have been met.
- *Construction Specifications:* The technical provisions must be in sufficient detail so that when used with applicable drawings, and any specifications or standards incorporated by reference, full and open competition is achievable. Materials, equipment, components, or systems shall be described using references to documents, specifications, or standards generally known such as Federal, military or other nationally recognized industry or technical society specifications or standards.
- *Statements of Work:* Service contracts should incorporate a SOW

whenever possible. The SOW must define the minimum work required to be provided by the contractor under the contract. Information Technology requirements often utilize a SOW. In these instances, the work required of a contractor may be to develop hardware and/or software, services to complement off-the-shelf items being delivered, or services without delivery of any hardware. A Work Breakdown Structure ("WBS") approach may be used to organize the SOW for complex procurements. The WBS approach provides a product-oriented hierarchically organized tree composed of hardware, software services and data resulting from project development efforts to produce a complete system and relates all of the work elements to one another and the final product or system.

- **Purchase Descriptions:** A purchase description may be used in place of a specification when no specification is available. A purchase description must describe the essential physical and functional characteristics of the materials or items to be provided. If used for the purchase of services, the purchase description must, to the fullest extent possible, describe the services the contractor is required to perform. A complete purchase description helps generate competition and is necessary for determining price reasonableness in the absence of competition.
- **Brand Names:** Specifications and purchase descriptions shall not be written to specify a particular product, brand name, or a particular feature of a single product to limit or preclude competition or consideration of alternate supplies of similar products, unless the feature or product is essential to the Authority and the products of alternate suppliers would not meet the minimum requirements for the item being purchased and there is a sole source D&F justifying the brand name only. The term "Brand Name" means a commercial product described by a brand name, or make and model number, or appropriate nomenclature by which a product is sold to the public. Where feasible, all acceptable brand name products should be referenced in the solicitation. Where brand name or equal is used, the purchase description must include all salient physical, functional, or other characteristics of the referenced product(s) which are essential to the Authority. All prospective contractors may offer products other than the brand name if those products meet the requirements of the Authority in essentially the same manner as the referenced brand-named product(s).
- **Stock Replenishment:** Specifications and purchase descriptions for spare parts shall comply with the "Stock Replenishment Procurement Guidelines", §3-15 of this chapter.

3-5 INDEPENDENT COST ESTIMATE

- (a) **General:** The independent Authority cost estimate represents the Authority's best estimate of the most current price for the supplies, services, or construction being procured.
- As part of the advance procurement planning process, the Program Office must provide an independent cost estimate to the Contracting Officer or designee with every procurement action. The independent cost estimate serves as a starting point in performing cost or price analyses in connection with every procurement action, including contract modifications

or change orders. The cost estimate shall be included with the procurement record submitted to the cognizant COUN attorney for review.

- The establishment of an independent cost estimate must be independent of the pricing of prospective bidders or proposers and must be done prior to the receipt of bids or proposals. The independent cost estimate assists in the Authority's determination of the benefit of a project relative to its cost. Also, the independent cost estimate provides financial planning information, including an indication of the complexity of the project, and the amount of the investment prospective bidders and/or proposers will make in responding to the solicitation. In addition, it provides a basis for determining which procurement procedures will apply to the project. Finally, the independent cost estimate is required to determine the reasonableness of the cost or price offered by bidders or proposers.

(b) *Confidentiality of the Independent Cost Estimate:* Authority independent cost estimates are held confidential and shall not be disclosed prior to the receipt of bids or proposals. Access to the independent cost estimate shall be limited to those Authority personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the Contracting Officer to identify a specialized task and disclose the associated cost breakdown contained in the Authority's estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price.

(c) *Development of the Estimate:* Independent cost estimates are required by the Authority and the FTA to be prepared without input from contractors who may bid or propose on the procurement. Independent cost estimates should be based on product knowledge, prior experience and market factors, using the following procedures:

- Contracting Officers shall ensure preparation and documentation of equipment estimates using appropriate sources – such as published price lists; prices from past competitive procurements updated with inflation factors; an independent third party (identity of the third party must be specified); and pricing data from other agencies that obtained competitive bids for the same equipment or supplies. In the case of specialized equipment, care must be taken that the source of the estimates is not disproportionately obtained from one supplier.
- *Professional Services.* Contracting Officers shall ensure preparation and documentation of estimates for professional services using appropriate sources, such as past competitive procurements updated with inflation factors, published price lists such as Federal Supply Schedules, and pricing data from other agencies that obtained competitive bids for the same professional services. The Authority may also consider obtaining a professional cost estimate by a firm not interested in the final procurement if cost and price estimates are not reasonably available from other sources.
- *Construction.* In some cases, cost estimates may be difficult to obtain or may lie outside the competence of Authority personnel. Contracting Officers shall ensure preparation and documentation of cost estimates using appropriate sources, such as prior WMATA construction projects awarded competitively; and pricing data from other agencies that obtained competitive bids for similar construction work. A design firm may already be under contract, or may be engaged, to perform this service. In some

cases, the Authority's in-house personnel who have participated in design or past construction efforts may be the most professional and reliable cost estimators.

- (d) Contracting Officers or their designees must reconcile the difference between the contract award and the independent cost estimate amounts, where the difference is greater or lower than 10%. The reconciliation should explain why the difference is not viewed as undermining the finding of reasonableness of the prospective award price. The results of this reconciliation must be placed in the contract file.

3-6 COMPETITION

- All Authority procurements shall be conducted using full and open competition consistent with the standards set forth herein and in applicable statutes and regulations. All Authority personnel engaged in procurement activities shall take into account the requirements that are contained in all statutes, regulations or guidance that apply to the funds, including grant funds, used in procurements. The statutes, regulations and guidance that govern procurements, as applicable, include, but are not limited to:
 - Section 73 of the Authority's Compact;
 - FTA enabling legislation, 49 U.S.C. §5325(a) (FTA grant recipients to conduct all procurements financed under 49 U.S.C. Chapter 53 in a manner that provides full and open competition);
 - Common Grant Rule (49 C.F.R. § 18.1 et seq.);
 - FTA Circular 4220.1 (as may be amended and revised by the FTA); and
 - American Reinvestment and Recovery Act, Pub. L. 111-5 (Feb 17, 2009) ("ARRA") ("To the maximum extent possible, contracts awarded under the Act shall be awarded . . . through the use of competitive procedures.").

In conducting procurements that use non-federal funds, the Authority shall use procedures pertaining to full and open competition (and pertaining to restrictions on procurements not using full and open competition or excluding sources) that are consistent with competition procedures in procurements using federal funds. The Authority's procedures for procurements using non-federal funds also shall provide, as authorized by the Compact, for the Authority to: (i) make purchases using state and local sources; and (ii) make purchases using the GSA Schedule.

- *No restrictions on Full and Open Competition:* The Authority Compact Section 73 and the Procurement Policy adopted by the Board require all procurement transactions to be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:
 - Unreasonable requirements placed on firms in order for them to qualify to do business with the Authority;
 - Unnecessary experience requirements;
 - Bonding requirements that exceed the requirements described in state or

- local law or those described in FTA Circular 4220.1.
 - Improper Prequalification procedures that conflict with the prequalification standards in the WMATA Compact, the WMATA Procurement Policy, or FTA Circular 4220.1F or latest revision;
 - Retainer Contracts which make a noncompetitive award to a person or firm if that award is not for the goods or services specified under the retainer contract;
 - Specifying in-State or local geographical preferences or evaluating bids or proposals in light of in-State or local geographical preferences, even if those preferences are imposed by State or local laws or regulation, except as permitted by FTA Circular 4220.1.
 - Supporting or acquiescing in non-competitive pricing practices between firms or between affiliated companies. Questionable practices would include, but not be limited to, submission of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors;
 - Non-competitive awards to any person or firm on retainer contracts;
 - Excessively specific qualifications or evaluation criteria which favor a particular contractor;
 - Splitting larger procurements into multiple smaller procurements to evade competition requirements at certain ordering thresholds;
 - The specification of only a brand name product without listing its salient characteristics and not allowing “an equal” product to be offered; and
 - Any arbitrary action in the procurement process.
- Before concluding that any inventory or non-stock item must be procured on a “brand name” basis (and before submitting a D&F), the Program Office shall conduct market research that reasonably assesses whether there are other potential offerors for the part, and reasonably demonstrates that there are no competitors of the “brand name” manufacture that reasonably could be anticipated to submit a compliant bid. The D&F and underlying documentation describing the market research performed shall be submitted for approval by the General Counsel and Chief Procurement Officer. The D&F is subject to audit by the Compliance Officer.
 - Program Office specifications for products or services, as well as requirements relating to those products or services (experience, bonding, etc.), shall be reviewed by the Procurement Office and COUN to ensure that they are not unduly restrictive. If any unduly restrictive provisions are found, the specifications shall be returned to the Program Office for correction.
 - *Cooperative Purchasing Program:* When using non-Federal funds, Contracting Officers are authorized to use other government contracts, including Metropolitan Washington Council of Governments (“MWCOG”) contracts either as a participant at the time of solicitation, or if the contract was awarded and contains a provision for Authority use after award. Use of such contracts does not require a D&F provided the contract was awarded based on a competitive process. However, if the contract was not awarded competitively, a D&F is required and must be reviewed and approved one level above the Contracting Officer. In determining that a MWCOG contract will satisfy an

Authority need, Contracting Officers must demonstrate that the contract pricing is fair and reasonable prior to use of the contract.

Occasionally, it may be advantageous to use this method to meet capital requirements. Before doing so, Contracting Officers must carefully review the guidance in FTA Circular 4220.1 to be certain they can use this procurement method. Among other considerations, Contracting Officers must determine that the contract was awarded as a joint purchase between the Authority and another unit of local government and that the price is fair and reasonable, and that the solicitation, evaluation, and award of the contract complies with all federal requirements (i.e., full and open competition, Buy America, Civil Rights, etc.). If there are any questions regarding whether the procurement method meets the federal requirements, Contracting Officers must contact the FTA Regional office to ensure that purchasing through this method is permissible.

- Use of the Rider MWCOG Clause can be effective in reducing the time and administrative expense associated with procurements of supplies and services. The Rider Clause extends the bid pricing received by MWCOG member agencies to all member agencies.
- The requirements that must be satisfied for inclusion of the MWCOG Rider Clause in Authority solicitations and contracts are as follows;
 - In general, all competitively sourced contracts for goods or services should contain the Rider Clause
 - Contracts for supplies or services best suited to use of the Rider Clause are as follows:
 - Supplies that are commonly used and have industry-wide specifications and are purchased in large volumes (e.g., natural gas, gasoline, diesel fuel, antifreeze, road salt, and photocopy paper, etc.);
 - Items that are elastic in pricing based on the quantity purchased (e.g., vehicles); and
 - Services such as the pick-up and disposal of hazardous waste, or used petroleum products (e.g., motor oil, antifreeze, and transmission fluid, etc.).
 - Services which are unique such as specialty consulting services and architectural and engineering services should not include the Rider Clause.

The Program Office/Requesting Department is responsible for submitting the Purchase Request (PR), Independent Cost Estimate (ICE), Scope of Work (SOW)/Specification, contract of the cooperative vendor, and the suggested vendor's contact information to the Contract Administrator/Contracting Officer (CO). The Program Office must submit an ICE to the CO or his or her designee with every procurement action before a solicitation shall be issued. PRMT shall work with the Program Office to identify the contract of the cooperative vendor.

- Piggybacking is the post-award use of a contract allowing a party who was not contemplated in the original procurement to purchase the goods or services included in the contract at the same prices contained in the contract.

Piggybacking is allowed when the solicitation document and contract contain an assignability clause that provides for the assignment of all or part of the specified deliverable(s) or stated minimum or maximum quantities of goods to be purchased as originally advertised, evaluated, and awarded. Piggybacking applies to both the base and option quantities included in a contract. Contracting Officers shall not inflate the order quantities of material or services to facilitate piggybacking by other agencies. When utilizing contract options and assignments to meet federally funded requirements, Contracting Officers must not negotiate a separate contract based on the terms and conditions of the original. FTA considers such a contract to be a sole source procurement which requires legally acceptable justification. There should be no new agreement. If there are negotiations for a separate agreement, FTA does not consider this to be piggybacking.

- If the supplies or services were solicited, competed and awarded through the use of an indefinite-delivery – indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and a maximum quantity that represent the reasonably foreseeable needs of the parties to the solicitation and contract.
- Where WMATA obtains these contractual rights through assignment, it may exercise them after first determining the contract price remains fair and reasonable, and all federal requirements have been addressed in the contract's clauses. WMATA is not required to perform a second price analysis if a price analysis was originally performed. However, WMATA must determine the contract price or prices originally established are still fair and reasonable.
- WMATA is responsible for Buy American compliance with the transaction and assuring that it executes all of the required pre-award and post-delivery Buy American audit certifications.

3-7 PROCUREMENT ACTION: DETERMINATION AND FINDINGS (D&F)

The following types of procurement actions require a written Determination and Findings ("D&F") reviewed and approved by the Chief Procurement Officer, and General Counsel:

- Only one responsible bidder or proposer: The supplies, services or construction needed by the Authority are available from only one responsible source and no other type of supplies, services or construction will satisfy the needs of the Authority;
- Unusual and compelling urgency: The Authority's need for the supplies, services or construction is of such an unusual and compelling urgency that the Authority would be seriously injured unless the Authority limits the number of sources from which it solicits bids or proposals;
- Single bid: As a result of receipt of a single bid in response to an invitation for bids, it is necessary to negotiate the contract to determine price reasonableness;
- Unsolicited proposal: Acceptance of an unsolicited proposal;

- Excluding a particular source from competition;
- Limited competition;
- Continued development or production of a major system or continued provision of highly specialized services; or
- Purchasing apart from a specific manufacturer in order not to void a warranty.

The D&F shall be valid for an appropriate number of years, not to exceed the life of the contract. PRMT will monitor and notify program 60 days before the D&F expiration date. Proper preparation of D&F packages includes:

- Market research that (i) reasonably assesses potential offerors; and (ii) reasonably demonstrates there are no competitors of the proposed awardee that reasonably could be anticipated to submit a compliant bid/proposal; (ii) considered the following factors (performance/physical characteristics, availability of product data, competitors, expressions of interest/capability); and (iii) to the best of his/her knowledge, there is no other entity that reasonably could be anticipated to submit a compliant bid/proposal.

3-8 CONTRACT TYPES AND RISK

- (a) Contract types are grouped into two broad categories: fixed-price (where the contractor is paid a price for performing work or providing services), and cost-reimbursement (where the contractor is reimbursed for the reasonable, allowable and allocable costs incurred in performance of the contract). In their purest form, these types of contracts are distinguished by the degree of risk of the cost of performance which is allocated to the contractor.
- In a fixed-price contract, the contractor must complete the work to receive the price, which is pre-established and is not influenced by the cost of performance. This contract type carries a higher degree of risk for the contractor since it is required to perform for the agreed upon price regardless of its actual cost of performance.
 - In a cost-reimbursement contract, the contractor's profit is not affected by the cost of performance because its incurred costs will be reimbursed and the amount of the fee is predetermined. This contract type carries low risk for the contractor since it will be compensated for its actual work performed, not the results achieved.

The choice of contract type to use should be based on the type of procurement being made and the risk of that procurement to the Authority.

- (b) Fixed-price and cost-reimbursement contracts are also distinguishable by the method of payment to the contractor. Under fixed-price contracts, payment is made for completed and delivered work. Cost-reimbursement contract payments are made on the basis of costs incurred during contract performance. Cost-reimbursement contracts present more of a risk to the Authority since payment is not based on completed work.
- (c) Refinements in contracting techniques result in a variety of fixed-price and cost reimbursement contracts that alter the normal risk distribution between these contract types. The major category that falls into this area is incentive

contracts. Incentive contracts share risk between the parties by negotiating arrangements that alter the contractor's profit based on the cost or quality of performance. Fixed-price contracts with an economic price adjustment are another means of sharing risk. In these contracts, the cost of labor, materials, or both are adjusted if there are fluctuations in market conditions. Another type of contract is commonly known as time-and-materials contracts. In these contracts, contractors are paid based on a level-of-effort, or hours worked rather than completed work or tasks.

- (d) Indefinite quantity contracts require contractor performance but allow the Authority to order only that amount of material or services that it requires. In some cases, the Authority may be free to order some or all of the material or work from another party. Indefinite quantity contracts may have quantity or dollar expenditure requirements or may include committed purchase requirements or minimum order amounts by the Authority. This type of contract is commonly used for the purchase of repair/replacement parts over multiple years where exact quantities to be purchased are unknown. Contracts with option years to be exercised at the sole discretion of the Authority are another form of this type of contract.
- (e) Other types of contracts are letter contracts and revenue generating contracts.

3-9 ESTABLISHMENT OF CONTRACT TERM/PERIOD OF PERFORMANCE

General: The Contracting Officer, in consultation with the Program Office and other Authority Departments as appropriate, shall establish the contract term, including any options, and incorporate the term into the solicitation document. The contract term should be based on factors such as:

- The benefit to the Authority of a multi-year term;
- The potential costs or savings associated with the recommended term;
- The risk(s) in the event of unsatisfactory contractor performance; and
- The impact on the competitive marketplace.

Term Limit: Pursuant to FTA Circular 4220.1, except for the procurement of bus rolling stock and replacement parts which are limited to five years and rail rolling stock and replacement parts which are limited to seven years, all other third-party contracts (such as property, services, leases, construction, revenue, etc.) are not encumbered by Federal requirements restricting the maximum period of performance. Nevertheless, the term of all other contracts must be reasonable.

Each third-party contract to acquire a new bus model or a bus with significant alterations to an existing model must include provisions to assure compliance with the applicable requirements of 49 U.S.C. Section 5318, as amended by MAP-21, and FTA regulations, "Bus Testing," 49 CFR Part 665. The Authority may enter into multi-year contracts to acquire buses or replacement parts, with options not exceeding five years from the contract date to acquire additional buses or replacement parts. The Authority may enter into multi-year contracts to acquire rail cars or replacement parts, with options not exceeding five years from the contract date to acquire additional rail cars

or replacement parts.

The FTA interprets the five and seven-year terms as covering the Authority's requirements for rolling stock and replacement parts needs from the first day the contract becomes effective to its requirements at the end of the fifth or seventh year respectively. In the case of buses or rail cars which often have long lead times, the requirements will necessarily precede the Authority's need to put the new buses or rail cars into revenue service. This means that the Authority cannot include options for more buses, rail cars or replacement parts than are required for the applicable five or seven-year period based on the effective date of the contract. This does not mean that the Authority must receive delivery, acceptance, or fabrication of the buses, rail cars or replacement parts within five or seven years of the contract effective date.

3-10 AUTHORIZED METHODS OF PROCUREMENT

Determining the Procurement Method: Contracting Officers shall obtain full and open competition through the use of the competitive procedure, or combination of authorized procedures, best suited for the particular procurement. (Refer to Section 3-6 for the Authority's requirements to obtain full and open competition in procurements.) In determining the appropriate competitive procedure, Contracting Officers will:

- Solicit sealed bids (in accordance with WMATA Compact Section 73(a)(2)(A) and chapter 9 of this BPM), if:
 - Time permits the solicitation, submission, and evaluation of sealed bids;
 - The award will be made on the basis of price and other price related factors;
 - It is not necessary to conduct discussions with the responding bidders about their bids; and
 - There is reasonable expectation of receiving more than one sealed bid; or
- Request competitive proposals (in accordance with WMATA Compact Section 73(a)(2)(B) and Chapter 10 of this BPM):
 - If sealed bids are not appropriate.
 - When the competitive proposal method is used, Contracting Officers shall briefly explain in writing which one of the previous conditions cannot be met and place the explanation in the contract file. No additional documentation or justification is required.
 - Because bids and proposals can at times be ambiguous, in the "Basis for Award" clause Contract Administrators must include a provision that reserves the Authority's right to seek additional information or clarification from any bidder or proposer regarding any statement that is found to be ambiguous prior to making an award. Care must be taken when requesting additional information or clarification in sealed bid procurements. In this type of procurement, the additional information or clarification requested to resolve the ambiguity must not materially change the bid.

3-11 PUBLICIZING CONTRACT ACTIONS

- (a) *Solicitation Announcement Notices:* All competitive procurements above the simplified acquisition threshold must be publicized. Contracting Officers shall use sound business judgment in deciding how best to publicize a procurement notice. Solicitation announcement notices shall be publicized in a manner likely to attract as many bidders/proposers as possible, depending on the type of procurement, in order to obtain full and open competition. Potential means of publicizing procurements include local newspapers, business journals, FedBizOps, the Internet, local Bulletin Boards, and any other media the Contracting Officer considers worthwhile and in the best interests of the Authority. Contracting Officers may also refer to the latest revision of FTA Circular 4220.1 for additional guidance.
- Procurements posted to the Authority's Internet site must be properly maintained, updated and error free. Procurement Managers must ensure that all staff thoroughly review posted solicitations at scheduled intervals for accuracy and completeness. Solicitation announcements must be edited and updated in near real time (i.e., weekly, at a minimum).
 - Solicitation postings must be concurrent with publicly available documents.
 - Amendments, revisions or updates must be posted concurrently as well.
 - All attachments contained in the postings must be in a Microsoft Office document format (i.e., Word, Excel, etc.) or in an Adobe file format (i.e., .pdf format).
 - When posting or revising documents posted to the Authority's website, staff must follow the instructions contained in the Authority Internet Solicitation Announcement Instruction Sheet.
- (b) *Non-Competitive Procurements:* Non-competitive procurements do not require formal advertisement. However, Contracting Officers should seek alternative sources for items which have historically been considered sole source.
- (c) *Documentation of Publication:* The form and dates of advertisement or other publication (i.e., the Authority's website) shall be recorded and placed in the contract file. A proof of publication is not required for the contract file.
- (d) *Contract Award Announcement:* The FTA Notification of Grant Approval requires the Authority to include in any announcement of contract award for goods or services (including construction) having an aggregate value greater than or equal to \$500,000, both the amount of federal funds that will be used to finance the procurement and the percentage of federal funds in relation to the total cost of the procurement.

3-12 ELECTRONIC COMMERCE

- (a) The Authority shall use electronic commerce whenever it is practicable and cost effective. In this BPM, the use of terms normally associated with paper-

based transactions (e.g., “copy”, “document”, “page”, “printed”, “sealed envelope”, and “stamped”) shall not be interpreted to restrict or exclude the use of electronic commerce. Contracting Officers may supplement electronic transactions by using traditional media to transmit the requirements of any solicitation document or any contract action governed by the Authority’s procurement regulations (e.g., transmittal of construction drawings in hard copy).

- (b) In carrying-out electronic commerce, the Authority may exercise broad discretion in selecting the hardware and software that will be used. However, the CPRO shall ensure that the systems, technologies, procedures, and processes used by the Authority to conduct electronic commerce:
 - Are implemented uniformly throughout the Authority, to the maximum extent practicable;
 - Are implemented only after considering the full or partial use of existing infrastructures;
 - Facilitate access to Authority procurement opportunities by small and local businesses and DBEs;
 - Include a single means of providing widespread public notice of acquisition opportunities through the Authority-wide point of entry and a means of responding to notices or solicitations electronically; and
 - Comply with national and internationally recognized standards that broaden interoperability and ease the electronic interchange of information, such as standards established by the National Institute of Standards and Technology.
- (c) Before using electronic commerce, the Authority’s head of Information Technology shall ensure that the Authority systems are capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.
- (d) Provided all of the preceding requirements are met, the Authority may accept electronic signatures and records in connection with Authority contracts.

3-13 CONTACTS WITH PROSPECTIVE CONTRACTORS

Procurement actions will be conducted in an ethical and proper manner with an emphasis on maximizing competition. In accordance with §2-9 (Standards of Conduct), no official involved in the procurement process shall have contact with prospective contractors concerning the conduct of any Authority procurement of property or services unless explicitly authorized to do so by the Contracting Officer. Similarly, unsolicited proposals shall not be encouraged by Authority officials. Unsolicited proposals will only be accepted and considered as prescribed in §10-27.

3-14 PREQUALIFICATION CRITERIA

Contracting officers shall ensure that all lists of prequalified persons, firms or

products that are used in acquiring goods and services are:

- Current; and
- Include enough qualified sources to ensure full and open competition.

In addition, Contracting Officers shall not preclude potential bidders or proposers from qualifying during the solicitation period, which is from the date the solicitation is issued until the time for the receipt of bids or proposals.

3-15 STOCK REPLENISHMENT PROCUREMENT GUIDELINES

- (a) *General:* The Stock Replenishment Program includes requirements for a comprehensive spare parts data package in each new contract for rolling stock or other major systems to provide an initial pool of spare parts. The Authority shall also employ a multi-sourcing approach following the initial acquisition of spare parts when alternate sources of supply have been identified and it has been determined that competition would result in favorable pricing and other terms to the Authority.
- (b) *Contract Term Limits:* The Authority may use a variety of competitive means for obtaining items. Blanket Purchase Agreements or requirements type contracts for large groups of items from the same or different manufacturers and/or vendors can be used to assure timely delivery and maximize economies of scale. **The requirements of FTA Circular 4220.1 require that all contracts for the purchase of repair/replacement parts for rolling stock do not exceed five years after the date of original award for bus procurements and for not more than seven years after the date of the original award for rail procurements inclusive of options.** Publicly advertised IFBs may also be used for definite quantity, definite delivery purchases of items when the reorder requirements are large or the cost per unit is high. If smaller quantities are required, purchases may be made through the Simplified Acquisition process.
- (c) *Compliance with FTA Requirements:* If Federal funds are used to purchase stock items, all Federal requirements must be followed. Included in these requirements is the restriction on the use of brand-names without allowing for equivalent items to be considered. Therefore, all solicitations for repair/replacement parts must include a complete description of all items with all salient physical and/or functional characteristics listed unless the Contracting Officer determines in writing that a sole source procurement is justified.

Do not transfer to capital any items purchased with jurisdictional funds if the purchase using federal funds would have been prohibited under federal rules. In particular, do not transfer to capital any items (e.g., parts) that would have been subject to federal Buy America rules (manufactured abroad).

- (d) *Maximizing Competition:* The Authority will attempt to limit the number of sole source repair/replacement parts to the maximum extent practicable. All procurements for the purchase of rolling stock must contain a provision requiring the vehicle manufacturer to identify the manufacturer(s), specifications, use and cost information for all systems and components

included on the vehicle at the time of purchase. In addition, the Authority will monitor the demand for repair/replacement parts and when economically feasible will attempt to develop additional sources of supply to encourage competition and lower the cost of these parts.

- (e) *Maintaining Information on Parts:* Operations must maintain repair/replacement parts data including:
- Specifications and/or drawings;
 - Manufacturer's descriptive materials;
 - Commercial catalog references; or
 - Salient characteristics suitable for competitive procurement if only a brand-name is used.
- (f) *Monitoring the Demand for Parts:* Procurement in cooperation with Operations will identify items with high usage that are available from a single source. These items will be examined for opportunities to include alternate products or manufacturers or both to foster competition and lower costs. (Based on item cost and usage, it will not be economically feasible to expend the resources to attempt to identify second sources for all repair/replacement parts.)

4 - TYPES OF CONTRACTS

4-1 PURPOSE AND SCOPE

This chapter authorizes the use of various types of contracts to meet the procurement objectives of the Authority. Contract types and conditions for their use are described on the following pages. Considerations for selecting the appropriate contract type and documenting that decision in the contract file as required by WMATA Compact Section 73 and FTA Circular 4220.1 as revised are specified.

4-2 GENERAL PROVISIONS

A wide selection of contract types is available to Contracting Officers in order to provide needed flexibility. The contract types are grouped into two broad categories: fixed-price contracts and cost-reimbursement contracts.

4-3 SELECTING CONTRACT TYPES

- (a) Contracts resulting from sealed bidding must be a firm-fixed-price contract or a fixed-price contract with an economic price adjustment. The type of contract to be used shall be determined prior to solicitation, and the solicitation shall inform of the type of contract.
- (b) The Contracting Officer shall select the contract type that is most appropriate to the circumstances of the procurement.
- (c) The cost-plus-a-percentage-of-cost and the percentage of construction cost methods of contracting are prohibited.
- (d) The Contracting Officer may 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 prices can be established.
- (e) *Documentation.* The Contracting Officer shall include documentation in each contract file to support the decision for the contract type selected.

4-4 FACTORS IN SELECTING CONTRACT TYPES

There are many factors that the Contracting Officer should consider in selecting and negotiating the contract type. Prior to selecting a contract type, the Contracting Officer should review those elements of the procurement which directly affect the cost, time, risk, and profit incentives bearing on contractor performance. Among the factors that may be considered in selecting any type of contract are the type and complexity of the supply or service being procured, and the urgency of the requirement.

4-5 FIRM-FIXED-PRICE CONTRACTS

- (a) *Description.* A firm-fixed price contract shall provide for a price that is not subject to any adjustment.
- (b) *Application.* A firm-fixed-price contract shall be used for acquiring commercial products or services, on the basis of reasonably definite functional or detailed specifications when the Contracting Officer can establish fair and reasonable prices, when:
- There is adequate price competition;
 - There are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis or supported by valid cost or pricing data;
 - Available cost or pricing information permits realistic estimates of the probable costs of performance; or
 - Performance uncertainties can be identified, and reasonable estimates of their cost impact can be made.

4-6 FIXED-PRICE CONTRACTS WITH ECONOMIC PRICE ADJUSTMENTS

- (a) *Description.* A fixed-price contract with economic price adjustment provides for revision of the stated contract price upon the occurrence of specified contingencies that are specifically defined in the contract. There are three types of economic price adjustments:
- *Adjustments Based on Established Prices.* These price adjustments are based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items;
 - *Adjustments Based on Actual Costs of Labor or Materials.* These price adjustments are based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance; or
 - *Adjustments Based on Cost Indices of Labor or Material.* These price adjustments based are on increases or decreases in labor or material cost standards or indices that are specifically identified in the contract.
- (b) For use of economic price adjustments in procurements by competitive sealed bids, the Contracting Officer shall follow the procedures in §9-26 (c).
- (c) *Application.*
- A fixed-price contract with economic price adjustment may be used when there is fluctuation in market or labor prices that may exist during an extended period of contract performance.
 - 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. Price adjustments based on labor and material costs shall be limited to contingencies beyond the contractor's control.
 - When establishing the base level from which adjustment will be made, the Contracting Officer shall ensure that cost elements 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 Chief Procurement Officer.

4-7 FIXED-PRICE INCENTIVE CONTRACTS

A fixed-price incentive contract is a fixed price contract that provides for adjusting profit and establishing the final contract price by a formula based on the relationship of final negotiated total cost to total target cost. This contract type is covered in §4-11.

4-8 COST-REIMBURSEMENT CONTRACTS

- (a) *Description.* Cost-reimbursement contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish a ceiling that the contractor may not exceed (except at its own risk) without the approval of the Contracting Officer.
- (b) *Application.* Cost-reimbursement contracts are suitable for use with Architectural/Engineering design, planning, IT services and research and development contracts.
- (c) *Contract Clause.* Each cost-reimbursement contract shall contain the following:
 - A clause, approved by the Chief Procurement Officer, indicating that only those costs determined by the Contracting Officer to be reasonable, allowable and allocable in accordance with Chapter 16 of these procedures, will be reimbursable; and
 - A clause, approved by the Chief Procurement Officer, establishing a stated price ceiling.
- (d) A cost-plus-fixed-fee contract is a cost-reimbursement contract that provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract. The fixed-fee does not vary with the actual cost but may be adjusted as a result of changes in the work to be performed under the contract. This contract type permits contracting for efforts that might otherwise present too great a risk to contractors, but it provides the contractor only a minimum incentive to control costs. The contract shall include a clause, approved by the Chief Procurement Officer, setting a maximum allowable fee.
- (e) *Completion 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. This form of contract normally requires the contractor to complete and deliver the specified end product (e.g., a final report or research accomplishing the goal or target) within the estimated cost, if possible, as a condition for payment of the entire fixed fee. However, in the event that the work cannot be completed with the estimated cost, the Authority may require more effort without an increase in fee, provided the Authority increases the estimated cost.
- (f) Under a cost-reimbursement contract, the Contracting Officer may issue a change order, a direction to replace or repair defective items or work, or a

termination notice without immediately increasing the funds available. Further, under this type of contract, a contractor is not obligated to incur costs in excess of the estimated cost in the contract; the Contracting Officer shall ensure availability of funds for directed actions.

- (g) Under a cost-reimbursement contract, the Contracting Officer may direct that any increase in the estimated cost or amount allotted to a contract be used for the sole purpose of funding termination or other specified expenses.

4-9 INCENTIVE CONTRACTS

- (a) *General.* An incentive contract may be used when a firm-fixed-price contract is not appropriate and the required services can be procured at lower costs, by relating the amount of profit or fee payable under the contract to the contractor's performance. Incentive contracts are designed to obtain specific objectives by establishing reasonable and attainable targets that are communicated to the contractor in writing.
- (b) When predetermined, formula-type incentives on technical performance or delivery are included, increases in profit or fee shall be provided only for achievement that surpasses the targets, and decreases shall be provided for to the extent that targets are not met.

4-10 TYPES OF INCENTIVES

- (a) *Cost Incentives.*
 - Incentive contracts shall include cost incentives which take the form of a profit or fee adjustment. No incentive contract shall provide for incentives without providing for a cost constraint.
 - Incentive contracts shall include a target cost, a target profit or fee, and a profit or fee adjustment formula that provides for the following:
 - Actual cost that meets the target will result in the target profit or fee;
 - Actual cost that exceeds the target will result in downward adjustment of the target profit or fee; and
 - Actual cost that is below the target will result in upward adjustment of the target profit or fee.
- (b) *Performance Incentives.*
 - Performance incentives may be considered in connection with specific elements of the contractor's performance. These incentives should be designed to relate profit or fee to results achieved by the contractor, compared with specific targets. To the maximum extent practicable, positive and negative performance incentives shall be considered in connection with service contracts for performance of objectively measurable tasks when quality of performance is critical.
 - Technical performance incentives may be considered in connection with specific elements of the contractor's performance. Technical performance incentives shall be designed to tailor profit or fee to results achieved by the contractor, compared with specified target goals. The contract shall be

specific in establishing performance test criteria (i.e., testing conditions, instrumentation precision and data interpretation) in order to determine the degree of attainment of performance targets.

- Delivery incentives should be considered when improvement from a required delivery schedule is a significant Authority program objective. Incentive arrangements on delivery shall specify the application of the reward-penalty structure in the event of Authority caused delays or other delays beyond the control, and without the fault or negligence, of the contractor or a subcontractor.

4-11 FIXED-PRICE INCENTIVE CONTRACTS

- (a) *Description.* A fixed-price incentive contract is a fixed-price contract that provides for adjusting profit and establishing the final contract price, by application of a formula based on the relationship of total final negotiated cost to total target cost. The final price is subject to a price ceiling, negotiated at the outset.
- (b) *Application.* A fixed-price incentive contract may be used when the following factors apply:
- A firm-fixed-price contract is not suitable;
 - The nature of the services being procured and other circumstances of the procurement are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance;
 - If the contract also includes incentives on technical performance and/or delivery, the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work; and
 - Adequate cost or pricing information for establishing a reasonable firm target is reasonably expected to be available at the time of initial contract negotiations.
- (c) *Limitation.* A fixed-price incentive contract shall be used only when it is impractical to obtain services of the kind or quality required without the use of this contract type.

4-12 INDEFINITE-DELIVERY CONTRACTS

- (a) *Definitions.* As used in this Section and in §4-13 and §4-15:
- "Delivery order contract" is an indefinite-delivery contract for supplies that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract.
 - "Task order contract" is an indefinite-delivery contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of tasks during the period of the contract.
- (b) There are three types of indefinite-delivery contracts: (1) indefinite-quantity contracts (§4-13); (2) requirements contracts (§4-13); and definite-quantity

contracts (§4-14). The appropriate type of indefinite-delivery contract may be used to acquire goods and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award. All three types of indefinite-quantity contracts allow for maintaining minimal stocking levels of goods in the Authority's stores system. Also, indefinite-quantity contracts allow for flexibility in both quantities and delivery schedules and the ordering of goods and/or services once requirements are known.

- (c) *Timing of Funds Obligation.* The Contracting Officer executing orders under a requirements or indefinite-quantity type contract shall obligate funds when individual orders are issued.
- (d) *Contract Clauses.*
 - Solicitations and contracts for delivery and task order contracts shall include appropriate ordering and ordering limitation clauses approved by the Chief Procurement Officer.
 - The Contracting Officer shall:
 - Include in the schedule of each indefinite-quantity type contract, the names of Authority offices authorized to issue orders under the contract;
 - State an estimated total quantity in the solicitation and the resulting contract, and include a clause stating that this estimate is not a representation to a contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal; and
 - Ensure that the contract obligates the amount of budget authority needed to cover the Authority's minimum required order, if any, under the contract.
 - The contract shall state the maximum limit of the contractor's obligation to deliver and the Authority's obligation to order. The contract may also specify maximum or minimum quantities that the Authority may order under each individual order and the maximum that it may order during a specified period of time.

4-13 INDEFINITE-QUANTITY AND REQUIREMENTS CONTRACTS

- (a) *Indefinite-Quantity Contract.* An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The Authority places orders for individual requirements such as:
 - For each contractor receiving an award under a single solicitation, the contract must require the Authority to order, and the contractor to furnish, at least a stated minimum dollar amount of supplies or services. In addition, each contract must state the maximum overall dollar amount that the Authority can order from all contractors combined during the life of the awarded contracts;
 - To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount the Authority is fairly certain to order;
 - The Contracting Officer should, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under

a single solicitation. No contract above the amount of \$100 million (including all options) may be awarded to a single source; and

- A solicitation and contract for an indefinite quantity must:
 - Specify the period of the contract, including the number of options and the period for which the Authority may extend the contract under each option;
 - Specify the total minimum and maximum dollar amount of supplies or services the Authority will acquire under the contract;
 - Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the Authority will acquire under the contract in a manner that will enable a prospective bidder/proposer to decide whether to submit a bid/proposal;
 - State the procedures that the Authority will use in issuing orders. If multiple awards may be made, state the procedures and selection criteria that the Authority will use to provide awardees a fair opportunity to be considered;
 - Include a description of the Authority offices authorized to issue orders; and
 - Include authorization for placing oral or electronic orders provided that the Authority has established procedures for obligating funds and that oral orders are confirmed in writing by issuance of a purchase order.

(b) *Application of Indefinite-Quantity Contracts.* Contracting Officers may use an indefinite- quantity contract when the Authority cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the Authority will require during the contract period, and it is inadvisable for the Authority to commit itself for more than a minimum quantity. The Contracting Officer should use an indefinite-quantity contract only when a recurring need is anticipated.

- (c) *Job Order Contracts.* A Job Order Contract (JOC) is a specialized form of indefinite- quantity contract. A JOC is used to provide a streamlined procedure for miscellaneous and unpredictable job needs that may require prompt attention when they arise and can have a cost anywhere from a few tens of thousands of dollars to several million dollars. JOC contractors develop a familiarity with the working conditions at the Authority's work sites, as well as the Authority's administrative and operational procedures. This familiarity creates efficiencies and economies. In addition, contractors that might otherwise be unwilling to contract for relatively small or isolated projects are willing to contract for a larger potential scope of work over a multi-year contract life.

- JOC solicitations and contracts must comply with the requirements of indefinite- quantity contracts set out in this section.
- The Authority will make awards to multiple contractors, if reasonably possible, and must make multiple awards if the maximum contract amount (including options) exceeds \$100 million.
- The solicitation will include a requirement that a JOC contractor self-perform at least 20% of the work on an annual basis.
- The minimum contract value promised to the contractor should be sufficiently meaningful in amount as to encourage qualified companies to bid on the JOC solicitation.

- Orders issued under a JOC contract will comply with the procedures set out in § 4-15 and 18-13.
 - The total annual value of a JOC contract will not exceed \$35 million unless the need for a higher amount is justified in writing and reviewed and approved by the Chief Procurement Officer and General Counsel.
- (d) *Requirements Contracts.* A requirements contract provides for all actual purchases requirements for specified goods or services during a finite contract period, with deliveries or performance to be scheduled by placing orders with the contractor.
- The Contracting Officer shall state a realistic estimate of the total quantity to be ordered over the life of the contract in the solicitation and resulting contract. The estimate should be qualified to state that the estimated quantity is not a guarantee of the actual quantity to be required or ordered, or that the conditions affecting the requirement will be stable over time. The estimated quantity can be derived from past ordering experience, user input or both, but should reflect the most up-to-date information on need available.
 - The solicitation document and contract must state the maximum amount of goods or services to be ordered which may be expressed as a maximum dollar amount or quantity. The contract may also specify the minimum and/or maximum quantities that may be ordered with each order and the maximum quantity that may be ordered during a specified time interval.
- (e) *Application of Requirements Contracts.* Contracting Officers may use requirements contracts when the Authority anticipates a recurring need for goods and/or services but cannot predict the exact quantities required during a specific period of time.
- (f) *Authority Property Furnished for Repair.* When a requirements contract is used to acquire work (e.g., repair, modification or overhaul) on existing items of Authority property, the Contracting Officer shall specify in the Schedule that failure of the Authority to furnish such items in the amounts or quantities described in the Schedule as “estimated” or “maximum” will not entitle the contractor to any equitable adjustment in price under the Authority Property clause of the contract.

4-14 DEFINITE-QUANTITY CONTRACTS

- (a) *Description.* A definite-quantity contract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at designated locations upon order.
- (b) *Application.* A definite-quantity contract may be used when the Contracting Officer determines in advance that a definite 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.

4-15 ORDERING

- (a) Orders placed under indefinite-delivery contracts do not require public notification.
- (b) No protest under chapter 17 is authorized in connection with the issuance or proposed issuance of an order under an indefinite-delivery contract, except for a protest on the grounds that the order increases the scope, period, or maximum value of the contract.
- (c) Orders placed under indefinite-delivery contracts must follow the procedures at § 18-13 and contain the following information:
 - Date of order;
 - Contract number and order number;
 - Item number and description, quantity and unit price or estimated cost or fee;
 - Delivery or performance schedule;
 - Place of delivery or performance;
 - Any packaging, packing, and shipping instructions;
 - Accounting and appropriations data; and
 - Method of payment and payment office.

4-16 TIME-AND-MATERIALS CONTRACTS

- (a) *Description.* A time-and-materials contract provides for acquiring supplies or services on the basis of:
 - Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses and profit; and
 - Materials at cost, including, if appropriate, material handling costs as part of material costs.
- (b) *Definitions.*
 - “Direct materials” means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end services.
 - “Hourly rate” means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are as follows:
 - Performed by the contractor;
 - Performed by the subcontractor; or
 - Transferred between divisions, subsidiaries or affiliates of the contractor under a common control.
 - “Materials” means:
 - Direct materials, including supplies transferred between divisions, subsidiaries, or affiliate of the contractor under a common control;
 - Subcontractors for supplies; and
 - Other direct costs (e.g., travel, etc.).
- (c) *Application.*

In accordance with Policy Memorandum 09-08, The Use and Monitoring of Time and Material (T&M)/Labor Hour Service Contracts.

- A time-and-materials contract may be used with prior written approval from the Chief Procurement Officer only after the Contracting Officer determines in writing that at the time of contract execution it is not possible to define the scope or duration of the work or to anticipate the contract costs with any degree of confidence and no other type of contract is suitable, and only if the contract includes a ceiling price that the contractor exceeds at its own risk. The Contracting Officer shall document the contract file with the Chief Procurement Officer's approval as well as to justify the reasons for and the amount of any subsequent change in the ceiling price.
- *Contracting Officer Responsibilities* Contracting Officers must use the Scope of work and Program Office input to identify potential areas of risk (i.e., technical obsolescence, schedule pressure, security information, maintenance and support, dependencies, staffing availability, cost, funding, vendor stability, and past performance).
 - The Contracting Officer must analyze the risks. This risk assessment should be used to develop risk mitigation strategies for the contract.
 - The risk mitigation strategy must be made part of the contract file.
 - Using the risk mitigation strategy, the Contracting Officer must prepare a plan of corrective actions to implement should the contractor fail to perform its contractual obligations on a timely basis.
- *Authority Surveillance.* A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Authority surveillance of contractor performance is required.
- *Material Handling Costs.* When included as part of material costs, material handling costs shall include only costs clearly excluded from the labor-hour rate. Material handling costs may include all appropriate indirect costs allocated to direct materials in accordance with the contractor's usual accounting procedures consistent with chapter 16 of these procedures.

4-17 LABOR-HOUR CONTRACTS

A labor-hour contract is a variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor. Labor-hour contracts are subject to the same requirements and restrictions as time-and-materials contracts.

4-18 LETTER CONTRACTS

- (a) *Description.* A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services.
- (b) *Application.*
 - A letter contract may be used when negotiating a definitive contract is not possible in sufficient time to meet the requirement. However, a letter contract should be as complete and definite as feasible under the circumstances.
 - When a letter contract award is based on price competition, the Contracting Officer shall include a not-to-exceed price;

- Each letter contract shall include a clause, approved by the Chief Procurement Officer indicating the maximum liability of the Authority under the letter contract;
 - The maximum liability to the Authority shall be the estimated amount necessary to cover the contractor's requirement for funds before execution of the definitive contract. However, the Authority's maximum liability shall not exceed 50% of the overall price ceiling for the term of the definitive contract pursuant to this section unless approved in advance by the Chief Procurement Officer;
 - Each letter shall contain a negotiated schedule including:
 - Dates for submission of the contractor's price proposal, required cost or pricing data, and, if required, make-or-buy subcontracting plans;
 - A date for the start of negotiations; and
 - A target date for final negotiations, which shall be the earliest practicable date. The schedule will provide for execution of the contract with 120 days after the date of the letter contract or before completion of 50% of the work to be performed, whichever occurs first. The contracting officer may, in extreme cases and according to Authority procedures, authorize an additional period. If the Contracting Officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement regarding price or fee for the work performed, then the Contracting Officer must negotiate a settlement for work performed, issue a Stop Work Order and re-solicit.
 - Prior to execution of a letter contract, the Contracting Officer shall ensure that funds are committed for obligation through a purchase requisition in the amount of the maximum Authority liability for the term of the letter contract.
 - For purposes of initiation and approval of letter contracts, and for purposes of contracting authority, the Contracting Officer shall use the estimated cost of the contract for determining the type, level of review, and approval required.
- (c) *Limitations.* A letter contract may be used only after the Contracting Officer determines, in writing to the procurement file, that no other type of contract is suitable. A letter contract shall not:
- Commit the Authority an amount in excess of the funds available at the time the letter contract is executed; and
 - Be amended to satisfy a new requirement unless the new requirement is inseparable from the existing contract. Any amendment shall be subject to the same requirements as a new letter contract.

4-19 REVENUE CONTRACTS

- (a) *General.* Revenue contracts are contracts whose primary purpose is to generate revenues or to create business opportunities for the Authority. Examples include, rail and bus advertising, vending machine services, etc.
- If revenue contracts involve use of a federally-funded asset, the Federal Transit Administration (FTA) requires that they be awarded through competition. The extent and type of competition should be consistent with the purpose and scope of the procurement and the available marketplace;

- and
 - Competition is not required when a business opportunity (such as running utility cable through tunnels or allowing the installation of transmission towers or antennas on property) is made available on an equal basis to all qualified applicants.
- (b) *Economic Analysis.* The contract file for a revenue contract should include an economic analysis justifying the contract term.
- *Contents of Economic Analysis.* In performing this analysis, the Contracting Officer may wish to conduct a market survey to obtain information and recommendations from prospective proposers to determine what the typical up-front investment will be and what kind of contract period would be required for the proposers to recover that investment. The economic analysis should explain why the specific period of performance was necessary for the recovery of the contractor's investment and a reasonable economic return; and
 - The contract file should show the conclusions reached with respect to the contract period of performance finally selected.

4-20 MULTI-YEAR CONTRACTS

- (a) *General.* Multi-year contracts are those which have a term of years which exceeds the current budget period. Such contracts must be contingent upon future funding by the Authority, vesting in the Authority the right to cancel without penalty if such funding is not available for any budget period beyond the funded period. Option provisions are unnecessary. Multi-year contracting may be used in either competitive or non-competitive procurements.
- (b) *Required Documentation for Multi-Year Contracts.* The Contracting Officer shall document the following factors as justification for the use of multi-year contracting:
- That the Authority requires the special production of definite quantities or the furnishing of long-term services to meet its need(s);
 - That there is a reasonable expectation that throughout the life of the contract, the Authority will have sufficient funding for the entire program;
 - That there is a stable design for the program and the technical risks associated with the program are not excessive;
 - That a multi-year contract will serve the best interests of the Authority by encouraging competition or otherwise promoting economies in procurement and/or performance; and
 - The estimated requirements cover the period of the contract and are reasonably firm.
- (c) *Multi-Year Solicitation Requirements.* The solicitation for a multi-year contract must require that each response quote a price for the base funded period of the contract and for each subsequent period of the contract, as well as a cumulative price for the multi-year requirement. Each solicitation for a multi-year contract shall include the following:
- The requirements by item or services for the base funded period;
 - Multi-year contract requirements including requirements for each additional period;
 - The criteria for evaluation factors other than price where the procurement is on the basis of factors in addition to price;

- If the multi-year procurement is on the basis of factors in addition to price, the relative importance of the evaluation factors;
- Notice that if the Authority determines before award that only the base funded requirements are needed, the Authority may evaluate proposals and make award solely on the requirements designated for the base funded period;
- A prominently placed notice describing the multi-year features of the solicitation; and
- A statement that an award will not be made on less than the requirements designated for the base funded period.

(d) *Evaluation of Multi-Year Bids/Proposals.*

- The Contracting Officer shall evaluate bids or offers to determine the lowest overall evaluated cost to the Authority for both the multi-year and the requirements designated for the base funded period. The award of a multi-year procurement is to be based on the total contract value for all program years, and not just the funded portion of the program;
- If the procurement is by competitive sealed bids (on the basis of price and price related factors), the Contracting Officer shall award the contract on the basis of the lowest evaluated price;
- If the procurement is by competitive sealed proposals (on the basis of price and other non-price related factors), the Contracting Officer shall award the contract consistent with the basis of award; and
- In the case of a sole source procurement, a Contracting Officer shall make an award only if a detailed review of the cost and technical proposal supports the objectives of multi-year contracting.

(e) *Cancellation of Multi-Year Contracts.* The Contracting Officer shall ensure that the Authority is protected in the event of cancellation of a multi-year contract in the following manner:

- When a contract is terminated for the convenience of the Authority, the Authority's obligation shall be in accordance with the Termination for Convenience of the Authority clause of the contract; or
- Cancellation costs may have to be included in the contract in the form of an advance agreement for any program year or portion thereof canceled by the Authority (but cancellation costs are not required to be included if the contractor will accept a contract without them).

(f) *Distinction Between Multi-Year and Multiple Year Contracting.* The key distinguishing difference between multi-year and multiple year contracts is that multi-year contracts buy more than one year's requirement without establishing and having to exercise an option for each program year after the first, whereas multiple year contracting is a method by which the Contracting Officer awards a contract for a base period of one or more years, with option provisions for future years' requirements. The base period of the contract is a firm and fully funded requirement. Beyond the base period, the Authority uses option provisions, which may be exercised unilaterally at the discretion of the Authority as additional funding becomes available. There is no need for the inclusion of cancellation payments since the exercise of the option(s) is totally within the discretion of the Authority.

4-21 USE OF OPTIONS

- (a) *Option in Best Interest of the Authority.* Except as provided in §4-21(b) and §4-21(c), a Contracting Officer may include an option in a contract when it is in the best interest of the Authority. Options may be included in contracts to assure the future availability of property or services. An option is a unilateral right in a contract by which, for a specified time, the Authority may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract.
- (b) *Prohibition When Requirements Are Foreseeable.* A Contracting Officer shall not use an option when the Authority's foreseeable requirements for goods involve quantities large enough to permit the recovery of start-up costs and the production of required supplies at a reasonable price; or delivery requirements are known far enough into the future to permit competitive procurement and production of goods.
- (c) *Other Conditions Concerning the Use of Options.* A Contracting Officer shall not use an option in any of the following circumstances:
- If the contractor would incur undue risks, such as when the price or availability of necessary materials or labor is not reasonably foreseeable;
 - If an indefinite quantity or requirements type contract would be more appropriate; provided, that a Contracting Officer may use an option to extend the term of these types of contracts;
 - If market prices for the supplies or services involved are likely to change substantially; or
 - If the basic quantity is a learning or testing quantity and competition for the option would be impractical after the initial contract is awarded.
- (d) *Options in Services Contracts.* A Contracting Officer may include options in a contract for services if there is an anticipated need for similar services beyond the first contract period and/or funding year. The total of the basic and option periods in a contract for services may not exceed five years, absent approval of COUN.
- (e) *Options in Supply Contracts.* The total of the basic and option quantities shall not normally exceed the requirement for five years after the date of the original contract in contracts for supplies. The Contracting Officer shall justify in writing the quantities or the term under option, the notification period for exercising the option, and any limitation on the option price. The Contracting Officer shall include the justification document in the contract file.
- (f) *Contract Provisions Must Provide Option Price.* The cost of each option shall be readily discernible from the contract provisions that set forth the option. Contract provisions, approved by the Chief Procurement Officer, setting forth the cost of the option may include, but are not limited to, the following:
- A specific dollar amount;
 - An amount to be determined by applying provisions (or a formula) provided in the basic contract, but not including renegotiation of the price for work in a fixed-price type contract;

- In a cost-type contract, a stated fixed or maximum fee or a fixed or maximum fee amount determinable by applying a formula contained in the basic contract;
- A specific price that is subject to an economic price adjustment provision; or
- A specific price that is subject to change as a result of changes to the prevailing labor rates provided by the U.S. Department of Labor (DOL).

4-22 SOLICITATION OF CONTRACTS WITH OPTIONS

- Inclusion of All Option Clauses in Solicitation.* If a contract will provide for the exercise of an option, the solicitation shall include appropriate option clauses, approved by the Chief Procurement Officer. Each solicitation containing an option provision shall state the basis of evaluation and shall inform bidders that the Authority may exercise the option at the time of award.
- Discretionary Option Quantities.* In solicitations that require the offering of an option, the total amount of the option quantities may be left to the discretion of the Contracting Officer and Program Office based on the needs of the Authority.
- Statement of Option Period.* Each contract shall state the period which an option may be exercised to provide the contractor adequate lead time to ensure continuous production or services.
- Evaluation of Offers for Solicitation Options.* When awarding the base contract, the Authority shall evaluate offers for any option quantities or periods contained in a solicitation when it has been determined prior to soliciting offers that the recipient is likely to exercise the options. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole-source procurement.

4-23 EXERCISE OF OPTIONS

- Requirements.* A Contracting Officer shall exercise an option only after COUN review and approval and after documenting the file to show the following:
 - That sufficient budget authority is available;
 - That the requirement covered by the option fulfills an existing Authority need; and
 - That the exercise of the option will be the most advantageous method of fulfilling the Authority's requirement, when price and other factors are considered.

Exercising an option after a lower price has been negotiated constitutes a sole-source procurement.

- Factors to Consider.*
 - The Contracting Officer, after considering price and other factors, shall make the judgment required by §4-23 (a) above, on the basis of one of the following:
 - A new solicitation failed to produce a better price or a more advantageous offer than that offered by the option;

- An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the most advantageous offer; or
 - The time between the award of the contract containing the option and the exercise of the option indicates that the option price is the lowest price obtainable or the most advantageous offer.
 - When determining whether to exercise an option, the Contracting Officer shall consider the need for continuity of operations and the potential cost of disrupting operations.
- (c) *Citing Option Provision in Modifications.* The contract modification or other authorized written document, which notifies the contractor of the exercise of the option, must cite the option provision as authority for the action and should be issued within the time-period specified in the contract.

4-24 PROCUREMENT ADMINISTRATIVE LEAD TIMES (PALT)

- (a) The PALT listed below reflects suggested standard lead times aligned with procurement type and threshold:

PROCUREMENT TYPE	DOLLAR VALUE	LEAD TIME RANGE (Calendar Days)
Under \$250,000 Using Simplified Procedures	\$0 – \$10,000	Purchase Card
	\$10,000 and above	30-45 days
Under \$250,000 Using Simplified Procedures	Any Amount as Simplified Purchase	30-45 days
Blanket Purchase Agreement (BPA)	Any Amount	30-45 days
Task Orders Under Indefinite Delivery Contracts	Any Amount	30-45 days
Formal Procurement Procedures Sealed Bids Invitation for Bids (IFB)	Any Amount	60-90 days
Competitive Proposals Request for Proposals (RFP)	Any Amount	90-180 days
Delivery Orders/Task Orders issued off WMATA IDIQ or Requirements Type Contracts	Any Amount	30-60 days
Non-Competitive Actions: Other Than Full and Open Competition (includes Procurement and Procedures Manual Chapters 8 and 11, sole source, and urgent actions – the latter two requiring submittal of a completed Determination and Findings (D&F))	Any Amount	30-90 days

(a) Delivery Orders/Task Orders Under External Contracts e.g. General Services Administration/Federal Supply Schedules, etc.	Any Amount	30-60 days
(b) Any Modification to Exercise Options	Any Value	30-60 days

- (b) **Note:** Standard lead times begin at the receipt of a procurement ready package from the Program Office. Procurement ready means a properly prepared, fully documented requisition, Independent Cost Estimate, Scope of Work/Specifications, Determination & Findings, including any applicable clearances and approvals.

5 - CONTRACT FINANCING, FUNDING AND PAYMENT

5-1 PURPOSE AND SCOPE

This chapter provides procedures for all Authority officials involved in the contracting process pertaining to contract financing, funding, payments to contractors, and the treatment of contractor debt.

5-2 PROVISION AND USES OF CONTRACT FINANCING

- (a) Generally, private financing (financing of a contract solely by the contractor with no assistance from the Authority) shall be considered the most preferable type of financing for all Authority contracts. The Authority can provide financing on a contract-by-contract basis only if private financing is not available.
- (b) The Contracting Officer shall avoid any undue risk of monetary loss to the Authority through contract financing and shall monitor the contractor's financial status and use of any contract financing provided under the contract.
- (c) Contract financing by the Authority shall be used only for financing contractor working capital and shall not be used for the expansion of contractor-owned facilities.
- (d) Except for contracts under which facilities are being procured for Authority ownership, contract financing by the Authority shall not be used for the procurement of fixed assets.
- (e) Contract financing shall not be provided for purchases made under simplified acquisition procedures.

5-3 CONTRACT FINANCING PAYMENT METHODS

- (a) Contract financing payment means an authorized Authority disbursement of monies to a contractor prior to the acceptance of supplies or services by the Authority. Contract financing payment methods include advance payments, partial payments, and progress payments, which are generally described as follows:
- (b) Advance payments are advances of money by the Authority to a prime contractor before, in anticipation of and for the purpose of complete performance under one or more contracts. They are expected to be recovered from payments due to the contractor incidental to performance of the contract(s). Advance payments may be made to prime contractors for the purpose of making advances to subcontractors.
- (c) Partial payments for accepted supplies and services that are only a part of the contract requirement are authorized. Partial payments can assist the contractor in participating on Authority contracts without, or with minimal,

contract financing.

- (d) Progress payments may be authorized when payments are based on costs incurred as the work progresses under the contract or based on a percentage or stage of completion of the contract work.

5-4 ADVANCE PAYMENT

- (a) Contracts for the payment of rent, tuition, insurance premiums, and subscriptions to publications are contracts where the Authority makes advance payments.
- (b) Advance payments utilizing FTA funds are prohibited unless prior written concurrence is obtained from FTA.

For federally-funded contracts, the FTA does not authorize funding payments made by the Authority to a contractor prior to the incurrence of costs by the contractor, unless prior written concurrence is obtained from FTA. Where advance payments are customarily required in the marketplace, FTA concurrence is required only where an advance payment exceeds \$100,000.

5-5 PROGRESS PAYMENTS

- (a) *General.*
 - Progress payments should reflect the value received by the Authority on products received or services performed. The Authority shall obtain title or a secured interest in materials included in progress payments. The Authority must also have sufficient documentation to substantiate the work performed for which payment is requested.
 - In the case of cost-reimbursement contracts, the basis may be an interim milestone toward a completed deliverable.
 - Progress payments for construction contracts must be made on a percentage of completion basis (§5-6). The Contracting Officer and COTR should closely monitor such payments to ensure that the percentages billed by the contractor are an accurate reflection of progress made and do not represent advance payments. A percentage-of-completion method is authorized only for construction contracts.
 - Bids conditioned on progress payments when the solicitation does not provide for progress payments shall be rejected as non-responsive.
 - In the case of deliverables such as buses, rail cars or other products a Schedule of Values should be established. Breakdown each lump-sum item into component parts of work for which progress payments may be requested. The total costs for the component parts of work shall equal the contract price for that lump-sum item. The Contracting Officer may request data to verify accuracy of dollar values. Include mobilization, general condition costs, overhead and profit in the total dollar value of unit price items and in the component parts of work for each lump-sum item. Do not include mobilization, general condition costs, overhead or profit as a

separate item. Do not break down unit price items. Use only the contract price for unit price items. The total cost of all items shall equal the contract price. The Schedule of Values will form the basis for progress payments. An acceptable Schedule of Values shall be agreed upon by the Contractor and Contracting Officer before the first progress payment is processed.

(b) *Customary and Unusual Progress Payments.*

- *Customary Progress Payment Rates.* Progress payments are based on costs incurred by the contractor as work progresses under the contract. The customary progress payment rate is 80% applicable to the total cost of performing the contract. For contracts where the contractor is a Disadvantaged Enterprise Firms (DBE) and has been certified by the Authority, the customary progress payment rate is 85%.
- *Unusual Progress Payment Rates.* Any rate higher than 80% (or 85% for DBEs) shall be considered an unusual progress payment rate. The Contracting Officer shall only authorize unusual progress payment rates if both of the following apply:
 - The contract necessitates pre-delivery expenditures that are large in relation to the contract price and in relation to the contractor's working capital and credit; and
 - The contractor fully documents the need to supplement any private financing available.

(c) *Contract Price.*

- For the purpose of making progress payments and determining the limitations on progress payments, the Contracting Officer may use the following in determining the contract price:
 - Under firm-fixed-price contracts, the contract price shall be the current contract price for which funds have been obligated;
 - If the contract is re-determinable or subject to economic price adjustment, the contract price shall be the initial price until modified;
 - Under a fixed-price incentive contract, the contract price shall be the target price for which funds have been obligated. However, if the contractor's properly incurred costs exceed the target price, the Contracting Officer may provisionally increase the price up to the ceiling or maximum price;
 - Under a letter contract, the contract price shall be 50% of the maximum amount of the contract; and
 - Any portion of the contract specifically providing for reimbursement of costs only shall be excluded from progress payments.
- The Contracting Officer shall not make progress payments or increase the contract price beyond the funds obligated under the contract, as amended.

(d) *Exclusion of Progress Payments.*

A Contracting Officer shall not provide for progress payments if the contract items are quick turnover types for which progress payments are not a customary commercial practice, such as the following:

- Subsistence;
- Clothing; or
- Standard commercial items not requiring a substantial accumulation of pre-delivery expenditures by the contractor.

5-6 PROGRESS PAYMENTS BASED ON A PERCENTAGE OR STAGE OF COMPLETION

- (a) Progress payments based on a percentage or stage of completion must be utilized by the Contracting Officer for construction contracts, subject to the prohibitions in §5-5(b).
- (b) *Retainage.* When satisfactory progress on a contract has not been achieved by a contractor during any period for which a progress payment is to be made, a portion of the progress payment otherwise due may be retained.
 - Retainage should not be used as a substitute for good contract management, and the Contracting Officer should not withhold funds without cause;
 - Determinations to retain funds and the negotiated amount to be withheld shall be made by the Contracting Officer on a case-by-case basis. Such decisions will be based on the Contracting Officer's assessment of past performance and the likelihood that such performance will continue;
 - The amount of retainage withheld shall not exceed 10 percent (10%) of the approved estimated amount in accordance with the terms of the contract and may be adjusted as the expected performance, the ability to rely on alternative safeguards, and other factors change; and
 - Upon completion of all contract requirements, retained amounts shall be paid promptly unless these amounts are otherwise necessary to protect the Authority's interest.

5-7 CONSIDERATION FOR PROGRESS PAYMENTS

- (a) There should be no requirement for a separate consideration for providing progress payments or for changing progress payment rates if coverage is included in the terms of the contract when awarded.
- (b) Adequate new consideration shall be required when the contract, during contract performance, is amended to provide progress payments.
- (c) The contractor may provide new consideration by monetary means (such as reduction in contract price) or non-monetary means (such as incorporating terms in the contract amendment conferring a new benefit on the Authority). Fair and reasonable consideration shall approximate the amount by which the price would have been smaller if the provision for progress payments had been included in the initial contract.

5-8 SUPERVISION AND APPROVAL OF PROGRESS PAYMENTS

- (a) The extent of progress payments supervision may vary, according to the contractor's experience, performance record, reliability, quality of management, financial strength, and with the adequacy of the contractor's accounting systems and controls. Supervision shall be of a kind and degree sufficient to provide timely knowledge of the need and timely opportunity for

any action necessary to protect the interests of the Authority.

- (b) The Contracting Officer shall, before approving progress payments, determine the following:
 - That the contractor will be capable of transferring ownership (title), or that the Authority is otherwise protected against loss by additional protective provisions in the contract; and
 - The contractor's accounting system and controls are adequate for proper administration of progress payments.
- (c) The Contracting Officer may request an audit review of the contractor's request for progress payment when there is reason to question the reliability or accuracy of the contractor's certification.
- (d) The Contracting Officer shall ensure that any excess of unearned progress payments is promptly corrected through one or more of the following:
 - Reducing the progress payment rate; or
 - Suspending progress payments.

5-9 REVIEW OR AUDIT OF PROGRESS PAYMENTS

- (a) *General.* In each contract providing for progress payments, the Contracting Officer shall include provisions, approved by the Chief Procurement Officer, giving the Authority the right to conduct post-payment reviews or audits at the discretion of the Contracting Officer.
- (b) The Contracting Officer shall conduct progress payment reviews periodically, at intervals of six months or less, and may conduct reviews or request audits by the Office of Inspector General (OIG) at any time.

5-10 SUSPENSION OR REDUCTION OF PROGRESS PAYMENTS

- (a) *General.* In each contract that provides for progress payments, the Contracting Officer shall include provisions, approved by the Chief Procurement Officer, which assert the Authority's right to reduce or suspend progress payments, in the following circumstances:
 - The contractor fails to maintain an efficient and reliable accounting system and controls that are adequate for the proper administration of progress payments;
 - The Contracting Officer determines that contract performance is endangered by the contractor's financial condition;
 - The progress payments exceed the fair value of undelivered work under the contract; and
 - The Authority determines there is substantial evidence that the contractor's request for progress payments is fraudulent.
- (b) The Contracting Officer must evaluate the effect of the action on the contractor's operations, based on the contractor's financial condition, projected cash requirements, and the existing or available credit arrangements. Suspension and reduction of progress payments shall only be

taken in accordance with the contract terms. The Contracting Officer must give notice to the contractor of the intended action.

- (c) The Contracting Officer shall take immediate unilateral action only if warranted by circumstances such as overpayments or unsatisfactory contract performance. In all cases, the Contracting Officer must document the contract file with evidence supporting the Contracting Officer's decisions.

5-11 PROTECTION OF AUTHORITY TITLE

- (a) The Contracting Officer must include a provision, approved by the Chief Procurement Officer, with the progress payment provisions in the contract which provides that the Authority shall receive title to all of the materials, work-in-process, finished goods, and other items of property under the contract. The Contracting Officer shall ensure that Authority title is not compromised.
- (b) The Contracting Officer shall require additional protective provisions, if deemed necessary, to establish and protect the Authority's title.

5-12 RISK OF LOSS

The Contracting Officer shall include a provision, approved by the Chief Procurement Officer, that the contractor shall bear the risk of loss, theft, destruction, or damage to property affected by the provision.

5-13 PROGRESS PAYMENTS TO SUBCONTRACTORS

- (a) The Contracting Officer shall encourage each contractor to provide progress payments to subcontractors on terms that meet the standards in §5-5 (b) for customary progress payments.
- (b) In each contract providing for progress payments, the Contracting Officer may include a provision, approved by the Chief Procurement Officer, which requires the contractor to include in the terms of each subcontract the substance of the progress payment provisions in the prime contract, modified to indicate that the contractor (not the Authority) awards the subcontract and administers the progress payments.
- (c) If the contractor makes progress payments to a subcontractor under a cost-reimbursement prime contract, the Contracting Officer shall accept the progress payments as reimbursable costs of the prime contract only under the following conditions:
 - The payments are made under the standards in §5-5 (b) for customary progress payments;
 - The payments do not exceed the progress payment rate set forth in §5-5 (b); and
 - The subcontract contains progress payment terms as required under §5-

13 (b) above.

5-14 CONTRACT DEBT DETERMINATION AND COLLECTION

In determining the amount of any contract debt, the Contracting Officer and the Chief Procurement Officer shall fairly consider both the Authority's claim and any contract claims by the contractor against the Authority. This determination does not constitute a settlement of such claims, nor is it a Contracting Officer's final determination under the Disputes Clause in the contract. The Contracting Officer, in coordination with COUN shall use all proper means available for collecting debts as rapidly as possible.

5-15 DEMAND FOR PAYMENT OF CONTRACT DEBT

- (a) The Contracting Officer shall make a demand for payment as soon as the amount of contract debt due has been computed. If the debt arises from excess costs for a default determination under §18-15 the Contracting Officer shall make the demand without delay.
- (b) The demand shall include the following:
 - A description of the debt, including the debt amount;
 - Notification that any amount not paid within 30 days from the date of the demand, or from any earlier date specified in the contract, shall bear interest at the rate set forth in §5-19;
 - A notification that the contractor may submit a proposal for deferment of collection if immediate payment is not practical or if the amount is disputed; and
 - Identification of the Contracting Officer or other official designated for determining the amount of the debt and for its collection.

5-16 NEGOTIATION OF REFUND TO RESOLVE CONTRACT

- (a) The Contracting Officer shall attempt to resolve the amount of contract debt and refund through negotiations with the contractor at the time the debt has been established.
- (b) If the Contracting Officer and contractor agree upon a refund to the Authority, the Contracting Officer shall promptly write a memorandum to document the agreement, the amount of contract debt and the form of repayment to the Authority. Upon approval of COUN, the memorandum shall be signed and dated by the Contracting Officer for the Authority and the contractor.

5-17 TYPES OF FORM FOR REPAYMENT

- (a) The Contracting Officer shall execute a contract modification to adjust the contract in accordance with the memorandum of agreement;

- (b) If the Contractor has invoices on hand for payment, the Contracting Officer shall make an appropriate setoff. To the extent that the setoff reduces the debt, an explanation of the setoff shall indicate the extent to which the demand amount is reduced;
- (c) The Contracting Officer shall defer such future payments to the contractor;
- (d) Request a refund from the contractor.

5-18 DEFERRED PAYMENT AGREEMENTS

- (a) At a minimum, the Contracting Officer shall include the following in any deferred payment terms of the Refund Agreement;
 - A description of the debt;
 - The date of the first demand for payment;
 - Notice of interest charges;
 - The method for making payments and the office to which the payments shall be made; and
 - Provisions for termination of the deferred payment arrangement and acceleration of the maturity of the debt if the contractor defaults on the deferred payment agreement or the underlying contract, or if bankruptcy or insolvency proceedings are instituted by or against the contractor.
- (b) If the contractor's appeal of the debt is pending, the refund agreement shall include a provision, approved by the Chief Procurement Officer, requiring the contractor to diligently prosecute the appeal and to pay the debt in full either when the appeal is decided or when the contractor and the Authority agree on the debt amount.
- (c) If the contractor does not plan to appeal the debt or file an action under the Disputes Clause of the contract, the refund agreement shall include a specific schedule of payments.
- (d) The refund agreement shall include a provision, approved by the Chief Procurement Officer, allowing the contractor to make prepayments without prejudice for refund of overpayments and for crediting of interest.

5-19 CONTRACT DEBT INTEREST CHARGES AND CREDITS

- (a) The Contracting Officer shall apply interest charges to any contract debt unpaid after 30 days from the issuance of a demand, unless one of the following applies:
 - The contract is without any provision for profit or fee with a nonprofit organization; or
 - The contract specifies another due date or procedure for charging or collecting interest; or
 - The contract is for purchases made under simplified acquisition procedures.
- (b) The interest rate charge of 1% shall be computed for the actual number of calendar days involved beginning on the due date and ending on the date on

which the designated officer received payment from the contractor.

5-20 CONTRACT FUNDING

Contracts Conditioned Upon the Availability of Funds.

- A contractor shall not perform services or deliver supplies under a contract conditioned upon the availability of funds until the Contracting Officer has given written notice to the contractor that funds are available. The Contracting Officer shall not give notice to the contractor until the appropriate amount of budget authority has been authorized.
- The Authority shall not accept supplies or services under a contract conditioned upon the availability of funds until the Contracting Officer has given written notice to the contractor that funds are available.

5-21 LIMITATION OF COST OR FUNDS

- (a) Upon learning that a partially funded contract will receive no further funds, the Contracting Officer shall promptly give the contractor notice of the decision not to provide funds.
- (b) Under a cost-reimbursement contract, the Contracting Officer, upon learning that the contractor is approaching the estimated cost of the contract or the limit of the budget authority allocated and encumbered, shall promptly obtain information about funding pertinent to the continuation of the contract and notify the contractor in writing of one of the following:
 - That additional funding is available or the estimated cost has been increased in a specified amount;
 - That the contract will not be further funded, and that the contractor shall submit a proposal for an adjustment of fee, based on the percentage of work completed in relation to the total work called for under the contract; or
 - That the contract will be terminated.

5-22 ASSIGNMENT OF CONTRACT PAYMENTS BY CONTRACTORS

A contractor may assign funds due or to become due under a contract if all the following conditions are met:

- The contract specified payments aggregating \$1,000 or more;
- The assignment is made to a bank, trust company, or other financing institution;
- The contract does not prohibit the assignment. A contract may prohibit the assignment of contract payments if the Contracting Officer determines that the prohibition is in the best interests of the Authority;
- Unless otherwise expressly permitted in the contract, the assignment:
 - Covers all unpaid amounts payable under the contract;
 - May be made only to one party, except that any assignment may be made to one party as agent or trustee for two or more parties

- participating in the financing of the contract; and
 - Is not subject to further assignment.
- The assignee shall be required to send written notice of assignment together with a true copy of the assignment instrument to the:
 - Contracting Officer;
 - Surety on any bond applicable to the contract; and
 - Disbursing officer designated in the contract to make payment.

5-23 PROCEDURES FOR ASSIGNMENT OF CONTRACT PAYMENTS

- (a) *Assignments.*
- Assignments by corporations shall be executed by an authorized representative of the corporation and attested by the authorized official of the corporation.
 - Assignment by a partnership may be signed by one partner if it is accompanied by an acknowledged certification that the signer is a general partner of the partnership who is authorized to sign the assignment on behalf of all partners.
 - Assignments by an individual shall be signed by that individual, and the signature shall be acknowledged before a notary public or other person authorized to administer oaths.
- (b) *Filing.* The assignee shall forward to each required individual (§5-22) an original and three copies of the notice of assignment together with one true copy of the instrument of assignment.
- (c) *Examination by the Authority.* In examining and processing notices of assignment and before acknowledging their receipt, the Contracting Officer shall, with the concurrence of COUN, ensure that the following conditions are met:
- The contract was properly approved and executed;
 - The contract is one under which claims may be assigned; and
 - The assignment covers only money due or to become due under the contract.
- (d) *Release of Assignment.*
- A release of an assignment shall be required whenever either of the following occurs:
 - There has been a further assignment or reassignment; or
 - The contractor wishes to reestablish its right to receive future payments after the contractor's obligations to an assignee is satisfied and a balance remains due under the contract.
 - The assignee, under a further assignment or reassignment, in order to establish a right to receive payment from the Authority shall file the following with the individuals listed in §5-22:
 - Written notice of release of the contractor by the assignee;
 - A copy of the release instrument;
 - Written notice of the further assignment or reassignment; and
 - A copy of the further assignment or reassignment instrument.
 - If the assignee releases the contractor from an assignment of contract payments, the contractor, in order to establish a right to receive payment of the balance due under the contract, shall file a written notice of release

together with a certified copy of the release of assignment instrument with the individuals listed in §5-22.

- The recipient of a notice of release of assignment or an official acting on behalf of therecipient shall acknowledge receipt of the notice in writing.

5-24 AUTHORITY PAYMENT PROCESS

- (a) The Authority will promptly process all contract payments with necessary controls to assure compliance with all contract terms and conditions in accordance with internal procedures authorized by the General Manager or Chief Financial Officer. Electronic Funds Transfer (“EFT”) shall be used for all contracts except if the Authority does not expect to make more than one payment to the same contractor within a one-year period.
- (b) *Solicitation and Contract Requirements.* Contracting Officers will clearly specify insolicitations, and contracts all of the required information needed by the proposer for EFTtransfer and shall forward the EFT information provided by the successful proposer to theOffice of Accounting (“ACCT”).
 - The Contracting Officer shall also make clear the form and content of an acceptable invoice, including a requirement that invoices be numbered, contain an invoice date, contract and purchase order number, for services, the period of performance being invoiced, and for goods, the quantity of goods delivered. All original invoices are to beprovided directly to ACCT, unless electronic submission of invoices is allowed by the contract and the Authority has established procedures for their acceptance; and
 - Contracting Officers will require that final invoices be clearly marked FINAL, and that invoices cite the amount of the contract, the amount previously paid and the balance due.
- (c) *Retention of Payment Information.* ACCT will maintain summary payment information in the Authority’s financial system of record. ACCT will provide the Contracting Officer withcopies of paid invoices and copies of final invoices upon receipt from the contractor or assure that such payment records are made available to the Contracting Officer as part ofthe appropriate payment information system.

6 - SPECIAL FEDERAL AND GRANTEE REQUIREMENTS

6-1 PURPOSE AND SCOPE

This chapter prescribes the generally applicable federal laws and regulations for Authority contracts and purchases, and where appropriate, indicates the specific contract types and dollar thresholds requiring contractual coverage. However, this Chapter does not supersede, nor does it include all requirements of, or substitute for authoritative documents such as Federal Transit Administration (“FTA”) Circulars (e.g., 4220.1, as revised), the FTA Master Agreement (“M.A.”), as revised, and the Code of Federal Regulations. Instead, this Chapter highlights some of the common requirements that are not otherwise included in these procedures.

6-2 RESPONSIBILITY

- (a) Contracting Officers are responsible for:
 - Including Federal and FTA required provisions and clauses in all solicitations and contracts. Chapter 23, Procurement Forms and Provisions, provides for the incorporation and maintenance of provisions applicable to Authority contracts; and
 - Ensuring the requirements of FTA Circulars 4220.1 and 5010.1, as revised, and FTA Master Agreement, as revised, and, as applicable, the FTA Best Procurement Practices Manual, are included in contracts.
- (b) The Office of the Comptroller shall be responsible for notifying the Chief Procurement Officer of special federal grant provisions that affect the procurement process.

6-3 CONTRACTOR LABOR REQUIREMENTS

- (a) The Authority may provide internal procedures as part of the procurement procedures or other instructions to affect the enforcement and notification requirements of the contractor labor requirements outlined below. Debarment actions for violations of the requirements will be processed as required by applicable Federal regulations.
- (b) *Equal Opportunity.* Contracting Officers working with the Disadvantaged Business Enterprise (“DBE”) Liaison Officer shall include required equal employment opportunity provisions for contracts in excess of \$10,000 and shall assure contractor compliance with those provisions. The equal employment opportunity provisions are those authorized by Executive Order No. 11246 dated September 24, 1965 (see DOL EEO 11246) and further implemented by 41 CFR 60-2, as amended and issued by the Department of Labor (“DOL”) (also see DOL 41 CFR 60). These provisions will include the requirements of Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, (see DOL Vietnam Veterans Compliance Assistance) and

Sections 503 and 504 of the Rehabilitation Act of 1973 (see DOL Rehabilitation Act Sec. 503).

Equal opportunity requirements include a prohibition against employment discrimination on the basis of race, color, religion, sex or national origin. Also prohibited is discrimination on the basis of age. The Americans with Disabilities Act of 1990 prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities.

- (c) *Work Hours and Safety.* All contracts in excess of \$2,000 for construction and other contracts in excess of \$2,500 which involve the employment of mechanics or laborers shall include provisions for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-333) as implemented by DOL regulations (29 CFR, Part 5) (also see DOL Contract Work Hours). These requirements do not apply to purchases of supplies or materials for articles ordinarily available on the open market. The Contracting Officer shall ensure that appropriate safety provisions from the Authority Construction Safety Methods Manual and from OSHA are included as safety requirements in all rail system contract work and shall comply with the Metrorail Safety Rules and Procedures.
- (d) *Copeland "Anti-Kick Back" Act.* All contracts for construction or repair shall include a provision requiring the contractor to comply with the Copeland Anti-Kickback Act (18 USC 874) as implemented by DOL regulations (29 CFR, Part 3) (also see DOL Copeland Act). This act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the performance of the work under the contract or subcontract to give up any part of the compensation to which he is otherwise entitled. The Contracting Officer is responsible for the reporting of all suspected or reported violations (see §13-18 (c)).
- (e) *Davis-Bacon Act.* All construction contracts in excess of \$2,000 shall include a provision requiring the contractor to comply with the Davis-Bacon Act (40 USC 276a-276a-7) as implemented by DOL regulations (29 CFR, Part 5) (also see DOL 29 CFR 5). Contractors are required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in periodic wage determinations by the Secretary of Labor. The Contracting Officer is responsible for inserting the current prevailing wage determinations issued by DOL into each solicitation and for ensuring that contract award is conditioned upon the contractor's acceptance of the most recent wage determination. All suspected or reported violations shall be reported to FTA by the Contracting Officer.
- (f) *Submission of Certified Payrolls for Construction Contracts and Subcontracts Greater than \$2,000.* Contract Administrators must ensure that all contractors and subcontractors performing work on federal or federally assisted construction contracts in excess of \$2,000 submit weekly certified payroll reports. At contract award, the Contract Administrator must inform the Contractors in writing of the requirement to provide a certified payroll report each month to the Project Manager as a condition of the contract. Contract Administrators must verify the receipt of the certified payroll reports by the

Project Manager's staff each month. If the certified payrolls reports are found to be missing or late, the Contract Administrator must notify the Contractor(s) that it/they is/are non-compliant to the terms and conditions of the contract. The Contract Administrator must document in writing the corrective action plan agreed to with the Contractor(s) to ensure compliance and place the corrective action plan in the contract file. In addition, the following provision must be included in the Special Provisions of each construction contract and subcontract with a value greater than \$2,000:

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

This contract is subject to the Davis-Bacon and Related Acts. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3 and 5 are herein incorporated by reference in this contract. The Davis-Bacon Act requires contractors and subcontractors under construction contracts and subcontracts greater than \$2,000 to submit weekly certified payrolls reports to the project manager.

- (g) *Walsh-Healey Public Contract Act.* All Authority contracts, for manufacturing or furnishing of materials, supplies, articles, or equipment, and which exceed or may exceed \$10,000 are subject to the Walsh-Healey Public Contracts Act (41 USC 35-45) which requires payment to employees the federal minimum wage for all hours worked and time and one-half their regular rate of pay for all hours worked over 40 in a workweek. Ensure that the provisions of the Act are included in all eligible Authority contracts with contractors providing for the manufacturing or furnishing of materials, supplies, articles, or equipment in their contracts.
- (h) *Convict Labor.* The Contracting Officer will ensure that all contracts include the contract provision requiring the contractor to agree not to employ any person during their terms of imprisonment, except as provided by PL 89-176, [18 USC 4082 c (2)].
- (i) *Notice of Labor Disputes.* The Contracting Officer will require Authority contractors and subcontractors to provide notice to the Authority of labor disputes in accordance with the appropriate contract provisions to be included in construction, supply and service contracts.
- (j) *Other Provisions Referenced in Circular 4220.1.* Contracts involving federal funding should also comply, as applicable, with the socio-economic requirements set out in Circular 4220.1, Chap. IV, Sec. 2.c. This includes giving a hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of Title V) who have the requisite skills and abilities to perform the construction work required under the contract. This preference should not be understood or enforced in a manner that would require an employer to give a preference to a veteran over an equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

6-4 LABOR SURPLUS

When appropriate, the Authority will comply with FTA and DOL regulations pertaining to utilization of the Federal Labor Surplus program.

6-5 FEDERAL POLICIES FOR ELDERLY AND DISABLED

- (a) As required by FTA Circular 4220.1F "Third Party Contracting Requirements," as revised, the Authority shall ensure that contracts for vehicle and facilities acquisition include appropriate accessibility for the elderly and disabled pursuant to Section 504 of the Rehabilitation Act of 1973 as implemented by 49 CFR Part 27. The Authority shall also ensure that construction contracts comply with the GSA specifications for the disabled as prescribed by 41 CFR 101-1-6, Accommodations for Physically Handicapped.
- (b) In addition to the above Federal requirements, Contracting Officers shall ensure that all contract specifications comply with Federal access requirements for individuals with disabilities in accordance with the Americans with Disabilities Act of 1990 ("ADA") (see DOL ADA) and implementing Federal Regulations.

6-6 FEDERAL FOREIGN TRADE REQUIREMENTS

- (a) *Buy America.* The Authority shall comply with Section 165 of the Surface Transportation Assistance Act of 1982, 49 USC 1601, Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Part 661, which impose Buy America Provisions on the procurement of foreign products and materials. Authority Contracting Officers shall ensure that Buy America requirements are observed in accordance with the following:
 - All Authority solicitations funded with FTA grant funds shall include the requirement for bidders to certify they will comply with the above laws and regulations, as amended.
 - 49 CFR Part 661 provides for a request for a waiver to be granted by FTA based upon justified applications requested by the Authority or in some cases, by the potential bidders. Authority Contracting Officers shall ensure that Authority requests for waivers shall meet the conditions required by 49 CFR Part 661.7. Requests for waiver addressed to FTA shall be prepared for the signature of the Chief Procurement Officer and concurrence of the General Counsel.
 - Authority solicitations and contracts shall include the appropriate certifications and contract provisions required by the above referenced laws and regulations, as may be amended.
- (b) *Cargo Preference.* The Authority shall comply with 46 USC 1241 (b) and 46 CFR Part 381.7(b) which impose cargo preference requirements for the shipment of goods by privately owned United States-flag commercial vessels. Authority Contracting Officers shall ensure that Authority solicitations and contracts include provisions requiring utilization of privately owned United

States-flag commercial vessels whenever goods are to be shipped, and to report shipments made to the Department of Transportation, Maritime Administration.

- (c) *Shipments and Travel by Air Carrier.* The Authority shall comply with provisions of the “Fly America” Act, 49 USC § 40118 and applicable regulations that require shipment by U.S. flag air carriers unless not reasonably available, and transportation of people on U.S. flag air carriers, unless not reasonably available.

6-7 ENVIRONMENTAL AND CONSERVATION REQUIREMENTS

- (a) *Violating Facilities List.* The Authority is required to comply with 40 CFR Part 15 as applicable which prohibits the use of facilities included on the Environmental Protection Agency (EPA) list of violating facilities for contracts exceeding \$100,000. Contracting Officers shall insert appropriate certifications and provisions in Authority solicitations and contracts to ensure compliance with the Clean Air Act (42 USC 7401) and the Clean Water Act (33 USC 1251).
- (b) *Federal Emission Standards.* Authority procurements that include motor vehicle requirements must ensure compliance with 40 CFR Parts 84 and 85 which establish Federal emissions standards for vehicles.
- (c) *Energy Conservation.* Authority Contracting Officers shall ensure that construction and facilities support contracts include all current Authority policies for environment or conservation requirements, including those energy efficient standards developed to comply with the Energy Policy and Conservation Act (PL 94-163).
- Authority contractors shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 USC 6321 et seq.
 - Authority contractors shall make all appropriate efforts to foster the use of fly ash, in compliance with EPA regulations “Guideline for Federal Procurement of Cement and Concrete Containing Fly Ash”, 40 CFR Part 247. A written determination that the use of fly ash is inappropriate in a particular procurement of cement or concrete is required. A copy of the determination must be submitted to FTA.
- (d) Where applicable, the Authority shall give a competitive preference for recycled products in accordance with 42 U.S.C. § 6962 and 40 C.F.R. Part 247.

6-8 INTELLIGENT TRANSPORTATION SYSTEMS

Intelligent transportation system (“ITS”) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, “FTA National ITS Architecture Policy on Transit Projects.” 66FR1455 et seq., January 8, 2001, and later published policies or implementing

directives FTAmay issue. Third-party contracts involving ITS must comply with all provisions of the foregoing regulations to ensure compliance with Federal requirements.

6-9 RESTRICTION ON LOBBYING

- (a) Federal Regulations at 48 CFR Parts 2 and 52, of the FAR and 49 CFR Part 20, DOT Common Rule, implement the restriction on lobbying and reporting requirements of 31 USC 1352. Federal rules require that the contractor disclose, if other than Federal appropriated funds are used, for influencing or attempting to influence a Federal transaction. Both the certification that appropriated funds have not and will not be paid, and the disclosure of information when other than appropriated funds have or will be paid for influencing or attempting to influence a Federal transaction, will be required from Authority bidders or proposers for specified “applicable contract actions” that are awarded using Federal grant monies authorized for Authority use on or after the effective date of 31 USC 1352, December 23, 1989.
- (b) For purposes of this requirement, an “applicable contract action” will include a new contract award or change-in scope modification in excess of \$100,000 which can be identified by COMP as being a federally funded transaction resulting from a Federal grant to the Authority on or after December 23, 1989.
- (c) Invitation for Bid or Request for Proposal (IFB/RFP) solicitations must include the certification and disclosure form entitled “Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Jan. 1990)” and the contract provision entitled “Limitation on Payments to Influence Certain Federal Transaction (Jan.1990)” (See Chapter 23).

6-10 AUDITS OF ROLLING STOCK PURCHASES

Contracting Officers shall ensure compliance with FTA regulations at 49 CFR Part 663. These regulations apply to the purchase of rolling stock for carrying passengers in revenue services. Contracting Officers shall also ensure compliance with the provisions of Circular 4220.1, Chap. IV, Sec. 2.e that may affect rolling stock procurements. Pre-award and post-delivery audits are required to ensure compliance with Buy America. The pre- award and post-delivery audits may be performed by a third-party auditor or the Office of Inspector General (“OIG”) Audit Team. If requesting that the OIG perform the pre-award or post-delivery audit the Buy America Audit Request Checklist must be used. The Authority must certify compliance and must maintain records of the certifications. Records are subject to FTA review.

6-11 PRIVACY ACT REGARDING FEDERAL RECORDS

Contracting Officers shall ensure that appropriate restrictions required by the Privacy Act of 1974, 5 USC 552a are included in any Authority contract requiring the administration of a system of records on individuals on behalf of the Federal government.

6-12 ADDITIONAL FEDERAL INTEGRITY PROVISIONS

- (a) Contracting Officers shall insert a "Conflict of Interest" provision in all Authority contracts to ensure contractor avoidance of conflict-of-interest situations in the performance of contract duties by the contractor and his affiliates.
- (b) Contracting Officers shall insert the required Federal provision entitled "Officials Not to Benefit" in all Authority contracts.

6-13 DRUG AND ALCOHOL TESTING

- (a) Effective January 1, 1995, Authority contractors who perform safety-sensitive functions are subject to comply with a drug and alcohol testing program according to Federal guidelines published in FTA regulations (49 CFR Part 655 and 49 CFR Part 40).

Authority departments and offices and Contracting Officer's Technical Representatives (COTRs) responsible for technical administration of contracts must coordinate with the Authority's Chief Medical Officer/Director on the identification of all applicable contracts and proposed contracts requiring a contractor and/or subcontractor to perform safety-sensitive functions. Authority Contracting Officers shall ensure that the required Federal testing requirements specified by the requesting activity are included in: (a) all applicable contracts with period of performance extending beyond January 1, 1995; and (b) in new contracts issued after that effective date.

- (b) Pursuant to the definitions regarding the Drug Free Workplace Act of 1988, the Federal Acquisition Regulation System (FAR), Procedures for Transportation Workplace Drug & Alcohol Testing Programs, 49 CFR 40, and Prevention of Alcohol Misuse & Prohibited Drug Use in Transit Operation, 49 CFR 655, the Contracting Officer must require that all contractors certify compliance with these regulations. The contractor's failure to comply with any part of the requirements of the Drug Free Workplace Act of 1988, the FAR, Procedures for Transportation Workplace Drug & Alcohol Testing Programs, 49 CFR 40, and Prevention of Alcohol Misuse & Prohibited Drug Use in Transit Operation, 49 CFR 655 may make the contractor subject to any of the following: suspension of payments, termination of a contract for default, suspension or debarment.

6-14 FTA REQUIRED CLAUSES

- (a) Contracting Officers must include all appropriate clauses stating the contractor's responsibilities under applicable Federal laws and regulations, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing. These clauses shall include the provisions relating to public transportation services in Circular 4220.1, Chap. IV, Sec. 2.f, where applicable.

- (b) The contract must include any necessary provisions requiring the contractor to include those applicable Federal requirements and directives on its subcontractors at the lowest tier necessary, except to the extent that FTA determines otherwise in writing.
- (c) If the contract requires the contractor to assume responsibilities usually performed by the Authority, the contract must include the appropriate provisions that would be applicable to the Authority as set forth in the FTA's Grant Agreement, Cooperative Agreement, or the Master Agreement. Those provisions must continue to subcontractors at the lowest tier necessary, except to the extent as FTA determines otherwise in writing.
- (d) The Master Agreement must be used to determine the applicability of the clauses to the procurement type. Also, FTA Circular 4220.1, latest revision, includes in Appendix D tables summarizing the required Federal clauses. Table A summarizes the third-party contract provisions and their Master Agreement reference. Table B lists the applicability of those third-party contract provisions. Contracting Officers should consult these references when constructing the contract for each solicitation.

7 - SOCIOECONOMIC PROGRAMS

7-1 PURPOSE AND SCOPE

- (a) This chapter establishes procedures concerning implementation of WMATA's socioeconomic programs regarding small, minority and women-owned businesses for the Disadvantaged Business Enterprise ("DBE") Program (including Small Business Enterprise (SBE) Program), the Minority Business Enterprise ("MBE"), the Small Business Program ("SBP") and the Micro Business Program ("MBP"). These procedures outline the processes that all contractors working directly for WMATA, or as applicable, as a tiered contractor/subcontractor, are required to follow when participating in a direct contract with WMATA.
- (b) The DBE Program applies to federally funded procurement actions. The SBE Program is limited to procurement actions above the simplified acquisition threshold but with a total value not to exceed \$1,000,000 except with the advice and consent of the Chief Procurement Officer (CPRO). The CPRO may increase the threshold for an SBE Set-Aside on a case-by-case basis. The CPRO may elect to award a single delivery order contract or task order contract or to award multiple delivery order contracts or task order contracts for the same or similar supplies or services to two or more sources under the solicitation. To the extent that any provisions of this chapter regarding the DBE Program are inconsistent with 49 CFR Part 26, the Code of Federal Regulations governs.
- (c) The MBE Program applies to local and jurisdictional funding procurement actions. It is a race-conscious contracting program that adheres to the legal requirements associated with such programs. It allows for MBE subcontracting goals to be established on a contract-specific basis when other race-neutral measures are not practical or feasible. Women owned businesses are, by definition, included as MBEs.
- (d) The SBP and MBP are race-neutral prime contracting set aside programs that allow certified small businesses to compete directly for contracts, but only against other similar sized businesses, thereby leveling the playing field and ensuring that only a small business is awarded the contract. Race-neutral measures are required to be utilized to the greatest extent possible before race-conscious measures, such as subcontracting goals are considered.
- (e) All non-federal locally funded contracts are potentially subject to set aside requirements. However, SBP set aside is mandatory for procurements valued between \$50,000 and up to \$1,000,000 at the CPRO's discretion when there are 3 or more certified small businesses available. MBP set aside is mandatory for smaller purchases valued up to \$50,000 when 3 or more certified businesses are available.

- (f) The overall objective of the non-federal MBE, SBP and MBP initiatives is to create new prime contracting and subcontracting opportunities for small, women and minority owned businesses on locally funded contracts and to significantly expand the number of businesses that seek certification through WMATA.
- (g) It is a requirement of WMATA's Socioeconomic Programs to structure contract requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.
- (h) WMATA must take steps to ensure that it uses small, minority and women-owned businesses to the fullest extent practicable. These steps include the following:
 - i. Assuring that these businesses are solicited whenever they are potential sources;
 - ii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by women's business enterprises;
 - iii. Establishing delivery schedules, where the requirement permits, which encourage participation by women's business enterprises.
 - iv. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration; and
 - v. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps.

7-2 SOCIOECONOMIC PROGRAM REQUIREMENTS

This portion of the chapter concerns the implementation of WMATA's Socioeconomic Programs.

7-2-1 DEFINITIONS

- (a) "MBE Appendix B-2" means the "Notice of Requirements for Minority Business Enterprise", which when attached to a solicitation, implements the MBE requirements of WMATA's MBE Program in the award and administration of Local and jurisdictional Assisted Contracts.

- (b) "Appendix B" means the "Notice of Requirements for Disadvantaged Business Enterprise", which when attached to a solicitation, implements the DBE requirements of WMATA's DBE Program in the award and administration of Federally Assisted Contracts. Appendix B-1 will be attached to a solicitation to implement the requirements of the Small Business Enterprise (SBE) Program.
- (c) "DBE/MBE" means a for-profit Small Business Concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (d) "DBE/MBE Goal" means a percentage of a contract based on demonstrable evidence of the availability of ready, willing, and able DBEs/MBEs relative to all businesses ready, willing, and able to participate on Authority contracts. The goal must reflect a determination of the level of DBE/MBE participation on a contract that can be expected absent the effects of discrimination.
- (e) "DBE/MBE Liaison Officer" means the official designated by WMATA who is responsible for the oversight, implementation, and execution of the DBE/MBE Programs.
- (f) "Federally Assisted Contract" means a contract (except for a contract solely for the purchase of land or otherwise exempt from WMATA's Procurement Procedures), at any tier, funded in whole or in part with United States Department of Transportation ("DOT") financial assistance or with other federal financial assistance that invokes the requirements of 49 CFR Part 26.
- (g) "Good Faith Efforts" means efforts to achieve a DBE/MBE goal, other requirements of WMATA's DBE/MBE Programs and/or 49 CFR Part 26 or WMATA Certification Program (WCP) Manual Non-federal which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- (h) "MBE" means any legal entity that is organized to engage in commercial transactions and is verified as being at least 51% owned, managed, and controlled by one or more socially and economically disadvantaged individuals. In order to be certified by

WMATA as an MBE, a business must be ready, willing, and able to sell goods and services that are sought by WMATA.

- (i) “MBP” means Micro Business Program; the MBP is a race-neutral contracting program that sets aside purchases for competition amongst very small businesses only. Eligibility is restricted to businesses that have their principal place of business located in Maryland, the District of Columbia or Virginia.
- (j) “MBP Set-Aside” is mandatory for smaller purchases valued up to \$50,000 when three (3) or more certified businesses are available and for individual purchase card transactions when three (3) or more certified small businesses are available.
- (k) “Non-Federally Assisted Contract” means funds originating from local sources that are not bound in any way by federal requirements and are not otherwise subject to federal DBE requirements.
- (l) “Race-Conscious” means a measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs/MBEs.
- (m) “Race-Neutral” means a measure or program that assists all small businesses. Race-neutral DBE/MBE participation includes, but is not limited to, any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE/MBE goal, or even if there is a DBE/MBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., strict low bid). For the purpose of the DBE Program, race-neutral includes gender-neutrality. The SBE and SBP Programs are race-neutral small business set-aside programs for selected contracts.
- (n) “Small Business Concern” means with respect to firms seeking to participate as DBE’s in Federally Assisted Contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act (15 U.S.C. §631) and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR §26.65(b).
- (o) “Small Business Enterprise (SBE)” means a for-profit Small Business Concern that is at least 51% owned by one or more individuals who are economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and whose management and daily business

operations are controlled by one or more of the economically disadvantaged individuals who own it.

- (p) “SBE Set-Aside” means a solicitation that is limited to SBE bidders/offers only. If it is determined that a DBE goal is not in the best interest of WMATA to satisfy a requirement, SBE Set-Aside will be used. The total value of the requirement must be less than \$1,000,000 and there must be a reasonable expectation that at least two or more SBE firms can provide the service/product. The CPRO may increase the threshold for an SBE Set-Aside on a case-by-case basis.
- (q) “Small Business Program (SBP)” means Small Business Program; a race-neutral prime contracting program that sets aside certain procurements for competition amongst small businesses only. Eligibility is limited to businesses that have their principal place of business located in Maryland, the District of Columbia, or Virginia.
- (r) “Small Business Programs Office” means the office designated by WMATA who is responsible for the oversight, implementation and execution of the DBE Program.
- (s) “SBP Set-Aside” is mandatory for procurements valued between \$50,000 and up to \$1,000,000 at the CPRO’s discretion when there are three (3) or more certified small businesses available.
- (t) “WCP” WMATA Certification Program; includes the DBE, SBE, MBE, SBP and MBP certifications that are offered by WMATA for the purpose of supporting disadvantaged, small, women and minority owned businesses. The MBE, SBP and MBP apply only to non-federally funded projects/contracts.

7-2-2 DBE POLICIES

- (a) It is Authority policy that DBEs shall have an equal opportunity to compete for, receive and participate in the performance of Authority contracts, including contracts and subcontracts at any tier; that only firms that fully meet WMATA’s eligibility standards are permitted to participate as DBEs; and that prime contractors and their subcontractors at every tier shall not discriminate on the basis of race, color, national origin, sex or any other unlawful basis in the award and performance of any contract, agreement or other arrangement.

- (b) The Contracting Officer, in cooperation with SBPO, shall to the maximum extent feasible, meet WMATA's overall annual DBE goal by using race-neutral means to encourage DBE and other small business participation, including but not limited to:
- Arranging solicitations, times for submission of bids or proposals, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses. Examples include the unbundling of large contracts to make them more accessible to small businesses, allowing the maximum time practicable for the submission of offers and requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces;
 - Providing assistance in overcoming limitations such as inability to obtain bonding, financing, and insurance. Examples include simplifying the bonding process, reducing the bonding requirements, eliminating, or reducing bid surety costs, and providing services to help DBEs and other small businesses, obtain bonding, financing, and insurance;
 - Providing technical assistance and other services;
 - Providing information and conducting programs on contracting procedures and specific contract opportunities. Examples include providing DBEs and other small businesses the mailing lists for bidders, advance notice of solicitations, ensuring that prime contractors receive lists of potential DBE subcontractors, publicizing business opportunities for DBEs and other small businesses on WMATA's website and providing information in languages other than English where appropriate;
 - Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
 - Providing services to help DBEs, and other small businesses, improve long-term development to increase opportunities to participate in a variety of types of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
 - Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
 - Ensuring distribution of the DBE and SBE Directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
 - Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media;

- Establishing a team to facilitate contracting opportunities, awareness, and recognition of the critical role that small businesses play in advancing WMATA's procurement activities;
 - Assigning small business participation within the established threshold on a contract-by-contract basis on Federally Assisted Contracts, where feasible, in lieu of a DBE goal; and
 - Identifying alternate acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete and perform as prime contractors.
 - Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- (c) After exhausting race-neutral means to encourage DBE and other small business participation, the Contracting Officer, in cooperation with the SBPO, shall encourage maximum DBE participation through race-conscious means including, but not limited to, setting contract goals; DBE outreach to encourage doing business with WMATA in general and to encourage participation in specific contracting opportunities (e.g., advance notice of solicitations; direct mailing to qualified DBEs regarding opportunities; and providing DBE firms, upon request and at no charge, a copy of bid sets and specifications with respect to any contract to be let, and the name, telephone number and E-mail address of an Authority contact to answer questions related to such prospective contracts) and supporting DBE development and mentor-protégé program(s) initiated by SBPO.
- (d) The Office of Procurement and Materials (PRMT) shall ensure that electronic commerce systems and procedures facilitate procurement opportunities for DBE firms. Electronic commerce also known as e-commerce is the buying and selling of products or services over electronic systems such as the Internet and other computer networks. Electronic commerce draws on such technologies as electronic funds transfer, supply chain management, Internet marketing, online transaction processing, Electronic Data Interchange ("EDI"), inventory management systems, and automated data collection systems.
- (e) When DBE goals have been established on a Federally Assisted Contract, the Contracting Officer shall use the Pre-Bid Conference to increase the contracting opportunities for certified socially and economically disadvantaged small businesses. A representative of SBPO shall be present to explain the following: the DBE goal amount; how the DBE goal was established; the requirements of Appendix B; the criteria for good faith effort; and information about the DBE Directory.

- (e) When DBE goals have been established on a Federally Assisted Contract, the Contracting Officer shall at the Post-Award Conference with the prime contractor and at the Post-Award Conference held by the prime contractor with the DBE subcontractors, explain the DBE requirements of the contract. A representative of the SBPO shall be present at each of these conferences to explain the following: the DBE goal amount; how the DBE goal was established; the requirements of Appendix B; the criteria for good faith effort; DBE contract monitoring; DBE contract compliance and reporting requirements; and provide information and answer questions about the foregoing items and the DBE Directory.

7-2-3 SMALL BUSINESS PARTICIPATION IN THE DBE PROGRAM

- (a) WMATA's DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.
- (b) An SBE is defined as a firm that:
- i. Is organized for profit;
 - ii. Has a place of business in the United States;
 - iii. Makes a significant contribution to the United States economy by paying taxes or using American products, services, materials and/or labor;
 - iv. Does not exceed the Numerical Size Standard for its industry as established by the U.S. Small Business Administration (SBA);
 - v. Average gross receipts cannot exceed the overall USDOT size standard for a small business (\$28.48 million averaged over the three previous fiscal years or part of year which the business has been in existence).
 - vi. May be a sole proprietorship, partnership, corporation, limited liability corporation, or any other legally formed entity.
 - vii. Is at least 51% owned, managed, and controlled by one or more economically disadvantaged individuals. Economic disadvantage is defined as an individual with a net worth of less than \$1.32 million (excluding equity in personal residence and applicant firm);
 - viii. The 51% economically disadvantaged owner must be a U.S. citizen or permanent resident. Average gross receipts, for the last three years, must

meet SBA Small Business Size Standard (13 CFR §121.103) applicable to type of work performed (affiliates included); and

- ix. May be a sole proprietorship, partnership, corporation, limited liability corporation, or any other legally formed entity.

(c) This program element includes, but is not limited to, the following strategies:

- i. Establishing a race-neutral small business set-aside for prime contracts under a certain amount (e.g., \$1,000,000);
- ii. In multi-year design-build contracts or other large contracts (e.g., for megaprojects) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform;
- iii. On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all of the work involved;
- iv. Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts; and
- v. To meet the portion of its overall goal, WMATA shall project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
- vi. SBE opportunities will be identified on a contract-by-contract basis on construction and non-construction contracts with a total value less than \$1,000,000.

7-2-4 MBE POLICIES

- (a) The MBE program has been designed to mirror the race-conscious and race-neutral components of WMATA's DBE program in all major respects, however, the MBE certification requirements have been modified slightly to accommodate participation by more local small businesses.
- (b) Specifically, WMATA's MBE program allows businesses from the District of Columbia, Maryland, and Virginia ("DMV") to apply for WMATA MBE certification without having home state certification in place. Under the DBE Program, home state certification would be required before being able to apply for DBE. DMV firms applying for MBE without home state certification must complete and submit the Combined MBE/SBP/MBP Application, the Personal Net Worth (PNW) Statement, and all other required documentation. Those with home state certification may

submit their current certification letter in lieu of the Combined Application, and the PNW Statement to complete their application.

- (c) MBE goal setting, solicitation requirements, bid/proposal submission requirements, contract administration, and reporting requirements are essentially the same as the DBE Program.

7-2-5 SMALL BUSINESS PARTICIPATION (RACE-NEUTRAL MBE PROGRAM COMPONENT)

- (a) The intentional reduction in business size and other requirements, in addition to the SBP/MBP set-aside provisions, are meant to attract smaller local businesses that would otherwise not have considered the possibility of successfully partnering with WMATA through its contracting programs. The SBP/MBP business size/location requirements are as follows:

7-2-5-1 FOR SMALL BUSINESS (SBP):

- 1) The business must be physically headquartered within the DMV,
- 2) The SBP applicant's most recent three-year average gross receipts must be less than or equal to \$10,000,000 and,
- 3) The current number of full-time employees must be less than or equal to 50 (fifty).

7-2-5-2 FOR MICRO BUSINESS (MBP):

- 1) The business must be physically located within the DMV,
 - 2) The most recent three-year average business receipts must be less than or equal to \$3,000,000, and,
 - 3) The current number of full-time employees must be less than or equal to 25 (twenty-five).
- (a) All PRMT and Departmental staff persons involved in any part of the contract decision-making process, from solicitation development to contract award, are required to use all tools and resources available to ensure that small businesses have:

- 1) Access to as many separate contracting opportunities as possible;
 - 2) The ability to directly compete on a fair, transparent basis;
 - 3) Access to technical and administrative support that is specific to their needs;
 - 4) As much advance notice as possible regarding new contracts/projects; and
 - 5) Access to post-award information that helps with future bidding efforts.
- (b) All non-federally funded purchases, regardless of value, must be evaluated for potential set-aside. Larger sized projects may not be suitable for SBP or MBP set aside, however, purchases of a certain size are subject to mandatory set-aside, i.e., the item must be set aside unless an exception has been requested and approved by SBPO. The mandatory set-aside provisions are as follows:
- 1) Mandatory SBP set-aside for new contracts valued between \$50,000 and up to \$1,000,000, at CPRO discretion, when three (3) or more certified small businesses have been identified;
 - 2) Renewal contracts currently being performed by a small business must be set aside for SBP when re-solicited;
 - 3) Mandatory micro business (MBP) set aside for new contracts under \$50,000 when three (3) or more certified micro businesses have been identified; and
 - 4) Renewal contracts currently being performed by micro businesses must be set aside for MBP when re-solicited.

Exceptions to mandatory SBP or MBP set-asides must be requested and approved by the Procurement Review Committee and SBPO on a contract-specific basis. Exception requests must be made in writing via email to SBPO at SBPOHotline@wmata.com. Blanket exception requests will not be considered.

The CPRO may increase the above listed thresholds for a SBP or MBP set-aside on a case- by-case basis.

- (c) At the end of each fiscal year, but not later than July 15th, each department is required to submit a report that lists all SBP and MBP contract awards made during the year. SBPO will assist departments with this requirement by providing report templates and training as needed. The report must include: 1) Business Name, 2) Certification Number; 3) Contract or PO Amount, 4) Contract Term, and 5) Description of Products/Work Purchased.

Set-Aside Determinations

(a) Contract Unbundling and Work Scope Review

As outlined in Section III-1, taking proactive steps to unbundle contracts and carefully review work scopes and contract terms and conditions are two critical race-neutral action steps that must be undertaken early in the procurement process as the work scope is being developed and the solicitation document is being assembled.

Procurement, Department/Program and SBPO staff, must become skilled at designing technical scopes of work and general solicitation requirements that create SBP and MBP set-aside opportunities without jeopardizing project completion timelines or other essential project deliverables.

(b) The decision-making process for set-aside determinations is based on the following variables:

- 1) the product, material, or service being purchased,
- 2) the associated work category (NAICS code),
- 3) the volume/quantity of product being purchased,
- 4) the delivery schedule,
- 5) the number of certified businesses that sell what is being purchased,
- 6) other relevant factors that may have a direct bearing on the set-aside decision

(c) Certified small and micro businesses can be found by doing a search of the DCUCP Directory at <https://supplier.wmata.com/psp/supplier/SUPPLIER/ERP/h/?tab=DEFAULT>. The Directory allows for searches by NAICS code, certification type, and State.

(d) When a decision is made to set aside a procurement or purchase for SBP or MBP, the written solicitation must clearly indicate the set-aside by including specific language that informs potential bidders/offerors that bids/proposals may only be

considered for award if the bidder/offeror is certified by WMATA as a Small Business or Micro Business at the time of bid/proposal submission. The notification must also inform bidders/offerors that all certifications are subject to verification prior to contract award. The following language shall be included in each solicitation that is set aside for SBP or MBP:

“Pursuant to the provisions of the WMATA Certification Program (WCP), this is a [insert Small Business Program (SBP)/Micro Business Program (MBP here] procurement for which award will be limited to currently certified businesses. The [SBP/MBP] is a race-neutral contracting set-aside program that limits the award of certain contracts to small businesses of a certain size that are located in a certain geographic area. Only businesses that are confirmed to be certified under this Program at the time of bid/proposal submission are eligible for award of this contract”.

(e) Purchase Card Purchases

- 1) Each Purchase Cardholder must undergo mandatory Purchase Card training as part of receiving authorization to purchase goods and materials on behalf of WMATA. The mandatory requirements for the use of certified small businesses for all locally funded purchases under \$50,000 are to be incorporated into the Purchase Card training curriculum.
- 2) Purchase Card users and Approvers are encouraged to evaluate what products, items and services are being purchased on a recurring basis. A regular search of the public DCUCP database for small and micro businesses, either by NAICS code or description, will provide a list of certified businesses that can potentially provide the goods/services sought.
- 3) When there are 3 or more certified businesses available, it is required that the individual Purchase Card transaction(s) be made with one or more of the identified certified businesses unless reasonable pricing is unable to be negotiated.
- 4) The Purchase Card Administrator must ensure that all Purchase Cardholders keep records of each transaction made with a SBP or MBP certified business. The transactions are to be compiled into a report that must be submitted by the Purchase Card Administrator to the SBPO at the end of each fiscal year. The report must, at a minimum list the following: (a) Name of Business, (b) Certification # and Type, (c) Total # of Transactions made with Business, and (d) Description of the Products, Goods, Services, etc., purchased.

All other requirements associated with the implementation of the MBE, SBP and MBP initiatives are outlined in the following documents:

- 1) Regulatory Framework Document for the WCP Non-Federal Programs
- 2) WCP Non-Federal Policies and Procedures Manual
- 3) SOP #21-11, "WCP Vendor Certification (Non-Federal)"
- 4) SOP #21-09, "Minority Business Enterprise (MBE) Compliance Procedures (Non-Federal)"

7-2-6 DBE/MBE GOAL-SETTING PROCEDURES

- (a) The goal setting procedures are established by the DBE/MBE Liaison Officer. The Office of Procurement and Materials and other Authority offices and departments shall cooperate in the setting and implementation of contract goals and WMATA's DBE/MBE Program.
- (b) Race-conscious DBE contract goals shall be used only on Federally Assisted Contracts with subcontracting opportunities and shall be designed to meet any portion of the annual projected DBE goal that WMATA projects it will be unable to meet using race-neutral means.
- (c) Race-conscious MBE contract goals shall be used on Non-Federal, locally funded contracts when subcontracting opportunities exist, but only when all other race-neutral means have been considered and applied, and it is clear that small business objectives cannot be met without the use of a goal-based strategy.
- (d) No DBE contract goals will be used in a year in which WMATA can meet its overall annual DBE goal through race-neutral means only. At the midpoint of each WMATA fiscal year, SBPO shall project whether WMATA will meet its overall annual goal. If it is projected that WMATA will exceed its overall annual goal in any year, Contracting Officers working with SBPO shall reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If it is projected that WMATA will fall short of its overall goal, appropriate modifications will be implemented in the use of race-neutral and race-conscious measures to allow the overall goal to be met.
- (e) The DBE/MBE Liaison Officer may request input from other Authority offices in establishing the contract goals. A DBE goal for a specific contract may be higher or lower than WMATA's overall annual DBE goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the

work of the particular contract. Additional factors in setting contract goals include the historical percentage of subcontracted work performed on previous similar contracts; the minimum percentage of work required to be performed by the prime contractor; and other circumstances that have a material impact on subcontracting opportunities (sole source, first-time equipment, economic hardship, time constraints, etc.). MBE goals shall use a similar approach and shall be established on a contract-specific basis.

- (f) DBE goals and SBE set-asides must not be used on a contract solicitation simultaneously, i.e., when a solicitation/project is set aside for SBE, there cannot be DBE goals set for the project, and conversely, if a DBE goal has been established for a solicitation, it may not also be set aside for SBE. The same rule applies to the MBE and SBP programs.

7-2-7 GOAL WAIVER/SUBSTITUTION PROCEDURES

- (a) Goal Waiver Request: A prime contractor seeking full or partial waiver must demonstrate good faith efforts to meet the goal. The evidence of good faith efforts must be clear and convincing. Waiver requests shall be made to the Contracting Officer, evaluated for sufficiency, and forwarded, with a recommendation, to the DBE/MBE Liaison Officer for further evaluation and final determination. The Contracting Officer shall inform the prime contractor of the DBE/MBE Liaison Officer's decision regarding the waiver request. According to 49 CFR §26.53, grantees can only award a contract that requires a DBE goal, to a bidder/offeror who has made GFE to meet the goal.
- (b) Substitution Request: A prime contractor seeking a full or partial substitution of DBE/MBE subcontractors must provide specific reasons for the substitution.
 - 1) The prime contractor must show clear and convincing evidence of good faith efforts to obtain a certified DBE/MBE as a replacement subcontractor.
 - 2) The prime contractor must demonstrate that it has good cause under 49 CFR §26.53 (if referring to a DBE) and the WCP Manual Section VI-6 B (if referring to an MBE) to substitute a subcontractor.
 - 3) Substitution requests shall be made to the Contracting Officer, evaluated for sufficiency, and forwarded, with a recommendation, to the DBE/MBE Liaison Officer for further evaluation and final determination.
 - 4) The Contracting Officer shall require the prime contractor to provide the affected subcontractor with notice of the proposed substitution in accordance with the applicable program regulations for the DBE or MBE programs and the DBE/MBE Liaison Officer shall consider any timely response from the DBE/MBE subcontractor.

- 5) The notification must be provided in writing to include and set forth the reasons for substitution to include evidence, for example, noncompliance issues.
 - 6) The DBE/MBE firm will be given 10 days to response and provide examples of adequate performance.
 - 7) The Contracting Officer shall inform the prime contractor of the DBE/MBE Liaison Officer's decision regarding the substitution request.
 - 8) The Contracting Officer (CO)/Contract Administrator (CA) and SBPO may meet to discuss the fact is necessary. An informal hearing may be scheduled with the prime contractor to receive additional clarification.
 - 9) The prime contractor must review the instructions for Termination Reduction Substitution (TSR) request and complete the TSR form to include with their submittal.
- (c) In order to be responsive, a bidder/offeror must make GFE to meet the DBE participation goal set forth in the contract. The bidder/offeror must document the GFE it made in that regard. Thus, the bid/offer submitted to WMATA must be accompanied by written documentation prepared by the bidder/offeror evidencing all of its sufficient and reasonable GFE toward fulfilling the goal. These efforts must be active steps and ones, which could reasonably be expected, to lead to sufficient DBE participation to meet the contract DBE participation goal.
- (d) GFE require that the bidder/offeror consider all qualified DBEs, who express an interest in performing work under the contract. This means that the bidder/offeror cannot reject a DBE as unqualified unless the bidder/offeror has sound reasons based on a thorough investigation of the DBE's capabilities. Further, the DBE's standing within its industry, membership in specific groups, organizations or associations and political or social affiliation (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids/offers in the bidder's/offeror's efforts to meet the contract DBE participation goal.
- (e) Additional examples of a GFE are as follows:
- Attendance at a pre-bid/proposal meeting, if any, scheduled by WMATA to inform DBEs of subcontracting opportunities under a given solicitation;
 - Advertisement in general circulation media, trade association publications, and minority-focused media for at least 20 days before bids/offers are due. If 20 days are not available, publication for a shorter reasonable time is acceptable;
 - Written notification to capable DBEs that their interest in the contract is solicited;
 - Documentation of efforts to negotiate with DBEs for specific subcontracts including at a minimum:
 - i. The names, addresses, and telephone numbers of DBEs that were contacted and the date(s) of contact;

- ii. A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed; and
- iii. A statement explaining why additional agreements with DBEs were not reached.

(f) Examples of Documenting GFE: The following is a list of types of actions a bidder/offeror should take when documenting GFE. This list is not intended to be exclusive or exhaustive, nor are all the actions mandatory. Other factors or types of efforts may be relevant in appropriate cases:

- Solicitation/Advertisement Efforts – should include efforts to solicit quotes, through all reasonable and available means, the interest of all certified firms who have the capability to perform the work of the contract. The bidder/offeror should ensure that the requests are made within sufficient time to allow DBE firms to respond. The contractor should take the initiative to contact firms which have indicated an interest in participating as a subcontractor/supplier.
- Negotiation Efforts – should include efforts to make a portion of the project work available, consistent with the availability and capabilities of our DBE firms in order to facilitate DBE participation. Contract work items shall be separated into smaller economically feasible subcontracts to ensure DBE participation. Plans/specifications should be made available to the DBE firms which have shown an interest in participating. When negotiating with DBE firms a contractor should use good business judgment by considering price and capability, as well as, project goals. A contractor is not expected to accept a price that is not reasonable and is excessive. Comparison figures should accompany the GFE submittal which supports the price differential.
- Assistance Efforts – should include efforts to assist DBE firms in obtaining bonding, lines of credit, insurance, equipment, materials, supplies or other project related assistance. Contractors are encouraged to assist firms with independently securing/obtaining these resources. A contractor may not provide these resources to the DBE firm, except in certain instances where joint checks are permissible with prior approval. The level of assistance should be limited to referral sources, introductions, and making initial contacts with industry representatives on the DBE firm's behalf.
- Additional Efforts – could include any additional efforts to utilize the services of minority/women organization groups; local, state, and federal business offices which provides assistance in the recruitment and placement of DBE firms. Utilizing the services offered by the department's DBE supportive services consultant for assistance with advertisement and recruitment efforts. Contractors are encouraged to undertake and document any other efforts taken in their attempt to fulfill the project goal.

(g) Public Interest of Waiver

- As prescribed by 49 CFR, Appendix A, §V, the performance of other bidders/offerors in meeting the goal requirements when determining whether a bidder's/offeror's efforts are sufficient may be considered. For example, the

contractor is requesting a waiver of 5% of the 15% DBE participation goal. The second bidder/offeror has not requested a waiver. Pursuant to the standard set forth in 49 CFR Part 26, the contractor has documented adequate good faith efforts to obtain the goal and make a reasonable demonstration that it was unable to obtain the DBE overall participation goal, or was unable to obtain the DBE participation at a reasonable price.

7-2-8 SOLICITATION REQUIREMENTS

(a) The Contracting Officer shall insert the following into each solicitation:

- A provision requiring all bidders or offerors to ensure, for any contract awarded pursuant to the solicitation, that:
 - o The following clause will be included in all Federally Assisted Contracts and subcontracts, “The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as WMATA deems appropriate.”; and
 - o No individual or firm will be intimidated, threatened, coerced or discriminated against for the purpose of interfering with any right or privilege secured by 49 CFR Part 26 or because the individual or firm has made a complaint, assisted or participated in any manner in an investigation, proceeding or hearing related to WMATA’s DBE Program;
- A provision requiring all bidders or offerors to certify whether their business concern is or is not a DBE firm;
- If applicable, a provision requiring all bidders or offerors to certify whether their business concern is an SBE firm;
- The prompt payment provisions required by WMATA’s DBE Program Plan pursuant to 49 CFR § 28.48 and the WCP Manual; and
- Both the prime contractor and the DBE/MBE subcontractors are required to submit on a monthly basis Prompt Payment reports via the Supplier Portal on the WMATA website. Failure to submit these reports may result in suspension of contract payments. The prime contractor shall certify with each payment request that payments have or will be made to all subcontractors due payment within ten (10) days after receipt of payment from WMATA for

work by that subcontractor. The prime contractor must inform the CO and COTR with their payment request of any situations in which scheduled subcontractor payments have not been made and the reason therefore.

- 1) The prime contractor shall require each subcontractor to report Prompt Payment data to WMATA's Small Business Programs Office online at www.wmata.com under Doing Business with WMATA and on a monthly basis using the "Prompt Payment Report-Subcontractor's Report". The subcontractor shall certify that payment has been received.
 - 2) The prime contractor and the subcontractor are required to have Prompt Payment reporting training for each WMATA contract which has been awarded to them. Failure to complete this training may result in suspension of contract payments.
 - 3) The CA shall include these forms in all federally assisted Disadvantaged Business Enterprise contracts; and Small Business Enterprise Set-Asides with a DBE goal assigned. The CA shall also ensure that both prime contractor and the subcontractor have Prompt Payment reporting training.
- A provision requiring the prime contractor to submit evidence of subcontractor payment in the form of lien waivers or cancelled checks prior to WMATA releasing subsequent payments to the prime contractor.
 - All of the above mandatory language and contract provisions regarding non-discrimination, prompt payment, DBE/MBE status disclosure, etc., shall also apply to non-federal contracts with MBE goals pursuant to the provisions outlined in the WCP Non-Federal Policies and Procedures Manual.
- (b) The Contracting Officer shall insert the following language into each solicitation for a Federally or Non-Federally Assisted Contract for which the DBE/MBE Liaison Officer has established a participation goal:
- MBE Appendix B-2 or Appendix B (DBE);
 - A provision requiring prime contractors to collect and report data on subcontract participation to the DBE/MBE Liaison Officer;
 - The final contract goal from the Goal Setting form;
 - A provision requiring prime contractors to provide the DBE/MBE Liaison Officer with "bidder's list" information including the name, address, certification status, age of firm(s) and annual gross receipts of firm(s) to be considered for subcontracting opportunities with bids and proposals;
 - A provision requiring prime contractors and DBE/MBE firms to cooperate fully and promptly with WMATA and/or USDOT compliance reviews, certification reviews, investigations and other requests for information related to the WMATA's DBE/MBE Program;
 - A provision requiring prime contractors to include in their subcontracts a term providing that prime contractors will use appropriate alternative dispute mechanisms to resolve payment disputes;

- A provision providing that prime contractors will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed;
 - A provision requiring prime contractors and their subcontractors to maintain records and documents of payments to DBEs for three years (5 years for MBEs) following performance of the contract, and that these records will be made available for inspection upon request by any authorized representative of WMATA or USDOT;
 - A provision requiring prime contractors to meet the goal or request a waiver and to provide documentation of the efforts to meet the goal;
 - A provision notifying prime contractors that failure to make good faith efforts or engage in false, fraudulent or dishonest conduct in connection with the DBE/MBE program may result in findings of non-responsibility on future contracts, suspension or debarment or other actions available to WMATA;
 - A provision requiring prime contractors to contact the DBE/MBE Liaison Officer upon receipt of a Notice-to-Proceed to receive compliance training from the DBE/MBE Liaison Officer or designee.
 - Appendix B-1;
 - A provision requiring SBE to self-perform at least 51% of the tasks on the awarded contract;
 - A provision requiring SBE firms to cooperate fully and promptly with WMATA and USDOT compliance reviews, certification reviews, investigations and other requests for information related to WMATA's DBE Program;
 - A provision requiring SBE contractors to include in their subcontracts a term providing that prime contractors will use appropriate alternative dispute mechanisms to resolve payment disputes;
 - A provision providing that SBE contractors will not be reimbursed for work performed by subcontractors unless and until they ensure that subcontractor(s) are promptly paid for the work they have performed;
 - A provision requiring SBE contractors and their subcontractors to maintain records and documents of payments to subcontractors for three years following performance of the contract, and that these records will be made available for inspection upon request by any authorized representative of WMATA or USDOT; and
 - A provision notifying SBE contractors that engaging in false, fraudulent, or dishonest conduct in connection with the DBE program may result in findings of non-responsibility on future contracts, suspension or debarment or other actions available to WMATA.
- (c) The Contracting Officer shall insert in solicitations for Federally Assisted Contracts for transit vehicles a provision requiring transit vehicle manufacturers to certify compliance with the requirements of 49 CFR §26.49.
- (d) Supplies, equipment, or services that are obtained under a Federal Supply Schedule ("FSS") awarded by the General Services Administration ("GSA") do require compliance with WMATA's Appendix B requirements. For FSS orders exceeding the federal micro purchase threshold (as defined in Federal Acquisition Regulations ("FAR") (2 CFR 200), the Contracting Officer should give preference

to DBE firms when two or more items at the same delivered price will satisfy the requirement.

- (e) Supplies, equipment, or services obtained under a contract sponsored by the Council of Governments require DBE participation. However, the DBE goals required by Appendix B only apply to WMATA's portion of the contract.

7-2-9 BID AND PROPOSAL REQUIREMENTS

- (a) The Contracting Officer shall require that bidders or offerors submit the following with any bid or proposal for a Federally Assisted Contract for which SBPO has established a DBE goal:
 - A completed "Schedule of DBE Participation" which is sufficient to meet the contract DBE goal;
 - An executed document of commitment to use the DBE subcontractors whose participation it submits to meet the goal;
 - Executed "Letters of Intent to Perform as a Subcontractor/Joint Venture" from each of the DBE firms identified in the "Schedule of DBE Participation";
 - If applicable, a request for waiver of the DBE goal;
 - A description of any in-house DBE program operated by the prime contractor; and
 - A description of past participation with DBE firms.
 - For Non-Federal contracts, the CO shall require bidders or offerors to submit:
 - 1) A completed "Schedule of MBE Participation", including notification that a waiver of some/all of the MBE goal is being requested;
 - 2) Executed "Letter of Intent to Perform as a Subcontractor/Joint Venture" from each MBE;
 - 3) A copy of current MBE certification letters for each named MBE.
- (b) The documents referenced above are intended to be submitted with the bid or proposal. Any waiver request based on good faith efforts shall be resolved prior to contract execution. Any bidder or offeror that fails to meet the contract DBE/MBE goal and fails to demonstrate good faith efforts to support a waiver of the goal shall be deemed non-responsible and will be ineligible for contract award. Deficiencies and inconsistencies related to the referenced submissions shall be treated as matters of responsibility, not responsiveness: however, the specific commitment to DBE/MBE participation and/or the demonstration of good faith efforts must be in place prior to execution of the contract.
- (c) The CO shall provide written notice to any bidder or offeror that in WMATA's determination, it has failed to meet the requirements of this subpart. The notice shall provide a deadline, prior to award, for the bidder or offeror to request

administrative reconsideration in writing. Upon receipt of a written request for reconsideration, the CO shall name an official, not involved in the original determination, to meet with the bidder or offeror in person to discuss whether it met the goal or made adequate good faith efforts. After the meeting, the official must provide a written determination on the request for reconsideration. Award shall not be made until the written determination is issued.

- (d) The CO shall require that a bidder or offeror submit the following Appendix B documentation, if applicable, within 10 calendar days after notification that it is the apparent successful bidder or selected offeror:

Documents itemized on the DBE Certification Instructions for each proposed DBE firm including the “DBE Disclosure Affidavit”:

- “Information for Determining Joint Venture Eligibility”; and
- A copy of any Joint Venture Agreement
- If applicable, MBE Appendix B-2 requires the apparent successful bidder or selected offeror to submit within ten (10) calendar days:

(1) “Information for Determining Joint Venture Eligibility”; and

(2) Copy of Joint Venture Agreement

- (e) All DBE/MBE firms must be certified with WMATA no later than the time of the bid or proposal due date for the solicitation under which the firm wishes to participate.
- (f) On the first day of each month, CO shall report to the DBE/MBE Liaison Officer the number of DBE’s/MBEs, and the number of all firms, that have bid or proposed on contracts during the previous month. The report shall also include the value of contracts awarded to DBEs/MBEs, contract terms and the percent of work performed by DBEs/MBEs on contracts with and without goals respectively.
- (g) All SBE/SBP firms must be certified with WMATA no later than the time of the bid or proposal due date for which the firm wishes to participate as an SBE. A copy of current Authority certification letter must be provided.

7-2-10 CONTRACT ADMINISTRATION REQUIREMENTS

- (a) SBPO is responsible for monitoring DBE participation and related DBE and SBE contract compliance activities in accordance with 49 CFR Part 26 and WMATA’s DBE Program Plan, such as reviewing contract records, monitoring work sites, performing compliance reviews, reviewing contractor records and documents

pertaining to DBE and SBE participation. Any deficiencies shall be forwarded to the Contracting Officer for resolution, and if unresolved will be subject to further compliance actions including affecting responsibility determinations in future procurements, debarment, and referral to the USDOT. In addition, the Contracting Officer shall support the SBPO in monitoring and enforcing WMATA's DBE Program as it relates to procurement activities.

- (b) The prime contractor shall monitor the performance of its DBE subcontractors, collect and report data on DBE participation, including payments to DBEs, to SBPO on the "DBE Participation Status Report", which shall be submitted monthly with each payment request. The Contracting Officer shall consider the suspension of contract payments or other remedies if the contractor fails to submit the status report in a timely fashion.
- (c) The prime contractor shall certify with each payment request to WMATA that payment has been or will be made to all subcontractor's due payment, within ten (10) days after receipt of payment from WMATA for work by those subcontractors. Failure by the contractor to carry-out the requirements of Appendix B is a breach of the contract. The CO shall consider all remedies, including referral to the USDOT to initiate suspension or debarment proceedings, enforcement action and/or prosecution if the contractor fails to perform as required by the contract.
- (d) Any allegation that any person or firm has willfully and knowingly provided incorrect information or made false statements regarding the DBE Program shall be referred to SBPO.
- (e) The CO shall provide data relating to DBE firms to the SBPO. The CO shall provide a close-out notice to the SBPO within five (5) days of the Contracting Officer's determination that the contract has been closed. The CO shall forward all intermediate, if any, and final reports pertaining to contracts with DBE participation, and non-DBE small-business firms during a race-neutral effort, to SBPO. The reports shall include the value of the work performed by DBEs, including monthly data regarding payments received by DBEs. Copies of all subcontracts shall be forwarded to SBPO at the time of their execution by the prime contractor.
- (f) All of the above referenced contract administration requirements also apply to the MBE Program and are outlined in detail in the WCP Non-Federal Policies and Procedures Manual.

7-2-11 DBE/SBE ACTIONS MONITORING STEPS BY DEPARTMENT

Responsibility	Action
Program Office	Complete DBE/MBE Goal Setting Form for contract requirements and submit it to the Office of Procurement and Materials.

Contracting Officer	Reviews the Goal Setting Form and forwards the form to the DBE/MBE Liaison Officer
DBE/MBE Liaison Officer	Establishes subcontract goals on a contract-by-contract basis and returns the Goal Setting Form to the Program Office. Or, prepares SBE/SBP set-aside memo.
Program Office	Includes completed Goal Setting Form or set-aside memo in the contract record as required.
Contracting Officer CO (Continued)	Inserts final goal and requirements into solicitation document or issues solicitation as a race-neutral SBE/SBP set-aside. Obtains necessary goal-related documentation with the bid or proposal including any additional documentation from the apparent successful bidder or offeror. Submits bid/proposal information to the DBE/MBE Liaison Officer for review. Submits goal/set-aside and compliance questions and requests to the DBE/MBE Liaison Officer for review.
DBE/MBE Liaison Officer	Coordinates preparation of contract goal documentation, reviews bids or proposals for compliance with the goal, approves/disapproves request for goal waivers and notifies CCO of compliance by memo. After contract award, the Contract Compliance Branch will conduct contractor compliance training including the contractor's prompt payment and reporting requirements.
DBE/MBE Liaison Officer supported by the CO	Following contract award monitors DBE/MBE subcontract participation and related contract compliance requirements.

7-2-12 CONTRACT FILES

The following documents must be included in the contract file:

- DBE/MBE documentation submitted with each bid/proposal and documentation submitted by the successful bidder/offeror;
- DBE/MBE Liaison Officer approval/disapproval of any goal waiver request(s);

- Internal and external correspondence related to DBE/MBE issues; and
- Contract Compliance Reviews (CCR) and contract closeout documentation to include signoff attesting that the DBE goal has/has not been met.

8 - SIMPLIFIED ACQUISITION PROCEDURES

8-1 PURPOSE AND SCOPE

This chapter describes the procedures for the acquisition of supplies and services, including construction that does not exceed the simplified acquisition threshold. Simplified acquisition procedures for the procurement of Architect-Engineer and related services are in §12-8.

8-2 SIMPLIFIED ACQUISITION AUTHORITY

The simplified acquisition contracting authority of Contracting Officers shall be a specific delegation and amount, issued to named individuals within the Authority.

8-3 SIMPLIFIED ACQUISITION THRESHOLD

In accordance with the federal government, as authorized by the WMATA Compact, the Authority's simplified acquisition threshold shall be in accordance with federal law, as published at 2 CFR 200 (currently \$250,000) for both Federally funded and Operating funded procurements.

8-4 USE OF SIMPLIFIED ACQUISITION PROCEDURES

- (a) The simplified acquisition procedures set forth in this Chapter may only be used for the procurement of supplies, services or construction when the anticipated aggregate dollar value of the procurement does not exceed the simplified acquisition threshold. Where such procedures are used, the Authority will promote competition to the maximum extent practicable.
- (b) A Contracting Officer shall use the simplified acquisition method that is most suitable, efficient, and economical based on the circumstances of the procurement. In addition to other considerations in §8-5, Contracting Officers shall:
 - Promote competition and to the maximum extent practicable
 - Include small or minority businesses when practical
 - Establish deadlines for the submission of responses to solicitations that affords suppliers a reasonable opportunity to respond;
 - Consider all quotations or offers that are timely received; and
 - Use innovative approaches, to the maximum extent practicable, in awarding contracts using simplified acquisition procedures.

- (c) Contracting Officers shall not:
- Use simplified acquisition methods when the procurement requirement is estimated to exceed the simplified acquisition threshold, even if the resulting award does not exceed the limit; or
 - Split a procurement totaling more than the simplified acquisition threshold into several purchases, or otherwise reduce the size of the procurement, in order to circumvent procurement rules and regulations.

8-5 COMPETITIVE SIMPLIFIED ACQUISITIONS PROCEDURES

- (a) For all procurements above the micro-purchase limit of \$10,000, the Contracting Officer shall solicit quotes from at least three sources to achieve an adequate number of qualified sources and to promote competition to the maximum extent practicable and to ensure that the purchase is in the best interest of the Authority. In soliciting competition, Contracting Officers shall consider the following before requesting quotes:
- The nature of the supply or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive;
 - Information obtained in making recent purchases of the same or similar item;
 - The urgency and dollar value of the proposed purchase; and
 - Past history concerning specific dealers' prices.
 - When soliciting quotes, the Contracting Officer shall notify potential quoters of the basis on which award will be made (price only or price and other factors, e.g., past performance and quality). Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.
- (b) For non-federally funded procurements, the Contracting Officer should also consider the following additional sources:
- Small local businesses within the Transit Zone (The District of Columbia, the cities of Alexandria, Falls Church and Fairfax and the counties of Arlington, Fairfax, and Loudoun and political subdivisions of the Commonwealth of Virginia located within those counties, and the counties of Montgomery and Prince George's in the State of Maryland and political subdivisions of the State of Maryland located in said counties.) shall be contacted for quotes. (§7-3-3)
 - If practical, two sources not included in the previous solicitation should be requested to furnish quotes. If practical two quotes should be requested from small or minority businesses. The additional sources from which to solicit quotes shall be selected in accordance with the Minority Business Enterprise Program requirements for locating small and local business sources (§7-3-3).
- (c) If the Contracting Officer determines that the best interest of the Authority (or

other factors set forth in §8-4(b)), indicate that quotes should be obtained from more than three sources, the Contracting Officer may require the solicitation of additional quotes. Also, in situations where fewer than three (3) quotes are received, it is essential that a D&F documenting limited competition results and justify price reasonableness prior to making the award.

- (d) A Contracting Officer may orally solicit quotes. However, a Contracting Officer shall use a written solicitation in the following circumstances:
 - A large number of line items are included in a single proposed procurement;
 - Obtaining oral quotes is not considered economical or practical;
 - Extensive specifications are involved; and
 - Soliciting for construction contracts over the Davis Bacon Act threshold (currently \$2,000).
- (e) *Use of Options.* Options may be included in solicitations, provided the requirements of §4-21 are met, and the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures.
- (f) *Promoting Competition.* A Contracting Officer shall maximize competition for simplified acquisitions and shall not limit solicitations to suppliers of well-known and widely distributed makes or brands, or solicit on a personal preference basis.
- (g) *Source List.* The Contracting Officer shall have available a source list. The list should indicate whether the business is a small, local, or WMATA certified Disadvantaged Business Enterprise.
- (h) *Notification.* For acquisitions that do not exceed the simplified acquisition threshold, and for which automatic notification is not provided through an electronic method that provides widespread electronic public notice, notification to unsuccessful suppliers shall be given only if requested.

8-6 NON-COMPETITIVE SIMPLIFIED ACQUISITION PROCEDURES

- (a) *Actions At or Below the Micro-Purchase Threshold.*
 - A procurement for an amount not exceeding the micro-purchase threshold of \$10,000, or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act, may be awarded without obtaining competitive quotes, if the Contracting Officer considers the price to be fair and reasonable;
 - Non-competitive purchases shall be distributed equitably to certified small businesses when practical.
 - The Contracting Officer shall take action to verify price reasonableness in the following instances:
 - 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
 - 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).

- *Documentation.* The Contracting Officer shall provide a description of how he determined the price to be fair and reasonable. If competitive quotes were solicited and the award was made to other than the low bidder, documentation to support the purchase can be limited to identification of the solicited vendors and an explanation for the award decision.
- The size of the procurement should not be divided or reduced solely to come within the micro-purchase ceiling.

(b) *Actions Above the Micro-Purchase Limit.* Non-competitive simplified acquisitions above \$10,000 up to the simplified acquisition threshold must be supported by a written D&F initiated by the Program Office and reviewed and approved by the Chief Procurement Officer and General Counsel. The procurement record shall reflect the basis for the sole-source selection.

8-7 EVALUATION OF QUOTATIONS OR OFFERS

(a) *General.*

- The Contracting Officer shall evaluate quotes in an impartial manner, and inclusive of transportation charges from the shipping point of the supplier to the delivery destination.
- Quotes shall be evaluated on the basis established in the solicitation, and all quotes shall be considered.

(b) *Evaluation Procedures.*

- The Contracting Officer has discretion in fashioning suitable evaluation procedures. At the Contracting Officer's discretion, one or more of the evaluation procedures in chapters 9 and 10 may be used.
- If using price and other factors, ensure that quotes can be evaluated in an efficient fashion. Formal evaluation plans, establishing a competitive range, conducting discussions, and scoring quotes are not required. Contracting Officers may conduct comparative evaluations of quotes. Evaluation of other factors, such as past performance:
 - Does not require the creation or existence of a formal database; and
 - May be based on information such as the Contracting Officer's knowledge of and previous experience with the supply or service being acquired, customer surveys, or other reasonable bases.
- For acquisitions conducted using a method that permits electronic response to the solicitation, the Contracting Officer may:
 - After preliminary consideration of all quotes, identify from all quotes received one that is suitable to the user, such as the lowest priced product, and quickly screen all lower priced quotes based on readily discernible value indicators, such as

- past performance, warranty conditions, and maintenance availability; or
 - Where an evaluation is based only on price and past performance, make an award based on whether the lowest prices of the quotes having the highest past performance rating possible represents the best value when compared to any lower priced quote.

(c) *Vendor Exceptions:*

The CA/CO must conduct a preliminary review of the vendor exceptions and make an assessment including his/her comments in the vendor exceptions document before disseminating to other WMATA departments. PRMT should identify per exception what department is responsible for review: PRMT reviews clauses related to procurement procedures found in the Procurement Best Practices Manual; COUN - all legal/liability and other clauses they deem appropriate; RISK - all insurance and liability cap clauses; IT/IT Cybersecurity - all relative intellectual property/cybersecurity clauses and related non-disclosure clauses as they relate to this data; Program Office - clauses related to the SOW and technical specifications; and other departments as the subject matter of the exception taken dictates.

8-8 BASIS FOR AWARD

- (a) Before making award, the Contracting Officer shall determine, in writing, that the proposed price is fair and reasonable.
 - Whenever possible, base price reasonableness on competitive quotes.
 - If one response is received, or the price variance between multiple responses reflects a lack of adequate competition, the Contracting Officer shall include a statement in the contract file of price reasonableness and the basis for the determination. The Contracting Officer may base the determination on:
 - Market research; or
 - Comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the Contracting Officer's personal knowledge of the item being purchased, or any other reasonable basis.
- (b) When adequate competition is lacking or for sole source acquisitions, the Contracting Officer must perform a cost analysis to determine price reasonableness (§16-4).
- (c) Occasionally an item can be obtained only from a supplier that quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantity required. In these instances, the Contracting Officer should inform the Program Office of all facts regarding the quote and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

8-9 DOCUMENTATION AND RECORDS

General. Documentation for simplified acquisitions should be kept to a minimum and shall be retained in accordance with Authority retention policies and procedures. Contract Administrators must assemble all relevant written records for all procurements. The records will be collected into a single file and placed into the Authority's record keeping system and submit a copy to the Policy Mailbox at prmtpolicy@wmata.com. The appropriate checklist (refer to Appendix A for checklists) must be completed by the Contract Administrator to ensure that the proper procurement processes have been followed, all considerations relevant to the procurement process have been addressed, and all components of the procurement file shall be assembled no later than 60 days after contract award. The Contracting Officer shall follow the required format for a Procurement Record (for over the Simplified Acquisition Threshold) or Memo to File documenting the procurement processes followed, available on the PRMT intranet.

- (a) *Oral Solicitations.* The Contracting Officer shall establish and maintain informal records of oral price quotes 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 and conditions quoted by each.
- (b) *Written Solicitations.* For acquisitions not exceeding the simplified acquisition threshold, written records of quotes to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier(s) contacted, and other pertinent data noted on the applicable checklist must be maintained.
- (c) *Special Situations:*
 - *Sole Source Procurements.* In accordance with §11-4 (a), the purchase file shall document the circumstances in which the sole source procurement is used and reflect documentation sufficient to justify the sole source decision. See §8-6 (a) for documentation requirements for non-competitive simplified acquisitions;
 - *Other Than Price-Related Factors.* Include additional statements supporting the award decision if other than price-related factors were considered in selecting the supplier; or
 - *Federally Funded Procurements.* All federally funded purchase orders shall be documented in a soft copy file. In addition to the requirements in §8-9(a)-(b), and the basis for award determination (§8-8), the file shall include:
 - The independent cost estimate;
 - Verification of the System for Award Management formerly, the Excluded Parties List System, result; and
 - A brief explanation of the award decision.
- (d) *Submission of Certified Payrolls for Construction Contracts and Subcontracts Greater than \$2,000.* Contract Administrators must ensure that all contractors and subcontractors performing work on federal or federally assisted construction contracts in excess of \$2,000 submit weekly certified payrolls reports. At contract award, the Contract Administrator must inform the Contractors in writing of the requirement to provide a certified payroll report each month to the Project Manager as a condition of the contract. Contract Administrators must verify the

receipt of the certified payrolls reports by the Project Manager's staff each month. If the certified payrolls reports are found to be missing or late, the Contract Administrator must notify the Contractor(s) that it/they is/are non-compliant to the terms and conditions of the contract. The Contract Administrator must document in writing the corrective action plan agreed to with the Contractor(s) to ensure compliance and place the corrective action plan in the contract file. In addition, the following provision must be included in the Special Provisions of each construction contract and subcontract with a value greater than \$2,000:

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

This contract is subject to the Davis-Bacon and Related Acts. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1,3 and 5 are herein incorporated by reference in this contract. The Davis-Bacon Act requires contractors and subcontractors under construction contracts and subcontracts greater than \$2,000 to submit weekly certified payrolls reports to the project manager.

8-10 SIMPLIFIED ACQUISITION METHODS

The following simplified acquisition methods may be used by Contracting Officers or authorized Authority individuals: (a) the Authority purchase card (§8-11; (b) purchase orders (§8-12); and (c) blanket purchase agreements (§8-13).

8-11 AUTHORITY PURCHASE CARD

The Authority purchase card is authorized for use in making and/or paying for purchases of supplies and services. The Authority purchase card may be used by Contracting Officers and other individuals designated in accordance with §2-4. The card may be used only for purchases that are authorized by the Authority purchase card policies and procedures (P/I 8.11). The Authority purchase card may be used to:

- Make purchases below the micro-purchase threshold (currently \$10,000) on a non-competitive basis and up to \$5,000 per transaction if obtaining a minimum of three quotes;
- Place a task or delivery order (if authorized in the basic contract, basic ordering agreement, or blanket purchase agreement); or
- Make payments, when the contractor agrees to accept payment by the card.

8-12 PURCHASE ORDERS

(a) General.

- Except as provided in §8-13, a Contracting Officer shall issue a purchase order on a fixed-price basis and shall not include economic price

adjustment or redetermination provisions.

- Purchase orders shall:
 - Be issued on a form prescribed by the Chief Procurement Officer;
 - Include any trade and prompt payment discounts that are offered;
 - Specify the quantity of supplies or services ordered;
 - When applicable, 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 receiver. Receiving report shall be completed by the designated Authority officials immediately upon receipt and acceptance of material; and
 - Contain a date by which delivery of supplies or performance of services is required.
- Distribution of copies of purchase orders shall be limited to those required for essential administration and transmission of contractual information.
- 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.

(b) *Not-To-Exceed Purchase Orders.*

- A Contracting Officer shall use a not-to-exceed purchase order only under the following circumstances:
 - The transaction will not exceed the Authority's simplified acquisition threshold;
 - It is impractical to obtain pricing in advance of issuance of the purchase order; and
 - The purchase is for repairs to equipment requiring disassembly to determine the nature and extent of repairs, material available from one 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.
- The Contracting Officer shall issue each not-to-exceed purchase order by setting 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.

(c) *Modification of Purchase Orders.*

- A purchase order may be modified by using the modification form approved by the Chief Procurement Officer. Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.
- The Contracting Officer shall 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.

(d) *Termination and Cancellation of Purchase Orders.*

- If a purchase order that has been accepted in writing by the contractor is to be terminated, the Contracting Officer shall process the termination

- action in accordance with the provisions of §18-15 (b);
- If a purchase order that was not accepted in writing by the contractor is to be canceled, the Contracting Officer shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written acceptance of the cancellation, and proceed in accordance with the provisions of the two bullets below;
- If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action shall be required and the purchase order shall be considered canceled; or
- 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 claim in accordance with the provisions of Chapter 18 of these procedures.

8-13 BLANKET PURCHASE AGREEMENTS

- (a) A Blanket Purchase Agreement (BPA) may be used, in accordance with the provisions of this Chapter, as a simplified method of filling anticipated repetitive needs for supplies, services, or other items.
- (b) A Contracting Officer may establish a BPA if one or more of the following criteria apply:
 - There is a wide variety of items in a broad class of goods that are generally purchased, but the quantities, and delivery requirements by item are not known in advance and may vary considerably.
 - There is a need to provide commercial sources of supply for one or more offices in the Authority that do not otherwise have or need direct authority to purchase.
- (c) A BPA shall not be used for any commodity, service, or other item for which a requirements type contract has been issued by the Authority.
- (d) A BPA is not a contract and may be established without a purchase requisition or obligation of funds.
- (e) To the extent practical, BPA's for items of the same type shall be placed concurrently with more than one supplier. All competitive sources shall be given an equal opportunity to furnish supplies, services, or other items under a BPA.
- (f) A BPA may be limited to furnishing individual items or commodity groups or services that the source of supply is in a position to furnish, except as provided otherwise under this Section.
- (g) The Contracting Officer shall not use a BPA to authorize purchases that are not otherwise authorized by law or these procedures and shall not purchase from a BPA to avoid the simplified acquisition authority limitation.
- (h) The existence of a BPA shall not justify procurement on a sole source basis.

- (i) When there is an insufficient number of vendors with BPAs to ensure maximum practicable competition for a particular purchase, the Contracting Officer shall:
- Solicit quotes from other sources and make the purchase; and
 - 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.

9 – PROCUREMENT BY COMPETITIVE SEALED BIDDING

9-1 PURPOSE AND SCOPE

- (a) Sealed bidding is a method of procurement that, through an Invitation for Bids (“IFB”), solicits the submission of competitive bids, followed by a public opening of the bids and contract award to the lowest priced, responsive and responsible bidder. Authority contracts shall be awarded by competitive sealed bids (IFBs) rather than by competitive proposals (RFPs), except as otherwise provided in the Authority’s Compact, Board Resolution 2011-30 and these procedures.
- (b) Section 73(a)(2) of the Authority Compact and Resolution 2011-30 provide that the Authority shall solicit competitive sealed bids if:
 - i. Time permits the solicitation, submission and evaluation of sealed bids;
 - ii. This award will be made on the basis of price and price related factors;
 - iii. It is not necessary to conduct discussions with responding sources about their bids;
 - iv. Two or more responsible bidders are willing and able to compete effectively for the business; and
 - v. A complete, adequate, and realistic specification or purchase description is available.
- Firm fixed price contracts shall be used when the method of procurement is sealed bidding, except when economic price adjustments may be necessary due to the nature of the commodity being purchased not being conducive to long-term price commitments; and
- Firm fixed-price awards may be used in procurements following the Simplified Acquisition procedures.

9-2 INVITATION FOR BIDS

- (a) *IFB Requirements* The invitation for bids will be publicly advertised, and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids.
 - IFBs shall include:
 - Instructions to and information for bidders concerning the bid submission requirements, including the time and date set for the receipt of bids and the address where bids are to be delivered, the maximum bid validity period prior to Authority acceptance, and any other special information;
 - The purchase description(s), quantities, delivery, or performance schedule, and inspection and acceptance requirements; any special instructions necessary; and
 - A statement indicating the award will be made on the basis of the lowest bid price.

Additional requirements for IFBs are as follows:

- An IFB may incorporate documents by reference provided that the IFB

- clearly specifies where and/or how the documents can be obtained;
- IFBs shall require bidders to acknowledge all amendments issued;
- Bids shall be solicited in a manner to assure full and open competition;
- Each IFB shall be publicized in accordance with §9-11 Of this chapter, and publicly opened in accordance with §9-21 of this chapter; and
- If after commencing an IFB, the Contracting Officer determines that the use of negotiation is necessary to complete the procurement, the Contracting Officer shall proceed in accordance with Chapter 10 of this BPM. If an IFB results in a single bid being submitted, the procedures in chapter 11 of this BPM shall be followed.

9-3 LIVING WAGE POLICY

- General.* The Living Wage requirement will be included in all service contracts, including construction contracts, awarded in an amount that exceeds \$250,000 in a 12-month period. The provision “flows down” to subcontracts that exceed \$250,000 in a 12-month period which are awarded under the applicable prime contract. The Authority established Living Wage Rate may be reduced by a contractor’s per-employee cost for health insurance and will be adjusted annually based on the average wage rates of local jurisdictions with a Living Wage policy.
- Contract Clause.* The Living Wage clause is required in solicitations and the resulting contract. The Living Wage clause shall be inserted in the General Provisions.

9-4 IFB PREPARATION

Contracting Officers shall prepare IFBs and contracts using a uniform contract format including the appropriate standard forms (see chapter 23) and provisions authorized by the CPRO. The uniform contract format shall contain the following, as appropriate to the nature of the contract requirement (i.e., supplies, equipment, services, or construction):

- The solicitation and contract form prescribed by the Authority;
- A description of the supplies or services required, including quantities and any description or technical specification needed to permit full and open competition;
- A price proposal form that requires pricing be submitted by either unit price or fully extended price, or both;
- Include a provision on the price proposal, but not as part of the basis of award, a breakdown of the unit or extended price exclusive of delivery and the delivery cost by unit or extended amount;
- When applicable, packaging, packing, preservation, and marking requirements including a prominently printed expiration or “Use By” date for items with a limited shelflife;
- Inspection, acceptance, quality assurance, reliability and warranty requirements including documents, exhibits and other attachments;
- Requirements for time, place and method of delivery or performance;

- Requirements for accounting and any other required contract administration information;
- Special contract requirements (e.g., bid guarantee, bonds, insurance, liquidated damages, progress payments);
- Contract provisions required by law;
- Representations, certifications, and other statements required of bidders; and
- Instructions, conditions, and notices to bidders.

9-5 BID PREPARATION INSTRUCTIONS

The instructions to bidders on bid preparation shall require:

- Each bid is to be based on the drawings, specifications, scope of work and/or scope of services contained in the IFB.

9-6 TIME FOR THE SUBMISSION OF BIDS

Bidding time is the period of time between the date of distribution of the IFB and the time set for the receipt of bids. In each case, bidding time will be set to provide a reasonable time for prospective bidders to prepare and submit bids, consistent with the needs of the Authority. A minimum of 14 calendar days shall be provided unless a shorter time is deemed necessary for a particular procurement by the Contracting Officer. For bidding periods of fewer than 14 days, the Program Office must demonstrate that there is an urgent need for the supplies, services or construction, and the procurement file must be documented to support the urgency.

9-7 ELECTRONIC BIDS

- (a) If electronic commerce is authorized, the solicitation document shall specify the electronic method(s) that bidders may utilize in addition to mail and in-hand delivery of bids. In determining whether to authorize electronic commerce, Contracting Officers shall consider such factors as:
 - Anticipated size of the bid response;
 - Urgency of the solicitation;
 - Availability, reliability, speed, and capacity of the receiving equipment (e.g., facsimile machines); and
 - Adequacy of the controls for receiving, identifying, recording, and safeguarding bids, and ensuring their timely delivery to the bid opening.
- (b) Bids received in response to an IFB that permits electronic commerce must contain specific information by which the bid and the bidder can be easily identified and contain specific reference to the items, quantities, and prices on which the bid is being submitted; the IFB number, due date and time of the bid; and a statement that the bidder agrees to be bound all of the terms, conditions, and provisions of the IFB.

- (c) The provisions of this section are not intended to limit the use of Reverse Auctions, whether conducted by the Authority directly or through a third-party service.

9-8 BID SAMPLES

- (a) "Bid Sample" means a sample to be furnished by the bidder to show the characteristics of the item being offered in response to the IFB. The IFB shall state when the bidder is required to furnish samples. The IFB shall also state whether samples must be provided with the bid or subsequent to the bid opening. Bidders shall not be required to furnish samples unless there are characteristics of the product that cannot be described adequately in the Specifications or Product Description. If bid samples are required, the IFB shall list all of the characteristics by which the samples will be examined.
- (b) Bid Samples shall be used to determine form, fit and function in responsiveness to the IFB. Bids shall be rejected as non-responsive if the sample fails to conform to each of the characteristics listed in the IFB. A bidder's ability to produce the required items, however, is a matter of vendor responsibility which must be evaluated separately.

9-9 DESCRIPTIVE LITERATURE

- (a) *General* "Descriptive Literature" means information available in the ordinary course of business (such as catalogs, illustrations, drawings, and brochures) which shows the characteristics, construction, or operation of an item offered in a bid.
- (b) *Use of Descriptive Literature* The IFB shall state whether the bidder is required to furnish Descriptive Literature. Descriptive Literature shall only be required when the Contracting Officer needs it to determine whether the products offered meet the specifications or to establish exactly what the bidder proposes to furnish. Descriptive Literature shall only be used to determine a bidder's ability or capacity to perform and therefore, will determine the responsiveness of the bid. Failure to submit Descriptive Literature when required will also cause the bid to be rejected as non-responsive.
- (c) *Restrictions* When Descriptive Literature is requested, the IFB shall clearly identify the following:
- The descriptive Literature required to be furnished;
 - The purpose for which the literature is required and will be used;
 - The extent to which the literature will be considered in the evaluation of bids; and
 - The consequences that will apply if a bidder fails to furnish the literature or if the literature furnished does not comply with the requirements of the IFB.
- (d) *Waiver of Descriptive Literature Requirement* The Contracting Officer may

waive the requirement for furnishing descriptive literature if the bidder states in its bid that the product being offered is OEM or provides the manufacturer's part number for a product previously approved by the Authority.

9-10 SOURCE LISTS

- (a) Contracting Officers shall establish or have access to source lists. The purpose of source lists is to identify sources of supplies or services that may be interested in competing for Authority contracts. Source lists must include certified DBEs for federally funded and MBE/SBP/MBPs for operationally funded solicitations. Program Offices may compile a list of potential sources to be provided to the Contracting Officer for inclusion on the source list.
- (b) A rotation of sources or use of a different portion of a source list may be used for separate procurements to encourage competition. Also, the use of pre-solicitation notices may be issued to establish a source list for a solicitation.

9-11 PUBLIC NOTICE

In accordance with §3-11, IFBs or notice of availability of IFBs shall be posted on the portion of the Authority's website designated for such purposes, and if necessary mailed, sent by electronic mail, or otherwise distributed to bidders in the Source List for the purpose of securing full and open competition. The Contracting Officer shall furnish identical information concerning procurements to all prospective bidders receiving the solicitation.

9-12 SOLICITATION RECORD

A procurement file shall be retained for each solicitation issued in accordance with the Authority's record retention schedule. The record of the solicitation contained in the procurement file shall include the following:

- The name of each publication in which the notice of the solicitation was published, if any; proof of publication is not required;
- The date on which the solicitation was issued;
- A copy of the solicitation and amendments, if any; and
- A bid abstract or bid tabulation recording:
 - The name(s) of the bidder(s);
 - The bid amount(s);
 - Acknowledgement of amendment(s), if any;
 - Bid guarantee, if any;
 - Cost/Price Analysis; and
 - Record of SAM check for suspension or debarment of the recommended bidder.

9-13 PRE-BID CONFERENCES

- (a) Pre-bid conferences are considered best practice and are conducted to explain the procurement requirements. Pre-bid conferences shall be announced to all prospective bidders and posted on the Authority's website. The pre-bid conference shall be held 7 to 10 days after the IFB is issued. The time-period between the bid announcement and the pre-bid conference should reflect the estimated time required for prospective bidders to read the solicitation and formulate questions prior to the pre-bid meeting. More complex or unusual procurements should allow for more than 10 days between the bid announcement and the pre-bid meeting.
- Pre-bid conferences should be considered when the procurement is highly complex or unusual in nature and prospective bidders would benefit from the ability to receive clarification on the specifications or scope of work.
 - Pre-bid conferences are also useful for fostering networking between DBE firms and prime contractors.
- (b) The comments made at the pre-bid meeting shall not change the IFB unless a formal amendment is issued. Contracting Officers shall notify all pre-bid meeting attendees of this requirement at the start of the pre-bid meeting. The Contracting Officer shall prepare a written record of the pre-bid meeting including all questions and answers and a list of attendees including contact information. A copy of this record shall be made available to all prospective bidders in the form of an amendment and posted on the Authority's website with the procurement information.
- (c) Attendance at pre-bid meetings is normally voluntary. However, attendance at the pre-bid meeting may be made mandatory as a pre-requisite for submitting bids when the procurement is highly complex or the work is unusual in nature or extensive project knowledge is necessary in order to prepare a bid. Mandatory pre-bid conference attendance may be seen as limiting competition; therefore, this option should only be used for very unusual circumstances. If, in the Contracting Officer's opinion attendance at the pre-bid meeting should be mandatory, the announcement of the bid should clearly communicate the attendance requirement.

9-14 AMENDMENT OF INVITATIONS FOR BIDS

- (a) *Purpose* Amendments to solicitations are used to make necessary corrections or changes in quantity, delivery, schedule, opening date, or other items; to correct defects or ambiguities; and to ensure that all prospective bidders are given the same information on which to base their bids.
- (b) *Distribution* Amendments shall be posted on the Authority's website for such purpose and a notification sent to all prospective bidders who were either sent or requested a copy of the original IFB solicitation.
- (c) *Timeliness* Amendments shall be distributed within a reasonable time to allow for prospective bidders to consider the amendment in preparing or modifying

their bids. If the time and date for the receipt of bids is not sufficient to permit preparation or modification of bids prior to the due date, the Contracting Officer shall consider extending the time for bid submission. Extensions to the bid due date may be a part of the amendment of the substance of the solicitation document or issued separately. Amendments shall allow a minimum of 7 to 10 days between the issuance of the amendment and the bid due date.

- (d) *Content* Amendments shall clearly identify the portion of the IFB being amended and the amended language or pages to be substituted in place of the identified portion of the IFB. The amendment shall also require that the bidder acknowledge receipt of all amendments issued. Failure of a bidder to acknowledge all amendments directly or indirectly will render a bid non-responsive.

9-15 CANCELLATION OF A BID PRIOR TO OPENING

- (a) Solicitations may be cancelled prior to bid opening. The contract file shall contain the reason(s) supporting the cancellation and if necessary, record the number of bids received and returned. (As used in this section, "opening" means the date and time established for the public opening of bids.)
- (b) Prior to the opening of bids, a solicitation may be cancelled in whole or in part when the Contracting Officer determines that cancellation is in the best interests of the Authority. Reasons for cancelling bids include, but are not limited to:
 - There is no longer a need for the goods, services, or construction;
 - The Authority no longer has the funding necessary for the procurement;
 - Proposed amendments to the procurement would be of such magnitude that a new solicitation is preferable; or
 - The solicitation did not contain all factors of significance to the Authority.
- (c) *Notice of Cancellation and Return of Bids* When a solicitation is cancelled prior to bid opening, the notice of cancellation shall be sent to all prospective bidders that were solicited, and any bids received shall be returned unopened to the bidders. If bids were received electronically, the bids received shall not be viewed, and the bids shall be purged from the appropriate IT system(s). The notice of cancellation shall:
 - Identify the solicitation being cancelled;
 - Briefly explain the reason(s) for cancellation;
 - When appropriate, explain that a future re-solicitation for a revised or similar procurement of goods, services or construction may be issued; and
 - Post notice of the cancellation on the Authority's website.

9-16 SUBMISSION OF BIDS: GENERAL PROVISIONS

To be considered for award, a bid must comply in all material respects with the requirements of the solicitation. Bids must be filled out, executed, and submitted in compliance with all instructions in the bid solicitation. Bids must be submitted by the

bidders so that they are received at the appropriate Authority office **no later than** the advertised date and time for the opening of bids. Bids that do not meet these requirements are non-responsive and must be removed from consideration for award.

9-17 MODIFICATION OR WITHDRAWAL OF BIDS PRIOR TO OPENING

- (a) Bids may be modified or withdrawn by any means authorized by the solicitation, provided notice is received in the office designated in the solicitation for receipt of bids **no later than** the time set for the opening of bids.
- A bid may be withdrawn in person by a bidder or its authorized representative, **no later than** the time set for the opening of bids. The identity of the person requesting the withdrawal of the bid must be clearly established and that person must sign a receipt for the bid. The receipt must be placed in the contract file along with a brief statement of the means used to establish the identity of the person.
 - If the solicitation authorizes bids via electronic mail, bids may be modified or withdrawn via electronic mail **no later than** the time set for the opening of bids, subject to the conditions specified in the electronic mail bids provision of the solicitation.
 - Bid modifications received by electronic mail, upon receipt, shall be printed and sealed in an envelope by the bid opening officer or designee, who shall:
 - Write on the envelope the date and time of receipt, the name of the person receiving the information, and the solicitation number;
 - Sign the envelope;
 - Retain the envelope in a secure location until the time set for the bid opening; and
 - Shall not disclose any information regarding the contents of the envelope until the bid opening.
 - If the solicitation authorizes facsimile bids, bids may be modified or withdrawn via facsimile **no later than** the time set for the opening of bids, subject to the conditions specified in the facsimile bids provision of the solicitation.
 - Bid modifications received by facsimile, upon receipt, shall be sealed in an envelope by the bid opening officer or designee, who shall:
 - Write on the envelope the date and time of receipt, the name of the person receiving the information, and the solicitation number;
 - Sign the envelope;
 - Retain the envelope in a secure location until the time set for the bid opening; and
 - Shall not disclose any information regarding the contents of the envelope until the bid opening.
- (b) *Return of Bid Guarantee* If a bid is withdrawn in accordance with this section, any bid guarantee shall be immediately returned to the bidder.
- (c) *Documenting the Procurement File* All documents relating to the modification

or withdrawal of bids shall be made a part of the contract file.

9-18 LATE BIDS, LATE MODIFICATION, AND LATE WITHDRAWALS

- (a) Any bid, modification or withdrawal of a bid received after the time set for the bid opening is late. A late bid, late modification, or late withdrawal **shall not be considered** unless received before contract award, and either:
- It would have been timely but for the action or inaction of Authority personnel; or
 - It was sent by mail or, if authorized by the solicitation, was sent by electronic mail or facsimile and it is determined by the Authority that the late receipt was due solely to mishandling by the Authority after receipt at the Authority.
- (b) *Establishing Time of Bid* Bids shall be submitted via the Supplier Portal on or before the bid due date and time, as publicized in the solicitation.
- (c) *Consideration of Late Submittals* Any late bid or modification shall not be considered.
- (d) *Documenting the Procurement File* The following records shall, if available, be included in the procurement file with respect to each late bid or modification:
- A statement of the date and time of mailing or delivery;
 - A statement of the date and time of receipt;
 - A written determination, with supporting facts, of why the late bid or modification was not considered; and
 - A statement of the disposition of the late action.

9-19 NOTICE TO BIDDERS OF LATE ACTIONS

When a bid or modification of a bid is received late, the Contracting Officer shall promptly notify the bidder accordingly and return the bid unopened. A copy of that notice shall be placed in the contract file.

9-20 RECEIPT AND SAFEGUARDING OF BIDS

All bids received no later than the time set for the bid opening shall be kept in a secure location. Each bid shall be marked with the time and date of receipt. All bids shall remain unopened and kept in a locked box, safe, or secured room, or secure, restricted access electronic bid box, until the time and date for the bid opening:

- Envelopes or containers marked as bids that do not identify the bidder or the solicitation may be opened solely for identification purposes, but only by the Contracting Officer or designee assigned for this purpose;
- When bid samples are submitted, they shall be handled with sufficient care

- to prevent disclosure of their characteristics prior to the bid opening;
- Bids shall be returned to the bidders if the solicitation is cancelled prior to the bid opening;
- Prior to bid opening, information concerning the identity of bidders shall not be disclosed; and
- Also, prior to bid opening, information concerning the number of bids received may only be made available to Authority employees and then to only those employees as required in the execution of their duties.

9-21 BID OPENING

- Designation of Bid Opening Official* Contract Administrators are appointed Bid Opening Officials for their procurements and shall ensure their availability to open bids on the date and time specified in their solicitations. In their absence, they may formally appoint a substitute Bid Opening Official, who will open bids in accordance with these procedures.
- Opening Bids* Bids shall be submitted via the Supplier Portal on or before the bid due date and time, as publicized in the solicitation. Bids shall be submitted via the Supplier Portal on or before the bid due date and time, as publicized in the solicitation. Bids shall be submitted via the Supplier Portal on or before the bid due date and time, as publicized in the solicitation. Bids shall be submitted via the Supplier Portal on or before the bid due date and time, as publicized in the solicitation.
- Bid Review* The CA reviews the bids to ensure the Abnormally Low Bids meet all requirements, under the following criteria:
- The CA confirms the low bid is responsive.
- The CA routes the submittals to the appropriate departments to ensure all requirements are met (i.e., DBE, RISK, SAFE, and PO).
- The CA determines if the bidder is responsible.

9-22 POSTPONEMENT OF THE BID OPENING

- A bid opening may be postponed at the time scheduled for bid opening when an emergency or unanticipated event interrupts the normal course of business so that the conduct of bid openings as scheduled is impractical. An announcement of the postponement of the bid opening shall be publicly posted, if practical, before the issuance of a formal amendment of the solicitation. The announcement to postpone shall otherwise be communicated to those prospective bidders who are likely to attend the scheduled bid opening.
- If the postponement is due to an emergency situation described in this section, the Contracting Officer may proceed with the bid opening as soon as practicable after the scheduled bid opening date and time following an amendment to the solicitation and notice to bidders. The Contracting Officer shall prepare a written memorandum documenting the circumstances leading to the postponement of

the bid opening and place it in the contract file.

9-23 CANCELLATION OF AN INVITATION FOR BIDS AFTER OPENING

- (a) After the bid opening, an IFB may be cancelled and all bids rejected only if such an action is in the best interests of the Authority due to:
- The goods or services being solicited for are no longer required;
 - Inadequate or ambiguous specifications were cited in the invitation;
 - The specifications have been revised;
 - The IFB did not provide for consideration of all costs to the Authority;
 - All responsive and responsible bids received contain unreasonable prices;
 - The bids were not independently derived in open competition, were collusive, or were submitted in bad faith; or
 - For other reasons, cancellation is clearly in the public's best interests.
- (b) *Cancellation of Bids to Add Requirements is Prohibited* After the bid opening; an IFB shall not be cancelled and re-solicited due to increased requirements for the goods or services being procured. Award shall be made for the initial solicitation and the additional quantity shall be procured through a new solicitation.
- (c) *Notice Requirement* The decision to cancel procurements after bid opening requires review and approval one level above the Contracting Officer. When it is necessary to reject all bids, the Contracting Officer shall notify each bidder that all bids have been rejected and provide the documented reason for this action.

9-24 RECEIPT OF A SINGLE BID

If only one bid is received and, as a result, the Contracting Officer cannot determine price reasonableness, the bid shall be converted to a negotiated procurement and the procedures of Chapter 10 Procurement by Competitive Proposals shall apply. The Contracting Officer must document the contract file with the reason(s) for being unable to establish price reasonableness.

9-25 UNREADABLE ELECTRONIC BIDS

- (a) If a bid received by facsimile by the Authority is unreadable, or an E-mail or E-mail attachment was corrupted to the degree that conformance to the essential requirements of the IFB cannot be determined, the Contracting Officer shall immediately notify the bidder that the bid will be rejected unless the bidder provides clear and convincing evidence:
- Of the content of the bid as originally sent; and

- That the unreadable condition of the bid was caused by Authority mishandling of the facsimile transmission or E-mail.
- (b) Correction of bids submitted by facsimile or E-mail shall be affected by including the original bid, the verification request, and the bid verification in the contract file.

9-26 BID EVALUATION

- (a) *General* Bids shall be evaluated based on the requirements set forth in the IFB, including criteria to determine acceptability (e.g., inspection, testing, quality, workmanship, delivery, and suitability of a particular purpose). All criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total life cycle costs. No criteria may be used to evaluate bids unless the criteria are set forth in the IFB. Bids shall be evaluated without any discussions with bidders.

Because bids and proposals can at times be ambiguous, in the "Basis for Award" clause Contract Administrators must include a provision that reserves the Authority's right to seek additional information or clarification from any bidder or proposer regarding any statement that is found to be ambiguous prior to making an award. Care must be taken when requesting additional information or clarification in sealed bid procurements. In this type of procurement the additional information or clarification requested to resolve the ambiguity must not materially change the bid.

- (b) *Determination of the Low Bidder* Bids will be evaluated to determine which bidder offers the lowest cost to the Authority in accordance with the basis of award set forth in the IFB. Prompt payment discounts shall not be considered in the evaluation of bids. However, any discount offered will form a part of the award and will be taken by the Authority if payment is made within the discount period. In addition, the Contracting Officer must conduct a price analysis to determine price reasonableness in accordance with Chapter 16 Cost and Price Analysis.

The IFB process does not allow for the Authority to award a contract to other than the lowest priced responsive, responsible bidder. Further, the IFB process does not allow negotiations with any vendor, except as set forth in Section 9-24, above.

- (c) *Economic Price Adjustment* When an IFB contains an economic price adjustment clause, bids shall be evaluated on the basis of the submitted prices, including the economic price adjustment included in each bid up to the maximum allowable price adjustment, except as follows:
- If a bidder increases the maximum percentage of economic price adjustment stipulated in the IFB or limits the downward economic price adjustment provisions of the IFB, the bid shall be rejected as non-responsive; or
 - If a bid deletes or modifies the economic price adjustment clause in any way, the bid shall be rejected as non-responsive.

If a bidder bids less than the maximum percentage of the economic adjustment stipulation in the IFB, the bid shall be evaluated at the reduced maximum economic factor with those bids that did not reduce the factor. However, after evaluation, if the bidder offering the lower adjustment factor ceiling is the lowest bidder, the subsequent award shall reflect the lower ceiling.

- (d) *Evaluating Tie Bids* When two or more responsive, responsible and technically compliant bidders offer the same lowest price, contract award shall be based on the following order of priority:
- The first priority for award will be to the tied bidder that is a Small and Local Business; or
 - The second priority for award will be to the tied bidder which is a DBE.

If two or more bidders remain tied after application of the above priority factors, the award shall be made to the bidder whose bid was first received.

- (e) *Bidder Responsiveness and Responsibility* To be considered for award, a bid must be responsive and the bidder must be responsible. Bids may be rejected if they are found to be non-responsive or the bidder is found to be non-responsible.

A bid is responsive if it conforms in all material aspects to the requirements of the solicitation at the scheduled time of submission and does not require further discussions with the bidder.

A bidder is responsible if the contractor possesses the ability to perform successfully under the terms and conditions of the proposed procurement.

- *Bid Responsiveness* is very objective. Either the bid response conforms to the solicitation or it does not. Examples of exceptions that typically result in a bid being declared non-responsive include:
 - The bid fails to conform to material requirements of the contract terms or conditions (i.e., failure to sign the bid or taking exception to Authority terms);
 - The bidder fails to acknowledge receipt of an amendment unless the bid as it is received clearly demonstrates the bidder received the amendment (i.e., where the amendment includes replacement pages and the replacement pages are contained in the bid as received, or the amendment adds items on which to bid and the bidder submits a bid for those items);
 - The bid does not conform to applicable specifications or allowed alternates;
 - The bid fails to conform to the delivery schedule or permissible alternates;
 - There is a condition of the bid which affects the substance of the bid (i.e., affects price, quantity, quality, or delivery of the items offered);
 - The bid contains prices for line items that are materially unbalanced (i.e., figures in the bid conflict with the total bid price). Rejection of unbalanced bids must be reviewed and approved by the CPRO;

- A bid shall be analyzed to determine whether it is unbalanced with respect to the prices of separately priced line items. This is particularly important when evaluating option pricing in relation to the price for the base term.
- A bid is mathematically unbalanced if it contains unreasonably low prices for some items and unreasonably high prices for other items.
- A bid is materially unbalanced if:
 - * There is a reason to doubt that award to the bidder submitting a mathematically unbalanced bid would result in the lowest overall price to the Authority even though it is the lowest evaluated price; or
 - * The bid is so grossly unbalanced that its acceptance would be tantamount to providing the bidder with an advance payment.
- Any bid deemed materially unbalanced shall be rejected as non-responsive.
 - The bidder fails to furnish a bid guarantee or other required documentation in accordance with the requirements of the invitation;
 - The bidder fails to submit some intention to comply with Small and Local Business Program or Disadvantaged Business Program requirements; or
 - Failure to submit a Buy America Certification or submitting a Buy America Certification that reflects both compliance and non-compliance.
- **Bidder Responsibility** Making a determination of the responsibility of a bidder involves a great deal of subjectivity. If, at the time of contract award, the lowest responsive bidder possesses the ability to perform successfully and a willingness to comply with the terms and conditions of a proposed contract, the bidder is considered responsible (see also Chapter 15). To be determined responsible, a prospective contractor must meet all of the following requirements, as applicable:
 - Financial resources adequate to perform the contract, or the ability to obtain them;
 - Ability to meet the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
 - A satisfactory past performance record;
 - A satisfactory record of integrity and business ethics;
 - The necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them;
 - Compliance with applicable licensing and tax laws and regulations;
 - The necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
 - Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations (i.e., bidder has been suspended or debarred by a Federal or other government agency and that suspension or debarment has not expired by the bid opening date).

(f) *Documenting Responsiveness and Responsibility Determinations* All bids

rejected for being non-responsive or for the bidder being non-responsible require written documentation regarding the reason(s) for rejection of the bid(s), and such documentation must be placed in the contract file.

- (g) *Product Acceptability* The IFB shall set forth in the specification, product description, or scope of work any criteria that will be used in determining the acceptability of goods or services. The IFB shall require the submission of bid samples, descriptive literature, technical data, or other material necessary to ensure the goods or services to be provided meet the requirements of the solicitation. This evaluation is not conducted for determining which bidder's item is superior, but to determine if the goods or services meet the minimum requirements of the solicitation. Any bid offering goods or services that do not meet the minimum requirements of the solicitation shall be rejected as non-responsive.

9-27 BID MISTAKES

- (a) *General* Regardless of how it is discovered, a bid mistake is a problem in the sealed bidding method of procurement because of the strict rules of responsiveness, because bids have been exposed, and because the integrity of the procurement process is at stake.

The four generally accepted categories of bid mistakes are:

- Minor informalities or irregularities in bids discovered prior to award of the contract;
 - Obvious or apparent clerical mistakes discovered prior to contract award;
 - Mistakes other than minor informalities or irregularities in bids, or obvious or apparent clerical mistakes that are discovered prior to contract award; or
 - Mistakes discovered after contract award.
- (b) *Possible Remedies* If a mistake fits within one of these categories, three things can happen:
- The mistake may be corrected;
 - The mistake will be recognized and the bid allowed to be withdrawn; or
 - The mistake will not be recognized and the bid will not be allowed to be withdrawn.
- (c) *Minor Informalities or Irregularities in Bids* Minor informalities or irregularities may be waived if the Contracting Officer determines that the bid materially conforms to the requirements of the solicitation. The informality or irregularity is "immaterial" when there is no effect on the bid price, quantity, quality, or delivery requirements. The following are examples of acceptable informalities or irregularities:
- The bidder fails to include the required number of signed copies of its bid;
 - The bidder fails to furnish information concerning the number of its employees, etc.; or
 - The bidder fails to include a debarment or lobbying certification or both in its bid.

In instances such as the above, the Contracting Officer shall give the bidder the

opportunity to cure a deficiency resulting from a minor informality or irregularity in a bid. The contract file must contain all correspondence with the bidder necessary to correct the informality.

(d) *Obvious or Apparent Clerical Mistakes Discovered Prior to Award* Examples of obvious or apparent clerical errors include:

- Obvious misplacement of the decimal point;
- Reversal of the price from f.o.b. destination to f.o.b. origin (The Authority pays a higher price for picking the product up at the origin than for the bidder to deliver the product to the place designated);
- Mistake in designation of a unit of measure;
- Typographical errors;
- Apparent error in extending unit prices;
- Transposition errors; or
- Mathematical errors.

Bid mistakes are a potential source for a bid protest by either the firm requesting relief from a "mistake" or from another bidder that feels it could be adversely impacted by the Authority's decision regarding the mistake of another bidder. Therefore, Contracting Officers must exercise great care in the correction of an obvious or apparent mistake.

In no event shall a Contracting Officer allow for the correction of a mistake that results in making a non-responsive bid responsive. Also, if correction of the bid would displace one or more lower bids, it is recommended that the correction not be allowed unless the evidence of the mistake and bid actually intended are ascertainable from the IFB and bid itself as opposed to the bidder's request.

Due to the potential for negative impacts on the credibility of the Authority's procurement process, the Authority will only consider the correction of an obvious or apparent bid mistake if the bidder provided proper notice to the Contracting Officer of the mistake prior to the bid opening.

If proper notice was given prior to the bid opening, it is necessary for the Contracting Officer to confirm the error and its correction with the bidder. This process shall include the following steps:

- Prepare a written request to the bidder that it verify its bid price or advise the bidder to make a written request to withdraw or modify its bid;
- Advise the bidder that it must support its request with **any and all** evidence to support the correction it is requesting; and
- Advise the bidder of definite time deadlines in which to provide the information requested.

After receipt of written verification from the bidder, the contracting officer may correct an apparent or obvious clerical mistake. The Contracting Officer shall:

- Attach the verification to the original bid;
- Reflect the correction in the award document; and
- Document the procurement file to indicate why the action was taken.

In all cases where a bid is corrected or withdrawn, the Contracting Officer shall prepare a written determination clearly identifying the relief granted or denied to the bidder and the reasons supporting that determination. The determination must be reviewed and approved one level higher than the Contracting Officer and the documentation placed in the contract file.

- (e) *Mistakes Other than Minor Informalities or Irregularities in Bids* These mistakes are generally raised by the bidder along with a request to withdraw its bid. Examples include:

- A pricing element was not included in the bid (i.e., the material cost was included, but not the labor to install the material); or
- The cost for subcontractor work was not included in the bid.

Contracting Officers shall follow the procedures outlined in §9-27 (d) when a bidder alleges a mistake has been made. In instances like those listed above, Contracting Officers shall pay particular attention to the evidence the bidder furnishes that establishes the existence of the mistake. Be particularly sensitive to the bidder that wants out of its bid simply because it made a judgmental error in preparing its bid and, after bid opening, discovered it "left too much money on the table."

In no event shall a Contracting Officer allow for the correction of a mistake that results in making a non-responsive bid responsive. Also, if correction of the bid would displace one or more lower bids, it is recommended that the correction not be allowed unless the evidence of the mistake and bid actually intended are ascertainable from the IFB and bid itself as opposed to the bidder's request.

Due to the potential for negative impacts on the credibility of the Authority's procurement process, the Authority will only consider the correction of an obvious or apparent bid mistake if the bidder provided proper notice to the Contracting Officer of the mistake prior to the bid opening.

The Contracting Officer shall allow the bidder to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended correction to the bid is not similarly evident. The Contracting Officer may make a determination to correct the bid and not allow its withdrawal if:

- The bidder requests permission to withdraw a bid rather than correct it;
- The evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended; and
- The bid, both as originally submitted and as corrected, is the lowest bid received.

In all cases where a bid is corrected or withdrawn, the Contracting Officer shall prepare a written determination clearly identifying the relief granted or denied to the bidder and the reasons supporting that determination. The determination must be reviewed and approved one level higher than the Contracting Officer and the documentation placed in the contract file.

- (f) *Mistakes in Bids Discovered After Award* If a mistake in a bid is not discovered until after contract award, the mistake may be corrected by a contract

modification if correcting the mistake would be favorable to the Authority and it does not change the essential requirements of the specification or scope of work.

In addition, if a mistake is not discovered until after award, the Contracting Officer is authorized to make one of the following determinations:

- Rescind the contract award;
- To reformulate the contract to:
 - Delete the item(s) involved in the mistake; or
 - Increase the price if the contract price, as corrected, does not exceed that of the next lowest bidder under the original IFB; or
- Make no change in the contract as awarded, if the evidence does not warrant such a determination based in the requirements of preceding subsections of this section.

Determinations under this subsection shall be made only on the basis of clear and convincing evidence that a mistake was made. It must be clear that the mistake was mutual, or if solely made by the contractor, so apparent that the Contracting Officer should have taken notice of the probability of the mistake prior to contract award. The proposed determination shall be submitted to the CPRO for review and may be submitted to Counsel for review based on the determination of the CPRO.

The contract file shall be documented with a record of each determination made in accordance with this subsection, including the supporting facts, and the action(s) taken.

9-28 EXTENSION OF THE BID ACCEPTANCE PERIOD

If administrative or other difficulties are encountered after the bid opening which may delay contract award beyond the bid acceptance period stated in the solicitation, the Contracting Officer shall request an extension of the bid acceptance period from all of the bidders prior to the expiration of the bids to avoid the need to re-advertise for bids. The extension shall include the consent of sureties if applicable. The extension period as requested should be long enough to allow for the award of a contract.

9-29 CONTRACT AWARD

- (a) *Basis of Award* All contracts shall be awarded to the lowest responsive, responsible bidder whose bid meets the technical requirements set forth in the IFB. Where specified in bidding documents, factors such as discounts, transportation cost, and lifecycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Awards shall be made within the time for acceptance or any extension(s) thereof.
- (b) *Required Approvals* Awards shall not be made until all required internal

approvals have been obtained. When a bidder is selected for award, the Contracting Officer will request approval of the award, and any internal operating procedures approved by the CPRO. All necessary concurrences, including that of the General Counsel, shall be obtained.

- (c) *Notice of Award* Written notice of award, including a copy of the duly executed contract, shall be sent to the successful bidder. Notice of the award shall be made available to the public through electronic means. The notice of award or contract document may be made available to the public through the Public Access to Records Policy (PARP) process.
- (d) *Notice to Unsuccessful Bidders* For procurements above the simplified acquisition threshold, the Contracting Officer shall notify unsuccessful bidders within 24 hours of contract award that their bids were not accepted. The notice may be sent in writing or through electronic means. In addition, the Contracting Officer shall return any bid guarantee furnished by the unsuccessful bidders at the time of notification.
- (e) *Record of Award* Concurrent with an award, a record including the determination of the basis of award to the successful bidder shall be included in the contract file.

9-30 TWO-STEP SEALED BIDDING

- (a) *General* The two-step sealed bidding method is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. This process is useful when a complex procurement requires the submittal of an unpriced technical submittal in phase or step-one and the submission of sealed bids in phase or step-two as follows:
 - The objective of step-one is to determine the acceptability of technical submissions through an evaluation process which could involve clarification and discussion, if necessary, relating to the technical submittals and conformity to the technical requirements; and
 - The submission of sealed bids in step-two by those that submitted acceptable technical submittals in step-one. Bids submitted in step-two shall be evaluated and awards made in compliance with §9-26 Bid Evaluation and §9-29 Contract Award of this chapter.
- (b) *Conditions for use of Two-Step Bidding* Unless other factors require the use of sealed bidding, two-step sealed bidding may be used in lieu of a negotiated procurement when all of the following conditions are met:
 - Specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and discussion of the technical aspects of the requirement are necessary to ensure mutual understanding of the specification or purchase description between the bidders and the Authority;
 - Definite criteria exist for evaluating technical submittals;
 - More than one technically qualified source is expected to be available;
 - Sufficient time is available for use of the two-step method; and

- A firm fixed-price contract or a fixed-price contract with economic price adjustment will be used.
 - Bids should be solicited from at least three qualified prospective contractors.
- (c) *Step-One Process* Two-step bidding shall be initiated by the issuance of an IFB. Each request for technical submittals shall include, at a minimum, the following:
- A description of the goods or services required;
 - A statement of intent to use the two-step process;
 - The requirements of the technical submittal;
 - A source selection plan including, at a minimum, a technical evaluation team, evaluation criteria, and an evaluation rating guide;
 - A statement that the technical submittals shall not include prices or pricing information;
 - The due date and time for technical submittals;
 - A statement that in the second step only bids based upon acceptable technical submittals, either based on the initial submittal or as a result of discussions, will be accepted and considered for award. Also, each bid in the second step must be based on the bidder's own technical submittal;
 - A statement that bidders should provide submittals that are acceptable without additional information or explanation and that the Authority may make a final determination regarding the acceptability of the technical submittal solely on the basis of the technical submittal as provided. In addition, the Authority may proceed with the second step without requesting further information from any bidder, provided that the Authority may request additional information from bidders whose technical submittals it considers potentially acceptable but, which may involve clarification and discussion as necessary;
 - A statement that a notice of an unacceptable technical submittal will be sent to the bidder upon completion of the technical submittal evaluation and final determination of acceptability/unacceptability; and
 - A statement that only one technical submittal may be submitted by each bidder or that multiple technical submittals may be submitted by a single bidder. When specifications permit differing technical approaches, multiple technical submittals may be authorized if this would be in the best interest of the Authority.
- (d) *Delivery and Performance Requirements* Information on delivery and performance requirements is of assistance to bidders in determining whether to provide a technical submittal and should be included in the step-one request. The request shall also state that information on delivery or performance presented in step-one is not binding on the Authority and the final delivery or performance requirements will be contained in the IFB issued in the second step.
- (e) *Receipt and Evaluation of Step-One Submittals* The technical submittals shall be received and safeguarded in accordance with §9-20 of this chapter. Technical submittals shall not be opened publicly but shall be opened in the presence of one or more

procurement officials. Upon receipt of technical submittals, the Contracting Officer shall:

- Safeguard the technical submittals against disclosure to unauthorized persons;
- Accept and handle the technical submittals in accordance with chapter 22 of these procedures; and
- If included in the technical submittal, remove any reference to price or price related information.

- (f) *Evaluation of Technical Submittals* The Contracting Officer shall establish a time period for evaluating the technical submittals. The length of the period should vary based on the number and complexity of the technical submittals received. Evaluation shall be based on the criteria listed in the source selection plan of the IFB with consideration for responsiveness. Based on the evaluation, the technical submittal shall be categorized as:
- Acceptable;
 - Potentially acceptable; and
 - Unacceptable.

Any technical submittal which modifies or fails to conform to the specifications or essential requirements of the IFB shall be considered non-responsive and categorized as unacceptable.

- (g) *Sufficient Acceptable Technical Submittals* The Contracting Officer may proceed with the second step if there are sufficient acceptable technical submittals to permit adequate price competition in the second step and/or if further time and effort to make additional technical submittals acceptable and thereby increase competition would not be in the best interests of the Authority.

If there are insufficient acceptable technical submittals, and/or it is not in the best interest of the Authority to proceed to the second step immediately, the Contracting Officer shall request clarification or supplemental information from bidders whose technical submittals were found potentially acceptable. If discussions are held, the Contracting Officer shall identify the additional information the bidder must provide.

No technical submittal shall be discussed with any bidder other than the bidder who provided the technical submittal.

- (h) *Requests for Additional Information* When requesting additional information, the Contracting Officer shall set an appropriate due date and time for bidders to submit any additional information, conclude discussions, if any, and incorporate the additional information and discussions into their technical submittal. If necessary, and at his/her discretion, the Contracting Officer may extend the due date for the additional information.

If the additional information incorporated into the technical submittal results in the technical submittal being deemed acceptable, it shall be categorized as such. If the additional information does not result in the technical submittal being deemed acceptable, the technical submittal shall be designated unacceptable.

- (i) *Notice to Unsuccessful Bidders and Debriefing* If following the initial

evaluation or after clarification, the technical submittal is found unacceptable, the Contracting Officer shall promptly notify the bidder of the basis of the determination and that a revision of the technical submittal will not be considered.

- (j) *Discontinuation of the Two-Step Bidding Process* If, for any reason, it is necessary to discontinue the two-step sealed bidding process, the Contracting Officer shall include a statement of the facts and circumstances for discontinuing the process in the contract file. Each bidder or prospective bidder shall be notified in writing within 24 hours of the discontinuation of the two-step sealed bidding process.
- (k) *Late Technical Submittals* Late step-one technical submittals, requests for information or clarification to step-one technical submittals, and/or step-two bids are governed by §9-18 of this chapter.
- (l) *Step-Two Procedures* All requirements and procedures detailed in the earlier sections of this chapter regarding the IFB process shall be followed in the step-two process except as follows:
 - An IFB shall be issued only to those bidders submitting acceptable technical submittals in step one;
 - The step-two IFB shall prominently state that the bidder shall comply with the specifications and the bidder's technical submittal; and
 - The IFB shall not be advertised or publicly posted.

9-31 CONTRACT FILE ASSEMBLY AND DOCUMENTATION

- (a) *General* It is necessary to retain accurate and complete documentation regarding every contract awarded by the Authority. In addition to the requirements of §2-16, Procurement Record, Contract Administrators must adhere to the following requirements to implement consistent documentation in the form of a conformed contract. Conformed contracts will be compiled by each Contract Administrator and submitted to the Procurement file room.
- (b) Only those procurement files which contain a bound, labeled Conformed Contract will be accepted by file room personnel.
- (c) Within 60 days of contract award, all Contract Administrators must compile all documents which were issued pursuant to an IFB or RFP. Contract Administrators must assemble all relevant written records for all procurements. The records will be collected into a single file placed into the Authority's record keeping system and submit a copy to the Policy Mailbox at prmpolicy@wmata.com. The appropriate checklist (refer to Appendix A for checklists) must be completed by the Contract Administrator to ensure that the proper procurement processes have been followed, all considerations relevant to the procurement process have been addressed, and all components of the procurement file are assembled no later than 60 days after contract award. The procurement record and checklist must be reviewed by the contract manager and procurement manager. Following the review, the Contract Manager and the Procurement Manager must sign the checklist. Following this review, the

procurement record including the completed checklist will be reviewed by the assigned COUN attorney to ensure legal sufficiency of the procurement. In addition to those items listed in the appropriate checklist, the compiled documents must include those items indicated below as appropriate:

- For Service, Supply and Equipment Contracts:
 - Notice to Proceed/Award
 - Delegation of Contracting Officer's Technical Representative ("COTR"), if applicable
 - Executed Bid or Performance Bonds, if applicable (Note: Bid and Performance bonds may be required at the discretion of the Contracting Officer.)
 - Insurance Certificates
 - Executed Contract/Agreement Form (signed by both parties)
 - Unit Price Schedule (accepted with date)
 - Solicitation Package
 - Amendments (acknowledged)
 - Disadvantaged Business Enterprise ("DBE") Participation (Signed Letters of Intent, DBE Participant Schedule)
 - Complete Pre-Award Data
 - Representations and Certifications (signed)
 - For Information Technology Contracts:
 - Notice to Proceed/Award
 - Delegation of Contracting Officer's Technical Representative ("COTR"), if applicable
 - Insurance Certificates
 - Executed Contract/Agreement Form (signed by both parties)
 - Unit Price Schedule (accepted with date)
 - List of Positions (If applicable)
 - Department of Labor - Labor Rates (if applicable)
 - Solicitation Package
 - Amendments (acknowledged)
 - Disadvantaged Business Enterprise ("DBE") Participation (Signed Letters of Intent, DBE Participant Schedule)
 - Complete Pre-Award Data
 - Representations and Certifications (signed)
 - Cost Proposal
- (d) Once the documents are compiled, the Contract Administrator is responsible for creating a cover sheet which contains the descriptive contract name, IFB/RFP number, identifying initials of the Contract Administrator and the Group ID for Bus, Rail, Technical or Operations. The cover sheet must clearly be identified as for a Conformed Contract.
- (e) The Contract Administrator must make a minimum of three copies of the Conformed Contract for distribution to the Awarded Contractor, Program Office, Policy, and the Contract Administrator's records.
- (f) The Contract Administrator is also responsible for ensuring that the documents are properly three-hole punched and bound with an appropriate fastener.
- (g) Once the Conformed Contract has been compiled and bound the document

should be given to file room personnel for inclusion in the procurement file.

10 – PROCUREMENT BY COMPETITIVE PROPOSALS

10-1 PURPOSE AND SCOPE

- (a) This chapter prescribes the procedures for the solicitation of competitive proposals, and the evaluation, selection, and award of a contract(s) based on competitive proposals. It applies to all procurement actions that are solicited by competitive proposal except for two-step sealed bidding, Architect and Engineering Services and simplified acquisitions. It describes the Request for Proposals (“RFP”) method of solicitation, and includes the procedures for proposal submission, restrictions on the disclosure of information, consideration of unsolicited proposals, the source evaluation and selection process, and preparing the record of negotiations.
- (b) The Authority may use competitive proposals when the use of competitive sealed bidding(Chapter 9) is not appropriate.

10-2 AUTHORITY TO NEGOTIATE

- (a) *Authority to Use Competitive Proposals* The Contracting Officer may use procurement processes, approaches, and strategies suitable for acquisition specific circumstances. For competitively negotiated procurements, the criteria of Compact Section 73 (a)(2)(B) must be met.
- (b) Formal source selection is required at any dollar level when the Contracting Officer determines that the circumstances of the procurement dictate a technical evaluation team and price evaluation team approach to a procurement.
- (c) Source selection procedures in this section do not apply to procurements conducted by a Federal, State, or local government, or by the Council of Governments. However, these procedures apply if the procurement is conducted by the Authority on behalf of any of these entities. Formal source selection procedures require the appointment and use of evaluation teams.
- (d) Source Selection procedures are designed to accomplish the following:
 - Maximize competition;
 - Minimize the complexity of the solicitation, evaluation, and selection decision;
 - Ensure impartial and comprehensive evaluation of proposals; and
 - Ensure selection of the source whose proposal is expected to meet or exceed the Authority’s requirements within budget, representing the best overall value to the Authority.
- (e) Contracting Officers will be responsible for selecting the members of the Source Selection Team.

10-3 RESPONSIBILITIES

The Authority Program Office requesting the procurement is responsible for developing the technical requirements related to the source selection process. The Contracting Officer or designee shall be responsible for contractual actions related to process, including, but not limited to, the following:

- Issuing solicitations in accordance with the procedures in this chapter;
- Conducting or coordinating a cost analysis;
- Conducting or controlling all negotiations concerning, cost, price, technical requirements, past performance, and any other terms and conditions; and
- Conducting the source selection process in compliance with the provisions of this chapter.

10-4 LIVING WAGE POLICY

- (a) *General.* The Living Wage requirement will be included in all service contracts, including construction contracts, awarded in an amount that exceeds \$250,000 in a 12-month period. The provision “flows down” to subcontracts that exceed \$250,000 in a 12-month period, which are awarded under the applicable prime contract. The Authority established Living Wage Rate may be reduced by a contractor’s per-employee cost for health insurance and will be adjusted annually based on the average wage rates of local jurisdictions with a Living Wage policy.
- (b) *Contract Clause.* The Living Wage clause is required in solicitations and the resulting contract. The Living Wage clause shall be inserted in the General Provisions.

10-5 EVALUATION FACTORS

- (a) *General Evaluation Factors* Two types of evaluation factors will be considered in evaluating proposals. General evaluation factors relate to vendor responsibility and are evaluated by the Contracting Officer or designee. General evaluation factors include, but are not limited to:
 - Vendor Experience
 - Past experience as it relates to the SOW
 - Past experience as it relates to public sector organizations especially public transit
 - Past experience with Authority
 - Project Experience
 - Past projects of a similar scope and magnitude
 - Familiarity with the specific project SOW (Specific projects and the type of work performed)
 - Product Experience
 - Compliance of form, fit and function with the project SOW (Do the product features fit into the Authority’s environment)

- Service Experience
 - Staff skill sets (certification requirements, technology platforms, etc.)
 - Experience to match the SOW (Customer references and verified experience)
- (b) *Specific Evaluation Factors* Specific evaluation criteria shall be specific to the SOW of the procurement and shall include only those factors that will have an impact on the source selection decision. Specific evaluation criteria include, but are not limited to:
- Project Outcomes
 - Cost savings (dollar amounts or percentages) achieved in similar projects referenced in the proposal
 - System response times, etc.
 - Project Risks
 - Project scale, projects completed using the proposed technology platform including successful deployments
 - System response times, etc.
 - Vendor Experience
 - Vendor provides the Authority with the best probability of success within the project SOW and budget
 - Skill sets of auxiliary staff
 - Depth of experience of implementing similar projects
 - Number and number of successful implementations of the proposed solution
 - Because proposals can at times be ambiguous, in the “Basis for Award” clause Contract Administrators must include a provision that reserves the Authority’s right to seek additional information or clarification from any proposer regarding any statement that is found to be ambiguous prior to making an award. Care must be taken when requesting additional information or clarification in sealed bid procurements. In this type of procurement, the additional information or clarification requested to resolve the ambiguity must not materially change the bid.
- (c) *Significance of Evaluation Factors* Specific evaluation factors and significant sub-factors must:
- Represent the key areas of importance and emphasis in the source selection decision; and
 - Support meaningful contrast and comparison between the competing proposals.
- (d) *Relevant Importance of Evaluation Factors* The evaluation factors that apply to procurements and the relative importance of those factors are within the discretion of the Contracting Officer, subject to the following requirements:
- Cost/Price to the Authority shall be evaluated in every source selection;
 - Cost/Price factors such as cost realism should also be included;
 - Past performance shall be evaluated in all competitively negotiated procurements unless the Contracting Officer documents in the procurement file as to the reasons why past performance is not an appropriate evaluation factor in the instant procurement;
 - Quality and safety shall also be addressed in every source selection. Quality may be expressed in evaluation factors in terms of technical excellence, management capability, personnel qualifications, prior experience and schedule compliance;

- (e) *All Evaluation Criteria Must be Disclosed* All specific technical evaluation criteria and significant sub-criteria that will affect contract award and their relative importance shall be clearly stated in the solicitation. The solicitation document must, at a minimum indicate that:
- The criteria are listed in declining order of importance; or
 - The criteria are equally weighted; or
 - The criteria are listed in declining order of importance; however, criteria and are of equal importance.
- (f) *Evaluation of Cost/Price* Cost/Price will be evaluated by the source selection committee following the evaluation of the specific evaluation criteria discussed above. The solicitation must state, at a minimum, whether all technical evaluation criteria other than cost/price, when combined, are:
- Significantly more important than cost/price;
 - Approximately equal to cost/price; or
 - Significantly less important than cost/price.
- (g) The following are sample clauses that can be used to inform potential proposers of the importance of the specific technical evaluation factors in relation to cost/price:

EVALUATION AND AWARD

Proposals will be evaluated based upon the following criteria (list criteria, significant sub-criteria, if any, and a narrative statement of the relative performance of the criteria). Award will be made to the proposer whose proposal contains the combination of those criteria and price offering the best overall value to the Authority. This will be determined by comparing differences in the value of the technical criteria including quality and safety, and business management features with differences in cost to the Authority. In making this comparison [choose the proper alternative from the following options]:

1. TECHNICAL MOST IMPORTANT:

... the Authority is more concerned with obtaining superior technical or business management features than with making an award at the lowest overall cost to the Authority. However, the Authority will not make an award at a significantly higher overall cost to achieve slightly superior technical or management features.

-OR-

2. TECHNICAL AND COST/PRICE OF EQUAL IMPORTANCE:

... the Authority is concerned with striking the most advantageous balance between technical and business management features and cost/price to the Authority.

-OR-

3. ...COST/PRICE MOST IMPORTANT:
... the Authority is more concerned with making an award at the lowest overall cost than with obtaining superior technical or business management features. However, the Authority will not make an award based on a proposal with significantly inferior technical or business management features in order to achieve a small savings in cost/price.

Cost is not expected to be the controlling factor in the selection of a contractor for this solicitation. The degree of importance of cost as a factor could become greater depending on the parity of the proposals for the other evaluated criteria; where proposals are determined to be substantially equal, total cost and other cost factors would become the controlling factor.

10-6 SUBMITTAL REQUIREMENTS

- (a) Submittal requirements are used to obtain the information necessary for the evaluation of the proposals. There are three types of information necessary for evaluation of most competitive proposals: pricing information, technical information supporting the proposal, and capability information. Contracting Officers may also require vendor responsibility information. The solicitation must only require potential proposers to provide the minimum amount of information required to determine the reasonableness and realism of the proposed cost/price, the validity of the technical proposal, and information on past performance and experience and in demonstrating a complete understanding of the SOW. Solicitation documents must only require information that will be evaluated or is necessary to facilitate the evaluation of proposals. Information that will not be evaluated should not be required.
- (b) *Pricing Information* Contracting Officers must purchase supplies and/or services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the cost or pricing data Contracting Officers must only obtain necessary information. If the price is based on adequate price competition, little or no information should be necessary from proposers. This includes when pricing information is based on established catalogs or market prices or previous contract pricing. If these sources for pricing information are not available or applicable, then the potential proposer should be required to disclose the appropriate information on the prices at which the same or similar items have previously been sold adequate for the determination of the reasonableness of the price.
- (c) *Technical Information* The amount and depth of the technical information required to be submitted should vary based on the complexity of the solicitation and whether the technical information would be understandable without explanation. If the solicitation requires known items such as common off-the-shelf software, little information may be needed or required to support the proposed scope of work. However, the information required to support the technical solution to a new or uncommon issue may require much greater detail to enable evaluators to adequately assess the proposal.

- (d) *Capability Information* The information necessary to make an assessment will depend on the evaluation factors used in each solicitation and must be tailored to those factors. Past performance information can be obtained from Authority records and references from other agencies and companies for whom the proposer has previously worked. However, to the extent Authority and other agency records are incomplete past performance information will have to be obtained from the proposer. This is done by requiring information on a specific number of recent contracts of similar scope and magnitude. The vendor references are then contacted, the experience information verified and provided to the Technical Evaluation Team. In assessing the proposer's understanding of the scope of work, proposers may be asked to provide a statement of how it will perform each work element. This written statement can then be included in the technical evaluation. Contracting Officers should consider including the proposer's understanding of the work as an element of oral presentations to be held with firms in the competitive range. This approach allows the Technical Evaluation Team to directly discuss the past performance with the proposer's staff responsible for the successful performance of the Authority's proposed contract.

10-7 PRESOLICITATION NOTICES AND CONFERENCES

- (a) *Purpose* Pre-solicitation notices and conferences may be used as preliminary steps in competitive proposal procurements to accomplish any of the following:
- Develop or identify interested vendors;
 - Request preliminary information based on a general description of the supplies or services involved;
 - Explain complicated specifications and requirements to interested vendors; or
 - Aid prospective vendors in the submission of proposals without undue expenditure of effort, time and money.
- (b) *Use and Form* If pre-solicitation notices are used, the Contracting Officer shall prepare and issue each notice to potential sources and shall publicize the notice by posting it to the Authority website for such purposes, and, if deemed appropriate, in a newspaper of general circulation or a trade publication. A pre-solicitation notice shall include the following:
- A description of the information to be furnished in the response;
 - An indication of whether the notice will be followed by a conference and a formal solicitation; and
 - A request that parties interested in the potential procurement respond by a specific date.
- (c) *Distribution* The Contracting Officer shall furnish copies of the solicitation to all those responding affirmatively to the pre-solicitation notice and to other prospective vendors upon request.
- (d) *Request for Information* In complex procurements, a pre-solicitation conference may not be used to request information pertaining to management, engineering, and production capabilities. Contracting Officers must publish a Request for Information ("RFI") instead.

10-8 REQUIREMENTS FOR REQUESTS FOR PROPOSALS

- (a) *RFP Requirements* An RFP shall be used to communicate the Authority's requirements and solicit competitive proposals from prospective vendors. Each RFP shall conform to the contract format specified in Chapter 23 of this BPM, provided that it shall also include:
- A statement that discussions may be conducted with proposers who submit proposals determined to be reasonably qualified of being selected for award, but that proposals may be accepted without such discussions;
 - A statement of when and how price should be submitted;
 - The RFP shall state whether all evaluation factors other than cost/price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost/price.

Contracting Officers or their designees shall issue solicitation documents that contain all of the information necessary to enable prospective contractors to prepare proposals.

Except for solicitations for information or planning purposes, the Contracting Officer shall not solicit proposals unless there is a definite intent to award a contract.

- (b) *Proposal Preparation Time* The time allowed for the preparation of proposals shall be set to provide proposers with a reasonable amount of time to prepare their proposals considering the complexity of the proposal requirements. At a minimum, offerors should have 21 calendar days to prepare and submit proposals, unless a shorter time is deemed necessary for a particular procurement by the Contracting Officer. For response times less than 21 days, the Program Office must demonstrate that there is an urgent need for the supplies, services, or construction, and the procurement file must be documented to support the urgency. The manner, in which proposals must be submitted, including any forms for that purpose, must be designated as part of the RFP.
- (c) *Public Notice* Public notice shall be given by distributing the RFP through the Authority's website in the same manner provided for distributing Invitations for Bids under §9-11 and in §3-11. In determining additional sources to solicit, the Contracting Officer may use sources identified by the requesting Program Office and from source lists §9-10.

In addition to posting the RFP on the Authority's website, Contracting Officers may issue RFPs, modifications or amendments to RFPs, and/or authorize the receipt of proposals electronically (i.e., E-mail or facsimile). When deciding whether to utilize E-mail or facsimile in the RFP process, the Contracting Officer must consider the following:

- The anticipated proposal size and volume;
- Urgency of the requirement;
- Availability and suitability of electronic methods; and
- The adequacy of processes, procedures and controls for receiving, identifying,

recording, and safeguarding proposals and their timely delivery to the designated location for the receipt of proposals.

- (d) *Electronic Proposals* If E-mail and/or facsimile proposals are authorized (see §3-12 for information to assist in determining whether to authorize electronic submittals), the RFP solicitation shall include a provision with instructions for proposers detailing how to submit a proposal electronically. In addition, after the receipt of proposals, the Contracting Officer may request that proposers provide a complete signed original copy of the proposal.

10-9 PRE-PROPOSAL CONFERENCES

- (a) If held, the Contracting Officer must hold a pre-proposal conference to brief prospective proposers after an RFP solicitation has been issued, but prior to the due date for the receipt of proposals. For all pre-proposal conferences, the Contracting Officer must:
- Conduct the pre-proposal conference;
 - Furnish all prospective proposers identical information concerning the RFP solicitation;
 - Make a complete record of the pre-proposal conference; and
 - Promptly furnish a written copy of that record to all prospective proposers.
- (b) The Contracting Officer or designee shall also inform all pre-proposal conference attendees of the following:
- That all oral communications including remarks, questions and answers, and explanations do not qualify or amend the RFP solicitation unless the solicitation is amended in writing.
- (c) Pre-proposal conference attendance may be made a mandatory pre-requisite to submitting proposals when highly complex RFP contract requirements exist, the work to be performed is of a highly unusual or specialized nature, or extensive knowledge of the project is required in order to prepare a proposal.

10-10 AMENDMENT OF SOLICITATIONS

- (a) Before the receipt of proposals, the Authority may change its requirements, terms, or conditions (e.g., changes in quantity, specification, delivery schedule, SOW, correction of defects or ambiguities, or change in the due date for proposals) through the issuance of an amendment to the RFP solicitation. Amendments shall be issued to all prospective proposers known to have received the RFP solicitation and be posted on the Authority's website.
- (b) If the change(s) in the RFP requirements are so substantial that a complete revision of the solicitation is required, the Contracting Officer must cancel the original RFP solicitation regardless of where the solicitation is in the procurement process. Once the solicitation has been revised, it must be re-issued. The revised solicitation must be issued to all firms originally solicited and to any firms that requested the solicitation document. Further, the revised solicitation must be advertised in the same manner as the original solicitation, including in any newspapers of general circulation or trade publications utilized.

in the original solicitation in compliance with the requirements of the procedures of this BPM.

- (c) When time is of the essence, oral amendment notices may be issued provided that the Contracting Officer must document the contract file with the reason(s) for the oral notice and formalize the oral notice with a written amendment.
- (d) The Contracting Officer shall determine whether the due date for the receipt of proposals must be changed when issuing an amendment to an RFP solicitation. If the time available for notifying prospective proposers of an amendment prior to the due date for proposals is insufficient, the Contracting Officer shall notify prospective proposers by E-mail, facsimile or telephone of the extension of the RFP due date. The Contracting Officer must formalize the extension of the RFP due date with a written amendment to the solicitation.
- (e) The Contracting Officer shall not award a contract unless all amendments made to the solicitation were issued with sufficient time to allow for full consideration by prospective proposers.

10-11 CANCELLATION OF A REQUEST FOR PROPOSALS

- (a) A Contracting Officer may cancel an RFP either before or after the receipt of proposals. Typical reasons for cancelling an RFP include:
 - Inadequate or ambiguous scope of work or specifications were cited in the solicitation;
 - The scope of work or specifications require a significant revision;
 - The material, equipment, services, or construction being solicited are no longer required;
 - No acceptable proposals have been received;
 - The proposals were not independently arrived at in open competition, were collusive or submitted in bad faith; and
 - The cancellation is in the best interest of the Authority or the public.
- (b) If an RFP solicitation is cancelled, the procurement file must contain the reason(s) for cancelling the solicitation.

10-12 RECEIPT, REGISTRATION AND DISCLOSURE OF PROPOSALS

- (a) *Receipt* RFP proposals shall not be opened publicly. The procedures for receipt and handling of proposals must be similar to the receipt and safeguarding of bids in response to an IFB.
- (b) *Register Proposals* After the date and time established for the receipt of proposals, a Register of Proposals shall be prepared which for all proposals shall include:
 - The proposer's name;
 - The number of modifications received, if any; and
 - A description of the goods, services, and construction offered by the proposer.

- (c) *Disclosure* The Register of Proposals shall be open to public inspection only after the award of a contract. Proposals and modifications shall only be shown to Authority personnel with a need to know. Neither the number of proposals nor the identity of the proposers shall be disclosed to the public or Authority personnel not having a need to know prior to contract award.

10-13 MODIFICATION OR WITHDRAWAL OF PROPOSALS

Proposals may be modified or withdrawn no later than the established RFP due date in accordance with §9-17. For the purposes of this Section and §10-14, the established RFP due date is the published time and date for the receipt of proposals or modifications to proposals.

10-14 LATE PROPOSALS, MODIFICATIONS AND WITHDRAWALS

- (a) Proposers are responsible for submitting proposals, revisions and modifications so that they will reach the Authority's office designated in the RFP solicitation no later than the time designated for the receipt of proposals. Proposers may use any transmission method authorized in the solicitation (i.e., regular mail, electronic mail, facsimile, or in-hand delivery).
- (b) Any proposal, revision, or modification that is received after the date and time specified in the RFP or under the paragraph above are deemed "late" and shall not be considered. The Contracting Officer shall document the procurement record accordingly.
- (c) If electronic or facsimile submission of proposals is authorized, and any portion of a proposal received by the Contracting Officer electronically or by facsimile is unreadable, the Contracting Officer shall immediately notify the proposer and permit the proposer to resubmit the unreadable portion of the proposal. The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the proposer and documented for the file. The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness provided the proposer complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

10-15 HANDLING PROPOSALS AND INFORMATION

- (a) *Unauthorized Disclosure* After receipt of proposals and prior to award, the information received in response to the RFP including the number or identity of proposers shall be reasonably safeguarded from unauthorized disclosure. This information shall not be made available to the public or to any Authority employees unless access to the information is required in performance of the employee's responsibilities.
- (b) *Authorized Disclosure* During the pre-award period of a competitive proposal procurement, only the Contracting Officer or others specifically authorized may

transmit technical or other information and conduct discussions with prospective contractors.

- (c) *Disclosure of Prejudicial Information* No Authority employee or agent shall furnish ANY information concerning a pending RFP to a prospective contractor or any of its competitors.
- (d) *Notification Regarding the Handling of Proposals* In order to ensure that submitted proposals (whether or not marked confidential, proprietary, trade secret, etc.) are handled in a confidential manner, the following notice must be placed on the cover of each proposal upon receipt:

NOTICE REGARDING THE HANDLING OF PROPOSALS

This proposal shall be used and disclosed for evaluation purposes only. The recipient of this proposal must place a copy of this Notice on any copy or abstract she makes of this proposal. Any notice of confidential, proprietary or trade secret information placed upon the proposal by the proposer must also be strictly observed. Disclosure of this proposal beyond the Authority's evaluation team is strictly forbidden.

- (e) *Release of Proposals Outside of the Authority* Contracting Officers may allow for the evaluation of proposals outside of the Authority in compliance with the following restrictions:
 - A written non-disclosure agreement shall be obtained from the outside evaluator agreeing that the information contained in the proposal will be used for evaluation purposes only and will not be further disclosed;
 - All designations of a proprietary nature imposed by the proposer or the Authority must be affixed to any reproduction or abstract made by the evaluator;
 - Proposals must not be released to a person or organization that has or may have a current or prospective business interest in the proposals; and
 - Public Access to Records Program requests may only be processed after contract award.

10-16 ADEQUACY OF PROPOSALS

- (a) Because the RFP process permits discussions and subsequent offers, questions regarding the responsiveness of a proposal are generally applicable.
- (b) The absence of submittal requirements may be addressed in the evaluation of proposals. In instances when required documents are missing from a proposal the Technical Evaluation Team must be instructed to evaluate and score the proposal. The evaluation scores given by the evaluators must reflect that the proposal does not meet the requirements of the RFP solicitation. Examples of missing documentation requirements may include:
 - Project Schedules
 - Resumes of Key Personnel
 - Examples of Relevant Experience of Key Personnel
 - Examples of Relevant Experience of the firm

- (c) However, certain requirements are neither curable nor addressed through the scoring of proposals. An example of such a requirement is the inability to meet the minimum experience requirement stated in the solicitation document.

10-17 SOURCE SELECTION PROCESS

- (a) Proposal evaluation is an assessment of the merits of the proposal and the ability of the proposer to perform the prospective contract successfully. The evaluation of each proposal shall be in accordance with the evaluation criteria set forth in the RFP. Factors not specified in the published evaluation criteria must not be used or rated. Evaluations must be conducted using the rating method, or combination of rating methods (e.g., color or other adjectival rating, or numerically weighted) determined by the Contracting Officer in consultation with the Program Office. The Technical Evaluation Team (“TET”) will conduct the evaluation. The scores for each proposal along with comments on the relative strengths, weaknesses, deficiencies and risks supporting the evaluation scoring shall be documented by the Technical Evaluation Team Chairman. The scores and related comments must be placed in the contract file.

If it is necessary to contract for any evaluation support services, such contract shall comply with the requirements of this Best Practices Manual.

- (b) *Technical Evaluation* The evaluation process will consist of a technical evaluation and a cost/price evaluation. The technical evaluation must be conducted according to the Source Selection Plan developed in conjunction with the RFP solicitation development process.

The technical evaluation process begins with the development of the evaluation criteria for the RFP. These criteria form the basis for evaluating all proposals submitted in response to the RFP solicitation.

The TET Chairman shall prepare supporting documentation for the selection decision that shows the relative differences among the proposals and their strengths, weaknesses, and risks in terms of the evaluation factors. The supporting documentation shall include the basis for the selection.

10-18 COMPETITIVE RANGE

“Competitive Range” is defined as those proposals determined during the RFP evaluation process to have a reasonable chance of being selected for award and are chosen for additional discussions and negotiations. The Contracting Officer shall determine which proposals are in the Competitive Range for the purpose of conducting further written or oral discussions. The Competitive Range shall be determined on the basis of cost/price and other factors that were stated in the RFP solicitation as the basis of award as well as the nature and extent of the competition. The Competitive Range Determination may not be used to unnecessarily limit competition.

10-19 CLARIFICATIONS WITH PROPOSERS

- (a) *Clarifications of Proposals* Clarifications are limited exchanges between the Contracting Officer and proposers that may occur when award without discussions is being contemplated. If award will be made without discussions, proposers may be given an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors.
- (b) *Communications with Proposers Before Establishing the Competitive Range* Communications are exchanges between Contracting Officers and proposers, after the receipt of proposals that occur during the proposal evaluation process prior to the proposals being scored by the TET. These communications may be conducted to clarify the Authority's understanding of the proposal, clarify past performance issues for responsibility determinations, or facilitate the proposal evaluation process.
- (c) *Limitations* If these communications occur, they must be limited to:
 - Communications with proposers whose past performance is the determining factor preventing them from being placed in the competitive range. The communications must be limited to addressing past performance issues to which the proposer has not had an opportunity to respond.
 - Communications intended to enhance the Authority's understanding of a proposal(s); allow for an interpretation of an unclear portion of a proposal or otherwise facilitate the Authority's evaluation of the proposal. The communications must not be used to cure deficiencies, omissions, technical or cost elements of the proposal, enhance and/or revise the proposal. Such communications may be considered in evaluating the proposals.

10-20 ORAL PRESENTATIONS

- (a) Oral presentations by proposers, as requested by the Authority, augment the written proposal in the evaluation process. The use of oral presentations can be effective in the source selection process. Oral presentations are particularly useful in situations where the proposer's qualifications to perform the work, or the proposer's understanding of the requirements, are the prime evaluation criteria. Solicitations for multiple-award task order contracts may benefit from the oral presentation approach when the Authority is buying capability to perform work that will be more specifically defined after contract award.
- (b) Oral presentations provide an opportunity for dialog among the parties. The solicitation may include a requirement for oral presentations by all proposers, or for only those found in the competitive range. If the solicitation will require oral presentations, submittals such as certifications, representations, signed offers, and exceptions to Authority terms and conditions must be excluded from those oral presentations. Information pertaining to the proposer's capability, past

performance, work plans or approaches, staffing resources, transition plans, or sample tasks are suitable topics for oral presentations. When deciding what information to obtain during oral presentations, Contracting Officers must consider the Authority's ability to evaluate the information to be presented. Therefore, it is generally best to limit oral presentation topics to a more detailed explanation of the written proposal, questions raised by evaluators during the evaluation of the written proposal, clarification of elements of the written proposal, or items specifically related to the evaluation criteria contained in the solicitation.

- (c) The potential for oral presentations and the selection criteria for proposer's participation in oral presentations (i.e., all proposers, or only those in the competitive range) must be stated in the solicitation. Contracting Officers should include simple notification information in the solicitation. It is not necessary to include detailed language concerning the content of oral presentations or location and timing information.
- (d) The Contracting Officer must include a record of oral presentations in the contract file to document what the Authority relied upon in the source selection process. The method and level of detail of the record (i.e., videotaping, audio recording, written transcript, Authority notes and written copies of the proposer's presentation notes and/or slide) shall be at the discretion of the Contracting Officer. If the oral presentation includes any information that will be included as a material term or condition of the contract, then the information must be in writing. Incorporation by reference of oral statements is not permitted.

10-21 PRE-DISCUSSION OBJECTIVES

Development of the pre-discussion position establishes the Authority's objectives and assists in the Contracting Officer's determination of a fair and reasonable price. The Contracting Officer or designee is responsible for ensuring that procurements are made at a fair and reasonable price, therefore, a cost/price analysis is essential for the development of the pre-discussion position.

10-22 DISCUSSIONS

- (a) Discussions are exchanges between the Authority and the proposers that are in the competitive range. The intent of discussions is to allow the proposer to revise its proposal. The discussions may involve price, schedule, technical requirements, or terms of the proposed contract. Discussions are tailored to each proposer's proposal, with the objective of maximizing the Authority's ability to obtain the best proposal based on the requirement and the evaluation factors set forth in the solicitation.
- (b) *Content of Discussions* The Contracting Officer must conduct written or oral discussions with all proposers in the competitive range. The content and extent of the discussions is at the discretion of the Contracting Officer, based on the facts particular to each

procurement. During discussions with proposers, the Contracting Officer or designee shall include, but not be limited to:

- Controlling all discussions;
- Advising each proposer of deficiencies in its proposal so that the proposer is given an opportunity to comply with the Authority's SOW;
- Attempting to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal;
- Resolving any suspected mistakes by calling them to the proposer's attention as specifically as possible without disclosing information about other proposals or the evaluation process;
- Providing the proposer a reasonable opportunity to submit any cost/price, technical or other revisions to its proposal that result from discussions; and
- Providing the proposer an opportunity to discuss past performance information obtained from references on which the proposer had not had a previous opportunity to comment. Names of individuals providing reference information about a proposer's past performance shall not be disclosed.

(c) *Limitations on the Disclosure of Information* The Contracting Officer and Other Authority personnel involved in the discussion shall not:

- Favor one proposer over any other;
- Reveal a proposer's technical solution, including unique terminology, innovative and unique uses of commercial items, or any information that would compromise a proposer's intellectual property to another proposer;
- Reveal a proposer's price without the proposer's permission, indicate to a proposer a cost or price it must meet to obtain further consideration, advise a proposer of its standing relative to another proposer, or otherwise furnish information about any other proposer's prices. However, a Contracting Officer may inform a proposer that its price is considered by the Authority to be too high or too low, and reveal the results of the analysis supporting that conclusion; and
- Assist a proposer to bring its proposal up to the level of other proposals.

(d) *Price Discussions* Price discussion is intended to permit the Contracting Officer and the proposer to agree on a fair and reasonable price. Price discussion does not require that agreement be reached on every element of cost. Reasonable compromises may be necessary, and it may not be possible to negotiate a price that is in accord with all the Program Office's opinions or with the Contracting Officer's pre-discussion objective. Compromise which involves safety must be in accordance with the Authority System Safety Program Plan. The recommendations and counsel of contributing specialists, including auditors, are advisory only. However, the Contracting Officer should include comments in the price discussion memorandum when significant audit or other specialist recommendations are not adopted.

(e) *Discussion Objective* The Contracting Officer's objective is to obtain a contract price that is fair and reasonable to the Authority while providing the contractor with the greatest incentive for high quality and efficient performance. The

discussion of a contract type and a price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Authority. Therefore, the Contracting Officer should balance the contract type, cost, and profit or fee negotiated to achieve a total result and price fair and reasonable to both the Authority and the contractor.

- (f) *Suspension of Discussions* If, however, the contractor insists on a price or demands a profit or fee that the Contracting Officer considers unreasonable and the Contracting Officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the Contracting Officer shall then formally suspend discussions with the contractor and move to the next contractor or reject and re-solicit.
- (g) *Profit or Fee* The Contractor's profit or fee shall be discussed as a separate element of the price for each contract. The Contracting Officer should consider the complexity of the work, the degree of risk assumed by the contractor, and other factors detailed in the Cost/Price Analysis Chapter in analyzing the profit. The Contracting Officer shall require any prospective contractor to submit details of its profit or fee.

10-23 BEST AND FINAL OFFERS (BAFOS)

- (a) Upon completion of discussions, the Contracting Officer will ask all proposers within the competitive range to submit their best and final offer. Oral requests for best and final offers shall be confirmed in writing.
- (b) The request for best and final offers shall include a set due date and time for BAFOs that allows a reasonable opportunity for their submission. After evaluation of the best and final offers, the Contracting Officer shall select that responsible proposer whose best and final offer is most advantageous to the Authority.

10-24 SUMMARY DISCUSSION MEMORANDUM

- (a) The Contracting Officer or designee must prepare and include in the contract file, a memorandum of the Record of Discussions including the principal elements of the price discussion, and the price reasonableness determination including the source and type of data used to support the determination of price reasonableness.
- (b) The Record of Discussions memorandum shall include at a minimum, the following information:
 - The purpose of the discussion;
 - A description of the procurement, including appropriate identifying numbers;
 - The name, position and organization of each person representing the contractor and the Authority in the discussion;

- If certified cost/pricing data were required (Chapter 16), the extent to which the Contracting Officer:
 - Relied on the cost or pricing data submitted and used them in discussing the price; and
 - Recognized as inaccurate, incomplete, or non-current any cost or pricing data submitted; the action taken by the Contracting Officer and the contractor as a result; and the effect of the defective data on the price discussed.
- The most significant facts or position considerations controlling the establishment of the pre-discussion and the discussed price including an explanation of any significant differences between the two positions; and
- The basis for determining the pre-discussion profit or fee objective, and the profit or fee discussed.

10-25 CONTRACT AWARD

- (a) A contract shall be awarded to the responsible offeror whose proposal is most advantageous to the Authority, price and other factors considered. In determining which proposal is most advantageous, grantees may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the “best value” to the Procuring Agency as defined in 4220.1F, I, 5.b., Definitions. If the grantee elects to use the best value selection method as the basis for award, however, the solicitation must contain language that establishes that an award will be made on a “best value” basis.
- (b) The Contracting Officer, after obtaining all required approvals, shall award a contract to the successful proposer by transmitting a written notice of award to that proposer.
- (c) Promptly after the award of each contract, the Contracting Officer shall notify unsuccessful proposers in writing.
- (d) The Contracting Officer shall provide a debriefing post-award for any unsuccessful proposer that submits a written request or debriefing.

10-26 DEBRIEFING

- (a) *Authority and Formality* The Contracting Officer is authorized to provide debriefings that furnish the basis for the source selection decision and contract award. Debriefings will be given orally.
- (b) *Purpose of Debriefing* Debriefings afford proposers in a competitive solicitation with an explanation of the evaluation process, an assessment of their proposal in relation to the evaluation criteria, a general understanding of the basis of the award decision, and the rationale for their exclusion from the competition.

Debriefings may also instill confidence in the evaluation process by reflecting that proposals were treated fairly. Debriefings may include:

- The Authority's evaluation of significant weaknesses or deficiencies in the proposal, as identified by the technical evaluators written comments; and
 - Reasonable responses to relevant questions about whether source selection procedures contained in the Request for Proposal and applicable law were followed.
- (c) *Debriefing* A disappointed Offeror may request a debriefing by submitting a written request to the Contracting Officer within three business days of when it is notified of its exclusion from the competitive range or that it has not been selected for award, whichever comes first. To the maximum extent practicable, the debriefing should occur within five business days after receipt of the written request.
- (d) *Post-Award Debriefing* Debriefings shall not include or reveal any information prohibited from disclosure by law, or exempt from release under the applicable public records laws, including trade secrets or privileged or confidential commercial or manufacturing information. Additional restrictions on the disclosure of information in a post-award debriefing are as follows:
- In a post-award debriefing, the following shall not be disclosed:
 - Point-by-point comparison between the debriefed proposer's proposal with those of other proposers; and
 - Names of individuals providing referenced past performance information about the proposer;
- (e) The Contracting Officer shall include a summary of any debriefing in the contract file.

10-27 UNSOLICITED PROPOSALS

- (a) The Authority may accept an unsolicited proposal for evaluation and contract award consideration only if the criteria below are satisfied, and any proposed award is justified in writing and approved by COUN.

To be considered, an unsolicited proposal shall meet all of the following criteria:

- It must be innovative and unique;
 - It must have been independently originated and developed by the proposer;
 - It must have been prepared without Authority input; and
 - It must show that the proposed work would benefit the Authority.
- (b) *Consideration of Unsolicited Proposals* Unsolicited proposals shall contain the following information to permit consideration in an objective and timely manner:
- The proposer's name and address and type of organization, such as profit, nonprofit, educational or certified MBE/SBP/MBP;
 - The names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;

- Identification of proprietary data to be used only for evaluation purposes;
 - The signature of a person authorized to represent and contractually obligate the proposer;
 - The proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;
 - The period of time for which the proposal is valid;
 - The type of contract preferred; and
 - The proposed duration of the work.
- (c) The Contracting Officer must take the following actions before entering into a contract resulting from an unsolicited proposal:
- Publicize the receipt of the unsolicited proposal.
 - Publicize an adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought.
 - Publicize the Authority's interest in acquiring the property or services described in the unsolicited proposal.
 - Provide an adequate opportunity for interested parties to comment or to submit competing proposals.
 - Publicize its intention to award a contract based on the unsolicited proposal or other proposal submitted in response to the publication.

If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services, the Contracting Officer may make a sole source award to the offeror, consistent with the procedures in Sec. 11-4, and at a fair and reasonable price.

10-28 EVALUATION OF UNSOLICITED PROPOSALS

- (a) When performing an evaluation of an unsolicited proposal, the following factors shall be considered, in addition to any others appropriate for the particular proposal:
- The unique and innovative methods, approaches, or concepts demonstrated by the proposal;
 - The overall scientific, technical or socio-economic merits of the proposal;
 - The potential benefit to the Authority's specific mission;
 - The proposer's capabilities, related experience, facilities, techniques or unique combinations of these which are integral factors for achieving the proposal objectives; and
 - The qualifications, capabilities, and experience of the proposed team leader or key personnel who are critical to achieving the proposal objective.
- (b) The Authority shall return an unsolicited proposal to a proposer, citing reasons, when its substance meets any of the following criteria:
- It is available without restriction to the Authority from another source;

- It resembles a pending competitive requirement; or
 - It does not demonstrate an innovative and unique method, approach, or concept, or if it does, another method, approach or concept may be available to the Authority on the basis of competitive proposals.
- (c) A favorable evaluation of an unsolicited proposal shall not, in and of itself, justify awarding a contract without full and open competition. The Contracting Officer may commence negotiations only when all of the following conditions are met:
- The unsolicited proposal has received a favorable comprehensive evaluation;
 - The unsolicited proposal is not disqualified under the criteria listed above;
 - The Authority office sponsoring the contract supports its recommendations with facts and circumstances that preclude competition and has the necessary funds;
 - The Authority sponsor has obtained approval from the appropriate approval authority (General Manager or Officer) in the form of a D&F; and
 - The Contracting Officer has publicized the requirement in accordance with §10-8 (c)- (d), unless publication would improperly disclose the originality of thought or innovativeness or would disclose proprietary information.

10-29 DESIGN BUILD SELECTION PROCEDURES

- (a) *Definition* “Design-build” means combining design and construction in a single contract with one contractor. If the competitive negotiation method of procurement is justified under the provisions of this Chapter, the Authority can use either the one-phase (“BEST VALUE”) selection procedures, or the two-phase selection procedures authorized in this Section. (See also Chapter 13-9b)
- (b) *Use of Two Phase Design Build Selection Procedures* During formal or informal procurement planning (Chapter 3), if considering the use of two-phase design-build selection procedures, the Contracting Officer shall conduct the evaluation as provided in this section. The two-phase design-build selection procedures shall be used when the Contracting Officer determines that this method is appropriate based on the following:
- More than one proposal is anticipated;
 - Thirty percent design work must be performed by proposers before developing price or cost proposals; and
 - The following criteria have been considered:
 - The extent to which the project requirements have been adequately defined;
 - The time constraints for delivery of the project;
 - The capability and experience of potential contractors;
 - The suitability of the project for use of the two-phase selection process; and
 - Other criteria determined to be necessary by the Authority.
- (c) *Preponderance of the work* Qualifications-based competitive procedures

should not be used to procure design-build services when the preponderance of the work to be performed is not of an architectural or engineering nature as defined in the latest revision of FTA Circular 4220.1.

- During formal or informal procurement planning (Chapter 3), whether considering the use of one-phase design-build selection procedures or two-phase design-build selection procedures, the Contracting Officer must conduct an analysis of the work to determine if a preponderance of the work to be performed is architectural and engineering in nature or directly support or are directly connected or related to construction, alteration, or repair of real property. If a preponderance of the work is architectural and engineering in nature, qualifications-based competitive proposal procedures must be used. If a preponderance of the work is not architectural and engineering in nature, qualifications-based competitive proposal procedures must not be used.
- (d) *Two Phase Design Build Scope of Work* The Authority shall develop a SOW for inclusion in the solicitation that defines the project and states the Authority's requirements (which may include criteria and preliminary design, budget parameters, and schedule of delivery requirements) to enable the proposers to submit proposals which meet the Authority's needs.
- (e) *Two Phase Design Build Procedures* Two solicitations will be issued in sequence. Proposals will be evaluated in Phase-One to determine the most qualified proposers that will submit proposals for Phase-Two. One contract will be awarded using competitive proposals.

Phase-One of the solicitation(s) shall include:

- The SOW;
- The Phase-One evaluation factors, including:
 - Technical approach (but not detailed design or technical information);
 - Technical qualifications such as:
 - Specialized experience and technical competence;
 - Capability to perform; and
 - Past performance of the proposer's team (including the architect-engineer and construction team members).
 - Other appropriate factors (excluding cost or price information, which is not permitted in Phase-One).

After evaluating Phase-One proposals, the Contracting Officer shall select the most highly rated proposers and request that those proposers submit Phase-Two proposals.

- (f) *Phase-Two Solicitation* Phase-Two of the solicitation(s) shall be prepared and include Phase-Two evaluation factors. Examples of potential Phase-Two evaluation factors include: design concepts, management approach, key personnel, and proposed technical solutions.
- (g) Phase-Two of the solicitation(s) shall require submission of technical and price proposals, which shall be evaluated separately.

10-30 CONTRACT FILE ASSEMBLY AND DOCUMENTATION

- (a) *General* It is necessary to retain accurate and complete documentation regarding every contract awarded by the Authority. In addition to the requirements of §2-16, Procurement Record, Contract Administrators must adhere to the following requirements to implement consistent documentation in the form of a conformed contract. Conformed contracts will be compiled by each Contract Administrator and submitted to the Procurement file room.
- (b) Within 60 days of contract award, all Contract Administrators must compile all documents which were issued pursuant to an IFB or RFP. Contract Administrators must assemble all relevant written records for all procurements. The records will be collected into a single file and placed into the Authority's record keeping system and submit a copy to the Policy Mailbox at prmtpolicy@wmata.com. The appropriate checklist (refer to Appendix A for checklists) must be completed by the Contract Administrator to ensure that the proper procurement processes have been followed, all considerations relevant to the procurement process have been addressed, and all components of the procurement file shall be assembled no later than 60 days after contract award. The procurement record and checklist must be reviewed by the contracting officer. Following the review, the contract manager and the procurement manager must sign the checklist. Following this review, the procurement record including the completed checklist will be reviewed by the assigned COUN attorney to ensure legal sufficiency of the procurement. In addition to those documents contained on the appropriate checklist, the compiled documents must include those items indicated below as appropriate:
- For Service, Supply and Equipment Contracts
 - Notice to Proceed/Award
 - Delegation of Contracting Officer's Technical Representative ("COTR"), if applicable
 - Executed Bid or Performance Bonds, if applicable (Note: Bid and Performance bonds may be required at the discretion of the Contracting Officer.)
 - Insurance Certificates
 - Executed Contract/Agreement Form (signed by both parties)
 - Unit Price Schedule (accepted with date)
 - Solicitation Package
 - Amendments (acknowledged)
 - Disadvantaged Business Enterprise ("DBE") Participation (Signed Letters of Intent, DBE Participant Schedule)
 - Complete Pre-Award Data
 - Representations and Certifications (signed)
 - For Information Technology Contracts
 - Notice to Proceed/Award
 - Delegation of Contracting Officer's Technical Representative ("COTR"), if applicable
 - Insurance Certificates
 - Executed Contract/Agreement Form (signed by both parties)
 - Unit Price Schedule (accepted with date)
 - List of Positions (If applicable)
 - Department of Labor - Labor Rates (if applicable)

- Solicitation Package
 - Amendments (acknowledged)
 - Disadvantaged Business Enterprise (“DBE”) Participation (Signed Letters of Intent, DBE Participant Schedule)
 - Complete Pre-Award Data
 - Representations and Certifications (signed)
 - Cost Proposal
- (c) Once the documents are compiled, the Contract Administrator is responsible for creating a cover sheet which contains the descriptive contract name and IFB/RFP number. The cover sheet must clearly be identified as for a Conformed Contract.
- (d) The Contract Administrator must distribute the Conformed Contract to the Awarded Contractor, the Contracting Officer’s Technical Representative, and Policy.
- (e) Once the Conformed Contract has been compiled, the document should be uploaded to CLM.

11 - SOLE SOURCE AND OTHER LESS THAN FULL AND OPENCOMPETITION PROCUREMENTS

11-1 PURPOSE AND SCOPE

Under certain circumstances, it may be appropriate to conduct a procurement using: (a) full and open competition after exclusion of sources; or (b) other than full and open competition. Procurements not using full and open competition will be reported to the Board on a quarterly basis. Such approaches may be used only after written approval of both the General Counsel and the Chief Procurement Officer of an appropriate D&F – whoshall approve such approaches only upon a determination that the procurement cannot reasonably be accomplished using full and open competition without exclusion of sources. WMATA procurement personnel and counsel shall comply strictly with WMATA restrictions and, to the extent applicable, federal restrictions on procurements conductednot using full and open competition or excluding sources.

11-2 GENERAL

- (a) *Authority.* With the written approval of both the General Counsel and the Chief Procurement Officer of an appropriate D&F, the Authority may conduct non-competitive or other than full and open competition procurements as follows:
- (1) *Only One Responsible Source.* The goods, services, or construction, needed by the Authority are available from only one responsible source and no other type of goods, services or construction, will satisfy the needs of the Authority:
 - i. *General Authority.* Section 73(c)(1) of the Authority Compact and Circular 4220.1, Chapter VI, Section 3.i(1) authorize the Contracting Officer to make procurements when only one responsible source for goods, services or construction will satisfy the needs of the Authority.
 - ii. *Application.* When determining whether there is only one source for the requirement, the Contracting Officer and approving authority shall consider whether there is a reasonable basis to conclude that:
 - The requirements cannot be modified to allow a competitive procurement; or
 - The existence of ownership or control of limited rights in data, patent rights, copyrights, trade secrets, secret processes, or similar circumstances preclude more than one source for the required goods or services, including construction; or
 - The procurement of public utility services (e.g., electric power, gas, water, or other regulated utility services).
 - iii. *Determination and Findings.* Contracts awarded using this authority shall be supported by a written justification from the Program Office and included in the procurement file.

The written justification shall consist of a D&F package demonstrating market research that reasonably assesses potential offerors for the product, services, or construction, and reasonably demonstrates that there are no competitors of the proposed awardee that reasonably could be anticipated to submit a compliant bid or proposal. The justification will be subject to audit by the Compliance Officer.

- (2) *Unusual and Compelling Urgency.* The Authority's need for the goods, services or construction, is of such an unusual and compelling urgency that the Authority would be seriously injured unless it limits the number of sources from which bids or proposals are solicited:
 - i. *General Authority.* Section 73(c)(2) of the Authority Compact and Circular 4220.1, Chapter VI, Section 3.i(1)(c) authorize the Contracting Officer to make procurements when the Authority's need for goods, services, or construction is of such an unusual and compelling urgency that the Authority would be seriously injured unless the Authority limits the number of sources from which it solicits bids or proposals. Any procurement under this authority shall be made with such competition as is practical under the circumstances.
 - ii. *Application.* An unusual and compelling urgency precludes full and open competition, and delay in award of a contract would risk serious injury to the Authority or to the public.
 - iii. *Determination and Findings.* Contracts awarded using this authority shall be supported by a written justification from the Program Office and included in the procurement file.
 - iv. *Source Selection Methods.* The procedure used shall be selected to ensure that the required goods, services, or construction is procured in time to meet the unusual and compelling urgent situation. Any procurement conducted pursuant to this authority must be done in such a way as to treat all bidders or proposers fairly.
- (3) *Federal or other Governmental Sources* If the goods or services can be obtained through federal or other governmental sources at reasonable prices see Section 3- 6(c) or 11-10 (Compact Section 73(c)(4)).
- (4) *Competition Determined to be Inadequate.* If after a formal or informal solicitation, or based upon industry research, or both, the Contracting Officer determines that competition is inadequate the file must contain a documented finding that adequate competition cannot be obtained in the time frame necessary to meet the needs of the Authority:
 - i. *A single bid or proposal is received. The Contracting Officer may determine, with the written approval of the General Counsel and the Chief Procurement Officer, that*

competition is adequate even if a single bid or proposal was received in response to a solicitation if, after review, the Contracting Officer further determines that the specifications were not restrictive, and that the other identified sources unilaterally chose not to submit a bid or proposal.

ii. If a single bid is received under these circumstances, the Contracting Officer can negotiate the price, and is responsible for determining price reasonableness in accordance with cost/price analysis procedures in Chapter 16 of these procedures. The independent cost estimate must have been received prior to the receipt of the bid or proposal.

- (b) **Competitive Proposal Method of Procurement.** For the non-competitive and limited competition procurements described in this Chapter, the Contracting Officer shall use the negotiated method of procurement, unless authorized otherwise by the FTA. The Contracting Officer shall seek competition as practicable under the circumstances and conduct periodic market surveys to prevent unnecessary continuation of non-competitive contracts. Procurements not using full and open competition must be reported to the Board on a monthly basis.
- (c) **Determination and Findings.** The file must reflect a documented finding that adequate competition cannot be obtained in the time frame necessary to meet the needs of the Authority.

11-3 SOLE SOURCE PROCUREMENT

- (a) **Conditions for Use.** Contracting Officers shall take reasonable steps to avoid using sole source procurements except in circumstances where it is both necessary and in the best interests of the Authority. The Contracting Officer shall take action, whenever possible, to avoid the need to continue to procure the same goods or services, including construction, without competition, to include conducting periodic market surveys or attempts at competitive procurement.
- (b) Sole source procurements shall follow the requirements set forth in this chapter and Section 3-6 Competition of this BPM.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) repealed the special procurement preference previously authorized for associated capital maintenance items. Thus, any sole source procurement of associated capital maintenance items must qualify for an exception under the same standards that would apply to other sole source acquisitions (Chapter VI 3.i(1)(b)2(d)).

A sole source procurement will be justified only under the following circumstances:

- It is inappropriate to use small purchases, sealed bids or competitive proposals; and
- The product or service is available from only one source; or

- A public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or
- The FTA authorizes noncompetitive negotiations; or
- After solicitation of a number of sources, the competition is determined to be inadequate.

11-4 SOLE SOURCE DETERMINATION AND FINDINGS

- (a) *General.* Any request by a Program Office that procurements be restricted to one potential contractor, shall be accompanied by a written justification as to why no other source will be suitable or acceptable to meet the Authority's need. The sole source justification must be approved in writing by the Chief Procurement Officer and General Counsel prior to soliciting proposals.
- Justification for sole source procurements shall cover all of the goods and/or services, including construction, to be procured under a single contract. The justification shall not be used to avoid competitive procedures for obtaining other goods or services, including construction, which do not qualify for sole source procurement under the same contract.
 - A written Determination and Findings ("D&F") document must be prepared by the Program Office for all procurements and placed in the procurement file.
- (b) *Other Examples.* The following are examples of circumstances which could necessitate sole source procurements (examples are not intended to be all inclusive and do not constitute authority in and of themselves):
- Follow-on contract. In accordance with Authority Compact Section 73(d)(2), the contract is a follow-on contract for the continued development or production of a major system or highly specialized equipment or services. An award to a source other than the original source would result in:
 - Substantial duplication of costs to the Authority not expected to be recovered through competition; or
 - There are unacceptable delays in fulfilling the Authority's needs, based on a detailed analysis of real or anticipated impact to the Authority's operations or major projects.
 - There is only one responsible source.
 - There is a unique or innovative concept or capability not available from another source.
 - Patent or data rights restrictions preclude competition.
 - Circumstances authorized by FAR Part 6.3.
- (c) *Unacceptable Justification.* Sole source procurements or awards shall not be justified on the basis of any of the following circumstances:
- The lack of adequate advance planning for the procurement of the required goods, services, construction or other items;
 - Delays in the procurement caused by administrative delays, or lack of sufficient procurement personnel;
 - Pending expiration of budget authority; or

- A vendor's unsupported assertion of sole source status.
- (d) *Determination and Findings.* The D&F authorizing a sole source contract must justify utilizing one or more of the provisions set forth in this chapter. Each sole source D&F shall include the following:
- Specific identification of the document as a sole source D&F;
 - The nature or description of the proposed procurement;
 - A description of the requirement. Estimated cost is not a factor in deciding the sole source;
 - A specific citation to Section 73(c)1 - 4 of the Compact (see Article XVI – General Provisions – Contracting & Purchasing) and the applicable provisions of these procedures that provide a legal authority for negotiating the procurement on a sole source basis;
 - An explanation of the proposed contractor's unique qualifications or other factors that qualify the proposed contractor as a sole source for the procurement;
 - A description of the market survey or other investigation conducted and the results, or a statement of the reasons why a market survey or other investigation was not conducted;
 - Any other pertinent facts or reasons supporting the use of a sole source procurement; and
 - The proposed contractor's name and contact information.
 - The conduct and documentation of a detailed responsibility to evidence the Contractor's financial capacity and technical resources; and
 - The conduct and documentation of a cost analysis, if applicable.

11-5 SOLE SOURCE PROCUREMENT PROCEDURES

- (a) *Public Notification.* Public notification of the intent to conduct sole source procurements is not required but may be conducted to seek expressions of interest from potential sources of supply to validate a sole source determination or test the market industry prior to approving successive determinations for the same goods, services, or construction.
- (b) *Request for Proposals.* The Contracting Officer shall, in writing, request a proposal for sole source procurements. The request shall contain the scope of work and refer to or attach all terms and conditions of the solicitation, including all applicable representations and certifications, but should be tailored to remove unnecessary information and requirements (e.g., evaluation criteria and voluminous proposal preparation instructions).
- The request shall be clear and identify specifically the goods or services required. The required goods or services shall be limited to those identified and justified in the D&F, and any incidental items required in connection therewith.
 - Resulting sole source contracts shall contain all the required clauses, representations, and certifications, in accordance with the requirements of the procurement procedures.
- (c) *Negotiation Procedures.* The Contracting Officer shall comply with the applicable negotiation procedures in Chapter 10.

11-6 COMPETITION EXEMPTIONS

- (a) Competition Exemptions: Contracts utilizing Operating Funds for the following procurements may be exempted from competition; but otherwise, will follow the requirements established by this manual:
- i. *Commodities or contractual services if federal or local law prescribes with whom the Authority must contract;*
 - ii. *Licensed Professional Services (such as legal services or negotiation services in connection with proceedings before administrative agencies or state or federal courts) including but not limited to experts, attorneys, mediators, and other supplies or services as necessary for any current or anticipated claim, dispute, protest, or litigation;*
 - iii. *Copyrighted or patented materials, including technical pamphlets, published books, maps, and testing or instructional materials; provided, that the materials are purchased directly from the owner or an authorized licensee of the copyright or patent;*
 - iv. *Group memberships in trade or professional organizations; or*
 - v. *Job-related seminars, conferences, and training including associated travel and per diem expenses (in accordance with GSA travel regulations) for WMATA employees.*

11-7 EMERGENCY PROCUREMENTS

- (a) *General Authority.* Notwithstanding any other provision of these procedures, the General Manager may authorize emergency procurements for which a public exigency or emergency will not permit the time required to obtain competition. In accordance with the Board approved Procurement Policy, the Authority may conduct a procurement on an emergency basis if the procurement is essential to an Authority requirement to deal with an existing “emergency condition”, as defined in §11-7(b). Emergency procurements may be negotiated on a sole source or limited competition basis depending on the circumstances to be described in the D&F required by §11-8 below.
- (b) *Definition.* An “emergency condition” is a situation (such as a flood, epidemic, riot, equipment failure or equipment destruction, or other reason declared by the General Manager) which creates an immediate threat to the public health, welfare, or safety. The existence of an “emergency condition” creates an immediate need for goods, services, or construction which cannot be met through normal procurement methods, and the lack of which would seriously threaten one or more of the following:
- The health or safety of any person;
 - The preservation or protection of property; or
 - The continuation of core Authority functions.
- (c) *Scope of Emergency Procurements.* The emergency procurement of goods or services shall be limited to quantities or time periods sufficient to meet the immediate condition and shall not be used to meet long-term requirements.

Long-term requirements for the same goods, services, or construction shall be requested separately by the requesting office, to initiate a separate non-emergency procurement action concurrent with the emergency procurement.

- (d) *Modification Restriction.* A contract procured on an emergency basis shall not be modified to expand the scope or extend the time of the procurement unless additional time or a limited number of additional supplies, services, or other items are needed to fill an ongoing emergency requirement until regular procurement action procedures can be completed, not to exceed six months.

11-8 EMERGENCY DETERMINATION AND FINDINGS

- (a) *General.* A written determination, based on the written justification from the user department describing the basis for the emergency, and for the selection of the particular contractor shall be included in the procurement file.
- (b) *Unacceptable Justification.* The justification for emergency procurement shall not be based solely on internal Authority circumstances. In the absence of an emergency condition, an emergency procurement shall not be justified on the basis of any of the following circumstances:
- The lack of adequate advance planning for the procurement of required supplies, services, or construction;
 - Delays in procurement caused by administrative delays, or lack of sufficient procurement personnel; or
 - Pending expiration of budget authority.
- (c) *Determination and Findings.* When an emergency procurement is proposed, the Program Office shall prepare a written D&F that sets forth the justification for the emergency procurement. The D&F must be reviewed and approved by the Chief Procurement Officer and the General Counsel. Each emergency procurement D&F shall include the following:
- Specific identification of the document as an emergency procurement D&F;
 - The nature or description of the proposed procurement action;
 - A specific citation to Section 73 of the Compact and the applicable provisions of this regulation that provide legal authority for negotiating the emergency procurement;
 - A description of the emergency, including the nature of the condition to the public health, welfare, or safety, and the nature of the harm that the public might suffer if the requirement were not met by emergency procurement;
 - A description of the requirement, including the estimated value or cost;
 - A description of the efforts made to ensure that bids or proposals are received from as many potential sources as possible under the circumstances, or inclusion of a sole source justification in accordance with the appropriate sole source provisions in the Emergency D&F; and
 - Any other pertinent facts or reasons supporting the procurement on an emergency basis.
- (d) *Emergency as a Sole Source Restriction.* 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 §11-5.

11-9 EMERGENCY PROCUREMENT PROCEDURES

- (a) *Public Notification.* The Contracting Officer shall not be required to publicize the solicitation of a procurement made on an emergency basis.
- (b) *Source Selection Method.* The procedure used shall be selected to ensure that the required goods, service, or construction is procured in time to meet the emergency. Any procurement conducted shall provide for full and open competition. The Contracting Officer shall attempt to solicit bids or proposals from as many potential contractors as possible under the emergency condition.
- (c) *Request for Proposals.* A Contracting Officer may use either a written or a verbal request to solicit proposals for an emergency procurement. Written requests shall be clear and concise, and only contain the data and information necessary for providing a proposal.
- (d) *Negotiation Procedures.* The Contracting Officer shall comply with the applicable negotiation procedures in Chapter 10.
- (e) *Contract Requirements.* The Contracting Officer shall ensure that each emergency procurement contract contains the required clauses, representations and certifications, in accordance with the requirements of these procedures.
- (f) *Record of procurement.* The Contracting Officer shall ensure that proper records of emergency procurements are maintained.

11-10 CONTRACT FILE ASSEMBLY AND DOCUMENTATION

- (a) *General* It is necessary to retain accurate and complete documentation regarding every contract awarded by the Authority. In addition to the requirements of §2-16, Procurement Record, Contract Administrators must adhere to the following requirements to implement consistent documentation in the form of a conformed contract. Conformed contracts will be compiled by each Contract Administrator and submitted to the Procurement file room.
- (b) Only those procurement files which contain a bound labeled Conformed Contract will be accepted by file room personnel.
- (c) Within 60 days of contract award, all Contract Administrators must compile all documents which were issued pursuant to an IFB or RFP. Contract Administrators must assemble all relevant written records for all procurements. The records will be collected into a single file and placed into the Authority's record keeping system and submit a copy to the Policy Mailbox at prmpolicy@wmata.com. The appropriate checklist (refer to Appendix A for checklists) must be completed by the Contract Administrator to ensure that the proper procurement processes have been followed, all considerations relevant to the procurement process have been addressed, and all components of the

procurement file shall be assembled no later than 30 days after contract award. The procurement record and checklist must be reviewed by the contract manager and procurement manager. Following the review, the Contracting Officer must sign the checklist. Following this review, the procurement record including the completed checklist will be reviewed by the assigned COUN attorney to ensure legal sufficiency of the procurement. In addition to the requirements of the checklist, the compiled documents must include those items indicated below as appropriate:

- For Service, Supply and Equipment Contracts:
 - Notice to Proceed/Award
 - Delegation of Contracting Officer's Technical Representative ("COTR"), if applicable
 - Executed Bid or Performance Bonds, if applicable (Note: Bid and Performance bonds may be required at the discretion of the Contracting Officer.)
 - Insurance Certificates
 - Executed Contract/Agreement Form (signed by both parties)
 - Unit Price Schedule (accepted with date)
 - Solicitation Package
 - Amendments (acknowledged)
 - Disadvantaged Business Enterprise ("DBE") Participation (Signed Letters of Intent, DBE Participant Schedule)
 - Complete Pre-Award Data
 - Representations and Certifications (signed)
 - For Information Technology Contracts:
 - Notice to Proceed/Award
 - Delegation of Contracting Officer's Technical Representative ("COTR"), if applicable
 - Insurance Certificates
 - Executed Contract/Agreement Form (signed by both parties)
 - Unit Price Schedule (accepted with date)
 - List of Positions (If applicable)
 - Department of Labor - Labor Rates (if applicable)
 - Solicitation Package
 - Amendments (acknowledged)
 - Disadvantaged Business Enterprise ("DBE") Participation (Signed Letters of Intent, DBE Participant Schedule)
 - Complete Pre-Award Data
 - Representations and Certifications (signed)
 - Cost Proposal
- (d) Once the documents are compiled, the Contract Administrator is responsible for creating a cover sheet which contains the descriptive contract name and IFB/RFP number. The cover sheet must clearly be identified as for a Conformed Contract.
- (e) The Contract Administrator must distribute the Conformed Contract to the Awarded Contractor, the Contracting Officer's Technical Representative, and Policy.
- (f) Once the Conformed Contract has been compiled, the document should be

11-11 FEDERAL SUPPLY SCHEDULES

- (a) *Authorization.* The Authority is authorized, by WMATA Compact § 73(c)(4) and GSA Order ADM 4800.2E, Appendix B, to place orders under the General Services Administration (“GSA”) Schedules Program (also referred to as Federal Supply Schedule (“FSS”)). All procurements made using the GSA schedule must be made in full accordance with GSA regulations. The WMATA Compact also authorizes the use of state/local schedules offered through the Council of Governments (“COG”). The Authority is also authorized to “ride on” state and local contracts if the required Rider Clause is in the contract.

Under the GSA Schedules Program, GSA has established long-term government-wide indefinite delivery contracts with commercial firms to provide supplies and services at stated prices for given periods of time. These contracts provide WMATA with a simplified process of obtaining commonly used commercial supplies and services at prices associated with volume buying. If using GSA Schedules for meeting the requirements of federally funded procurements, Contracting Officers must ensure that they are meeting all federal requirements through an existing contract or schedule. If Contracting Officers are in doubt concerning whether a particular existing contract or schedule meets the federal requirements, they should contact the FTA Regional office before purchasing to ensure the purchases are permissible under the Common Grant Rule and FTA Circular 4220.1

- (b) *Application.* The GSA procedures described in this Chapter apply to all orders placed against GSA Schedules. GSA schedule contracts may not be used to acquire Architect- Engineering services.
- (c) *General.* Orders placed against an FSS contract, using GSA’s program procedures detailed in this section, are considered to be issued using full and open competition. Therefore, Contracting Officers need not seek further competition, publicize the requirement, or make a separate determination of fair and reasonable pricing, except as otherwise required by these procedures. GSA has already determined the prices of items under schedule contracts to be fair and reasonable.
- (d) *Optional Source.* Although GSA established FSS contracts are optional for use by the Authority, Contracting Officers should consider FSS contracts as a preferred source of supply, if practical.

11-11-1 ORDERING PROCEDURES FOR FEDERAL SUPPLY SCHEDULES

- (a) Contracting Officers shall use the ordering procedures of this section when placing orders or establishing a Blanket Purchase Agreement (“BPA”) for

supplies or services. The procedures in this section apply to all schedule contracts.

(b) *Definitions.* As used in this Chapter, the following definitions apply:

- “e-Buy” is an online Request for Quotation (“RFQ”) tool designed to facilitate the request for submission of quotations for a wide range of commercial supplies and services offered by GSA Schedule contractors who are on GSA Advantage!®.
- “Maximum order threshold” is the point where the Contracting Officer should expect price reductions from GSA Schedule contractor(s) appearing to provide the best value (considering price and other factors). Each Schedule contract has a maximum order threshold, which will vary by special item number.
- “Special Item Number (“SIN”)” means a group of generically similar (but not identical) supplies or services that are intended to serve the same general purpose or function.

11-11-2 ORDERING SUPPLIES AND SERVICES NOT REQUIRING A STATEMENT OF WORK

(a) *General.* The Contracting Officer shall use the procedures in this subsection when ordering supplies and services that are listed in the schedule contracts at a fixed price for the performance of a specific task, (e.g., installation, maintenance, and repair).

(b) *Orders at or below the micro-purchase threshold.* Contracting Officers may place orders at or below the micro-purchase threshold (\$10,000) with any FSS contractor that can meet the Authority’s needs, if the Contracting Officer considers the price to be reasonable. In accordance with § 8-6 (a), orders shall be distributed equally among suppliers, with consideration first being given to small and local businesses, if any, within the Transit Zone (District of Columbia, Maryland, and Virginia).

1) When practical, quotes shall be solicited from a vendor other than the previous supplier before placing a repeat order; Purchases cannot be intentionally separated if the only justification for separate purchases is to use the micro-purchase method and avoid a more rigorous procurement method.

2) The Contracting Officer shall take action to verify price reasonableness in the following instances:

- 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).

- 3) The Contracting Officer shall provide a description of how he/she determined the price to be fair and reasonable. If competitive quotes were solicited and the award was made to other than the low bidder, documentation to support the purchase can be limited to identification of the solicited vendors and an explanation for the award decision.
 - 4) The size of the procurement should not be divided or reduced solely to come within the micro-purchase ceiling. The aggregate cost for the micro-purchase threshold is \$10,000 per procurement transaction, whether weekly, monthly, or annually. Deliberately buying smaller quantities to stay under the micro-purchase threshold is unallowable and prohibited.
 - 5) The Contract shall document the establishment of price reasonableness in the procurement file.
- (c) *Orders exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold.*
- The Authority shall place orders with the schedule contractor that can provide the supply or service that represents the best value, if the Contracting Officer finds the price to be reasonable.
 - Orders shall be placed with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, the Contracting Officer shall request quotations from at least three schedule contractors.
 - When an order contains brand name or equal specifications, the Contracting Officer shall post the Request for Quote ("RFQ") indicating brand name or equal along with the justification or documentation.
 - In addition to price, when determining best value, the Contracting Officer may consider, among other factors, the following:
 - Past performance;
 - Special features of the supply or service required for effective program performance;
 - Trade-in considerations;
 - Probable life of the item selected as compared with that of a comparable item;
 - Warranty considerations;
 - Maintenance availability;
 - Environmental and energy efficiency considerations;
 - Delivery terms; and
 - Standardization and interchangeability with existing Authority equipment.
- (d) *Orders exceeding the simplified acquisition threshold.* Each order shall be placed on a competitive basis, unless this requirement is waived on the basis of a justification that is prepared and approved in accordance with § 11-10-7. The Contracting Officer shall:
- Post the RFQ on e-Buy to afford all schedule contractors offering the required supplies or services under the appropriate multiple award schedule and opportunity to submit a quote; or
 - Provide the RFQ to as many schedule contractors as practicable, consistent with

market research appropriate to the circumstances, to reasonably ensure that quotes will be received from at least three contractors that can fulfill the requirements. When fewer than three quotes are received from schedule contractors that fulfill the requirement, the contracting officer shall prepare a written determination explaining that no additional contractors capable of fulfilling the requirement could be identified despite reasonable efforts to do so. The determination must clearly explain efforts made to obtain quotes from at least three schedule contractors.

- The ordering activity contracting officer shall ensure that all quotes received are fairly considered and award is made in accordance with the basis for selection in the RFQ.
- In addition to price, when determining best value, the ordering activity may consider, among other factors, the following:
 - Past performance
 - Special features of the supply or service required for effective program performance
 - Trade-in considerations
 - Probable life of the item selected as compared with that of a comparable item
 - Warranty considerations
 - Maintenance availability
 - Environmental and energy efficient considerations
 - Delivery items

(e) *Documentation.* See §11-10-8 for documentation requirements.

11-11-3 ORDERING SERVICES REQUIRING A STATEMENT OF WORK

- (a) *General.* Contracting Officers shall use the procedures in this subsection when ordering services priced at hourly rates as established by the schedule contracts. The applicable services will be identified in the FSS publications and the contractor's pricelists.
- (b) *Statements of Work (SOWs).* All Statements of Work shall include the work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirements (e.g., security clearances, travel, and insurance). To the maximum extent practicable, Authority requirements shall be performance-based statements.
- (c) *Request for Quotation procedures.* The Contracting Officer must provide the Request for Quotation ("RFQ"), which includes the statement of work and evaluation criteria (e.g., experience and past performance), to schedule contractors that offer services that will meet the Authority's needs. The RFQ may be posted to GSA's electronic RFQ system, "[e-Buy](#)".
 - Orders at or below the micro-purchase threshold. See §11-11-2 (b)
 - Orders exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold.
 - The Contracting Officer must obtain a statement of work from the Program Office.
 - The Contracting Officer shall provide the RFQ (including the statement of

- work and evaluation criteria) to at least three schedule contractors that offer services that will meet the agency's needs.
 - The Contracting Officer should request that contractors submit firm-fixed prices to perform the services identified in the statement of work.
- For proposed orders exceeding the simplified acquisition threshold or when establishing a BPA. In addition to meeting the requirements of §11-11-2 (d), the Contracting Officer shall:
 - Provide the RFQ (including the statement of work and evaluation criteria) to additional schedule contractors that offer services that meet the needs of the Program Office. When determining the appropriate number of additional schedule contractors, the Contracting Officer may consider, among other factors, the following:
 - The complexity, scope and estimated value of the requirement; and
 - The market search results.
 - Seek price reductions.
- (d) *Evaluation.* The Contracting Officer shall evaluate all responses received using the evaluation criteria provided to the schedule contractors. The Contracting Officer is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable.
- (e) Place the order, or establish the BPA, with the schedule contractor that represents the best value. After award, Contracting Officers should provide timely notification to unsuccessful bidders/proposers. If an unsuccessful bidder/proposer requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the award decision shall be provided.
- (f) *Documentation.* See §11-11-8 for documentation requirements.

11-11-4 BLANKET PURCHASE AGREEMENTS (BPA)

- (a) *Establishment.* BPAs may be established to the maximum ordering threshold of the schedule contract. BPAs must not exceed the Authority's simplified acquisition threshold, when issued in accordance with the terms and conditions of the schedule contract. The Contracting Officer may establish BPAs under any schedule contract to fill repetitive needs for supplies or services, in accordance with §8-13, Simplified Acquisition Procedures. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the Contracting Officer establishing the BPAs and should be based on a strategy that is expected to maximize the effectiveness of the BPAs. In determining how many BPAs to establish, consider:
 - The scope and complexity of the requirement(s);
 - The need to periodically compare multiple technical approaches or prices;
 - The administrative costs of BPAs; and
 - The technical qualifications of the schedule contractor(s).

Establishment of a single BPA, or multiple BPAs, shall be made using the

same procedures outlined in §11-11-1 and §11-11-2. BPAs shall address the frequency of ordering, invoicing, discounts, requirements (e.g., estimated quantities, work to be performed), delivery locations, and time.

When establishing multiple BPAs, the Contracting Officer shall specify the procedures for placing orders under the BPAs.

(b) *Ordering from BPAs:*

- *Single BPA.* If the Contracting Officer establishes one BPA, authorized users may place the order directly under the established BPA when the need for the supply or service arises.
- *Multiple BPAs.* If the Contracting Officer establishes multiple BPAs, before placing an order exceeding the micro-purchase threshold, the Contracting Officer shall:
 - Forward the requirement, or statement of work and the evaluation criteria, to an appropriate number of BPA holders, as established in the BPA ordering procedures; and
 - Evaluate the responses received, make a best value determination, and place the order with the BPA holder that represents the best value.
- *BPAs for hourly rate services.* If the BPA is for hourly rate services, the Contracting Officer must require the Program Office to develop a statement of work for requirements covered by the BPA. All orders under the BPA shall specify a price for the performance of the tasks identified in the statement of work.

(c) *Duration of BPAs.* BPAs generally should not exceed one year in length but may do so to meet program requirements. BPAs are not contracts and should not be used in place of a contract. Therefore, a BPA shall not be issued for multiple years. If the product or service is required beyond a one-year period, a D&F is required.

(d) *Review of BPAs*

- The Contracting Officer that established the BPA shall review it at least once a year to determine whether:
 - The schedule contract, upon which the BPA was established, is still in effect;
 - The BPA still represents the best value; and
 - Estimated quantities/amounts have been exceeded and additional price reductions can be obtained.
- The Contracting Officer shall document the results of its review.

(e) *Documentation.* The Contracting Officer shall include an explanation in the contract file of the BPA selection process.

(f) *Purchase Card.* The Authority's Purchase Card may be used to place orders up to the designated BPA amount, which also addresses the authorized ordering methods and associated dollar limitations.

11-11-5 PRICE REDUCTIONS

There may be other reasons for Contracting Officers to request a price reduction. For example:

- Contracting Officers may seek a price reduction when the supply or service is available elsewhere at a lower price;
- When establishing a BPA to fill recurring requirements;
- The potential volume of orders under BPAs, regardless of size of the individual order, offers the opportunity to secure greater discounts.

Note: Schedule contractors are not required to pass on to all schedule users a price reduction extended only for a specific order.

11-11-6 SMALL LOCAL BUSINESS

- (a) The Contracting Officer may consider socio-economic status when identifying contractor(s) for consideration or competition for award of an order or BPA. At a minimum, the Contracting Officer shall consider:
- Small Local Business schedule contractors within the Authority's Transit Zone;
 - Veteran-owned business;
 - Disabled veteran-owned small business;
 - HUB Zone small business;
 - Women-owned small business; or
 - Small disadvantaged business schedule contractor(s).

The Authority maintains a list of registered Small Local Businesses, which can be compared with the information on the small business representations of Schedule contractors on [GSA Advantage!®](#) and in the [Schedules e-Library](#).

- (b) For orders exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, the Contracting Officer must follow the guidelines established in the Authority's Small Local Business Preference Program when two or more items at the same delivered price will satisfy the requirement.

11-11-7 LIMITED SOURCES DETERMINATION AND FINDINGS

- (a) The Contracting Officer must justify his/her action when restricting consideration for orders placed under Federal Supply Schedules:
- Of schedule contractors to fewer than three; or
 - To an item unique to one manufacturer see §3-4 (c) (e.g., a particular brand name, product, or a feature of a product, unique to one manufacturer) and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the Authority's needs.
- (b) Circumstances that may justify a restriction(s) cited in paragraph (a) of this subsection include:
- Only one source is capable of responding due to the unique or specialized nature of the work;
 - The new work is a logical follow-on to an original FSS order provided that the

- original order was placed in accordance with the applicable FSS ordering procedures. The original order must not have been previously issued under sole source or limited source procedures; and
- An urgent and compelling need exists and following the ordering procedures would result in unacceptable delays.
- (c) The Contracting Officer shall procure such requirements only if the need to do so is justified in writing and approved at the levels specified in paragraph (f) of this subsection.
- (d) Except as provided in paragraph (e) of this subsection, when an order contains brand name specifications, the Contracting Officer shall post the following information along with the Request for Quotation (RFQ) to “e-Buy” (<http://www.ebuy.gsa.gov>):
- For proposed orders exceeding \$25,000, but not exceeding the simplified acquisition threshold, the documentation required by paragraph (f) of this subsection applies.
 - For proposed orders exceeding the simplified acquisition threshold, the justification required by §3-6 (c) applies.
- (e) The posting requirement of paragraph (d) of this subsection does not apply when:
- Disclosure would compromise the Authority’s security. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not justify use of this exception;
 - The nature of the file (e.g., size, format) does not make it cost-effective or practicable for Contracting Officers to provide access through e-Buy; or
 - The Chief Procurement Officer makes a written determination that access through e-Buy is not in the Authority’s interest.
- (f) Orders exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold. For proposed orders exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, the Contracting Officer shall document the circumstances when restricting consideration.

11-11-8 DOCUMENTING AWARD DECISION AND ORDERS

- (a) Procurement personnel shall document orders, at a minimum, by identifying the:
- Schedule contracts considered, noting the contractor’s name and address from which the supply or service was purchased;
 - Purchase order number;
 - Description of the supply or service purchased;
 - Amount paid;
 - Contractor delivery and payment terms;
 - Competitive review and the best value decision; and
 - Documentation that a market/pricing comparison was conducted.
- (b) If an Authority requirement, in excess of the micro-purchase threshold but not exceeding the simplified acquisition threshold, is defined so as to require a particular brand name, product or feature of a product unique to one manufacturer, thereby precluding consideration of a product manufactured by another company, the Contracting Officer shall include an explanation in the contract file:

- As to why the particular brand name, product, or feature is essential to satisfy the Authority's needs; and
 - That market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the Authority's needs.
- (c) Orders awarded noncompetitively require preparation and approval of a Determination and Findings, in accordance with these procedures.
- (d) In addition to the documentation requirements in paragraphs (a) – (c) above, when ordering supplies or services requiring a statement of work (see §11-10-3), the Contracting Officer shall document the:
- Evaluation methodology used in selecting the contractor to receive the order;
 - Rationale for any tradeoffs in making the selection;
 - Price reasonableness determination required by §11-10-3 (d); and
 - Rationale for using other than:
 - A firm-fixed price order; or
 - A performance-based order.

11-11-9 ORDER PLACEMENT

- (a) In emergency situations, oral orders may be placed to the maximum ordering limitation of the schedule contract, not to exceed the simplified acquisition threshold, provided the contractor accepts this procedure and a confirming copy is promptly forwarded to the contractor. However, oral orders may not be placed for services requiring a statement of work or orders containing brand name requirements that exceed \$25,000. Oral orders should be kept to a minimum as the potential exists for duplicate deliveries when oral orders are placed and followed up by a written confirming order.
- (b) Orders may be placed on the prescribed form for Authority purchase orders, or an established electronic communications format to order supplies or services from schedule contracts. The Contracting Officer shall place an order directly with the contractor in accordance with the terms and conditions of the pricelists.
- (c) Prior to placement of the order, the Contracting Officer shall ensure that Authority regulatory or statutory requirements have been applied, such as inclusion of the:
- Authority Indemnity Clause;
 - Authority Insurance Clause; and
 - FTA and federally required clauses, when federal funds are used.
- (d) Orders shall include the following information in addition to any information required by the schedule contract:
- Complete shipping and billing addresses;
 - Contract number and date;
 - Order number;
 - F.O.B. delivery point; (i.e., origin or destination);

- Discount terms;
- Delivery time or period of performance;
- Special item number or manufacturer's part number;
- A statement of work for services, when required, or a technical specification with a complete description of each item (i.e., model number, features and options such as color, finish, and electrical characteristics);
- Quantity and any variation in quantity;
- Number of units;
- Unit price;
- Total price of order;
- Points of inspection and acceptance;
- Other pertinent data (e.g., delivery instructions or receiving hours and size-of-truck limitation);
- Marking requirements; and
- Level of preservation, packaging, and packing.

11-11-10 INSPECTION AND ACCEPTANCE

- (a) *Supplies.* Inspection and acceptance of supplies shall be at destination except when the schedule contract requires mandatory inspection at origin or a schedule item is covered by a product description, and the Contracting Officer determines that the schedule contracting agency's inspection assistance is needed (based on the ordering volume, the complexity of the supplies, or the past performance of the supplier).
- When the schedule contracting agency performs the inspection, the Authority will provide two copies of the order specifying source inspection with detailed inspection requirement to the schedule contracting agency. The schedule contracting agency will notify the Authority of acceptance or rejection of the supplies and provide the requisite certification documentation to substantiate the schedule contracting agency's position.
 - Material inspected at its source by the schedule contracting agency, and determined to conform to the product description of the schedule, shall not be re-inspected for the same purpose. The Authority shall limit inspection to kind, count, and condition on receipt.
 - Unless otherwise provided in the schedule contract, acceptance is conclusive, except in regard to latent defects, fraud, or such gross mistakes as to suggest fraud.
- (b) *Services.* The Authority has the right to inspect all services in accordance with the contract requirements and as called for by the order. The Authority shall perform inspections and tests as specified in the order's quality assurance surveillance plan in a manner that will not unduly delay the work.

11-11-11 REMEDIES FOR NONCONFORMANCE

- (a) If a contractor delivers a supply or service, but it does not conform to the

order requirements, the Contracting Officer shall take appropriate action in accordance with the inspection and acceptance clause of the contract, as supplemented by the order.

- (b) If the contractor fails to perform an order, or take appropriate corrective action, the Contracting Officer may terminate the order for default or modify the order to establish a new delivery date (after obtaining consideration, as appropriate). Contracting Officers shall follow the procedures at §11-10-12 below, when terminating an order for default.

11-11-12 TERMINATION FOR DEFAULT

- (a) The Contracting Officer may terminate individual orders for default, which shall comply with §18-15 (c) and may include charging the contractor with excess costs resulting from repurchase.

The GSA contracting office shall be notified of all instances where the Authority's Contracting Officer has terminated for default an individual order to a Federal Supply Schedule contractor, or if fraud is suspected.

- (b) If the contractor asserts that the failure was excusable, the Contracting Officer shall follow the Disputes procedure in Chapter 19 of these procedures, as appropriate.
- (c) If the contractor is charged excess costs, the following apply:
 - Any repurchase shall be made at as low a price as possible, considering the quality required by the Authority, delivery requirement, and administrative expenses. Copies of all repurchase orders, except the copy furnished to the contractor or any other commercial concern shall include the notation:
 - "Repurchase against the account of [insert contractor's name] under Order [insert number] under Contract [insert number]."
 - When excess costs are anticipated, the Contracting Officer may withhold funds due the contractor as offset security. The Contracting Officer shall minimize excess costs to be charged against the contractor and collect or set-off any excess costs owed.
 - If the Contracting Officer is unable to collect excess repurchase costs, he/she shall notify the GSA after final payment to the contractor.
 - The notice shall include the following information about the terminated order: (A) Name and address of the contractor, (B) Schedule, contract, and order number, National stock or special item number(s), and a brief description of the item(s), Cost of schedule items involved, (E) Excess costs to be collected, and (F) Other pertinent data.
 - The notice shall also include the following information about the repurchase contract: (A) Name and address of the contractor, (B) Item repurchase cost, (C) Repurchase order number and date of payment, (D) Contract number, if any, and (E) Other pertinent data.
- (d) Only the GSA Contracting Officer may modify the contract to terminate for cause any, or all, supplies or services covered by the schedule contract. If the GSA Contracting Officer has terminated any supplies or services

covered by the schedule contract, no further orders may be placed for those items. Orders placed prior to termination for default shall be fulfilled by the contractor, unless terminated for the convenience of the Authority.

11-11-13 TERMINATION FOR CONVENIENCE

- (a) The Contracting Officer may terminate individual orders for the Authority's convenience, which shall comply with §18-15 (b).
- (b) Before terminating orders for the Authority's convenience, the Contracting Officer shall pursue a "no cost" settlement agreement with the contractor.
- (c) Only the GSA Contracting Officer may modify the schedule contract to terminate any, or all, supplies or services covered by the schedule contract for the Authority's convenience.

11-11-14 DISPUTES

- (a) *Disputes pertaining to the performance of orders under a schedule contract.* Under the Disputes clause of the schedule contract, the Contracting Officer may:
 - Issue final decisions on disputes arising from performance of the order (but see paragraph (b) of this section); or
 - Refer the dispute to the GSA Contracting Officer.

The GSA Contracting Officer shall notify the Contracting Officer promptly of any final decision.

- (b) *Appeals.* Contractors may appeal final decisions to either the Board of Contract Appeals servicing the agency that issued the final decision or the U.S. Court of Federal Claims.
- (c) *Alternative disputes resolution.* The Contracting Officer should use alternative dispute resolution methods to the maximum extent practicable (see 19-3 (b)).

12 - ARCHITECT-ENGINEER AND RELATED SERVICES

12-1 PURPOSE AND SCOPE

This chapter prescribes policies and procedures for the procurement of Architect-Engineer (“A-E”) and related services, excluding expert witness services.

12-2 DEFINITION

The term “Architect-Engineer Services” means:

- Professional services of an architectural or engineering nature, which are required to be performed or approved by a person licensed, registered, or certified to provide such services;
- Professional services of an architectural or engineering nature performed by contract that are associated with research, planning development, design, construction alteration, or repair of real property;
- The design firms the Authority may contract with to prepare plans and specifications must be evaluated individually to determine whether they can efficiently divide the work into specialty packages, if multiple prime contractors are to be used, or if the project can be designed in phases appropriate for use of phased design and construction;
- Other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigation, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, development of plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services; and
- Such other services as may be included under FTA Circulars or regulations, or under the Brooks Act, as amended.

12-3 PUBLIC ANNOUNCEMENT

- (a) The Authority shall publicly announce 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. Sources for A-E contracts shall be selected in accordance with the procedures in §12-5.

Prior to publicly announcing an A-E Services requirement, the Authority must consider whether it is appropriate for an A-E Consultant to accomplish the work. The Contracting Officer shall consider the Architect-Engineer Consultant’s customary role with respect to the type of work sought in the public announcement. FTA’s enabling legislation at 49 USC Section 5325(b)(1) requires the use of the qualifications- based procurement procedures contained in the Brooks Act, 40 USC Sections 1101 through 1104, to acquire A&E

services, but also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services, when those services are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used.

Qualifications-based procurement procedures may not be used to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property.

Except for procurements less than the simplified acquisition threshold as described in §12-8 or as otherwise approved by the General Manager, all requirements for AE services shall be formally solicited through announcement in FedBizOpps and on the Authority's website. All announcements will provide, at a minimum:

- A broad SOW;
- The applicable selection factors (§12-5);
- A specific time and place to receive technical proposals;
- A specific point of contact; and
- The specific format to be followed in submitting a technical proposal or qualifications, i.e., GSA Standard Form S.F. 330.

(b) *Organizational Conflict of Interest* The A-E Consultant will not be utilized for the work to be accomplished if, because of the award of that work to the A-E Consultant, the:

- A-E Consultant's actual or potential ability to render impartial assistance or advice to the Authority would be impaired; or
- A-E Consultant would have an unfair competitive advantage with respect to the work which is the subject of the proposed public announcement.

Once the requirement is publicly announced, an A-E Consultant will not be allowed to participate as a prime contractor, joint venture member, or subcontractor, if the Contracting Officer determines that a conflict of interest exists. Sub-consultants to the A-E Consultant may be considered as a prime contractor, joint venture member, or subcontractor, provided that such participation does not: (1) impair the actual or potential ability of the sub-consultant to render impartial assistance or advice to the Authority; (2) create the potential or impair the sub-consultant's objectivity in performing any contract services provided to the Authority; or (3) confer an unfair competitive advantage on the sub-consultant with respect to the publicly announced work.

12-4 COMPETITION

Procurement of A-E services in accordance with the procedures in this Section will constitute a competitive procedure.

12-5 SELECTION CRITERIA OF FIRMS FOR A-E CONTRACTS

The Authority shall evaluate each potential contractor in terms of its:

- Professional qualifications necessary for satisfactory performance of required services;
- Specialized experience and technical competence in the type of work required;
- Capacity to accomplish the work in the required time;
- Past performance on contracts with the Authority, Government agencies, and private industry in terms of cost control, quality of work, and compliance with performance schedules;
- Location in the general geographical area of the project and knowledge of the locality of the project; provided, that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project;
- Proposed or past DBE participation (for responsiveness and responsibility determinations only); and
- Acceptability under other appropriate evaluation criteria. Price is excluded as an evaluation factor.

12-6 TECHNICAL EVALUATION TEAM (“TET”)

- (a) A TET shall be convened for the purpose of selecting proposed contractors for the performance of A-E or related services. The Chairman of the TET will be an Authority staff member familiar with source selection procedures and appointed by the Contracting Officer. The cognization EMT and SMT member or Office Director requesting the services will nominate members of the TET to the Contracting Officer. TET nominees will have significant program knowledge, expertise in the area of interest, and experience with Authority related acquisition matters to the greatest extent possible. As appropriate, the appointed TET will include registered architects, engineers or surveyors among its members. At least one member of the TET shall be from the user department. Other departments shall be represented when appropriate. The DBE Liaison will be invited to assign a representative to participate in the TET's deliberations. TET members will be designated as voting or non-voting members by the Contracting Officer.
- (b) *Meetings and Records.* The meetings of the TET shall be scheduled by the Chairperson. The TET's deliberations are highly confidential and shall not be made available to anyone without specific approval of the Contracting Officer. The Chairperson shall cause a record to be made of all TET meetings and actions for inclusion in the procurement files. The final TET report must comply with §12-6 (c) below.
- (c) *TET Responsibilities.* The TET shall perform the following functions:
- Review the current data files on eligible firms, including prior A-E evaluations and responses to a public notice concerning the particular project.
 - Evaluate the firms in accordance with the criteria in §12-5 above as may be expanded in a particular solicitation.
 - Establish and recommend to the Contracting Officer a short list of three or more

firms listed beginning with the most qualified firm based on the review of submitted documents. Once the short list and the basis of a firm's inclusion on the list has been approved by the Contracting Officer, the TET shall conduct interviews with each short-listed firm.

- After interviews conclude, prepare a report recommending, in qualification order (considering strengths and weaknesses), at least three firms that are to be considered to perform the required services. The report shall justify the ranking of each firm by including a description of the discussions and evaluation conducted by the TET to allow the Contracting Officer to review the considerations upon which the recommendations are based.
- (d) *Contracting Officer Responsibilities with the TET.* The Contracting Officer shall review the recommendation of the TET and:
- Approve the recommended list of qualified prospective contractors submitted; or
 - Return the recommendation to the TET for such action as may be considered appropriate. The Contracting Officer shall not add firms to the selection report.

12-7 NEGOTIATIONS

- (a) The final selection authorizes the Contracting Officer to begin negotiations. Negotiations shall be conducted beginning with the most qualified firm in the final selection.
- Authority to Negotiate. The Contracting Officer is responsible for conducting all negotiations and for the results thereof. In discharging responsibilities, the Contracting Officer shall use the services of technical, legal, audit and other specialists in the Authority, as required.
 - Representation of Requesting Office. The representative(s) of the Program Office initiating the procurement shall be present and may assist in negotiations.
- (b) The Contracting Officer shall request a proposal from the firm, ensuring that the solicitation does not inadvertently require the firm to propose or preclude the firm from proposing the use of any appropriate design method.
- (c) If a mutually satisfactory contract with a fair and reasonable price cannot be negotiated after the Contracting Officer has obtained a written best and final offer, the firm will be notified in writing that negotiations have been terminated. The Contracting Officer shall then initiate negotiations with the next firm on the final selection list. If a mutually satisfactory agreement cannot be reached with the next most qualified firm after the Contracting Officer has obtained a written best and final offer that firm will be notified in writing that negotiations have been terminated. Then, if necessary, negotiations with successive firms in descending order of qualifications may be conducted until contract award can be made to the firm whose price the Authority believes is fair and reasonable, or the procurement is cancelled or re-competed.

12-8 ARCHITECT-ENGINEER (A-E) SIMPLIFIED PROCEDURES

- (a) The simplified procedures set forth in this section may be used in selecting prospective contractors to perform A-E and related services estimated to be within the Authority's simplified acquisition threshold.
- (b) A TET for services estimated to be within the simplified acquisition threshold is not required.
- (c) The following actions shall be taken in the evaluation and selection process:
 - The Program Office requesting A-E services, together with the Chief Engineer, shall review background and qualification data on as many prospective contractors as they deem feasible under the circumstances, and select the firm they consider best qualified to perform the services being procured.
 - A report, signed by both officials reviewing the data, will be prepared and submitted to the Contracting Officer. The report will list at least two firms in the order considered best qualified to perform the services being procured.
 - The Contracting Officer will concur with the recommendation made therein or return the report for such action as may be considered necessary.
 - Upon concurrence from the Contracting Officer, his/her designated representative will commence negotiations with the best qualified firm. If agreement cannot be reached with the best qualified firm, then only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified firm. Then, if necessary, negotiations with successive firms in descending order may be conducted until contract award can be made to the firm whose price the Authority believes is fair and reasonable.
 - Upon conclusion of contract negotiations, the contract will be submitted for approval in accordance with §2-4 (d).

12-9 CONTRACTOR PERFORMANCE EVALUATIONS

- (a) *Preparation of Performance Reports.* Selection of an A-E contractor always depends on prior performance of the firm, its subcontractors and consultants. In order to ensure proper consideration of firms, a formal written evaluation of the A-E contractor's performance will be prepared on two occasions. The first evaluation is initiated at the completion of design at the end of each period of performance by the design phase COTR, and the second is initiated by the construction phase COR/COTR at the completion of the construction phase. GSA [Standard Form 330](#) ("SF 330") will be used for purposes of evaluating A-E firms.
- (b) *Maintaining and Retention of Performance Reports.* The Contracting Officer will maintain all completed evaluation forms. The original will be maintained in the contract file and a copy will be maintained in a file established for each contractor. These records are to be maintained for five years after completion of construction.
- (c) *Contractor Access to Performance Reports.* The contractor will have access to

these evaluations. In any situation of less than satisfactory performance, the contractor will be given the opportunity to review and comment on the evaluation before it is made part of the official record.

12-10 COST ESTIMATE FOR ARCHITECT-ENGINEER WORK

An independent Authority estimate of the cost of A-E services shall be prepared and furnished by the Program Office to the Contracting Officer upon submittal of the procurement ready package. The estimate shall be prepared on the basis of a detailed analysis of the required work as though the Authority were submitting a proposal.

12-11 COST AND PRICE ANALYSIS

The Contracting Officer must conduct a cost analysis of pricing proposals during negotiations of any contract or modification, but prior to award in accordance with Chapter 16 of these procedures.

12-12 RELEASE OF INFORMATION ON FIRM SELECTION

When an award has been made, the Contracting Officer may release award information.

12-13 ERRORS AND OMISSIONS INSURANCE

All A-E contractors will be required to obtain and maintain errors and omissions insurance in a type and amount deemed appropriate by RISK for the protection of the Authority. A-E contractors may be found liable for designer errors and omissions and the Authority may initiate claims against A-E contractors or their insurance companies.

12-14 A-E CONTRACT REQUIREMENTS AND PROVISIONS

- (a) *Contract Type.* The Contracting Officer will select the appropriate type of contract in accordance with Chapter 4 of these procedures. The type of contract selected for use should be discussed and justified in the source selection plan.
- (b) *Contractor Assistance.* The A-E firm is often contacted during the construction phase to provide advice and assistance. The basic scope of the contract should include a provision for this service.
- (c) *Performance Period.* A-E contracts for design and monitoring of construction projects should be awarded to cover the specific project period of performance. A-E contracts with options shall comply with the Authority's policies for using options as required by §4-21.
- (d) *Contract and Contract Modifications.* All A-E contracts and modifications thereto

will incorporate definitive prices or cost-plus-fixed-fee amounts, firm delivery dates, and agreement on contract terms and conditions. Non-definitive contractual instruments, such as those issued "subject to audit" or "subject to 'downward adjustment,'" may not be issued without the written approval of the Chief Procurement Officer.

- (e) *Organizational Conflict of Interest Contract Provision.* A-E Consultant contracts will contain a provision which prohibits them from being considered for publicly advertised contracts and limit their sub-consultants' participation in publicly advertised contracts as outlined in §12-3 (b).
- (f) For federal requirements pertaining to audits and establishment of indirect cost rates for awarded architect/engineering contracts, see FTA 4220.1, Chapter VI, Section 3f(5).

12-15 RETENTION OF A-E RECORDS

- (a) The Contracting Officer shall be responsible for maintaining a complete current inventory of the basic statement of qualifications, [GSA Standard Form 330](#), for each A-E firm which requests consideration for an Authority contract. These records are available for use by all appropriate Authority personnel.
- (b) All other records relating to a specific A-E contract will be retained in the procurement file until the contract is closed out.

12-16 CONTRACT FILE ASSEMBLY AND DOCUMENTATION

- (a) *General* It is necessary to retain accurate and complete documentation regarding every contract awarded by the Authority. In addition to the requirements of § 2-16, Procurement Record, Contract Administrators must adhere to the following requirements to implement consistent documentation in the form of a conformed contract. Conformed contracts will be compiled by each Contract Administrator and submitted to the Procurement file room.
- (b) Only those procurement files which contain a bound labeled Conformed Contract will be accepted by file room personnel.
- (c) Within 60 days of contract award, all Contract Administrators must compile all documents which were issued pursuant to an IFB or RFP. Contract Administrators must assemble all relevant written records for all procurements. The records will be collected into a single file and placed into the Authority's record keeping system. The appropriate checklist (refer to Appendix A for checklists) must be completed by the Contract Administrator to ensure that the proper procurement processes have been followed, all considerations relevant to the procurement process have been addressed, and all components of the procurement file shall be assembled no later than 60 days after contract award. The procurement record and checklist must be reviewed by the contract manager and procurement manager. Following the review, the Contract Manager and the Procurement Manager must sign the checklist. Following this

review, the procurement record including the completed checklist will be reviewed by the assigned COUN attorney to ensure legal sufficiency of the procurement. In addition to the requirements of the appropriate checklist, the compiled documents must include those items indicated below as appropriate:

- Notice to Proceed/Award
 - Delegation of Contracting Officer's Technical Representative (COTR), if applicable
 - Insurance Certificates
 - Executed Contract/Agreement Form (signed by both parties)
 - Unit Price Schedule (accepted with date)
 - List of Positions (If applicable)
 - Department of Labor - Labor Rates (if applicable)
 - Solicitation Package
 - Amendments (acknowledged)
 - Disadvantaged Business Enterprise ("DBE") Participation (Signed Letters of Intent, DBE Participant Schedule)
 - Complete Pre-Award Data
 - Representations and Certifications (signed)
 - Cost Proposal
- (d) Once the documents are compiled, the Contract Administrator is responsible for creating a cover sheet which contains the descriptive contract name and IFB/RFP number. The cover sheet must clearly be identified as for a Conformed Contract.
- (e) The Contract Administrator must distribute the Conformed Contract to the Awarded Contractor, the Contracting Officer's Technical Representative, and Policy.
- (f) Once the Conformed Contract has been compiled, the document should be uploaded to CLM.

13 - CONSTRUCTION CONTRACTS

13-1 PURPOSE AND SCOPE

- (a) *General.* This chapter prescribes the procedures unique to construction contracting. "Construction" means the process of building, altering, repairing, improving, or demolishing any public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings, or real property.
- (b) *Applicability.* Contracts for construction are subject to the provisions of this Chapter and other applicable provisions prescribed in these procedures. A contract for construction including supplies or services shall contain clauses applicable to the predominant part of the work.

13-2 GENERAL POLICY

- (a) It is intended that the Contracting Officer have sufficient flexibility in formulating the project delivery approach in a particular project to fulfill the Authority's needs. In each instance, consideration commensurate with the project size and importance should be given to all the appropriate and effective means of obtaining both the design and construction of the project. The methods for achieving those purposes set forth in this Chapter and in Chapter 12 of these procedures, regarding Architect-Engineering and related services, are not to be construed as an exclusive list.
- (b) In selecting the construction contracting method, the Contracting Officer should consider the results achieved on similar projects in the past and the methods used. Considerations should be given to all appropriate and effective methods, their comparative advantages and disadvantages, and how they might be adapted or combined to fulfill the Authority's requirements.
- (c) This section is intended to guide Authority personnel in selecting the appropriate contracting method.

13-3 METHODS OF CONTRACTING

Contracts for the construction, reconstruction or improvement of any facility, when the expenditure exceeds the Simplified Acquisition Procedures threshold, may be awarded using either the competitive sealed bidding (Chapter 9) or competitive proposal (Chapter 10) contracting method, or any configuration thereof that most likely will result in timely, economical, and otherwise successful completion of the construction project. Construction contracts shall not be awarded using non-

competitive procedures.

13-4 CRITERIA FOR METHOD SELECTION

Construction methods that may be utilized by the Authority include:

- Design/Bid/Build
- Design/Build
- Design/Build/Operate/Maintain
- Construction Manager at Risk
- Progressive Design Build

- (a) Before choosing the construction contracting method to use, a careful assessment must be made of the requirements the project must satisfy and those other characteristics that would be desirable. In addition to factors set forth in paragraphs (b) and (c), other factors to consider are:
- The date the project must be ready to be occupied;
 - The type of project;
 - The extent to which the Authority's requirements and the ways in which they are to be met are known; and
 - The size, scope, complexity, and economics of the project.

Sections 13-7 through 13-12 provide additional information about the advantages of the construction contracting methods including project control and time considerations.

- (b) The following factors relating to the Authority's resources should be considered:
- The amount and type of financing available for the project, including whether the budget is fixed or flexible, and the source of funding (for example, general or special authorization, federal assistance monies, or bonds);
 - A realistic appraisal of the qualifications and experience the Authority's personnel can bring to the project and, of equal importance, how much time such personnel can devote to the project; and
 - The availability of outside consultants.
- (c) Choice of the proper construction contracting method entails not only the internal examination described in this section, but must take into account the characteristics, experience, and availability of the contractors who can work on the project. It is important to consider the amount of competition currently in the market for the particular type of contract and whether a price can be obtained that is fair and reasonable when considered together with the benefit to the Authority potentially obtainable from such a contract.
- Prospective construction contractors must be capable and willing to bid on the construction project as required by the contracting method chosen.
 - If the contracting method involves use of consultants, an evaluation of the availability of qualified consultants should be made.
 - If the design-build method or some variation of it is considered, availability of firms capable of both designing and construction of the facility must be determined.

13-5 LEASE, BUY, OR BUILD

Before initiating a construction project, consideration shall be given to leasing or buying existing building space as well as to constructing new space. Factors to consider when choosing among these three alternatives include, but are not limited to:

- Whether the Authority's requirements will be continuing or temporary;
- The need for control by the Authority over the building including, but not limited to, security considerations;
- The adequacy of available space to fit the Authority's needs;
- To the extent they are reasonably known or ascertainable, the life-cycle costs associated with leasing, buying, or building;
- Which method is most time effective to meet the Authority's requirements;
- The need to physically separate and distinguish the Authority's facilities from private facilities;
- The dislocation of existing tenants, both commercial and residential, resulting in relocation claims; and
- Environmental impacts.

13-6 GENERAL DESCRIPTIONS

- (a) The following descriptions are to provide a common vocabulary for use in the context of this section and for general discussion concerning the construction contracting activities of the Authority. The methods described are not all mutually exclusive and often may be combined on one project. These descriptions are not intended to be fixed in respect to all construction projects of the Authority. In each project, these descriptions may be adapted to fit the circumstances of that project. However, the Contracting Officer should endeavor to ensure that these terms are described adequately in the appropriate contracts, are not used in a misleading manner, and are understood by all relevant parties.
- (b) The single prime contractor method of contracting has one general contractor contracting with the Authority to complete an entire construction project on a timely basis in accordance with plans and specifications provided by the Authority. These plans and specifications may be prepared by a private architectural firm under contract to the Authority. The general contractor takes responsibility for successful completion of the project, including any work performed by subcontractors.
- (c) Under the multiple prime contractor method, the Authority contracts directly with a number of contractors to complete portions of the project in accordance with the Authority's plans and specifications. The Authority or its agent will have primary responsibility for successful completion of the entire project.
- (d) In a design-build or turnkey project, a design-build contractor contracts directly to meet the Authority's requirements as described in a set of performance specifications by constructing a facility to its own plans and specifications. Design responsibility and construction responsibility both rest with the design-

build contractor. Phased design and construction denotes a method in which construction begins when appropriate portions have been designed but before substantial design of the entire structure has been completed. This method can include instances where the design-build contractor supplies the site as part of the package.

- (e) A construction manager is a firm or a person experienced in construction that has the ability to evaluate and to implement plans and specifications as they affect time, cost, and quality of construction and the ability to coordinate the design and construction of the project, including the administration of change orders. The Authority contracts with a qualified construction manager to act for the Authority in the construction project as specified in the construction management contract.
- (f) At times, the construction manager may guarantee that the project will be completed on time and will not exceed a specified maximum price. This form of contracting is known as Construction Manager at Risk. In such contracts, the construction manager will become responsible to complete the project at or below the specified maximum price.

13-7 SINGLE PRIME CONTRACTOR

- (a) Traditional construction contracting involves the selection of a single general contractor through a competitive sealed bid or proposal process where comprehensive plans and specifications are precise enough to allow prospective general contractors the ability to prepare the bid or proposal. The contractor awarded the contract takes responsibility for the coordination of subcontractors and timely completion of the project at the price specified in the contract. The architect-engineer, the Authority's project manager, and (if used) the construction manager shall monitor the progress of the project and otherwise represent the Authority's interest as set forth in the pertinent contracts.
- (b) The primary advantage of the single prime contractor method is that the Authority can look to one contractor who has responsibility for completing the project. Also, the Authority is given a fixed price for completion of the entire project before the construction begins.
- (c) The single prime contractor method removes subcontractors from direct Authority control. This method will include the cost of the total project including the prime contractor's mark-up on each subcontract.

13-8 MULTIPLE PRIME CONTRACTORS

- (a) Multiple prime contractors may be used with design and construction by separating the plans and specifications into packages pertinent to recognized trades. The Authority may manage and coordinate their work or contract with a construction manager to so do. The contracts may provide that responsibility for successful completion of the entire project rests with the Authority or the

Authority's agent.

- (b) The advantage to using the multiple prime contractor method is that it can lessen the primecontractor's markup on the subcontractors' contracts and gives the Authority control overall the contractors doing the work. It permits the Authority more flexibility in deciding when to enter the construction market and with what size contracts. Also, this method allows the Authority privity of contract with a larger number of contractors, thereby allowing the Authority to prescribe how the contractors will complete their contracts.
- (c) There are disadvantages to this method, however, since it places all the risk of managing and coordinating the construction work with the Authority. The Authority or its representatives must actively and aggressively supervise the project to ensure timely and successful completion. A contract that merely requires specialty contractors to cooperate and to coordinate their work is insufficient.
- (d) Whenever multiple prime contractors are used the contract between the Authority and each prime contractor must be coordinated, clearly state the scope of each contractor's responsibility, when the portions of its work are to be complete and must provide a system of timely reports on progress of the contractor's work and problems encountered.

The contract must specify that each contractor is liable for damages caused to other contractors and the Authority because of delay or otherwise. Such clauses cannot attempt to relieve the Authority's liability where it fails to coordinate and manage the project properly. Further, the duties of the Authority's Project manager, the architect-engineer, and the construction manager (if one is employed) with respect to the contractors should be clearly delineated in all the parties' contracts.

13-9 DESIGN-BUILD TURNKEY

- (a) The design-build or turnkey method gives the contractor maximum control of the design and construction project consistent with the Authority's needs. The Authority prepares a set of performance specifications including functional criteria, any life-cycle cost considerations, and other evaluation factors. The Authority also shall specify the degree of detail necessary in a design proposal. The contractor is selected on the basis of its design proposal, proposed price, and other stated evaluation criteria. It may be appropriate to use a multi-step process to lessen the number of firms submitting final design proposals to reduce administrative burden and to keep proposal preparation costs down. After award, the contractor completes the design (subject to review by the Authority or its architect-engineer as set forth in the contract) and constructs the project. The contractor chooses whether to phase the project.
- (b) When using federal funds, the Authority must procure design-build services through means of a qualifications-based competitive proposal procedure based on the Brooks Act when the preponderance of the work to be performed is considered to be architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design,

architectural, engineering, surveying, mapping, or related A&E services. Conversely, architectural and engineering qualifications-based competitive proposal procedures may not be used to procure design-build services when the preponderance of the work to be performed are construction services.

- (c) In the design-build method, a fixed or target price for the project is established at time of contract and the contractor designs and builds the project with its own forces. Consequently, the duty and risk of proper management of project design and construction lies with the contractor. It also allows the contractor to design and perform in a manner best suited to its operations and experience. It may give the Authority earlier definition of the project. This method is most appropriate when the Authority will not need to be deeply involved in the project's design and construction.
- (d) A disadvantage of the design-build method is that there is less control over the design and construction process. The contract is awarded on the basis of a design proposal, not a complete set of plans and specifications. The Authority's needs may not be met if the specifications are deficient, if the contractor's design proposals are not carefully evaluated, and if the design and construction process is not carefully monitored to ensure that both the specifications and the design proposal are being followed.
- (e) Careful preparation of the specifications and evaluation criteria is crucial to successful use of the design-build method. The contract documents should delineate clearly the Authority's rights to inspect plans and specifications and the construction work in progress. They should indicate precisely what will constitute completion of the project by the contractor.

13-10 CONSTRUCTION MANAGER

- (a) A construction manager may bring a valuable practical construction perspective to the Authority in both the planning and design phases of the project. For purposes of this section, the planning phase encompasses those activities involved in determining the Authority's requirements, selecting the construction contracting method, and establishing progress schedules. Prior to the solicitation of construction, the construction manager should perform a value engineering study of the design. The value engineering study should include suggestions to cut construction costs relating to the practicality of construction, construction industry conditions, and building materials specified. A construction manager would assist in phasing the construction process.
- (b) Once construction commences, the construction manager's role may be limited to monitoring construction progress and inspecting and otherwise representing the Authority's interest if design and construction with a single prime contractor is used. If the project is constructed by the phased design and construction method or the multiple prime contractors method, the construction manager is responsible for the supervision and management of their work. In a project using phased design, the construction manager may give the Authority a performance incentive price for completion of the project at final completion of all the drawings and specifications. To the extent the construction manager is

the Authority's representative, the manager will assist in the final inspection and acceptance of the project by the Authority.

- (c) The construction manager adds construction expertise to the Authority's team. Several benefits of this expertise are listed below.
- The selection of the construction contracting method and other crucial decisions in the early phases of the project can be made with a better understanding of their impact upon construction.
 - The construction manager can manage the work of the various construction contractors as the Authority's representative instead of a single prime contractor whose interests may not coincide with those of the Authority. In this way, the Authority will gain more control of the actual construction project.
 - Phased design and construction may be used more readily because a construction manager can relieve the burden on the Authority to coordinate its duties with those of the architect-engineer and the various contractors.
 - A construction manager may offer a performance incentive because of its involvement in the project from the beginning. This may permit the Authority to phase the design and construction effectively and still have a fixed price for funding purposes before construction begins.
- (d) A disadvantage of using a construction manager is that the construction manager's fee is added cost to the construction project. On smaller construction projects, construction management may not be cost effective.
- (e) It is imperative that the construction management contract clearly set forth the duties and authority of the construction manager with respect to all the participants in the project. The contract should define the possible liability of the Authority and the construction manager for failure to coordinate the subcontractors' work and for failure to deliver a completed project.

13-11 DESIGN-BID-BUILD CONSTRUCTION

- (a) The design-bid-build procurement method requires separate contracts for design services and for construction. For the design services, the qualifications-based procurement procedures must be used. Qualifications-based procurement procedures shall not be used for the procurement of the construction.
- (b) The initial step in using design-bid-build construction is to gather a team to design the project and provide a complete set of drawings and specifications to use in awarding the construction contract or contracts. Except for redesign necessitated by changes in the Authority's requirements or problems encountered during construction, design is complete before construction begins.
- (c) A project using design-bid-build construction proceeds in clearly defined steps which may aid in financing and gaining any necessary approvals as well as aid in managing the entire project. Complex or unique projects can be completely thought through and planned before construction begins. Before any construction begins, a fixed price for the project can be established.

- (d) A disadvantage of design-bid-build construction is that it requires a longer time to complete the project than phased design and construction. The complete package of drawings and specifications also freezes design decisions months or years before construction begins.

13-12 PHASED DESIGN AND CONSTRUCTION

- (a) Phased design and construction may be used when the architect-engineer, working with the construction manager (if one is used) can settle on the major design decisions and then do the detail design work in the sequence necessary to construct the project. This design process then allows construction to begin before design is complete for the entire project (of course, design is complete on those portions being constructed). Construction should begin only after the Authority's requirements are set, the overall (schematic) design is complete, and the complete drawings and specifications for the first construction phase are ready. (It may be possible to start site preparation prior to this stage.) A construction manager often is necessary to assist in packaging the various specialty contracts and to manage the work under these contracts.
- (b) Phased design and construction may result in reduced project completion time. It also may allow reduction in the scope of the project if prices on early portions indicate the project may exceed the budget (in a design and construction project, such redesign might delay the entire project). It also gives the Authority added flexibility in deciding when to let the various specialty contracts to take advantage of market conditions.
- (c) A disadvantage of phased design and construction is that portions of the project begin before later portions are completely designed. Major changes in these later portions may necessitate costly changes in the early portions and result in costly delays to many of the early contracts. The Authority bears the risks for at least some coordination of specialty contractors and for ensuring that design of later portions does not adversely affect earlier ones. In design and construction projects, the Authority avoids these risks.
- (d) The contract must clearly establish the architect-engineer's duty to design to allow phasing, and the contracts with the specialty contractors must clearly delineate their scope of work, duties, and required coordination with other contractors and the Authority. Further, the management rights of the Authority and its construction manager, if one is used, must be set forth.

13-13 SPECIFICATIONS

- (a) Where applicable, Contracting Officers shall ensure that references in specifications conform to widely recognized standards for specifications promulgated by governments, industries, and technical societies.
- (b) 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 requirement.

- (c) The technical provisions of construction specifications shall be in sufficient detail so that when used with the applicable drawings, specifications, and standards incorporated by reference, bids or proposals can be prepared on a fair and competitive basis. Materials, equipment, components, or systems shall be described, where possible, by reference to generally known references (e.g., Federal, military, or nationally recognized industry, and technical society specifications, and standards). The standards which best represent the Authority's minimum needs shall be selected for incorporation into the construction specifications. Contracts for the construction of new buildings or additions to existing buildings must include seismic safety provisions in accordance with 42 USC §§ 7701 *et seq.* and applicable regulations.
- (d) Specifications for construction contracts exceeding \$150,000 must require the contractor to comply with Buy America requirements set out in FAR Subparts 25.1 and 25.2. Also, facilities to be used in public transportation service must comply with accessibility provisions for individuals with disabilities in accordance with 42 USC Sec. 12101 *et seq.* and applicable regulations.

13-14 ESTIMATE OF CONSTRUCTION COSTS

- (a) An independent Authority estimate of construction costs must be prepared, for each proposed contract and for each proposed contract modification, by the Program Office requesting the proposed contract or contract modification. Independent cost estimates must be processed in strict accordance with §3-5 (Independent Cost Estimate).
- (b) If two-step sealed bidding is used, the estimate must be prepared after step one is completed (§9-30).

13-15 DISCLOSURE OF MAGNITUDE OF CONSTRUCTION PROJECT

Advance notices and solicitations must state the scope of the construction requirement. Notices shall be conducted in accordance with §3-11 (Publicizing Contract Actions), §9- 11 (Public Notice), and §10-8 (c) (Public Notice).

13-16 LIQUIDATED DAMAGES

- (a) The Contracting Officer must evaluate the need for liquidated damages in construction contracts in accordance with §18-16.
- (b) Liquidated damages provisions will be included in all construction contracts under which the Authority may reasonably expect to incur damages in the form of increased costs from late completion of the construction, and the extent or amount of such damages would be difficult or impossible to assess. See §18-16 for guidance regarding factors to consider in using a liquidated damages

clause and in documenting the decision.

- (c) Liquidated damages provisions for construction contracts are contained in the "Termination for Default - Damages for Delay - Time Extension" clause of the General Provision for construction contracts (WMATA General Provisions and Standard Specifications for Construction Projects). To make such provisions operative, an appropriate rate of Liquidated damages must be stipulated in an amount per unit of time in an additional provision substantially as follows:

LIQUIDATED DAMAGES

In case of failure on the part of the Contractor to complete the work within the time stated in the contract, or any extensions thereof, the Contractor shall pay to the Authority as liquidated damages, pursuant to the clause of this contract entitled "Termination for Default - Damages for Delay - Time Extensions," the sum of <dollars> for each day of delay". This amount reflects the Authority's best estimate of lost revenue and/or increased costs arising out of the contractor's failure to complete its work in a timely fashion.

The liquidated damages provision must be clearly stated in the solicitation. In addition, the calculation supporting the liquidated damages amount must be in writing and placed in the contract file. Liquidated damages should reflect the Authority's best estimate of lost revenue, increased costs, or both based on a contractor's failure to complete its work in a timely fashion.

13-17 FIXED-PRICE CONSTRUCTION CONTRACTS

A Contracting Officer shall use firm-fixed-price contracts to procure construction. 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) by milestone (defined portions 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 all these methods.

13-18 CONSTRUCTION LABOR STANDARDS

- (a) *General.* This Section provides a detailed description of the Federal labor laws and requirements which are applicable to Authority contracts, establishes administrative procedures in connection with such laws, and prescribes the contract clauses with respect to each such labor law or requirement.
- (b) *Applicability.* All contracts in excess of \$2,000 for construction and other contracts in excess of \$2,500 which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act ([40 USC 327-330](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#)).
- Computing Work Week Wages. Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard week of 40 hours. Work in excess of the standard work week is

permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

- Working Conditions. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor.
- Contract Clause. The prescribed clause specifying the above requirements is entitled "Contract Work Hours and Safety Standards Act - Overtime Compensation" which is included in the separate "General Provisions" utilized by the Authority for construction contracts.

(c) *Copeland Anti-Kickback Act Provision.* All contracts for construction or repair shall include a provision requiring the contractor to comply with the Copeland Anti-Kickback Act ([18 USC 874](#)) as supplemented in Department of Labor regulations ([29 CFR Part 3](#)). This act provides that each contractor or subcontractor shall be prohibited from inducing by any means any persons employed in the performance of the work under the contract or subcontract to give up any part of the compensation to which he is otherwise entitled.

- Reporting Violations. The Contracting Officer is responsible for reporting violations in accordance with 29 CFR Part 5.7 and 5.10.
- Contract Clause. The prescribed clause specifying the above requirements is entitled "Compliance with Copeland Regulations" and is included in the "General Provisions and Standard Specifications for Construction Projects."

(d) *Davis-Bacon Act.* All Authority construction contracts in excess of \$2,000 shall include a provision requiring the contractor to comply with the Davis-Bacon Act ([40 USC 276a](#) to a-7) as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate no less than the minimum wages specified in a wage determination issued by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week.

- Minimum Wage Rates. Minimum wage rates paid to laborers and mechanics employed under any construction contract exceeding \$2,000 shall be the rates prevailing in the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act and regulations thereunder. Wage determinations are published by the Department of Labor. Special wage rate determinations may be obtained from the Department of Labor. The National Technical Information Service (NTIS) of the U.S. Department of Commerce offers Davis-Bacon, an online subscription service to provide the most comprehensive electronic access to official Department of Labor current wage determinations including a database download option. NTIS' Davis- Bacon subscribers can access NTIS' Davis-Bacon Wage Determinations online- system at <https://sam.gov/content/wage-determinations>.
- The state and county in which the construction will be undertaken; and
- The classifications of various work required.
- Wage Determinations. The Contracting Officer is responsible for the insertion in each solicitation of the current prevailing wage determination issued by the

Department of Labor. Contractors are required to comply with the DOL current prevailing wage determinations. The Contracting Officer is responsible for the reporting of all suspected or reported violations in accordance with the reporting procedures of 29 CFR Part 5.7.

- (e) *Submission of Certified Payrolls for Construction Contracts and Subcontracts Greater than \$2,000.* Contract Administrators must ensure that all contractors and subcontractors performing work on federal or federally assisted construction contracts in excess of \$2,000 submit weekly certified payrolls reports. At contract award, the Contract Administrator must inform the Contractors in writing of the requirement to provide a certified payroll report each month to the Project Manager as a condition of the contract. Contract Administrators must verify the receipt of the certified payrolls reports by the Project Manager's staff each month. If the certified payrolls reports are found to be missing or late, the Contract Administrator must notify the Contractor(s) that it/they is/are non-compliant to the terms and conditions of the contract. The Contract Administrator must document in writing the corrective action plan agreed to with the Contractor(s) to ensure compliance and place the corrective action plan in the contract file. In addition, the following provision must be included in the Special Provisions of each construction contract and subcontract with a value greater than \$2,000:

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

This contract is subject to the Davis-Bacon and Related Acts. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3 and 5 are herein incorporated by reference in this contract. The Davis-Bacon Act requires contractors and subcontractors under construction contracts and subcontracts greater than \$2,000 to submit weekly certified payrolls reports to the Project Manager.

- (f) *Labor Neutrality.* A contract may not require or prohibit the use of a project labor agreement (PLA), except if special circumstances require a PLA to be used to avert an imminent threat to public health or safety.

13-19 LIVING WAGE POLICY

- (a) *General.* The Living Wage requirement will be included in all service contracts, including construction contracts, awarded in an amount that exceeds \$250,000 in a 12-month period. The provision "flows down" to subcontracts that exceed \$250,000 in a 12-month period, which are awarded under the applicable prime contract. The Authority established Living Wage Rate may be reduced by a contractor's per-employee cost for health insurance, and will be adjusted annually based on the average wage rates of local jurisdictions with a Living Wage policy.
- (b) *Contract Clause.* The Living Wage clause is required in solicitations and the resulting contract. The Living Wage clause shall be inserted in the General Provisions.

13-20 VALUE ENGINEERING

- (a) It is Authority policy to require value engineering on all major capital projects. The Contracting Officer will ensure value engineering provisions are included in any construction contract exceeding \$1,000,000.
- (b) Value engineering considerations shall be factored into the development of construction contract specifications.

13-21 CONTRACT FILE ASSEMBLY AND DOCUMENTATION

- (a) *General* It is necessary to retain accurate and complete documentation regarding every contract awarded by the Authority. In addition to the requirements of §2-16, Procurement Record, Contract Administrators must adhere to the following requirements to implement consistent documentation in the form of a conformed contract. Conformed contracts will be compiled by each Contract Administrator and submitted to the Procurement file room.
- (b) Only those procurement files which contain a bound labeled Conformed Contract will be accepted by file room personnel.
- (c) Within 90 days of contract award, all Contract Administrators must compile all documents which were issued pursuant to an IFB or RFP. Contract Administrators must assemble all relevant written records for all procurements. The records will be collected into a single file and placed into the Authority's record keeping system and submit a copy to the Policy Mailbox at prmpolicy@wmata.com. The appropriate checklist (refer to Appendix A for checklists) must be completed by the Contract Administrator to ensure that the proper procurement processes have been followed, all considerations relevant to the procurement process have been addressed, and all components of the procurement file shall be assembled no later than 60 days after contract award. The procurement record and checklist must be reviewed by the contract manager and procurement manager. Following the review, the contract manager and the procurement manager must sign the checklist. Following this review, the procurement record including the completed checklist will be reviewed by the assigned COUN attorney to ensure legal sufficiency of the procurement. In addition to the checklist requirements, the compiled documents must include those items indicated below as appropriate:
 - Notice to Proceed/Award
 - Delegation of Contracting Officer's Representative ("COR")
 - Executed Bid/Payment/Performance Bonds, if applicable (Note all Construction contracts > \$100,000 must have a bid bond.)
 - Insurance Certificates
 - Executed Contract/Agreement Form (signed by both parties)
 - Unit Price Schedule (accepted with date)
 - Solicitation Package (includes Davis Bacon requirements)
 - Amendments (acknowledged)

- Disadvantaged Business Enterprise (“DBE”) Participation (Signed Letters of Intent, DBE Participant Schedule)
 - Complete Pre-Award Data
 - Representations and Certifications (signed)
- (d) Once the documents are compiled, the Contract Administrator is responsible for creating a cover sheet which contains the descriptive contract name and IFB/RFP number. The cover sheet must clearly be identified as for a Conformed Contract.
- (e) The Contract Administrator must distribute the Conformed Contract to the Awarded Contractor, the Contracting Officer’s Technical Representative, and Policy.
- (f) Once the Conformed Contract has been compiled, the document should be uploaded to CLM.

14 - BONDS, OTHER SECURITY AND INSURANCE

14-1 PURPOSE AND SCOPE

This chapter prescribes requirements for obtaining financial protection against losses under contracts that result from the use of the sealed bid or negotiated procurement method but does not apply to simplified acquisitions. It covers bid bonds, letters of credit, performance and payments bonds, and contractor insurance, which also may be required depending upon the type of contract.

14-2 DEFINITIONS

- (a) “Bid” means any response to a solicitation, including a proposal under a negotiated procurement.
- (b) “Bidder” means any entity that is responding or has responded to a solicitation, including a proposer under a negotiated procurement.
- (c) “Bid guarantee” or “Bid security” means a form of security (e.g., bid bond, certified check, or other negotiable instrument accompanying a bid) assuring that the bidder:
 - Will not withdraw a bid within the period specified for acceptance;
 - Will execute a written contract and furnish required bonds within the time specified in the bid, unless a longer time is allowed; and
 - Has the financial means to perform the SOW (i.e., is a responsible bidder).
- (d) “Bond” means a written instrument executed by a bidder or contractor (the “principal”), and a second party (the “surety” or “sureties”), to assure fulfillment of the principal’s obligation to a third party (the “Authority”), identified in the bond. If the principal’s obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the Authority. The types of bonds and related documents are as follows:
 - A payment bond assures payments as required by law to all persons supplying labor or material in the performance of the work; and
 - A performance bond secures performance and fulfillment of the contractor’s obligations under the contract.
- (e) “Penal sum” means the amount of money specified in a bond (or percentage of the bid price in a bid bond) as the maximum payment for which the surety is obligated or the amount of security required to be pledged to the Authority in lieu of a corporate or individual surety for the bond.
- (f) “Reinsurance” means 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.
- (g) “Sureties” means a firm(s) or corporation(s) executing a surety bond or bonds,

payable to the Authority, securing the performance of the contract, either in whole or in part or securing payments for labor and materials.

14-3 GENERAL PROVISIONS

- (a) The Contracting Officer may require any of the following types of security for any solicitation or contract subject to this procedure, regardless of the estimated amount of the contract:
 - Bid bonds;
 - Other bid or proposal security (e.g., letter of credit);
 - Construction performance and payment bonds; and
 - Performance or payment bonds or other security on non-construction contracts.
- (b) Solicitation Requirements and Contractor Responsibility.
 - A solicitation shall not bar bidders or proposers from using any surety or type of security permitted by this chapter;
 - When required by Federal law or regulation or as a condition of Federal assistance, the Contracting Officer shall require security, and the solicitation shall state the requirement; and
 - The Contracting Officer shall determine a contractor's responsibility even though security has been or can be obtained.

14-4 BID BONDS OR OTHER SECURITY

- (a) A Contracting Officer should not require a bid guarantee in connection with any solicitation unless a payment or performance bond is required under the contract.
 - When the Authority independent cost estimate for a construction project:
 - Exceeds \$100,000, bid guarantee, performance and payment bonds are required. This requirement also applies to Job Order Contracting ("JOC") contracts at a task order level. Installation contracts resulting in modification or alteration to existing facilities should be treated (for bonding purposes) as construction contracts; or
 - Is less than or equal to \$100,000, the requirement of a bid guarantee is discretionary.
 - Each bidder must provide a bid guarantee for a construction contract in an amount equal to five percent of the bid. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
 - No action shall be taken against the bid guarantee of a bidder or proposer that is permitted to withdraw a bid or proposal prior to award due to a mistake in the bid or proposal, in accordance with the applicable provisions of this procedure.
 - Unused bid guarantee should be returned to bidders as soon as it is determined that they have no reasonable chance of being awarded the contract.
- (b) *Solicitation Requirements.*

When a bid guarantee is required, the solicitation shall contain:

- A statement that bid guarantee is required;
- Notice that the bid guarantee will remain in effect for as long as the bid or proposal is required to remain effective; and
- Sufficient information to allow bidders or proposers to determine the amount of the required bid guarantee.

14-5 PERFORMANCE AND PAYMENT BONDS

(a) *Requirements on Use.*

- The Contracting Officer shall require a contractor to furnish performance and payment bonds or other security on any construction contract when the Authority's independent cost estimate of the contract exceeds \$100,000, in accordance with the provisions of these procedures. If a performance bond is required, bid guarantee may also be required to assure the execution of the performance bond. The bid guarantee for non-construction contracts shall be in an amount set by the Contracting Officer.
- The Contracting Officer may require a contractor to furnish a payment or performance bond or other security for any non-construction contract, after assessing the contract risks to the Authority and determining that the security is necessary to protect the interest of the Authority. The security shall be furnished in accordance with the provisions of this Section.
 - In performing a risk analysis, the Contracting Officer must consider the potential for contractor bankruptcy or financial failure; and
 - No performance or payment bond shall be required after the contract has been executed except when determined necessary by the Contracting Officer and added through a contract modification.
- For non-construction contracts, a payment bond should be used only when it is determined to be in the Authority's best interest. The determination of the need for and appropriate amount of a payment bond shall be made by the Contracting Officer as part of the risk management analysis and shall be documented in the contract file.
- The Federal Transit Administration (FTA) does not require bonding in any amount for non-construction contracts but leaves the decision to require bonds for these contracts to the discretion of the Contracting Officer in order to protect the interests of the Authority and the Federal government. However, to ensure full and open competition, excessive bonding (and experience) requirements must be avoided. The determination of the need for and the appropriate amount of a payment bond shall be made by the Contracting Officer as part of the risk management analysis and shall be documented in the contract file. Any deviation from this standard requires advance approval from the FTA.

(b) *Amounts Required.*

- ***Payment Bonds.*** A payment bond may be required when a performance bond is required. Payment bonds adequate to protect the Authority and FTA's interests are as follows: (1) Fifty percent of the contract price if the construction contract price is not more than \$1,000,000; (2) Forty percent of the contract price if the contract price is more than \$1,000,000 and not more than \$5,000,000; or (3) When the contract price is more than

\$5,000,000, the payment bond shall be \$2,500,000.

- When a contract price is increased, the Authority may require an addition to the payment bond in an amount adequate to protect suppliers of labor and material.
- **Performance Bonds.** A performance bond shall be executed on the part of the contractor for 100% of the contract price unless the Contracting Officer determines that a lesser amount would be adequate for the protection of the Authority. In making this determination, the Contracting Officer should consider the adequacy of other appropriate forms of risk management available for the procurement, such as warranties, guarantees, insurance and indemnities.
 - FTA Circular 4220.1, latest revision, requires a 100% performance bond for all construction contracts or subcontracts exceeding \$100,000. Any proposed deviation from this standard requires advance approval from FTA. The Contracting Officer shall state the amount or percentage of bonding required in the solicitation.
 - The Contracting Officer shall require an addition to the performance bond when a contract price is increased.
 - The increase in performance bond shall maintain the proportion of bonding established in the original contract price, unless the Contracting Officer determines that another amount or percentage is required to protect the Authority.
 - The Contracting Officer shall require additional performance bonding by directing a contractor to increase the original sum of the existing bond or to obtain an additional security.

(c) ***Solicitation and Contract Requirements.***

- When performance or payment bonding is required, the solicitation shall contain the following:
 - A statement that bonding is required;
 - The amount of the bond expressed as a fixed sum or percentage of the contract price; and
 - The deadline for submitting acceptable security.
- The contractor shall furnish all performance and payment bonds (or other securities) by the deadline for submitting bonds (or other securities) as stated in the solicitation. The bonds (or other securities) must be submitted and accepted before a notice to proceed is issued.
- If the Contracting Officer uses a letter of credit to allow the contractor to proceed with work before execution of the contract, the letter of credit shall contain a clause, approved by the Chief Procurement Officer, which states that no payments shall be made under the contract until the required payment and performance bonds have been received and accepted.

14-6 ACCEPTABLE TYPES OF SECURITY

When a security is required by the Contracting Officer under this Chapter, the Contracting Officer may accept any of the following types of security:

- A bond provided by a surety in accordance with §14-7;
- United States government securities that are assigned to the Authority

- which pledge the full faith and credit of the United States; or
- Cash, certified check or irrevocable letter of credit issued by an insured United States financial institution, or Parent Company Guarantee in the equivalent amount of the security.
 - Cash, certified checks, US government securities and Letters of credit provide the Authority with the capital necessary to complete the contract work. These financial instruments do not provide for a replacement contractor to complete the contract if the original contractor is unable to perform. If these types of security are used, the Authority would assume the role of contractor or solicit for a replacement contractor.
 - Payment bonds provide for a surety that will pay material and labor providers if a contractor cannot. Like the financial instruments listed above, payment bonds do not provide for a replacement contractor.
 - Performance Bonds provide for a surety that will assume the contractor's role or provide a mutually acceptable contractor to complete the work. Sureties provide the financial and management means to complete the work, but have no access to the contractor's facilities, patents, etc.
 - A Parent Company Guarantee provides access to the financial resources of the parent corporation, its facilities and the patents, etc. controlled by contractor. The risk associated with a Parent Guarantee is that the Parent Company is also not solvent.

14-7 SURETY BONDS AND OTHER SECURITY

- (a) A new surety bond covering all of or part of the obligation on a security previously approved may be substituted for the original security, if approved by the Contracting Officer.
- (b) In contracts requiring payment and performance bonds, the Contracting Officer shall not withhold payments that are due to contractors or assignees because subcontractors or suppliers have not been paid. When a Contracting Officer is notified of the contractor's failure to pay, the subcontractor or supplier shall be instructed to notify the surety.
- (c) If, after completion of the work under a contract requiring payment and performance bonds, the Authority receives written notice from the surety regarding the contractor's failure to meet its obligation to its subcontractors or supplier, the Contracting Officer shall withhold final payment. The surety shall agree to hold the Authority harmless from any liability resulting from withholding the final payment. The Contracting Officer shall authorize final payment upon agreement between the contractor and surety or upon a judicial or other binding determination of the rights of the parties.
- (e) If the amount of security exceeds the surety's underwriting limit, as established by the U.S. Treasury Department or a list established by the Authority, the security shall be acceptable only if:
 - The amount that exceeds the specified limit is coinsured or reinsured; and
 - The amount of coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or reinsurer.

14-8 SURETIES

- (a) The Contracting Officer shall determine the acceptability of all sureties and shall determine whether security of any type would be in the best interests of the Authority in all contracts.
- A payment bond may be required when a performance bond is required unless the Contracting Officer determines in writing that either type of bond would, by itself, protect the best interests of the Authority.
- (b) *Surety.* A performance or payment bond may be obtained from a surety. Each surety shall be a company authorized to do business either in the District of Columbia, Maryland or Virginia. For contracts with federal funding, the surety must hold a certificate of authority as an acceptable surety under Department of the Treasury regulations at 31 CFR Part 223.
- (c) *Parent Company Guarantee.* The corporate parent may pledge a portion of its assets in lieu of a performance bond or letter of credit. The advantage of this form of security is access to skilled labor, manufacturing facilities, tooling, patents, etc. The risks include that while the parent corporation had the financial resources when the guarantee was negotiated, it may not have these resources when needed to assume contract performance.
- (d) *Non-construction Contracts.* The performance bond requirements for non-construction contracts shall be in an amount set by the Contracting Officer, who shall consider the following:
- If a contractor is acquired by or merges with another business entity, the Authority (after recognizing the other entity as the successor in interest) must determine that the new business entity is financially able to perform the contract work;
 - Whether substantial progress payments are to be made before delivery of the contracted item; or
 - Any other factors which might favor the use of security to protect the best interests of the Authority.

14-9 INSURANCE REQUIREMENTS

- (a) *Construction Contracts.*
- The Authority will procure and pay premiums for insurance that benefits its contractors and subcontractors in the Capital Construction Program, as set forth in the document "Insurance Specifications for Construction Projects," as provided and amended by the Office of Risk Management.
 - The policies in the aforementioned document do not cover automobile liability insurance. Accordingly, Authority construction contracts in the Capital Construction Program will require the contractor to procure and pay premiums on comprehensive automobile liability insurance covering all vehicles used in the performance of the contract that are not covered under the comprehensive general liability insurance provided by the

Authority.

- Authority contractors shall comply with insurance requirements imposed by state and local governments.
 - The contractor and subcontractor will be required to carry: (1) general liability, (2) workmen's compensation, and (3) automobile insurance on construction contracts for other programs. Insurance specifications for these contracts will be coordinated with the Office of Risk Management for recommendation as to the appropriate insurance coverage.
- (b) *Non-Construction Contracts.* The Contracting Officer shall include insurance and indemnification provisions in equipment, supply and service contracts in accordance with procedures established by the Office of Risk Management (RISK) and approved by the Chief Procurement Officer.

15 - CONTRACTOR RESPONSIBILITY AND DEBARMENT

15-1 PURPOSE AND SCOPE

This chapter establishes Authority procedures for the award of contracts to responsible contractors, procedures for determining responsibility and how information is obtained and used as a basis for a responsibility determination.

15-2 RESPONSIBLE PROSPECTIVE CONTRACTORS

- (a) Contracting Officers shall make purchases from and award contracts to responsible contractors and shall determine in writing (§15-8) that the prospective contractor is responsible, in accordance with the provisions of this Chapter. In the absence of information clearly indicating that the prospective contractor is responsible, the Contracting Officer shall make a determination of non-responsibility.
- (b) To be determined responsible, a prospective contractor shall meet all of the following requirements:
 - Financial resources adequate to perform the contract, or the ability to obtain them;
 - Ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
 - A satisfactory record of integrity and business ethics;
 - The necessary organization, experience, accounting and operational controls and technical skills, or the ability to obtain them;
 - Compliance with applicable licensing and tax laws and regulations. Contractors must certify if they have been notified of an unresolved tax lien or any unsatisfied federal tax delinquency in excess of \$3,000;
 - The necessary production, construction, and technical equipment and facilities, 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 subcontractor;
 - Compliance with the Disadvantaged Business Enterprise Program requirements, if applicable;
 - Record of past performance;
 - Compliance with public policy; and
 - Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

15-3 SPECIAL STANDARD OF RESPONSIBILITY

When necessary for a particular procurement or class of procurement, the

Contracting Officer shall develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards shall be developed 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.

15-4 APPLICATION OF WALSH-HEALEY ACT

- (a) The Contracting Officer shall investigate and determine, in accordance with §6-3 (f), whether the contractor is eligible to receive award under the Walsh-Healey Act (41 USC §35-45), and shall not rely on the contractor's representation, if either of the following apply:
- A protest of eligibility has been lodged in accordance with federal law and regulations; or
 - The Contracting Officer has reason to doubt the validity of the representation.
- (b) *Reject Offers.* The Contracting Officer shall reject: (1) offers from all proposers whose representation indicates that they are not manufacturers or regular dealers of the supplies offered; and (2) offers that qualify or place a reservation on the representation and stipulations to avoid full compliance with the act.
- (c) *Ineligible Apparent Successful Proposer.* If the Contracting Officer determines that an apparently successful proposer is ineligible, the following procedures apply:
- The proposer must be notified in writing that:
 - It does not meet the eligibility requirements and the specific reasons, therefore; and
 - It may protest the determination by submitting evidence concerning its eligibility to the Contracting Officer within 10 working days.
 - If, after review of the proposer's evidence, the Contracting Officer's position has not changed, the proposer's protest and all pertinent material shall be forwarded, by the Authority, to the Department of Labor (DOL), Administrator of the Wage and Hour Division, for a final determination.
 - If the Contracting Officer forwards the case to the DOL for review of eligibility, the award should normally be held in abeyance until the Contracting Officer receives a final determination from the DOL. However, see §15-4 (d) for circumstances that permit award pending final determination.
 - The Contracting Officer shall notify other proposers whose offers might become eligible for award when an award is being held in abeyance, and request them to extend their acceptance period, if necessary.
- (d) If the Contracting Officer has forwarded an proposer's eligibility case for review to the DOL under §15-4 (c), award shall be held in abeyance until the Contracting Officer receives a final determination from the DOL, except that award may be made immediately if the Contracting Officer certifies in writing, and the certification is approved by the General Manager, that:
- The items to be acquired are urgently required; or
 - Delay of delivery or performance by failure to make the award promptly will result in substantial hardship to the Authority.

(e) When an award is made, the Contracting Officer shall document the contract file to explain the need for making the award before a determination of the proposer's eligibility by the DOL, and give prompt written notice to the DOL of the decision to award, and as appropriate, to the protestor and other concerned parties.

15-5 APPLICATION OF OTHER RESPONSIBILITY STANDARDS

- (a) *Ability to Obtain Resources.* Except to the extent that a prospective contractor has sufficient resources or proposes to perform the contract by subcontracting, the Contracting Officer shall require, and the prospective contractor shall promptly provide, acceptable evidence of the prospective contractor's ability to obtain required resources. Acceptable evidence of the prospective contractor's ability to obtain resources, as specified in §15-2, shall consist of a commitment or explicit arrangement that will be in existence prior to the time of contract award to rent, purchase, or otherwise acquire the needed facilities, equipment, personnel or other resources. Consideration of a prime contractor's compliance with limitations on subcontracting shall take into account the time period or quantities plus option periods or quantities, if such options are considered when evaluating offers for award.
- (b) *Satisfactory Performance Record.* A prospective contractor that is or recently has been seriously deficient in like kind contract performance may be presumed to be non-responsible. The Contracting Officer may determine the contractor to be responsible if the circumstances of the prior deficiency were beyond the contractor's control or if the contractor has taken appropriate corrective action. Past failure to perform acceptably and failure to meet the quality requirements of the contract are strong factors to consider in determining satisfactory performance. The Contracting Officer shall consider the number of contracts involved and the extent of deficient performance in each like kind contract when making this determination.
- (c) *Affiliated Concerns.* Affiliated concerns and affiliates shall be considered a separate entity in determining whether the business that is to perform the contract meets the applicable standards of responsibility. However, the Contracting Officer shall consider an affiliate's past performance and integrity when they may adversely affect the prospective contractor's responsibility.

15-6 SUBCONTRACTOR RESPONSIBILITY

- (a) *General.* Except as provided in §15-7, a prospective prime contractor shall be accountable for determining the responsibility of prospective subcontractors. The prime contractor shall use the requirements and standards for responsibility set forth in this chapter.
- (b) When it is in the interests of the Authority, the Contracting Officer may independently determine a prospective subcontractor's responsibility, using the same standards and requirements for responsibility set forth in this chapter.

15-7 OBTAINING INFORMATION FOR DETERMINING RESPONSIBILITY

- (a) Before making a determination of responsibility, the Contracting Officer shall possess or obtain information sufficient to satisfy the applicable standards and requirements for responsibility set forth in this chapter.
- (b) The Contracting Officer shall obtain information regarding the responsibility of a prospective contractor who is the apparent low bidder or whose offer is in the competitive range. The prospective contractor shall promptly supply information requested by the Contracting Officer regarding its responsibility. If the prospective contractor fails to supply the information requested, the Contracting Officer shall make a determination of non-responsibility based upon the lack of available information.
- (c) The Contracting Officer shall use the following sources of information, listed in priority order to support responsibility determinations:
 - General Services Administration publication titled "System for Award Management" ("SAM"), formerly the "Excluded Parties List System." The results of the search must be printed and placed in the contract file;
 - Written records and experience data, including verifiable knowledge of Authority personnel, and other sources, i.e.: publications, suppliers, subcontractors, and customers of the prospective contractor, financial institutions, government agencies, and business and trade associations. Contract Administrators and other Authority personnel who become aware of circumstances casting doubt on a contractor's ability to perform a contract successfully shall promptly inform the Contracting Officer and furnish the relevant information in writing;
 - Information supplied by the prospective contractor, including bid or proposal information, questionnaire replies, financial data, information on production equipment and personnel information; and
 - Pre-award survey reports.

15-8 DETERMINATIONS AND DOCUMENTATION

- (a) *Determinations.* The Contracting Officer's execution of a contract shall constitute a responsibility determination for the prospective contractor with respect to that contract. When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, the Contracting Officer shall make, sign, and place in the contract file a determination of non-responsibility, which shall state the basis for the determination.
- (b) *Supporting Documentation.* Documents and reports supporting a responsibility determination, including any pre-award survey reports and applicable information pertaining to DBEs, shall be included in the contract file.
- (c) *Disclosure of Pre-Award Information.* Information, including the pre-award survey report, accumulated for purposes of a responsibility determination of a prospective contractor shall not be released or disclosed outside the Authority. The Contracting Officer may discuss pre-award survey information with the prospective contractor before determining responsibility. At any time after award, the Contracting Officer may discuss the findings of the pre-award survey with the company surveyed.

15-9 PRE-AWARD SURVEYS

- (a) *General.* The Contracting Officer may require a pre-award survey to assist in determining a prospective contractor's capability to perform a proposed contract. A pre-award survey is normally required when the information on hand or readily available to the Contracting Officer, including information from commercial sources, is not sufficient to make a responsibility determination.
- Before beginning a pre-award survey, the Contracting Officer shall ascertain whether the prospective contractor is debarred, suspended, or ineligible. If the prospective contractor is debarred, suspended or ineligible, the Contracting Officer shall not proceed with the pre-award survey.
 - The Contracting Officer shall not request a pre-award survey unless circumstances justify the cost of the survey. Normally, a pre-award survey will not be required if the contemplated contract will be \$10,000 or less, or will have a fixed price of less than \$100,000 and will involve only commercial products.
- (b) *Reports.* When a pre-award survey discloses unsatisfactory performance, the Contracting Officer shall determine the extent to which the prospective contractor plans, or has taken, corrective action.
- The pre-award survey report shall indicate any persistent pattern of need under prior contracts for costly and burdensome Authority assistance to the contractor (such as engineering, inspection, or testing) that were provided to protect the Authority's interests but not contractually required; and
 - The Contracting Officer shall prepare a narrative pre-award survey report that documents the results of the pre-award survey and provides support for both the evaluation ratings and the responsibility determination.

15-10 LIST OF EXCLUDED PARTIES

- (a) The System for Award Management ("SAM"), formerly the Excluded Parties List System must be consulted when determining whether a prospective contractor is responsible. The Contracting Officer shall consult the SAM before soliciting an offer from or consenting to a subcontract. (Go to www.sam.gov, in the Extracts and Data Access area click on the Public Data Access box to access any suspension or debarment information regarding the firm or individual you are seeking.)
- (b) The result of the System for Award Management search must be documented in the contract file.

15-11 DEBARMENT AND SUSPENSION

- (a) Debarment is an action taken by the Chief Procurement Officer to exclude a contractor from contracting or subcontracting for a reasonable period of time. Debarment should not exceed three years consistent with the seriousness of the offense.
- (b) Debarment and suspension are discretionary actions that are appropriate means to

effectuate these procurement procedures. The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Authority's protection, and not for purposes of punishment.

15-12 DEBARMENT AND SUSPENSION DEFINITIONS

- (a) "Adequate evidence" means information sufficient to support the reasonable belief that a particular act or omission has occurred.
- (b) "Affiliates" means business concerns, organizations or individuals are affiliates of each other if, directly, or indirectly; (a) either one controls or has the power to control the other; or (b) a third-party controls or has the power to control both. Indicia of control include, but are not limited to, interrelated management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity established following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended or proposed for debarment.
- (c) "Civil judgment" means a judgment or finding of a civil offense by any court of competent jurisdiction.
- (d) "Contractor" means any individual or other legal entity that:
 - Directly or indirectly (e.g., through an affiliate), submits proposals for or is awarded an Authority contract or subcontract; or
 - Conducts business with the Authority as an agent or representative of another contractor.
- (e) "Conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- (f) "Debarment", as used in this section, means action taken by the Chief Procurement Officer to exclude a contractor from Authority contracting or subcontracting for a reasonable period of time.
- (g) "Indictment" means indictment for a criminal offense. Any information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.
- (h) "Ineligible", as used in this section, means excluded from Authority contracting (and subcontracting, if appropriate) pursuant to statute, Executive Order, or regulatory authority and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations.
- (i) "Legal proceedings" means any civil judicial proceeding to which the Authority is a party or any criminal proceeding. The term includes appeals from such proceedings.
- (j) "System for Award Management", formerly the "Excluded Parties List System", means a list compiled, maintained, and distributed by the General Services Administration, containing the names of contractors debarred, suspended or proposed for debarment by agencies under the procedures of this subpart, as well as contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. The System for Award Management identifies those parties excluded throughout the U.S.

Government unless otherwise noted) from receiving federal contracts or certain subcontracts and from certain types of federal financial and nonfinancial assistance and benefits.

- (k) "Preponderance of the evidence" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- (l) "Suspension", as used in this section, means action taken by a suspending official to disqualify a contractor temporarily from Authority contracting and Authority approved subcontracting; a contractor so disqualified is "suspended."

15-13 EFFECT OF LISTING

- (a) Contractors debarred, suspended, or proposed for debarment or suspension are excluded from receiving contracts, and the Authority shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the General Manager determines that there is a compelling reason for such action. Contractors debarred, suspended or proposed for debarment or suspension are also excluded from conducting business with the Authority as agents or representatives of other contractors.
- (b) Contractors debarred, suspended, or proposed for debarment or suspension are excluded from acting as individual sureties.

15-14 CONTINUATION OF CURRENT CONTRACTS

- (a) *Continuing Existing Contracts.* Notwithstanding the debarment, suspension, or proposed debarment or suspension of a contractor, the Authority may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the General Manager directs otherwise. The type of termination action to be taken should be made only after review by the Contracting Officer, technical personnel, and Counsel, to ensure the propriety of the proposed action.
- (b) *Extending Existing Contracts.* The Authority shall not renew or otherwise extend the duration of current contracts, including the addition of new work and exercising contract options, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment or suspension.
- (c) *Placing Orders Against Existing Contracts.* For contractors debarred, suspended, or proposed for debarment or suspension, Program Offices shall not do the following:
 - Place orders exceeding the guaranteed minimum under indefinite quantity contracts; or
 - Place orders under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements.

15-15 RESTRICTIONS ON SUBCONTRACTING

When a contractor debarred, suspended, or proposed for debarment or suspension is proposed as a subcontractor for any subcontract subject to Authority consent, Contracting Officers shall not consent to subcontracts with such contractors.

15-16 DEBARMENT

- (a) *General.* The Chief Procurement Officer may, in the public interest, debar a contractor for any of the causes in §15-16 (c). The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision.
- (b) *Description.* Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The Chief Procurement Officer may extend the debarment decision to include any affiliates of the contractor if they are: (1) specifically named and (2) given written notice of the proposed debarment and an opportunity to respond. The Contracting Officer is responsible for initiating recommended suspension or debarment actions and obtaining concurrence of General Counsel.
- (c) *Causes for Debarment.* The Chief Procurement Officer may debar a contractor for any of the causes listed below:
- Conviction of or civil judgment for:
 - Commission of fraud or a criminal offense in connection with (A) obtaining, (B) attempting to obtain or (C) performing a public contract or subcontract;
 - Violation of federal or state antitrust statutes relating to the submission of offers;
 - Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion or receiving stolen property; or
 - Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of an Authority contractor or subcontractor.
 - Preponderance of the evidence for:
 - Violation of the terms of an Authority contract or subcontract so serious as to justify debarment, such as:
 - Willful failure to perform in accordance with the terms of one or more contracts; or
 - A history of failure to perform, or of unsatisfactory performance of one or more contracts
 - Any other cause of so serious or compelling a nature that it affects the present responsibility of an Authority contractor or subcontractor.

15-17 DEBARMENT PROCEDURES

- (a) *Notice of Proposal to Debar.* The Chief Procurement Officer must provide a written notice to the contractor proposed for debarment and its known affiliates by certified mail, return receipt requested. The Chief Procurement Officer shall coordinate with General Counsel and notify the General Manager and Board prior to the release of the written notice to the Contractor. The written notice of proposal to debar shall include the following information:
- That debarment is being considered;
 - The reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

- The cause(s) relied upon in §15-16 (c) for proposing debarment;
- That, within 30 days after receipt of the notice, the contractor must submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;
- The Authority's procedures governing debarment decision making;
- The effect of the issuance of the notice of proposed debarment; and
- The potential effect of an actual debarment.

(b) *Chief Procurement Officer's Decision.*

- In debarment actions not based upon a conviction or civil judgment, if it is determined that a genuine dispute over material facts exists, the Authority will do the following:
 - Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and
 - Make a transcribed record of the proceedings and make it available at cost to the contractor unless the contractor and the agency waive the requirement for a transcript.
- In actions in which additional proceedings are necessary as to the disputed material facts, written Findings of Fact shall be prepared. The Chief Procurement Officer shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.
 - The Chief Procurement Officer may refer matters involving disputed material facts to another official for Findings of Fact. The Chief Procurement Officer may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous;
 - The Chief Procurement Officer's decision shall be made after the conclusion of the proceedings with respect to disputed facts; and
 - In any action in which the proposed debarment is not based upon a criminal conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.
- In debarment actions based on a criminal conviction or civil judgment, or in which there is no genuine dispute over material facts, the Chief Procurement Officer will make a decision based on all the information contained in the administrative record and based on advice of the General Counsel.

(c) *Notice of Chief Procurement Officer's Decision.*

- If the Chief Procurement Officer decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by certified mail, return receipt requested. The notice shall: (i) refer to the notice of proposed debarment; (ii) specify the reasons for the debarment; and (iii) state the period of debarment; and
- If debarment is not imposed, the Chief Procurement Officer shall promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.

15-18 PERIOD OF DEBARMENT

- (a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, the debarment should not exceed three years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.
- (b) The Chief Procurement Officer may extend the debarment for an additional period, if the Chief Procurement Officer determines that an extension is necessary to protect the Authority's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures above shall be followed to extend the debarment.
- (c) The Chief Procurement Officer may reduce the period or extent of debarment, upon the contractor's request, supported by documentation, for reasons such as:
 - Newly discovered material evidence;
 - Reversal of the criminal conviction or civil judgment upon which the debarment was based;
 - Bona fide change in ownership or management;
 - Elimination of other causes for which the debarment was imposed; or
 - Other reasons the Chief Procurement Officer deems appropriate.

15-19 SCOPE OF DEBARMENT

- (a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with a contractor, may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
- (b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.
- (c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors, if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

15-20 SUSPENSION

- (a) *General.* The Chief Procurement Officer may in the public interest, suspend a contractor for any of the causes in §15-20 (e) below.
- (b) Suspension is a serious action to be imposed on the basis of adequate evidence, pending

the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Authority's interest. In assessing the adequacy of the evidence, the Authority should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports and correspondence.

- (c) The existence of a cause for suspension does not necessarily require that the contractor be suspended. The suspending official should consider the seriousness of the contractor's acts or omissions and may consider remedial measures or mitigating factors. A contractor has the burden of promptly presenting to the Chief Procurement Officer evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. The existence or nonexistence of any remedial measures or mitigating factors is not necessarily determinative of a contractor's present responsibility.
- (d) Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The Chief Procurement Officer may extend the suspension decision to include any affiliates of the contractor if they are: (1) specifically named, and (2) given written notice of the suspension and an opportunity to respond.
- (e) *Causes for Suspension.* Suspension is an action taken by the Chief Procurement Officer to be imposed on the basis of adequate evidence, pending the completion of an investigation or legal proceedings when it has been determined that immediate action is necessary to protect the Authority's interest. The Chief Procurement Officer may suspend a contractor suspected, upon adequate evidence of:
 - Commission of fraud or a criminal offense in connection with: (i) obtaining;
 - (ii) attempting to obtain; or (iii) performing a public contract or subcontract;
 - Violation of Federal or State antitrust statutes relating to the submission of offers;
 - Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
 - Commission of any other offense indicating a lack of business integrity or business integrity or business honesty that seriously and directly affects the present responsibility of an Authority contractor or subcontractor;
 - Indictment for any of the causes in bullets 1 - 3 above; or
 - The Chief Procurement Officer may upon adequate evidence also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of an Authority contractor or subcontractor.

15-21 SUSPENSION PROCEDURES

- (a) *General.* Following the imposition of suspension, contractors may submit, in person, in writing, or through a representative, information and argument to the Chief Procurement Officer in opposition to the suspension. In actions not based on indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension, the Authority shall:
 - Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and
 - Make a transcribed record of the proceedings and make it available at cost to the contractor unless the contractor and the Authority waive the requirement for a

transcript.

- (b) *Notice of Suspension.* When a contractor and any specifically named affiliates are suspended, they shall be immediately notified of the suspension by certified mail, return receipt requested. The notice of suspension will include the following information:
- That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities: (i) of a serious nature in business dealings with the Authority, or (ii) seriously reflecting on the propriety of further Authority; dealings with the contractor. Any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Authority's evidence;
 - That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;
 - The cause(s) relied upon for imposing suspension;
 - The effect of the suspension;
 - That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts; and
 - Those additional proceedings to determine dispute material facts will be conducted unless the action is based on an indictment.
- (c) *Chief Procurement Officer's Decision.*
- In suspension actions based on an indictment, or where the contractor's submission does not raise a genuine dispute over material facts, the Chief Procurement Officer's decision shall be based on all information in the administrative record, including any submission made by the contractor;
 - In actions in which additional proceedings are necessary as to the disputed material facts, written findings of fact shall be prepared. The Chief Procurement Officer shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record;
 - The Chief Procurement Officer may refer matters involving disputed material facts to another official for findings of fact. The Chief Procurement Officer may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous;
 - The Chief Procurement Officer's decision shall be made after the conclusion of the proceedings with respect to disputed facts;
 - The Chief Procurement Officer may modify or terminate the suspension or leave it in force; and
 - Prompt written notice of the Chief Procurement Officer's decision shall be sent to the contractor and any affiliates involved, by certified mail, return receipt requested.

15-22 PERIOD OF SUSPENSION

Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the Chief Procurement Officer.

15-23 SCOPE OF SUSPENSION

The Scope of Suspension shall be the same as that for debarment, except that the procedures of §15-21 shall be used to impose suspension.

15-24 CERTIFICATION REGARDING DEBARMENT OR INELIGIBILITY

- (a) The Contracting Officer will assure compliance with federal guidelines by requiring contractor and subcontractor certification regarding debarment or ineligibility.
- (b) When a proposer, in compliance with the provision entitled "Debarred or Ineligible Parties," indicates an indictment, charge, civil judgment, criminal conviction, suspension, debarment, proposed debarment, ineligibility or default of a contract, the Contracting Officer shall:
 - Request such additional information from the proposer as the Contracting Officer deems necessary in order to make a determination of the proposer's responsibility; and
 - Notify the Chief Procurement Officer prior to proceeding with award where a proposer indicates the existence of an indictment, charge, conviction or civil judgment.
- (c) Proposers who do not furnish such information as may be requested by the Contracting Officer shall be given an opportunity to remedy the deficiency. Failure to furnish the certification or such information may render the proposer non-responsible.

16 - COST AND PRICE ANALYSIS

16-1 PURPOSE AND SCOPE

- (a) *Cost/Price Analysis Requirement:* The Authority must perform a cost or price analysis in connection with every procurement action, including contract modifications/change orders. The method and degree of analysis is dependent on the facts surrounding the particular procurement. The extent of the analysis depends on the value and nature of the purchase order or contract. For example:
- For micro-purchases a determination that the price is reasonable **is required**, however, that determination can be based on the Contracting Officer's or designee's familiarity with the product or service, etc., and not require a detailed breakdown or analysis of the cost elements.
 - If the procurement is for standard commercial items sold in significant quantities to the general public, a price analysis is sufficient.
 - If the procurement is for services, then some breakdown of the price would be required to determine that the labor hours, rates, profit, etc., are reasonable.
 - All of the Authority's cost principles for the evaluation of proposed costs for Federally funded contracts shall be consistent with Federal cost principles.
- (b) *Cost/Price Analysis Purpose:* The purpose of cost or price analyses is to ensure that the Authority does not pay unreasonable prices for goods and services. Unreasonably low prices can be an indication that the bidder/proposer made a mistake or does not understand the work being solicited. It is important to do a cost-realism analysis of cost proposals submitted for cost reimbursement contracts that are to be competitively awarded in order to determine the viability of the various proposals. The cost-realism analysis prevents award of a contract to a contractor with an unrealistically low contract cost that may eventually result in an overrun of contract costs.
- (c) *Cost/Price Analysis Data:* Cost or pricing data submitted by a proposer or contractor enables the Authority to perform the cost or price analysis. Cost or pricing data means all facts that prudent buyers or sellers would reasonably expect to affect price negotiations. Cost or pricing data are factual, not judgmental, and may be verified. While the cost or pricing data do not indicate the accuracy of the proposer's or contractor's price proposal, they do include the data used in forming that proposal. Cost or pricing data are more than historical accounting data; they are all the facts that can reasonably be expected to contribute to the soundness of estimates of future costs and to the validity determination of costs already incurred. These factors include, but are not limited to:
- Vendor quotations;
 - Non-recurring costs such as manufacturing start-up costs;
 - Changes in production methods or purchasing volume;
 - Data supporting projections of business prospects and related operations costs;

- Unit cost trends;
 - Make versus buy decisions;
 - Estimated resources needed to attain business goals; and
 - Information on management decisions that could have a significant impact on costs.
- (d) *Independent Cost Estimate:* The starting point for every cost or price analysis is a detailed independent cost estimate. The cost estimate shall be prepared by the Program Office prior to the receipt of bids or proposals. Prior to issuing a solicitation, Contracting Officers or their designees must ensure that the Program Office has developed an independent cost estimate for the goods or services to be purchased or cause such an estimate to be developed. This estimate may, based on the complexity of the procurement, range from a simple budgetary estimate to a complex calculation based on an inspection of the item to be purchased including drawings, specifications, and prior cost data from previous procurements of a like or similar nature. The estimate can, and in many cases will, be the basis for the determination of reasonableness of the cost or price for the goods and/or services. If the solicitation requires that the bidder/proposer provide a breakdown of the costs of the goods and/or services to be purchased, the cost estimate must be to the same level of detail to allow for a comparison of the cost elements.

16-2 DEFINITIONS

- (a) *“Price Analysis”* A price analysis involves examining and evaluating a proposed price without evaluating its separate cost and profit elements. Price analysis is based on data that is verifiable independently from the bidder’s/proposer’s price or price data. Price analysis is used to verify that the overall price offered is fair and reasonable.
- (b) *“Cost Analysis”* Cost analysis is used to evaluate the reasonableness of individual cost elements. A cost analysis consists of the review and evaluation of the separate cost elements; the proposed profit of a proposer’s cost; or pricing data and the judgment factors applied in estimating costs. A cost analysis is generally conducted to form an opinion as to whether the proposed cost, including profit, represents what the performance of the contract should cost.
- (c) *“Federal Cost Principles”* Federal grant funds may only be used to pay for allowable costs when the contract is a cost-plus-fixed-fee contract or when a fixed price contract is negotiated on the basis of cost estimates submitted by the contractor. The term “allowable cost” is defined in the Federal Acquisition Regulation (“FAR”) Part 31 (48 CFR 31.201-2).

16-3 PRICE ANALYSIS

- (a) *General* A price analysis shall be used in a competitive solicitation and in situations where items are being procured which are sold in the commercial marketplace to the general public. (A commercially available item is any item,

other than real property, that is customarily used by the general public and has been sold or offered for sale, lease or license to the general public. This includes any items not yet available in the market such as the next or successor version of a currently commercially available item. As used in the context of this chapter, “used by the general public” includes those items offered for sale to all businesses within a given industry such as railroad ties which are sold to railroads, transit agencies and their contractors.) A price analysis is an evaluation of the bidder’s/proposer’s price relative to the prices being offered by other vendors and being paid by the general public for the same or similar items. The results of the price analysis must be completely documented and the results placed in the contract file.

- Price analysis is not appropriate for research and developmental items or one-of-a-kind items for which there is no basis for comparison.
- It is not necessary for the competing product(s) to be identical to the product being offered. However, the item must be comparable to the product being offered and the price differences between the products reconcilable. The Contracting Officer or designee must be able to make value judgments regarding the differences between the products offered that support paying a higher or lower price than that of the competing product.

(b) *Price Analysis Methods* The Contracting Officer is responsible for selecting and using the appropriate price analysis technique(s) to ensure a fair and reasonable price is paid by the Authority. The acceptable forms of price analysis techniques are as follows:

- Adequate price competition;
- Comparison to previous purchases;
- Prices set by law or regulation;
- Established catalog prices and market prices;
- Comparison to a valid independent cost estimate; and
- Value analysis.

Adequate price competition and comparison to previous prices are usually the preferred price analysis techniques.

(c) *Adequate Price Competition* Adequate price competition is generally considered one of the best price comparison methods because all bids/offers are submitted to meet the same requirement during the same time period. However, apparent competition may lead to prices that are unreasonably high. Conditions that may lead to apparent competition include bidders not acting independently, bids that are not technically compliant, restrictive specifications, firms submitting courtesy bids to remain on the bidders list. In cases where the solicitation will result in multiple awards, the price analysis should consider if there was sufficient competition in the market to encourage fair and reasonable pricing.

Adequate price competition requires the following conditions must be met:

- At least two responsible bidders/proposers respond with prices to the solicitation.
- Each bidder/proposer must be able to supply the goods or services that satisfy the requirements of the solicitation.

- The bidders/proposers must independently be in contention for award of the contract which will be to the lowest responsive and responsible bidder.
- Each bidder's/proposer's price offer must be responsive to the solicitation requirements.

If one bid/proposal is received in response to an IFB solicitation, adequate price competition exists if:

- There was a reasonable expectation that two or more responsible bidders, competing independently, would submit bids in response to the solicitation and if:
 - Based on the offer received, the Contracting Officer can reasonably conclude that the bid was submitted with the expectation of competition; and
 - The determination that the bid is based on adequate price competition, is reasonable, and is approved by the CPRO.

(d) *Comparison to Previous Purchases* Comparison to previous purchases is also a good price evaluation technique when all bids/offers are submitted to meet the same requirement (i.e., no change in the specified product or service since the previous purchase). However, comparisons to previous purchases must account for changes in quantity, quality, schedules, economic conditions, and non-recurring costs such as design, capital equipment, etc., as these factors can cause variations in price. Each differing situation must be analyzed. The previous price must be reviewed to ensure it was fair and reasonable based on a physical review of the documentation contained in the previous contract file. The price analysis must clearly demonstrate that the proposed price is reasonable when compared to current or recent prices for the same or similar items, adjusted to reflect changes in market and/or economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition. The written record of this comparison must be placed in the contract file.

(e) *Prices Set by Law or Regulation* The Authority must acquire a copy of the rate schedules set by law or regulation. Once these schedules are obtained, the Contracting Officer or designee must determine that the rate schedules apply to the Authority and that the Authority is being charged the appropriate amount. For utility contracts, this policy applies only to prices set by an effective, independent regulatory agency, and not an industry trade group or association.

(f) *Established Catalog and/or Market Prices* Established catalog prices must meet all of the following conditions:

- The established catalog price(s) exist.
- The item(s) are commercial in nature.
- The item(s) are sold in substantial quantities.
- The item(s) are sold to the general public.

Catalog pricing recognizes that a commercial demand exists and suppliers have emerged to meet that demand. The Contracting Officer or designee is trying to ensure that the Authority receives, at a minimum, the same price as other buyers in the market for these item(s). Contracting Officers or designees

must ensure that the catalog being referenced is not an internal pricing document prepared by the bidder/proposer. This requirement can be met by obtaining information on where or how the catalog is made available to the public. When performing a price analysis using a published price list the analysis must consider whether the published price is the best price. Contracting Officers or designees should obtain a copy of the catalog or catalog price list, or at a minimum, the page(s) on which the item(s) to be purchased appear.

Established market prices are based on the same principle as catalog prices, except no catalog exists. A market price is established in the normal course of business between buyers and sellers. These prices must be verified by buyers and sellers independent of the bidder/proposer. If the Contracting Officer or designee is unsure of the buyers and/or sellers in a particular market, the bidder/proposer may supply the information. The pricing information received from the independent buyers and sellers must be documented and placed in the contract file.

(g) *Comparison to a Valid Independent Cost Estimate* Contracting Officers or designees must verify the facts, assumptions and judgments used in creating the independent estimate. The estimator must provide the method and data used in constructing the estimate. The sources of this data must be verified and the Contracting Officer or designee must be satisfied with the development of the estimate before relying on the estimate as the basis for determining a price to be fair and reasonable. All determinations made and all sources relied upon in this comparison must be documented and the record placed in the contract file.

16-4 COST ANALYSIS

- (a) *General* Cost analysis is the review and evaluation of the separate cost elements and the proposed profit in a bidder's/proposer's proposal (including cost or pricing data or information other than cost or pricing data) and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming the contractor performs its work with reasonable economy and efficiency. Cost analysis techniques include:
- Verification of cost or pricing data and evaluation of cost elements;
 - Evaluating the effect of the proposer's current business practices on future costs;
 - Comparison of proposed costs with:
 - Actual costs incurred by the proposer;
 - Previous cost estimates from the proposer or other proposers;
 - Other cost estimates from other proposers; and
 - The Authority's independent cost estimate.
 - Analysis of subcontractor costs;
 - Verification that costs or prices based on estimated costs for contracts that are federally funded are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable under FAR Part 31 or other applicable standards; and
 - Verification that cost or pricing data is current, accurate and complete.

- (b) *Cost Analysis Data* Cost analyses are performed using cost or pricing data provided by the proposer. The cost or pricing data are more than historical accounting data; they are all of the facts that can reasonably be expected to contribute to the soundness of estimates of future costs and to the determinations of costs already incurred. They may also include such factors as:
- Vendor quotations;
 - Nonrecurring costs;
 - Information on changes in production methods and in production or purchasing volume;
 - Data supporting projections of business prospects and objectives and related operations costs;
 - Unit-cost trends such as those associated with labor efficiency;
 - Make-or-buy decisions;
 - Estimated resources to attain business goals; and
 - Information on management decisions that could have a significant bearing on costs.

- (c) **A COST ANALYSIS IS REQUIRED WHENEVER A PRICE ANALYSIS CANNOT BE PERFORMED.** A cost analysis entails the review and evaluation of the separate cost elements and the proposed profit of a bidder's/proposer's cost proposal. A cost analysis is conducted to determine the degree to which the proposed cost, including profit, represents what the performance of the contract should cost. A cost analysis is appropriate in the following situations:

- The product or service being offered cannot be evaluated against other commercially available items or similar products or services. Examples include procurements for professional services where no competing price proposals are submitted, as in procurements for architectural and/or engineering services where only one cost proposal is requested from the highest ranking firm, or sole-source procurements for other types of products or services.
- When change orders/modifications are issued requiring the contractor to do the work and whose cost can only be evaluated by examining the cost elements, such as labor, materials, travel, etc.

The Authority must prepare a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. The Authority must prepare a cost analysis when the proposer submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost. The Authority is also expected to prepare a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order.

- (d) A price analysis may be substituted for a cost analysis for purchases not exceeding \$10,000 using small purchase procedures. For purchases greater than \$10,000 but not in excess of \$250,000, using small purchase procedures, a cost analysis is required unless the Contracting Officer determines that:
- There is adequate pricing data to conduct a price analysis; or
 - The cost of performing a cost analysis will exceed the value of the product or service to be procured.

- (e) *Cost Analysis for Sole Source Contracts* For sole-source contracts, in the event the Contracting Officer cannot obtain cost data from the contractor sufficient to perform a cost analysis, despite repeated attempts to obtain the data, a price analysis may be performed to establish price reasonableness utilizing a suitable price analysis technique. The contract file shall document the Contracting Officer's attempts to obtain the cost data and the contractor's written refusal to furnish such cost data. (This is an exception to standard practice where in any other situation the result of taking an exception to the Authority's terms and conditions is a finding of non-responsiveness and elimination of the bid from consideration for award.)
- (f) *Record Requirement* The written cost analysis including all supporting documents shall be placed in the contract file.

16-4-1 COST REALISM ANALYSIS

General Cost realism analysis is the process of independently reviewing and evaluating specific elements of each proposal's cost to determine whether the proposed cost elements are:

- Realistic for the work to be performed;
- Reflect a clear understanding of the requirements; and
- Consistent with the unique approach of performance and materials described in the technical proposal.

Application to Cost Reimbursement Contracts Cost realism analyses should be performed on competitively awarded cost-reimbursement contracts to determine the probable cost of performance for each proposer. The approximate cost may differ from the proposed cost and should reflect the Authority's best estimate of the cost of any contract that is likely to result from the proposal. The probable cost is determined by adjusting each proposer's proposed cost to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis. The probable cost should be used for the best value determination.

Causes of Unrealistically Low Price Proposals If bids or proposals contain unrealistically low pricing, there are several possible causes:

- The bidder/proposer does not understand the contract requirements. This may be due to:
 - The specification or statement of work may not be clearly stated;
 - The bidder/proposer may be unfamiliar with the terminology used in the solicitation document;
 - The bidder/proposer underestimates the level of effort required to complete the work or the complexity of the work; and
 - The bidder/proposer did not properly coordinate between its staff preparing the technical and pricing elements of its bid or proposal.
- The bidder/proposer may understand the contract requirements, but submit an unrealistically low price in an effort to secure the contract award with the expectation of recouping its costs through:

- Unnecessary or excessively priced contract modifications; or
- Receive follow-on contracts at excessively high prices.

Cost realism analyses may be used to determine the responsibility of a bidder/proposer when, as a result of the analysis, the Contracting Officer believes the bidder/proposer did not fully understand the contract requirements, there are concerns about the quality of the contractor's performance, or past experience indicates that the contractor's proposed costs have resulted in quality or service deficiencies.

16-4-2 COST PROPOSALS

Cost analyses are typically associated with negotiated procurements, including modifications and change orders to existing contracts. In order to facilitate the evaluation of contractor proposals, cost proposal formats shall be set forth in the solicitation. This will ensure that all proposers submit proposals that can easily be compared to one another on a cost element basis. This approach will also facilitate the evaluation of proposals against the independent cost estimate and cost realism analysis.

16-4-3 TECHNICAL ANALYSIS

A technical analysis of the proposed types and quantities of labor, materials, special tooling, equipment, travel requirements, and other direct costs will be necessary. These analyses shall be performed by Authority staff with the appropriate technical background. At a minimum, the technical analysis should examine the types and quantities of material proposed and the need for the types and quantities of labor hours and the mix type of labor categories.

16-5 TOTAL COSTS

In determining what constitutes total contract cost, the Contracting Officer may consider any generally accepted method of determining costs that is equitable and consistently applied, including standard costs properly adjusted for applicable variances.

16-6 DETERMINING COST REASONABLENESS

- (a) *General* A cost is considered reasonable if it does not exceed the amount that would be incurred by a prudent person in the conduct of a competitive business. Reasonableness of specific costs must be carefully examined when a contractor is not subject to normal competitive pressures (i.e., sole-source procurements). Contracting Officers should not presume a competitive contractor's pricing is reasonable. If, following a review of contractor costs, the Contracting Officer challenges the reasonableness of an element of cost, the burden of proof for establishing the reasonableness of the cost falls on the

contractor.

- (b) *Reasonableness Considerations* The reasonableness of a cost is subject to a number of considerations, including:
- Whether the cost is the type of cost generally recognized as ordinary and necessary for conducting the contractor's type of business or performance of the contract;
 - Generally accepted sound business practices, arm's-length bargaining, and Federal and State law and regulations;
 - The contractor's responsibilities to the Authority, other customers, the owners of the business, employees, and the public at large; and
 - Any significant deviations from the contractor's established practices.

16-7 DIRECT COSTS

- (a) *General* Direct costs are any expense that can be traced directly to (or identified with) a specific process or product. Direct costs (such as for labor, material, fuel or power, subcontracts, and other direct costs such as special tooling or test equipment, travel and IT charges) vary with the rate of output but are uniform for each unit of production, and are usually under the control and responsibility of the contractor.
- (b) *Handling of Direct Costs* Direct costs of performing the contract shall be charged to the contract. For reasons of practicality, the contractor may treat any direct cost of a minor dollar amount as an indirect cost if the accounting treatment:
- Is consistently applied; and
 - Produces substantially the same result as treating the cost as a direct cost.
- (c) Examples of direct costs include:
- Salaries, wages, fringe benefits;
 - Express service for overnight delivery (e.g. Federal Express, US Postal Service Priority Mail, or UPS), freight, or messenger delivery when needed to transport project material or report(s) in a non-routine manner;
 - Postage for mailing a large quantity of questionnaires or research surveys to accomplish the goals of the project;
 - Printing to produce bound manuals or print project-related manuscripts and large reports. Duplicating, page charges, reprints, reference materials; and Computer hardware and software directly related to the project.

16-8 INDIRECT COSTS

- (a) *General* Indirect costs are any expense (labor overhead in manufacturing/production and engineering, material overhead, subcontract handling and general and administrative costs such as for advertising, general computing, maintenance, security, supervision) incurred in the normal course of business and, therefore, difficult to assign to or identify with a specific

contract, project, or program.

- (b) *Allocation/Grouping of Indirect Costs* After direct costs have been determined and charged directly to the contract being considered or any other contract work, indirect costs are those costs remaining to be allocated. If an indirect cost is incurred for the same purpose and in like circumstances as a direct cost, it cannot be allocated as an indirect cost.

The contractor shall accumulate indirect costs in logical groupings in consideration of the reasons for incurring the costs. The groupings shall permit all costs within the grouping to be allocated to the contract based on a like percentage.

Once the basis for grouping and allocating costs has been determined, the vendor shall not remove individual cost elements. However, the method for allocating indirect costs may require revision if there is a significant change in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances.

Separate cost groupings for costs allocable to offsite locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to several contracts.

Indirect costs must be allocated in the accounting period in which they were incurred and accumulated for allocation to work performed in the same period.

- (c) *Indirect Cost Examples* Indirect costs include:
- Administrative and clerical salaries, wages, fringe benefits, such as: fiscal officers, accountants, department administrators, administrative staff officers, secretaries, staff assistants;
 - Express service for routine delivery of project material or report;
 - Postage (routine correspondence NOT pertaining to sponsored project);
 - Printing, reproduction, photocopying NOT project-related;
 - Organizational Membership;
 - Books and Subscriptions;
 - Computer software and supplies (general purpose such as word processing, spreadsheet programs, diskettes, toner cartridges, printer paper);
 - General office supplies, paper, pencils, pens, transparencies, tablets, staples, files, folders, binders, etc.; and
 - Telephone charges – basic line charge, pagers, local calls, voice mail, (cellular phones unless project-related field work phone).

16-9 COST ANALYSIS TECHNIQUES

- (a) *Verification of cost or pricing data and evaluation of cost elements* It is necessary to verify the reasonableness of all proposed costs including any allowances for contingencies, and projections of the proposer's cost trends

using current or historical cost or pricing data or any other information. The Contracting Officer can also determine the reasonableness of costs using forward audited or negotiated indirect cost rates, labor rates and other factors. When performing a cost analysis you should consider and evaluate the reasonableness of the pricing elements as follows:

- Direct Labor:
 - Determine and analyze the methodology used by the proposer to arrive at its direct labor costs;
 - Determine any labor cost that does not appear reasonable (i.e., including labor charges for a structural engineer on an IT project, or an unusually high number of hours or an hourly rate(s) that are not consistent with current or recent known rates); and
 - Determine if there any direct labor costs that should be included as an indirect labor cost.
- Direct Material:
 - Determine and analyze the methodology used by the proposer to arrive at its material costs;
 - Determine any material cost that does not appear to be directly related to the work to be performed;
 - Determine if there any direct material costs that should be included as an indirect material cost; and
 - Pay special attention to any unusual or special materials or high-cost items.
- Subcontractor Costs:
 - Determine whether the prime contractor conducted any cost analysis of its subcontractor(s) and the thoroughness of the analysis including:
 - Review any fair and reasonable determinations of the subcontractor's price;
 - Determine if the subcontract is the result of adequate competition; and
 - Review the cost or price data provided by the subcontractor to the prime contractor.
 - Examine any make-buy analysis supporting the subcontracting decision process including:
 - Evaluation of the proposer's current and future capacity; and
 - Any cost analysis information.
- Other Direct Costs ("ODC"):
 - Determine if any ODCs should be an indirect cost;
 - Determine if any ODC duplicates or appears to duplicate any direct cost element;
 - Determine and analyze whether any ODC does not appear to be reasonable; and
 - Pay special attention to any ODCs that are unusual for the type of contract or are of a high cost.
- Indirect Costs:
 - Determine how indirect costs are allocated.
 - Examine the number and types of costs in the indirect cost pools; and
 - Determine the relationship between the cost pools and the direct costs.
 - Examine past and current trends between direct and indirect costs and analyze how well the proposed indirect costs fit the trend analysis;

- Determine whether the indirect costs are consistent and consistently applied;
 - Determine if the indirect cost elements are allowable under FAR Part 31; and
 - Determine the reasonableness of the indirect costs based on the above analyses.
- (b) *Evaluating the effect of the proposer's current business practices on future costs* The Contracting Officer must determine if the proposer's price includes any contingencies that compensate for past inefficient or uneconomical practices and ensure that those contingencies or other pricing methodologies are removed from the proposer's pricing. One method for determining whether the price is affected by past inefficiencies is to examine the cost of the product or service relative to changes in the cost of labor and/or materials. For example, if the prices for labor and material are relatively stable or changing at a small rate, the proposer's pricing should be stable or changing at a similar rate. The proposer's costs should not reflect a much greater rate of change.
- (c) *Comparison of proposer's price with other costs* The Contracting Officer must determine if the proposed cost is reasonable when compared with historical costs or previous or current cost estimates. When comparing the proposer's costs with the proposed price, the Contracting Officer must determine whether the price to be paid by the Authority would provide the proposer with a reasonable profit. Previous cost estimates from the proposer or other proposers for similar materials or services may also provide a basis for determining the reasonableness of the proposed price. Contracting Officers must be aware of significant changes in the requirements from the previous contract, previous market and/or economic conditions and must ensure those changes are factored into the reasonableness determination. Proposed pricing from competing proposers may also be used to determine cost reasonableness. Contracting Officers must consider differences in project approach and be diligent in any comparison to the costs and cost structure contained in other proposer's pricing. The Authority's Independent Cost Estimate may also be used to determine price reasonableness. However, when using this comparison, the Contracting Officer must ensure that the cost estimate is complete and unbiased.
- (d) *Analysis of subcontractor costs* When examining subcontractor costs, Contracting Officers should determine the capacity of the proposer to perform the work. If that capacity is lacking, then a determination of the subcontract pricing should compare the subcontract price with the cost for the same or similar work by other contractors. If the proposer is capable of performing the work, the subcontract pricing should be within reasonable economic limits of the likely price the proposer would charge for the work.
- (e) *Verification that the proposed costs are compliant with FAR Part 31 or other applicable standards* FAR Part 31 contains detailed information about allowable and unallowable costs. The following information identifies some allowable and unallowable costs as defined in FAR Part 31:
- *Generally Allowable Cost Elements:*
 - Bonding Costs;
 - Economic Planning Costs;
 - Labor Relations Costs;

- Materials Costs;
- Rental Costs;
- Training and Education Costs; and
- Transportation Costs.
- *Generally Unallowable Cost Elements:*
 - Bad Debts;
 - Contributions or Donations;
 - Entertainment Costs;
 - Fines and Penalties;
 - Lobbying and Political Activity Costs;
 - Alcoholic Beverage Costs; and
 - Research and Development Costs.

Many other cost elements have limited allowability. If there is any question about whether a contract cost is allowable, Contracting Officers must refer to FAR Part 31.

- (f) *Verification that cost or pricing data is current, accurate, and complete* The Contracting Officer shall verify to the best of their ability that the cost or pricing data is current, complete and accurate.

16-10 PROFIT/FEE

- (a) The Authority shall negotiate profit as a separate element of the price for each contract in which there is no price competition, and in all cases, where a cost analysis is performed. A written record of the negotiations shall be placed in the contract file.
- (b) To negotiate a fair and reasonable profit, consideration **MUST** be given to:
- The complexity of the work being performed;
 - The amount of risk borne by the contractor;
 - The contractor's investment;
 - The amount of subcontracting;
 - The quality of the contractor's previous record of performance; and
 - Industry profit rates in the surrounding geographic area for similar work.

16-10-1 WEIGHTED GUIDELINES FOR PROFIT MARGIN CALCULATIONS

Where profit is as an element of the overall contract price, with prime contractors or subcontractors, a reasonable profit will be negotiated using the following procedure as a guide. This procedure is also adaptable to the negotiation of profit for task orders and modifications.

16-10-2 RISK FACTOR MATRIX

Factor	Rate	Weight	Value
Degree of Risk	20		
Degree of Difficulty of the Work	15		
Magnitude of Project/Task/Modification	15		
Performance Period	15		
Contractor's Investment	5		
Authority Assistance	5		
Amount of Subcontracting	25		
	100		%

Based on the judgment of the Contracting Officer or designee, the applicable level risk associated with the circumstances unique to each contract award, task order, or modification shall be evaluated as indicated in the following sections. The weights assigned shall range from 0.03 (3%) representing little or no risk to 0.12 (12%) representing a high degree of risk. The value for each factor is obtained by multiplying the figure in the Rate column with the Weight percentage determined by the Contracting Officer or designee. The resulting percentages in the Value column are totaled represent the fair and reasonable profit for the contract award, task order, or modification.

16-10-3 DEGREE OF RISK

- (a) *General* This factor measures the degree of cost responsibility and associated risk that the prospective contractor will assume as a result of the contract type contemplated and considering the reliability of the cost estimate in relation to the complexity and duration of the contract. Determination of contract type would be closely related to the risks involved in timely, cost-effective, and efficient performance. This factor should compensate contractors proportionately for assuming greater cost risks.
- (b) *Assessment of Contractor Risk* The contractor assumes the greatest cost risk in a closely priced firm fixed-price contract under which it agrees to perform a complex undertaking on time and at a predetermined price. Some firm fixed price contracts may entail substantially less cost risk than others because the contract task is less complex or many of the contractor's costs are known at the time of contract, in which case the risk factor should be reduced accordingly. The contractor assumes the least cost risk in a cost-plus-fixed-fee, level-of-effort contract, under which it is reimbursed those costs determined to be allocable and allowable, plus the fixed fee.

In evaluating assumption of cost risk, Contracting Officers shall, except in unusual circumstances, treat time-and-materials, labor-hour, and firm-fixed-price, level-of-effort term contracts as cost-plus-fixed-fee contracts.

- (c) *Application of Weight Factor* If the contract, task order, or modification involves little or no risk to the contractor, the weight should be 0.03. As the degree of risk increases, the weight should increase up to the maximum weight of 0.12. Lump sum contracts, task orders, or modifications generally carry a higher degree of risk and the weight factor should reflect the higher degree of risk. Time and Materials contracts, task orders, or modifications generally carry little or no risk to the contractor and the weight factor should be near the low end of the scale. Level of Effort contracts, task orders, or modifications

are moderately risky, and would have a weight factor near 0.07.

- (d) Other factors that affect the degree of risk are:
- The availability of the required skills in the labor market;
 - Utilization of assigned personnel;
 - Nature of the work;
 - The nature of the work done by subcontractors;
 - The location where the work will be performed;
 - Reasonableness of the negotiated costs;
 - Amount of labor required to complete the work; and
 - Whether the profit negotiation is conducted before or after the work is performed.

16-10-4 DEGREE OF DIFFICULTY OF THE WORK

- (a) *General* This factor measures the complexity of the work and the resources required of the prospective contractor for contract performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities and technical assets can be expected to lead to efficient and economical contract performance. Work that lacks difficulty or complexity should carry a weighting factor of 0.03. Highly specialized or complex work should carry a weighting factor approaching 0.12. This factor is related to the Degree of Risk.
- (b) *Assessment of Contractor Risk* The following shall be considered in determining contractor effort, but they may be modified in specific situations to accommodate differences in the categories used by prospective contractors for listing costs:
- *Material Acquisition*. This is a measure of the managerial and technical effort needed to obtain the required purchased parts and material, subcontracted items, and special tooling. Considerations include:
 - The complexity of the items required;
 - The number of purchase orders and subcontracts to be awarded and administered;
 - Whether established sources are available or new or second sources must be developed; and
 - Whether material will be obtained through routine purchase orders or through complex subcontracts requiring detailed specifications. Profit consideration should correspond to the managerial and technical effort involved.
 - *Conversion Direct Labor*. This is a measure of the contribution of direct engineering, manufacturing, and other labor to converting the raw materials, data, and subcontracted items into the contract items. Considerations include the diversity of engineering, scientific, manufacturing labor skills required, and the amount and quality of supervision and coordination needed to perform the contract task.
 - *Conversion-related Indirect Costs*. This measures how much the indirect costs contribute to contract performance. The labor elements in the allocable indirect costs should be given the profit consideration they would receive if treated as direct labor. The other elements of indirect costs should be evaluated to determine whether they:
 - Merit only limited profit consideration because of their routine nature, or
 - Are elements that contribute significantly to the proposed contract.
 - *General Management*. This measures the prospective contractor's other indirect costs and

general and administrative (G&A) expense, their composition, and how much they contribute to contract performance. Considerations include:

- How labor in the overhead pools would be treated if it were direct labor;
- Whether elements within the pools are routine expenses or instead are elements that contribute significantly to the proposed contract; and whether the elements require routine as opposed to unusual managerial effort and attention.

(c) *Other factors to consider when evaluating the degree of difficulty of the work are:*

- The nature of the work;
- Who is performing the work;
- The work location; and
- The period of performance.

16-10-5 MAGNITUDE OF THE WORK

In general, the greater the dollar value of the work, the lower the weighting factor should be. Contracts, task orders and modifications valued at less than \$100,000 shall be weighted at 0.12. Work whose estimated value is greater than or equal to \$100,000, but less than \$1 million shall be weighted between 0.12 and 0.05 with higher dollar values garnering lower weighting factors. Work whose estimated value is greater than or equal to \$1 million, but less than \$5 million shall be weighted 0.04 and work whose estimated value is greater than or equal to \$5 million shall have a weighting factor of 0.03.

16-10-6 PERFORMANCE PERIOD

As the duration of the work increases, so does the risk to the contractor. Therefore, contracts, task orders, or modifications whose performance period exceeds one year are to be assigned a weighting factor of 0.12. Performance periods that are one month or less should be assigned a weighting factor of 0.03. Performance periods between one month and one year should be assigned a weighting factor proportionally. If profit is being evaluated for a contract modification that has no effect on the performance period (i.e., no contract time extension), the weighting factor should not be applied, and the value calculated shall be zero for this factor.

16-10-7 CONTRACTOR'S INVESTMENT

This factor evaluates the contractor's cost of capital. It should be weighted at 0.03 for contracts, task orders, or modifications where the contractor has little or no capital at risk. Where the contractor has an average amount of capital at risk, the weighting factor should be 0.07. If the contractor has a large amount of capital at risk, the weighting factor should be 0.12. Factors to consider in evaluating the level of contractor capital at risk are:

- Amount of subcontracting;
- Amount of payments to subcontractors in advance of payment by the Authority (retainage);
- Mobilization costs;

- Amount of Authority furnished resources (i.e., tools, equipment, office space, etc.)
- Lump sum versus progress payments.

16-10-8 AUTHORITY ASSISTANCE

The greater the amount of assistance provided by the Authority, the lower the weighting factor should be. Authority assistance that benefits the contractor and results in a lower weighting factor includes:

- The amount of support and supervision provided by the Authority;
- The amount of use of Authority-owned property, equipment, and facilities; and
- The level of expediting assistance provided.

16-10-9 AMOUNT OF SUBCONTRACTING

The weighting factor shall be inversely proportional to the amount of subcontracting under the contract, task order, or modification. The degree of support given by the prospective contractor to Federal socioeconomic programs, such as those involving minority owned business concerns, labor surplus areas, and energy conservation is also a consideration. Greater profit opportunity should be provided to contractors who have displayed unusual initiative in these programs. If 80% or more of the work is subcontracted, the weighting factor shall be 0.03. As the amount of subcontracting decreases the weighting factor should proportionately increase to 0.12 when all the work is performed by the contractor's own forces.

16-11 AUDIT ASSISTANCE

- (a) *When to Request Audit Assistance* Audit assistance **IS REQUIRED** whenever the value of a proposal is significant and the costs of obtaining the audit assistance do not outweigh the benefits. This applies to all cost reimbursement contracts whether they are operating or federal grants. Audit assistance for all other contracts may be sought at the discretion of the Contracting Officer. The CA is required to forward a written request for financial auditing services through their immediate supervisor to PRMT's Procurement Analyst for review and approval. The request shall include the bid/proposal along with the bidder's/proposer's cost or pricing data. The Audit Request Template shall be utilized for this purpose. The template is located under Common Forms on PRMT's webpage. The procurement record must be fully documented in the Cost/Price Analysis Section as it relates to the audit assistance received, a determination and justification by the Contracting Officer that the information contained in the audit will or will not be used in cost negotiations and a signature of acceptance, by one level above the Contracting Officer, that affirms the position taken by the CO in this regard.
- (b) *Financial Capacity Determinations* Small or mid-size firms may lack the financial resources to perform a large scope of work. Similarly, a large firm that is heavily leveraged may lack the financial capacity to perform the contract scope. Contracting Officers must consider the potential contractor's financial capacity when as part of a vendor responsibility determination prior to contract award. Dun and Bradstreet reports, among others, provide financial information on most firms; however, in the case of privately held firms this information may be missing, incomplete or dated. If the Contracting Officer or designee is in doubt regarding a firm's financial capacity to perform the requirements of the contract, financial capacity information (i.e., Z-score) can be submitted to the OIG Contract Audit Team for review prior to an award determination. When requesting audit assistance from the OIG Audit Team the following checklists must be completed and

submitted with the appropriate attachments as required:

Office of Inspector General
Pre-Award Audit Request Checklist

Items Need for OIG Review	Requester's Comments			Detailed Description of Requester's Comments (If Any)
	YES	NO	N/A	
1. A copy of the proposed contract, if possible or a brief description of the contract background.				
2. Contact information: name, position, office number, cell phone number, and email address.				
3. Three most current audited financial statements with footnotes, if possible.				
4. Bank confirmation letter of contractor's bank account balance.				
5. Current Line of Credit, if necessary.				
6. Contractor's management letter regarding internal controls.				

- (c) *OIG Audit Team Checklists* When requesting audit assistance from the OIG Audit Team the following checklists must be completed and submitted with the appropriate attachments as required.

- OIG Billing Rate Audit Request Checklist:

Office of Inspector General
Billing Rates Audit Request Checklist

Items Need for OIG Review	Requester's Comments			Detailed Description of Requester's Comments (If Any)
	YES	NO	N/A	
1. A copy of the proposed contract, if possible or a brief description of the contract background.				
2. Related parties contact information: name, position, office number, cell phone number, and email address.				
3. Contractor's proposed billing rates.				
4. Chart of accounts				
5. Organization chart: one for the company and one for the WMATA project.				
6. Internal control survey (attached)				
7. Contractor's management letter regarding the internal control.				

8. Most current two full years of the trial balance sheets.				
9. Current two years of financial statements (preferably audited) with foot notes attached.				
10. Most current statement of direct, indirect, and fringe benefits overhead calculation.				
11. Payroll registers (not certified payrolls) for the specified individuals: names, positions, and the location of the individuals.				
12. Payroll registers (not certified payrolls) for the specified individuals: names, positions, and locations.				
13. Two years payroll tax returns (sole proprietor and single member LLC)				
14. Schedule Cs (sole proprietor and single member LLC)				

- OIG Pre-Negotiation Audit Checklist:

Office of Inspector General

Pre-Negotiation Audit Request Checklist

Items Need for OIG Review	Requester's Comments			Detailed Description of Requester's Comments (If Any)
	YES	NO	N/A	
1. A copy of the proposed contract, if possible or a brief description of the contract background.				
2. Sole source determination and findings, if applicable.				
3. Bid schedule, if applicable.				
4. Related parties contact information: name, position, office number, cell phone number, and email address.				
5. Contractor's proposal.				
6. Copy of chart of accounts				
7. Copy of organization chart: one for the company and one for the WMATA project.				
8. Internal control survey completed by contractor (attached)				
9. Contractor's management letter regarding the internal control.				
10. Copy of trial balance for two most current years.				
11. Copy of financial statements (preferable audited) with foot notes for two most current years.				
12. Copy of statement of direct, indirect, and fringe benefits overhead calculation for most current year.				

13. Copy of most current payroll register (no certified payrolls) for the specified individuals: names, positions, and the location of the individuals.				
14. Labor pool: cost center, department, classification, etc. Union wages schedule				
15. Fringe benefits (detailed)				
16. Payroll burden: 941, 940 (FUTA), state(s) unemployment (SUTA) for most current full year.				
17. Equipment (itemized) Owned (attach depreciation schedule) or Rented (attach rental agreements)				
18. Materials (itemized)				
19. Purchased parts (itemized)				
20. Commercial parts (itemized) with descriptions and manufacture or product part numbers				
21. Supplies (itemized)				
22. Subcontractors (itemized)*				
Items Need for OIG Review	Requester's Comments			Detailed Description of Requester's Comments (If Any)
	YES	NO	N/A	
23. Other direct costs (itemized)				
24. Manufacture overhead (detailed)				
25. Indirect (field) overhead (detailed)				
26. Insurance policies: General, Umbrella, Workers compensation, and professional				
27. Insurance policies: General, Umbrella, Workers compensation, and professional Bonding documents				
28. Profit with risk factors				
29. Bonding documents				

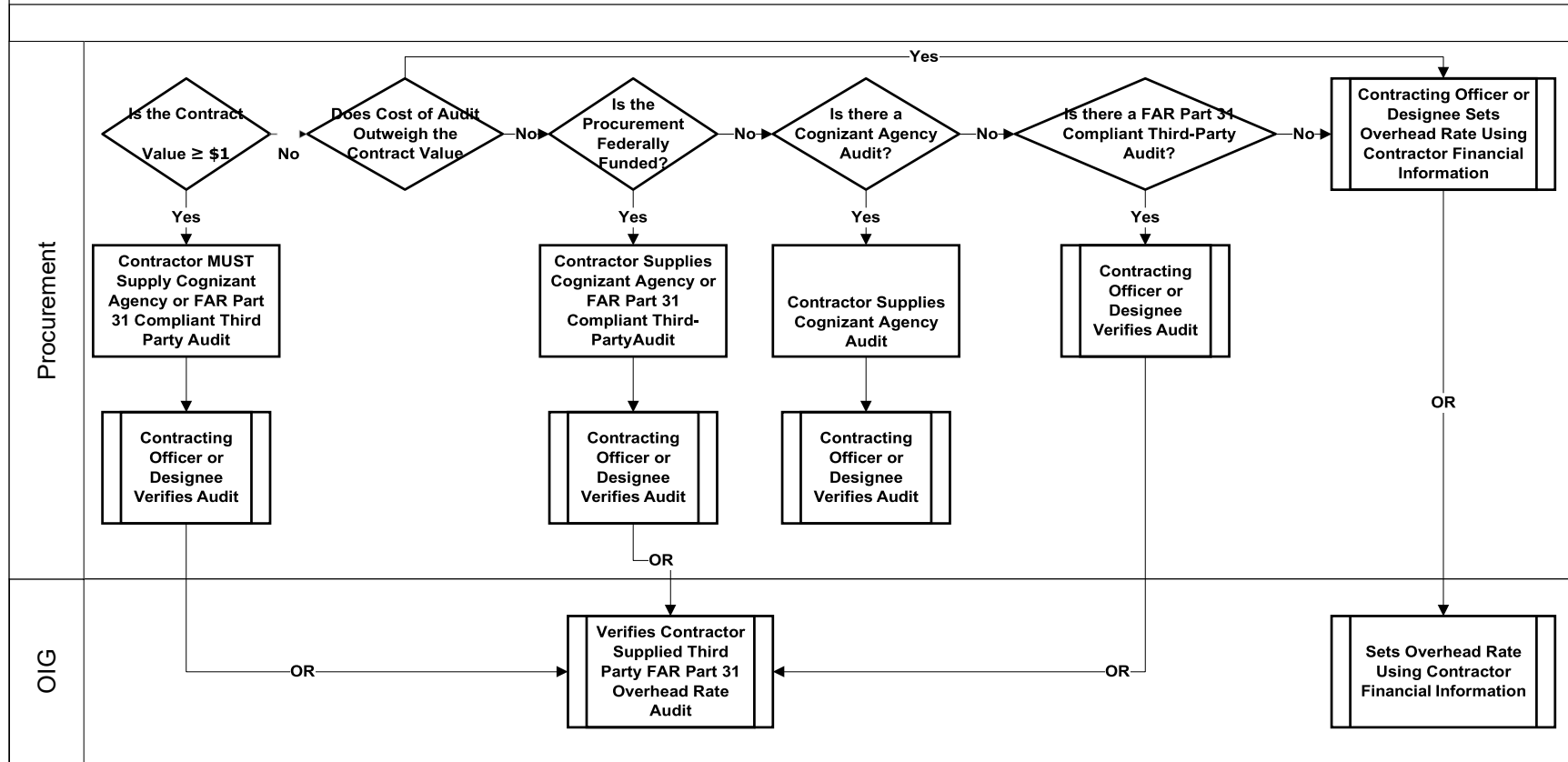
- O If requesting OIG Audit Team assistance with analysis of subcontractors, to the second tier, the Contracting Officer must provide the same information as for the prime contractor.

- (d) **Sources of Compliant Overhead Audits** If the proposer has performed work for Federal agencies, there may be a Federal agency audit, such as the Defense Contract Audit Agency ("DCAA") that can be contacted to obtain the latest available audit information regarding direct labor rates, indirect cost rates, and other pertinent costs. If there are no Federal audits, the Contracting Officer or designee should seek an audit by the proposer's independent audit firm that audits and certifies the contractor's latest financial statements. If the proposer's third-party auditor is utilized to obtain audit information on the proposer, the Contracting Officer or designee must ensure that the auditor followed the requirements of FAR Part 31 Cost Principles in its determination of allowable costs. The financial data for any subcontractors/subconsultants for whom financial data have been submitted to the

prime consultant shall also be evaluated.

- (e) *Audit Thresholds* The threshold for the conduct of an audit is as follows:
- For contracts valued at less than \$1 million: the contractor may provide a current FAR Part 31 compliant audit to be confirmed by audit, or, at the discretion of the Contracting Officer, the Contracting Officer or designee, or OIG Contract Audit Team will establish the overhead rate based on audited financial information provided by the contractor;
 - For contracts valued between \$1 million and \$5 million, the contractor must provide a current FAR Part 31 compliant audit performed by a Federal agency or the contractor's third-party auditor. (The audit will be subject to verification by the Authority.) If the contractor cannot obtain a FAR Part 31 compliant audit, the OIG Contract Audit Team will establish the overhead rate based on information provided by the contractor.
 - For contracts exceeding \$5 million, an audit must be performed by the Defense Contract Audit Agency, another federal audit agency, or an accounting firm approved by the Government to perform audits for the Government, in order to verify the contractor's rates.

Audit of Contractor Overhead Rate for Cost Reimbursement Contracts



16-12 ANALYSIS TEMPLATES

This section provides templates for the analysis of bidder/proposer/contractor costs or prices for specific situations. Contracting Officers or designees may utilize these templates or develop other similar templates for their use in performing a cost or price analysis. The completed analysis template or such other document must be placed in the contract file to document the cost or price reasonableness determination.

16-12-1 VERIFICATION OF LABOR BILLING RATES

Name or Position Title	Hourly Rate ¹	Overhead Rate ²	Total Labor Rate (Hourly Rate x Overhead Rate)	Profit Rate	Fully Loaded Rate (Total labor Rate x Profit Rate) ³	Is Fully Loaded Rate Within Approved Contract Rates? (Y or N) ⁴

¹ Billing rates are based on the payroll register

² Based on Current Approved Overhead Rate

³ (Total Labor Rate x Profit Rate) Based on Negotiated Profit Rate for the Contract

⁴ Comparisons of Fully Loaded Labor to Approved Contract Rate. If the Rate is Not Within Approved Rates, Payment Cannot be Authorized.

16-12-2 COST ANALYSIS FOR PROFESSIONAL LABOR RATES

- (a) *General* This template may be used to determine the cost reasonableness of professional labor rates. Comparisons should be based on actual hourly rates. Overhead and profit should not be included in this comparison.

Labor Category	Proposed Hourly Rate	Customer 1	Customer 2	Customer 3	Customer 4	Customer 5	Customer 6

- (b) *Basis of Comparison* The comparison should be made on the basis of hourly rates for similarly skilled individuals. (For example, for information technology contracts, a senior level programmer's hourly rates should not be compared to a junior level programmer.) Contracting Officers or designees should obtain as many customer references as possible from the

proposer for comparison. In the event the proposer provides limited information, the comparison can also be made utilizing hourly rates from current or previous contracts for services of a similar nature, provided the appropriate inflation factors are applied. If unable to obtain comparable pricing data from either the proposer or other Authority contracts, GSA or other published hourly rates may be utilized. The Contracting Officer must identify the source(s) for the comparable rate information.

16-12-3 COST ANALYSIS FOR MATERIAL OR EQUIPMENT

- (a) *General* This template may be used to determine the cost reasonableness of material or equipment purchases. Profit should not be included in this comparison.

Description	Quantity	Cost Per Unit	Extended Cost	Customer 1	Customer 2	Customer 3	Customer 4

- (b) *Basis of Comparison* Comparisons should be based on like material or equipment in similar quantities only. The comparison must also take into account whether the items to be supplied under the contract are commercially available off-the-shelf ("COTS") or are specifically configured for Authority use. This template can be utilized for comparisons of material, equipment, software, etc. Contracting Officers or designees must be aware of quantity differences, customization, and degree of customization, etc., that will limit the degree to which costs may be compared. If a customized product is being analyzed, the cost should be analyzed such that the cost of the product and the cost of customization are examined separately to the extent possible. That analysis would likely include both labor and non-labor components.

16-12-4 SUBCONTRACTOR/SUBCONSULTANT COST ANALYSIS

Cost analyses for subcontractor/subconsultant labor and material/equipment costs can be accomplished using the appropriate templates in the preceding subsections. Subcontractor/subconsultant overhead and profit rates are subject to the same analysis and audit requirements as prime contractors. Contracting Officers or designees must utilize the thresholds included in Section 16-11 above.

16-12-5 OTHER DIRECT COSTS

- (a) *General* Other Direct Costs include costs for travel, costs for material, or supplies purchased by the contractor or subcontractor(s) specifically for use during the contract, or for services specifically utilized to provide deliverable(s) to the Authority such as printing and/or reproduction costs. These purchases may also include computer hardware and software, or other similar equipment specifically purchased for the contract work. Costs are typically reimbursed based on actual amounts expended and require the contractor to document its

efforts to obtain the lowest price for the goods or services.

- (b) *Basis for Comparison* The analysis for these costs should be based on prices normally paid for similar products or services. Travel expenses should be compared to established per diem rates established by Federal Agencies.

17 – PROTESTS

17-1 OVERVIEW

- (a) A protest is a written objection by an interested party to any of the following:
 - 1. A solicitation to contract for the procurement of property or services.
 - 2. The cancellation of the solicitation or other request.
 - 3. Notice of award or intent to award a contract.
- (b) A protest shall not be permitted in connection with the proposed award of (i) small purchases at or below the Simplified Acquisition Threshold or (ii) any task or delivery order under an Indefinite Delivery / Indefinite Quantity (IDIQ) or Multiple Award Task Order Contract (MATOC), except as expressly authorized elsewhere.
- (c) Protests must be submitted to the Contracting Officer.
- (d) The Contracting Officer will review the written objection for compliance with the requirements of this Chapter. The Contracting Officer shall promptly dismiss any written objection that does not meet the requirements of form or timeliness and will notify the sender of the reasons for the dismissal. The Contracting Officer has discretion to waive any deficiency found within the protest when in the best interests of WMATA.
- (e) *Definitions.* As used in this Chapter:
 - “Interested party” means any WMATA registered vendor who:
 - is an actual or prospective offeror in the procurement involved; and
 - has a direct economic interest in the award or of the contract.
 - “Day” means a calendar day. In computing any time-period, the day of the act or event from which the designated period of time begins to run is not included; the last day in the period is included unless it falls on a Saturday, Sunday or Federal holiday, in which case the period shall conclude on the next business day.

17-2 FORM OF THE WRITTEN OBJECTION

- (a) Protests shall be concise and logically presented to facilitate review by the Contracting Officer. Protests shall include the following information:
 - Solicitation or contract number;
 - Name, email address, telephone numbers or other contact information of the protester;
 - All information establishing the protester as an interested party;
 - All information establishing the timeliness of the protest;
 - A detailed statement of the legal and factual grounds for the protest;
 - Copies of any relevant documents or other evidence supporting the protest;
 - Description of the resulting harm or prejudice from WMATA’s action;

- Statement as to the form of relief being requested, including whether the protester requests a stay of contract award or performance; and
 - Request for a Protest Decision.
- (b) The initial protest submission should be complete and include all the supporting documentation which the protester wishes the Contracting Officer to consider. The Contracting Officer may issue the decision on the protest based upon the initial protest submission without requesting further information. If necessary, the Contracting Officer may request additional information from the protester where the Contracting Officer determines it would be in WMATA's best interests.
- (c) The protest submission may reference any source of relevant legal authority that supports the objection, including decisions of the Government Accountability Office ("GAO"), U.S. Court of Federal Claims, or a Federal district court, when deemed persuasive.

17-3 TIMELY RECEIPT OF PROTESTS

- (a) Protests based on alleged improprieties within the solicitation must be received by the WMATA Contracting Officer before bid opening or the closing date for receipt of proposals.
- (b) In all other cases, protests must be received within fourteen (14) calendar days of when the protestor knew, or should have known, of the facts or circumstances giving rise to the protest, including but not limited to:
- The cancellation of a solicitation or award;
 - Notice of exclusion from the competitive range;
 - Notice of an unsuccessful bid or proposal;
 - Notice of intent to award a contract; and
 - Completion of a debriefing to the protestor.
- (c) Any protest that is not received by the Contracting Officer within the applicable time frame set forth in this section shall be dismissed as untimely, unless the Contracting Officer determines it to be in WMATA's interest to further consider the protest.

17-4 PROHIBITED BASIS FOR PROTEST

- (a) *Small Purchase Awards.* Contracts awarded for amounts below the Simplified Acquisition Threshold shall not be subject to any agency protest procedures and are deemed denied.
- (b) *IDIQ Contract Awards.* An IDIQ contract awardee shall not be deemed an interested party withstanding to protest an award to another offeror under the same IDIQ contract.
- (c) *Contract Administration Issues.* Protests involving issues of contract administration shall not be subject to any agency protest procedures and are deemed denied.

- (d) *Disputes Involving Subcontractors.* Protests involving disputes by a subcontractor shall not be subject to any agency protest procedures and are deemed denied. A subcontractor to an offeror shall not be an interested party, as defined within this chapter.

17-5 AUTHORITY REVIEW OF PROTESTS

- (a) *Receipt of Timely Written Objection.* Upon receipt of a complete written objection in proper form, and that is timely, the Contracting Officer will acknowledge the protest and provide an estimate for when the Contracting Officer intends to issue the decision on the protest. The Contracting Officer shall issue the decision on the protest no later than sixty (60) days of receipt of the protest, unless the Contracting Officer determines that additional time is necessary.
- (b) *Requests for a stay of contract award or performance.*
1. WMATA is not a federal agency and is not required to stay any activity upon the receipt of a protest, including but not limited to the receipt or evaluation of proposals, the award of a contract, or the performance of an awarded contract. The filing of a protest with the Contracting Officer shall not result in any automatic stay of procurement activity.
 2. Where a protest includes a request that WMATA to stay contract award or performance pending the Contracting Officer's resolution of the protest, the Contracting Officer shall consult with the CPRO and provide a recommendation to the CPRO based on the Contracting Officer's assessment of relevant factors such as the likelihood that the protest will be successful, the balance of the harms to WMATA and the protester, and the availability of suitable alternatives. The decision to issue a stay of contract award or performance shall be based on the best interests of WMATA and is within the sound discretion of the CPRO.
 3. The Contracting Officer shall determine whether it is appropriate to obtain a cost estimate from the WMATA program office or project manager to assess the potential impact of the requested relief. This estimate, if prepared, shall inform the Contracting Officer's recommendation on whether to grant a stay and will be furnished to the CPRO.
- (c) *Conference with Interested Parties.* Where the Contracting Officer determines that it would be beneficial to resolution of the protest, the Contracting Officer may conduct a conference with the protester and may include other interested parties, as appropriate.
- (e) *Release of Information.* The Contracting Officer must not disseminate or allow the loss or compromise of any proprietary or confidential information from bids/proposals, or WMATA source selection information while a protest is pending. Consequently, any request for information related to the subject matter of the protest, including parallel requests under the WMATA Public Access to Records Policy (PARP), will be suspended until the protest is fully resolved.

17-6 PROTEST DECISION

- (a) *Written Decision.* The Contracting Officer shall issue a written final decision within sixty (60) days of receiving a protest, unless the Contracting Officer determines that additional time is necessary. Additional time may be necessary where, for example, the protest is complex or the Contracting Officer determines that additional information or proceedings are necessary. If the Contracting Officer determines that additional time will be needed, the Contracting Officer shall inform the protester in writing of the date by which the Contracting Officer expects to issue the decision on the protest.
- (b) *Notification to FTA.* The Contracting Officer will notify the FTA of any protest of a procurement involving federal funds and advise the FTA of the status and the resolution thereof in accordance with Circular 4220.1F, Chap. VII, Sec. 1.a(2), or as amended.
- (c) The Protest Decision is conclusive and will exhaust all administrative remedies at WMATA.
- (d) Legal action, if permitted, contesting WMATA's decisions is governed by the Washington Metropolitan Area Transit Authority Compact, Pub. L. No. 89-774, 80 Stat. 1324 (1966), as amended. Nothing herein or in any WMATA communication shall be construed as a waiver of any immunity from suit.

17-7 APPEAL OF AGENCY PROTEST DECISIONS TO THE FTA

- (a) *Exhaustion of Administrative Remedies.* Availability of FTA review of protests of WMATA procurement decisions is described in FTA Circular 4220.1F, as may be updated from time to time. Nothing herein or in the FTA Circular shall be construed to define WMATA as a federal agency.
- (b) *Withholding of Award.* Appeal to the FTA will not result in an automatic stay of award.

17-A APPENDIX TO CHAPTER 17

- (a) General Form of Notice of Receipt

Dear Vendor,

Your correspondence of [date] has been received and reviewed in accordance with the Agency Protest procedures of Chapter 17 of the WMATA Procurement Guiding Principles Manual.

Pursuant to section 17-2, your written objection must be complete with all required information to allow for a Protest Decision. Your written objection has been found to be [sufficient / insufficient] for a final decision. [if insufficient, itemize deficiencies]

Pursuant to section 17-3, a written objection must be timely. Your written objection is therefore [timely / untimely] because [describe basis for timeliness determination]. Normally, a decision shall be forthcoming within sixty (60) days of receipt. Given the relative complexity of this matter, you may expect a decision no later than [date].

/Signed/

Contracting Officer

I have reviewed the recommendation of the contracting officer and determined that a stay of proceedings pending a resolution in this matter [shall / shall not] occur.

/Signed/

Chief Procurement Officer

- (b) General Form of the Protest Decision finding merit:

Dear Vendor,

[Recitation of relevant facts bearing on the decision]

[Recitation of relevant regulatory requirements]

[Application of relevant facts to regulatory requirements]

I have therefore determined that your protest has merit. The Authority intends to take the following corrective actions:

This is a final decision of the Contracting Officer.

/Signed/

Contracting Officer

- (c) General Form of the Protest Decision for denial:

Dear Vendor,

[Recitation of relevant facts bearing on the decision]

[Recitation of relevant regulatory requirements]

[Application of relevant facts to regulatory requirements]

I have therefore determined that your protest lacks merit. Based on the foregoing, the instant protest is denied.

Availability of FTA review of protests of WMATA procurement decisions is described in FTA Circular 4220.1F, as may be updated from time to time. Nothing herein or in the FTA Circular shall be construed to define WMATA as a federal agency. Legal action, if permitted, contesting WMATA's decisions is governed by the Washington Metropolitan Area Transit Authority Compact, Pub. L. No. 89-774, 80 Stat. 1324 (1966), as amended. Nothing herein shall be construed as a waiver of any WMATA immunity from suit.

This is a final decision of the Contracting Officer. We appreciate your interest in WMATA's procurement program and look forward to your future participation on other occasions.

/Signed/

Contracting Officer

cc: FTA Regional Administrator, Region III

18 - CONTRACT COMPLIANCE AND ADMINISTRATION

18-1 PURPOSE AND SCOPE

This Chapter defines the Office of Procurement and Materials (“PRMT”) and Contracting Officers’ roles, responsibilities, and authorities in the compliance and administration of Authority contracts.

18-2 AUTHORITY AND RESPONSIBILITY

- (a) *Definition.* Contract administration is the process of managing and enforcing compliance to the terms of a contract through such actions as modification to the contract, evaluating performance and progress, monitoring contract deliveries, inspections, approval of payments, and closeout.
- (b) *Authority.* The Chief Procurement Officer (“CPRO”) may delegate the responsibility for contract administration functions to Authority employees. Delegation of responsibilities shall be in writing and the employee shall be furnished a copy of the delegation (§18-21). The CPRO shall appoint a Compliance Officer with responsibility for conducting audits of procurement activities to determine compliance with applicable laws and procedures.
- (c) *Responsibility.* In accordance with §2-6, the Contracting Officer is responsible for the legal, technical, and administrative sufficiency of Authority contracts.
- (d) The Contracting Officer shall ensure that the supplies, services, or construction procured under each Authority contract conform to the quality, safety, and quantity requirements of the contract, including inspection, acceptance, warranty, and any other measures associated with quality assurance. The Contracting Officer shall be responsible for the following quality assurance requirements:
 - Ensuring that each contract includes inspection and test and other quality requirements, including warranty and reliability clauses when appropriate, which are necessary to protect the Authority's interest;
 - Ensuring that contract quality assurance is conducted by the Authority or under the direction of Authority personnel before acceptance;
 - Ensuring that no contract precludes the Authority from performing inspection, test, or other pertinent quality assurance measures;
 - Ensuring that nonconforming supplies, services, or construction are rejected;
 - Obtaining any quality plan specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies, services, or construction from the Program Office responsible for the technical requirements; and
 - Including in the solicitation and contracts the necessary Quality Assurance requirements to ensure the contractor's control of quality for the goods, services or construction being procured by the Authority.

18-3 CONTRACT AWARD APPROVAL

- (a) *Management Approval.* Specific guidance regarding the approval of construction contract change orders is included in P/I 8.6/3.
- (b) *FTA Approval.* The Authority is self-certified by Federal Transit Administration (FTA) and may process federally assisted procurement actions for award, without prior review and concurrence of FTA. FTA retains the right to require concurrence on a case-by-case basis whenever a matter of primary federal concern is involved.
 - The Authority's self-certification status does not waive its responsibility to conform to statutory requirements such as Buy America waivers, bid protests filed after final action by the Authority, and matters of contract administration which impact Federal concerns.
 - FTA review and concurrence is required in proposed claim settlements before using Federal funds in the following instances:
 - When insufficient funds remain in the approved grant to cover the settlement; or
 - Where a special Federal interest is declared because of program management concerns, possible mismanagement, impropriety, waste or fraud.

18-4 PRE-AWARD ORIENTATION

- (a) Contracting Officers are responsible for deciding whether a pre-award orientation in any form is necessary. If determined necessary, the pre-award orientation of prospective contractors and subcontractors shall be conducted through a conference.
- (b) If a pre-award orientation is conducted, it shall be to assist both the Authority and contractor personnel to achieve a clear and mutual understanding of all contract requirements and identify and prevent potential problems.
 - A pre-award orientation shall not be a substitute for the contractor's full understanding of the work requirements at the time offers are submitted, nor shall it be used to alter the final agreement arrived at in any negotiations leading to contract award.
- (c) *Guidelines for Use of Pre-award Orientation.* When deciding whether pre-award orientation is necessary and, if so, what form it shall take, the Contracting Officer shall consider, among other factors:
 - Prior discussions with the contractor;
 - The type, value and complexity of the contract;
 - The complexity and acquisition history of the product or service;
 - Requirements for spare parts and related equipment;
 - The urgency of the delivery schedule and relationship of the product or service to critical programs;
 - The length of the planned production cycle;
 - The extent and nature of subcontracting;
 - The contractor's performance history and experience with the product or service;
 - Safety precautions required for hazardous materials or operations; and

- Complex financing arrangements (i.e., Lease-Buy Back).

18-5 POST-AWARD CONFERENCE

- (a) *Post-Award Conference Arrangements.* For the same purposes as described in §18-4 for pre-award orientation, if the Contracting Officer decides that a post award conference is needed, the Contracting Officer shall be responsible for:
 - Establishing the time and place of the conference;
 - Preparing the agenda;
 - Notifying appropriate Authority representatives;
 - Notifying appropriate contractor representatives;
 - Designating or acting as chairperson;
 - Conducting a preliminary meeting of the Authority personnel; and
 - Preparing a summary report of the conference.
- (b) *Pre-Construction Meetings.* It is the policy of the Authority to conduct a "pre-construction meeting" with all construction contractors before the work under a construction contract begins.
- (c) *Post Award Conference Procedures.* The chairperson of the conference shall conduct the meeting.
 - The meeting should provide key members of both organizations an opportunity to establish lines of communication and authority and identify their respective duties and responsibilities. Discussions may also cover specific projects plans, specifications, safety requirements, unusual conditions and completion schedules. A thorough understanding of equal employment regulations, civil rights requirements, and other pertinent features of the contract will promote better relations and usually improve construction operations.
 - The Contracting Officer may make commitments or give directions within the scope of the Contracting Officer's authority and shall put in writing and sign any commitment or direction. Participants without authority to bind the Authority shall not take actions which alter the contract in any way.
- (d) *Post Award Conference Report.* The chairperson shall prepare and sign a summary report of the post award conference, including all information and guidance provided to the contractor. The report shall cover all items discussed, the names of the participants assigned responsibility for further actions, and the due dates for the actions. The chairperson shall furnish copies of the report to the Contracting Officer, the contractor, and others who require the information.

18-6 CONTRACT EXECUTION BY THE AUTHORITY

In accordance with §2-6 (b), contracts may be entered into and signed (executed) on behalf of the Authority only by Contracting Officers after review by COUN for legal sufficiency. The file documentationshould include the signature of the reviewing counsel. The Contracting Officer's name and official title shall be typed, affixed or printed on the contract. The Contracting Officer shall generally sign the contractafter it has been signed by the contractor. However, if circumstances warrant, the Contracting Officer may elect to issue notice of award to allow time for submission of required contract documents prior to execution of the contract.

18-7 CONTRACT EXECUTION BY CONTRACTORS

The following contract signatures by the contractor are required:

- (a) *Individual.* A contract with an individual shall be signed by that individual;
- (b) *Individual Doing Business As.* A contract with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's typed, stamped, or printed name and the words "an individual doing business as" [insert name of firm];
- (c) *Partnership.* A contract with a partnership shall be signed in the partnership name by a general partner with authority to bind the partnership. The Contracting Officer, before signing for the Authority, shall obtain a list of all general partners and ensure that each person signing for the partnership has authority to bind the partnership;
- (d) *Corporation.* A contract with a corporation shall be signed in the corporate name, followed by the word "by" and the signature and title of the person authorized to sign for the corporation;
- (e) *Joint Venturer.* A contract with a joint venturer may involve any combination of individuals, partnerships, or corporations. The contract shall be signed by each participant in the joint venture in the manner set forth in this section. When a corporation is participating in a joint venture, the Contracting Officer shall obtain from the corporation secretary a certificate stating that the corporation is authorized to participate in the joint venture; and
- (f) *Agent.* When an agent is to sign a contract, the agent's authorization to bind the principal shall first be established by evidence satisfactory to the Contracting Officer.

18-8 CONTRACT DISTRIBUTION

The Contracting Officer shall distribute, or cause to be distributed, copies of contracts or modifications within ten working days after execution by all parties, including, at a minimum, to the contractor and to the Program Office requesting the supplies or services.

18-9 AUTHORITY CONTRACT FILES

- (a) General.
 - The head of each Program Office performing contracting or contract administration functions shall establish files containing the records of all contractual actions pertinent to that office's responsibility.
 - The documentation in each contract file maintained by the procurement office shall be sufficient to constitute a complete history of the transaction for the following purposes:
 - Providing a complete background as a basis for the decisions made at each step of the procurement process;
 - Supporting actions taken;
 - Providing information for reviews and investigations; and

- Furnishing essential facts in the event of litigation.
 - Files to be established include, but are not limited to:
 - A file for cancelled solicitations;
 - A file for each contract; and
 - A separate Contracting Officer's Technical Representative or Contracting Officer's Representative file.
- (b) Contract Files.
- A contract file generally consists of:
 - The procurement office contract file that documents the basis for the procurement and the award, the assignment of contract administration (including payment responsibilities), and any subsequent action taken by the contracting office;
 - The contract administration contract file that documents actions reflecting the performance of contract administration responsibilities; and
 - The Program Office contract file that documents actions prerequisite to substantiating and reflecting contract payments.
 - Normally, each file should be kept separately; however any or all of the files may be combined.
 - Files shall be maintained at organizational levels that ensure:
 - Effective documentation of contract actions;
 - Ready accessibility to principal users;
 - Minimal establishment of duplicate and working files;
 - Safeguarding of confidential documents; and
 - Conformance with any procedures for file location and maintenance.
 - A central file system is established to ensure the ability to locate contract files.
 - Bid or proposal information and source selection information must be protected from disclosure to unauthorized persons.
 - The Authority may retain contract files in any medium (paper, electronic, etc.), or any combination of media, provided the requirements of this section are satisfied.

18-10 CONTRACT MODIFICATIONS

- (a) Contracting Officers or authorized representatives, acting within the scope of their delegated contract authority, are authorized to execute a contract modification on behalf of the Authority. All other Authority personnel are prohibited from taking any of the following actions:
- Executing contract modifications;
 - Acting in a manner that causes a contractor to believe that they are authorized to bind the Authority; or
 - Directing or encouraging a contractor to perform work that should be the subject of a contract modification.
- (b) COUN must review and approve modifications incorporating price increases greater either than \$250,000 or 10% of the contract price. Notwithstanding this threshold, program offices should seek COUN review of any modification about which it has a concern or question.
- (c) *Bilateral or Unilateral Modifications.* A contract modification may be either bilateral or

unilateral.

- *Bilateral modifications* are signed by the contractor and the Contracting Officer, or an authorized representative acting within the scope of his/her authority. Bilateral contract modifications may be used to:
 - Make negotiated, equitable adjustments resulting from the issuance of a change order;
 - Formalize a letter contract; or
 - Reflect other agreements of the parties to modify the terms of the contract, (e.g., a supplemental agreement for work outside the scope of the contract).
- *Unilateral modifications* are signed only by the Contracting Officer, or an authorized representative acting within the scope of his/her authority. Unilateral contract modifications may be used to:
 - Make administrative changes, such as correction of typographical errors or funding information;
 - Issue change orders;
 - Make changes authorized by a provision of the contract other than a Changes clause, such as an option; or
 - Issue a termination notice.

- (d) *Cost Estimate and Pre-negotiation Objective.* A contract modification, pursuant to the changes clause, shall be priced and an independent cost estimate shall be prepared by the Program Office before signature by the parties. The Contracting Officer will require that written pre-negotiation objectives be established for contract modifications in excess of \$250,000 and may require that re-negotiation objectives be established for modifications at lower amounts. If a no cost contract modification is issued, the Contracting Officer or an authorized representative shall justify, in writing, the reasons for the issuance of the no cost modification.

If a change or modification (1) calls for essentially the same type and mix of work as the basic contract and (2) is of relatively small dollar value compared to the total contract value, the Contracting Officer may use the basic contract's profit or fee rate as the pre-discussion position for that change or modification.

- (e) *Modifications Effecting Funding Levels.* The Contracting Officer or an authorized representative shall not execute a contract modification that causes or will cause an increase in the funding level of the contract without having first obtained an approved purchase requisition.
- (f) *Review of Modifications.* Contract modifications for construction contracts shall be reviewed as required by P/I 8.6/3.
- (g) *Additional Work or Work Outside of the Scope of the Contract.* The Authority shall not be responsible for any costs incurred unilaterally by a contractor for any additional work, or other actions by a contractor, outside the scope of the written contract and written contract modifications signed by the Contracting Officer. A contractor shall not rely upon any written or oral statements or directions of employees or agents of the Authority other than the Contracting Officer for authority to perform work, alter schedules or specifications, or any other action that would normally require a written contract modification. (See §18-12 for additional information regarding out-of-scope changes.)

- (h) *Responsibility to Negotiate.* The Contracting Officer may assign responsibility for negotiation of contract modifications to Contract Administrators. Assigned contract administrators shall also monitor the construction contract modifications negotiated by Contracting Officer's Representative (COR) authorized pursuant to P/I 8.6/3.

18-11 CHANGE ORDER REQUIREMENTS

18-11.1 CHANGES CLAUSE IN SOLICITATIONS AND CONTRACTS

- (a) The Contracting Officer (CO) shall include a standard Changes clause in each solicitation and contract. Each Changes clause may be modified during negotiations.
- (b) Each Changes clause shall be specific to the type of contract being solicited or executed and shall include provisions for adjustments in contract price, delivery schedules, and other contract terms that are appropriate to the type of contract. The Contracting Officer must issue a written change order when a change can be accomplished within the provisions of the Changes clause.

18-11.2 EQUITABLE ADJUSTMENT NEGOTIATIONS

- (a) *Negotiation Meetings.* Face-to-face contract negotiations are to be conducted at Authority locations. Exceptions to this policy may be approved by the Chief Procurement Officer.
- (b) *Negotiations and Written Documentation.* The CO shall negotiate an equitable adjustment resulting from a change order in the shortest practicable time. Negotiation shall consider the effects of both the addition of scope and the deletion of scope on the contract. The contract modification that reflects the parties' agreement to an equitable adjustment shall include the price effect of both additions and reductions on scope resulting from the change. If the CO is unable to accomplish a timely settlement to equitably adjust the contract for an Authority issued change, consideration should be given to issuing a multi-part and/or unilateral change order followed by a contractor claim.
- (c) A written memorandum shall be prepared to record the results of the negotiations. A summary of negotiations shall set forth the agreement between the parties on major issues (e.g., price, delivery, performance time, and payment terms) and any special provisions to be included in the contract. The memorandum shall explain the differences between the negotiated price adjustment and the Authority Independent Cost Estimate or the negotiation position. When there are numerous differences involving significant sums, a tabular format may be used to show the price differences and the differences must be explained in the narrative accompanying the tabulation. The CO shall meet with OMBS to document funding availability. When funding is available, the CO determines the final negotiated price

for the changed work.

- (d) A contract modification which reflects an equitable adjustment in the contract price is subject to review in accordance with the dollar value of the adjustment and as prescribed by §18-10 (e). When the price settlement reflected by the contract modification includes both price increases and decreases, the level of review required for approval of the modification shall be determined based on the absolute dollar value, which means the sum of all price increases and decreases, disregarding whether individual amounts are debits or credits. (For example, a \$100 increase + \$400 decrease = \$500 absolute dollar value.)
- (e) If the CO issues a unilateral change order, the CO and the contractor must execute a separate bilateral modification reflecting the resulting equitable adjustment in contract terms. If the CO and the contractor agree in advance to an equitable adjustment in the contract price, delivery terms, and/or other contract terms, the CO must enter into a bilateral contract modification. After the CO issues a change order, the contractor shall continue performance of the contract as changed.
- (f) The Contracting Officer shall ensure that a cost analysis is made, in accordance with Chapter 16 of these procedures.

18.11.3 CHANGE ORDER PROCESS

See also Policy Instruction (P/I) 8.6/3 in the WMATA Policy Instruction Manual Contracts and Procurement Section for the Change Order Process. The Change Order Process shall not be used for claims processing. For claims, refer to Section 19.0 in this BPM.

- (a) WMATA Directed Changes
 - (i) The purpose of the change order process is to outline the actions necessary to record, document, and process identified changed conditions to the contract. All contract changes regardless of whether they are initiated by the Contractor or directed by the Authority must be documented, monitored and processed to ensure funding availability and that the changed work is not commenced before written authority is given by the CO or his/her delegated representative.
 - (ii) WMATA Initiated Change: The Contracting Officer Representative (COR) shall review the proposed change and verify that the work requested is indeed a change to the contract. To understand the scope of the change the COR shall seek the support of the Designer and other WMATA Departments.
 - (iii) The Contracting Officer Representative (COR) shall:
 - Document the original contract requirements and establish the details

- of what is being changed;
- Document the reason for the change:
- Summarize the full scope of the change and potential impacts of time and cost on the performance of remaining contract work;
- Meet with the Office of Management and Budget to document funding availability for the change. If there is no funding available for the changed work, the COR must provide in writing to the Contractor that funding is not available and work must not begin for the changed work. Note: because all projects are subject to the availability of funding, the Contractor performs work at the risk of not being paid if he performs work after being notified that funds are not available.
- Provide a clear recommendation with supporting documents to his/her supervisor for the proposed action on the change.
- Complete the change order work authorization form A and forward to the Contracts Support Group for Submission to the Change Control Board.
- If the Contractor is given permission to perform the changed work by an unauthorized person and this was not a critical situation as described in P/I 8.6/3, the COR must begin the ratification process for requesting payment for work completed. Refer to Section 2.8 for Ratifications.

(b) Change Control Board (CCB)

- (i) The CCB is comprised of WMATA employees from the Departments of: System Safety & Environmental Management (SAFE), Office of Management and Budget Services (OMBS), Office of Procurement and Materials (PRMT), Office of the General Counsel (COUN), and Program Director (PROG) that is the end user for the contract. The PRMT Contracting Officer (CO) shall be the Chairperson of the CCB. Only the Contracting Officer (CO) of PRMT and representative from OMBS approve the change order work authorization form A. The other members of the Board operate in an advisory capacity only.
- (ii) The CCB meets once per week if there are change order forms for review. The CCB reviews the change order forms and determines whether the Authority should approve the requested change and obligate the Authority to costs and/or time associated with the change. This is implied by the written approval of the signatures from PRMT and OMBS. Approval of a pending contract change via the change order form A grants the COR authority to issue the pending change via the change order form B to the Contractor to sign and for pricing.
- (iii) If necessary and funding is available, the change order form B may be issued with a Limited Notice to Proceed (LNTP) work on the pending change as specifically directed by the Authority. A LNTP shall include a time for performance ceiling up to ninety (90) days maximum, and a payment ceiling up to fifty percent (50%) of the total cost for the changed work. In addition, the contractor must notify the Contracting Officer or his delegated representative when they have rendered services equivalent to fifty percent (50%) of the LNTP payment ceiling. A LNTP is considered an exception. An executed Modification supersedes the LNTP.
- (iv) After the CCB approves the change order work authorization form A and there

is available funding for the change, the COR may begin formulating the Modification package. Refer to Section 18- 10 on Modification. The Authority's Project Team shall finalize all requirements for modification within ten (10) days of the approved change order form A.

(v) Rejection of the change order form A:

- The Board Chair may require that a change order form A be edited to reflect decisions made during the CCB meeting prior to approving the change order form A. The staff shall fully document all edits and may present the revised change order work authorization form A at a future CCB meeting.
- If the requested change is not within the general scope of the contract, or is not within the project budget, and/or project contingency, the change order form A shall be denied by the CCB and shall be referred to the appropriate Management approval level via the Directors of the PROG office (end user) with a recommendation for further action.

18-12 OUT OF SCOPE CHANGES (“TAG-ON”)

- (a) *General.* A “Tag-On” is the addition of work (supplies, equipment, or services) that is beyond the scope of the original contract. FTA considers a “tag-on” an “out of scope change” or “cardinal change.” FTA Circular 4220.1F prohibits tag-ons to federally funded awards.

- The Changes clause (§18-11) contained in Authority contracts authorizes the Contracting Officer or authorized representatives who have been delegated contract authority by the Chief Procurement Officer, to make changes at any time by written order within the “general scope” of the contract, without using the procedures required for a new procurement. An “out of scope” contract change is a change that is beyond the scope of the contract and cannot be modified under the contract's Changes clause unless the out-of-scope change is supported by a sole source D&F and the contractor agrees to the out-of-scope change. (See subsection (c)).

Contracting Officers and other Authority employees delegated contract authority by the Chief Procurement Officer who sign contract modifications under the authority of the Changes clause are responsible for ensuring that the change is within the general scope of the contract. When in doubt, the Contracting Officer or other Authority employee delegated contract authority by the Chief Procurement Officer shall request a legal opinion from the Office of General Counsel (“COUN”) as to whether the proposed change is within the scope of the contract.

- (b) *Determine Whether Changes are “In” or “Out” of Scope.* There is no definitive test for determining whether a change is “within the general scope of the contract,” because every situation in which parties enter into a contractual relationship is unique. The facts and circumstances for every situation must be analyzed individually giving just consideration to the magnitude of the changes ordered and their cumulative effect upon the project as a whole. Whether changes are beyond the scope of the contract is usually determined by comparing the total work performed by the contractor to the work called for by the original contract. Below are some guidelines to consider when determining

whether a change is within the scope of the contract. Certain guidelines may be more applicable to construction, supply, service, or task order contracts.

- *Nature of work.* Is the work to be performed essentially the same work as the parties bargained for when the contract was awarded? If the function or nature of the work as changed is generally the same as the work originally called for, the changes are within the general scope.
 - *Scope of the original competition.* Is the change *within the scope of the original competition*, (i.e., what the bidders/proposers should have anticipated to be within the scope of the solicitation)? An important factor to be considered is "whether the original solicitation adequately advised bidders/proposers of the potential for the changes during the course of the contract that in fact occurred or whether the modification is of a nature which potential bidders/proposers would reasonably have anticipated under the Changes clause."
 - *Major changes in quantity* of the work have been held to be outside the scope of the original competition. This principle applies to both additive and deductive changes. Major additions in the quantity should be processed as new competitive procurements. Large reductions in quantity should be processed as contract termination actions.
 - *Changes granting additional time to perform* the work are generally within the scope of the original competition.
 - *Collateral impacts of change.* Does the cumulative impact of the change alter the nature of the item being procured? For example, a change in specification from a gasoline to a diesel driven heater was outside the scope because the change required substantial alteration of other components: (1) it substantially increased the heater's weight; (2) added an electrical starting system; (3) required a redesigned fuel control; (4) required a redesigned combustor nozzle; (5) altered the performance characteristics; (6) increased unit price by 29%; and (7) doubled the delivery schedule.
 - *Number of changes.* The number of changes is not a determining factor as to whether the changes cumulatively are within scope.
 - *Time of issuance.* The time of issuance of the changes has not been considered a factor. However, a contract cannot be executed contemplating a change.
- (c) Any out-of-scope contract change must be processed as a sole source procurement or competitively solicited.

18-13 ORDERING PROCEDURES

- (a) *Approach.* Individual orders shall clearly describe all services to be performed or supplies to be delivered so the full total cost or price for the performance of the work can be established when the order is placed. Orders shall be within the scope of the contract, shall be issued within the period of performance, and shall establish a maximum dollar value or fixed price beyond which the contractor is not obligated to perform without its agreement.
- (b) *Orders under Multiple Award Contracts.*
- Orders exceeding \$10,000 but less than \$5 million should be placed on a competitive basis that includes providing a fair notice of the intent to make a purchase, a clear description of the supplies or services to be procured, and the basis upon which the selection will be made. Cost or price will be one factor in the selection decision. Other

factors may include the contractor's particular qualifications for the work, schedule and contractor availability, past performance, the contractor's description of how it would accomplish the work, and minimum order requirements. All contractors should have a fair opportunity to submit an offer and have that offer fairly considered. The Authority will have broad discretion to select the awardee. The basis for award for the order shall be documented. Formal evaluation plans or scoring of quotes is not required.

- *Orders exceeding \$5 million.* For task or delivery orders in excess of \$5 million, Contracting Officers must provide a clear statement of the Authority's requirements, a reasonable response period, a disclosure of the significant factors and subfactors, including cost or price that the agency expects to consider in evaluating proposals and their relative importance. Contracting Officers may consider past performance on earlier orders, potential impact on other orders, and minimum order requirements.

(c) *Exceptions to the Fair Opportunity Process.* The Contracting Officer need not compete a requirement if:

(1) the Authority's need for the supplies or services is so urgent that a competition would result in unacceptable delays; (2) only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized; (3) the order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order; or (4) it is necessary to place an order to satisfy a minimum guarantee. Where an exception is invoked, the Program Office must provide a justification in writing that is approved by the Chief Procurement Officer and General Counsel.

(d) Orders placed under Job Order Contracts must follow the multiple-award ordering procedures in this section, unless, despite reasonable efforts, only a single JOC award could be made. The Authority will provide a scope of work and fixed price offers shall be based on that scope of work.

- (1) The Authority will not make an award to a contractor where it appears that performance of the award would make the contractor unable to meet its annual 20% self-perform requirement.
- (2) Before competing an order for more than \$1 million under the JOC program, the Authority will discuss in a meeting of the Procurement Review Committee to determine whether that procurement is appropriate for the JOC program or should be procured separately in a full and open competition. That determination should reflect the purposes of the JOC program as described in Section 4-13(c), and should consider whether the JOC contractors have the expertise to self-perform or effectively supervise subcontractors in performing the work.
- (3) Relevant questions to be asked are:
 - whether the work to be performed is the type of miscellaneous and unpredictable work for which the JOC was created and is within the IDIQ scope task order;

- whether the task is sufficiently substantial and the likelihood of a significant price savings so great, that the Authority's best interests are served by
 - conducting a stand-alone procurement; and whether the need is sufficiently immediate so as to preclude a separate procurement.
- (e) The documentation for the order must include the following: (1) an independent cost estimate; (2) a determination that the price is fair and reasonable; and (3) the inclusion of all required federal clauses.

18-14 SUSPENSION OF WORK/STOP ORDER

Situations may occur during contract performance causing the Contracting Officer to order a suspension of work. Category Managers, the Deputy Chief Procurement Officer or the Chief Procurement Officer may also issue work stoppages if the assigned Contracting Officer is not available. The actions listed below may be taken by the Contracting Officer as authorized by the Stop Work Order clause.

- The Contracting Officer may order the contractor, in writing, to suspend, delay, or interrupt any or all of the contract work for the period of time determined appropriate.
- If the performance of all or any part of the work of this contract is delayed or interrupted: by a specified stop work order, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by the delay or interruption, and the contract shall be modified in writing accordingly.

18-15 CONTRACT TERMINATION

- (a) All Authority contracts exceeding \$10,000 must contain provisions enabling the Authority to terminate such contracts for the convenience of the Authority. These provisions shall specify the manner in which such termination will be affected and the basis for settlement. There shall also be included in such contracts appropriate provisions specifying causes for which the contracts may be terminated for default. Termination settlement proposals in excess of \$100,000 are subject to audit by the OIG.
- (b) *Termination for Convenience of the Authority.*
- The Contracting Officer may, when the interests of the Authority so require, terminate a contract, in whole or in part, for the convenience of the Authority. The Contracting Officer shall give written notice of the termination to the contractor, based on written recommendation from the Program Office, specifying the part of the contract terminated and when termination becomes effective.
 - The Termination for Convenience of the Authority clause prescribed for use in fixed price supplies, services and construction contracts is included in the Authority's General Provisions for Supply, Service and Construction Contracts.
 - The Contracting Officer will attempt to negotiate a no-cost settlement with the contractor. Otherwise, the Contracting Officer will negotiate an appropriate settlement agreement with the contractor pursuant to the provisions of the Termination for Convenience clause of the contract.

(c) *Default.*

- *Construction Contracts.* The Default clause prescribed for use in fixed-price construction contracts is entitled "Default" and is included in the "General Provisions and Standard Specifications for Construction Projects."
- *Contracts for Supplies and Services.* The prescribed Termination for Default clause for contracts for supplies and services is included in the Authority's General Provisions for Supply and Services Contracts.
- If a contractor's right to proceed is terminated for default, the Authority may take over and complete the work or cause it to be completed, and the contractor and his sureties, if any, shall be liable to the Authority for any increased costs caused. The contractor and his sureties shall, in addition to increased costs in completing the work, be liable for liquidated damages or for actual damages if liquidated damages are not so provided.
- If the Contracting Officer determines that the contractor's failure to perform arises from causes which are excusable under the terms of the contract, the Contracting Officer shall not terminate the contractor's right to proceed. Neither shall damages (liquidated or actual) be imposed on the contractor because of any delays occasioned by such causes.
- Where the surety does not complete performance of the contract, the Contracting Officer normally will complete the performance of work by awarding a new contract based on the same plans and specifications. Such award may be the result of competitive bidding or negotiation, whichever procedure is most appropriate under the circumstances. The Contracting Officer must use reasonable diligence to obtain the lowest price available for completion and with the assistance of COUN, shall pursue any results under the contract against the surety.
- If the Contracting Officer determines that termination is not in the best interest of the Authority although the contractor is in default, the Contracting Officer may permit the contractor to continue the work, and the contractor and his sureties shall be liable to the Authority for damages (liquidated or actual) as specified in the contract. If a Contracting Officer in a supply and service contract accepts late delivery, the Contracting Officer generally waives the Authority's right to seek any actual damages for late delivery.

18-16 LIQUIDATED DAMAGES

- (a) The Contracting Officer must consider the potential impact on pricing, competition, cost and difficulties of contract administration, and similar matters before including a liquidated damages clause in contracts. A liquidated damages clause should only be used when:
- The time of delivery or timely performance is so important that the Authority may reasonably expect to suffer damages if the delivery or performance is delinquent; and
 - The extent or amount of damages would be difficult or impossible to ascertain or prove. Liquidated damage provisions must be stated clearly in the solicitation.
- (b) Liquidated damages are not punitive nor are they negative performance incentives. Liquidated damages are used to compensate the Authority for probable damages.

Therefore, the liquidated damages rate must be a reasonable forecast of just compensation for the harm that is caused by late delivery or untimely performance of the particular contract.

- Liquidated damages shall not be fixed without reference to probable actual damages and shall be established on a unit of time and amount basis. The assessment for damages shall be established at a specific rate per day, or another period of time, for each day or other unit of time beyond the contractor's delivery date or performance period. A unit of measurement other than time may be used, if appropriate, such as weight requirements in a rolling stock procurement. The procurement file must include a record of the calculation and rationale for the amount of damages established;
 - The Contracting Officer may use more than one liquidated damage rate when probable damage to the Authority is expected to change over the contract period of performance;
 - The Contracting Officer shall determine a reasonable rate of liquidated damages on a case-by-case basis, and shall set the rate of liquidated damages based on the recommendations and justifications provided by the Program Office initiating the procurement request and the Contracting Officer's assessment of all applicable factors;
 - The Contracting Officer shall document the justification of the rate of liquidated damages in the contract file and shall take all reasonable steps to mitigate these damages; and
 - A contract may include an overall maximum dollar amount or period of time during which liquidated damages may be assessed, or both, to prevent an unreasonable assessment of liquidated damages.
- (c) If a liquidated damages clause is included in a contract and a basis for termination for default exists, the Contracting Officer shall take appropriate action expeditiously to obtain performance by the contractor or to terminate the contract. If a delivery or performance is desired after termination for default, efforts shall be made to obtain the delivery or performance from another source within a reasonable time.
- (d) Pursuant to FTA Circulars 4220.1 "Third-party Contracting Requirements," and 5010.1 "Grant Management Guidelines," current revision, the FTA has a vested interest in the settlement of any disputes, defaults or breaches on federally-funded contracts, and a right to share in any recovery in proportion to the federal share of the project. Any liquidated damages recovered from a contractor on a federally-funded project must be credited to the project unless FTA permits another use.

18-17 DELIVERY AND PERFORMANCE SCHEDULES

- (a) The time of delivery or performance is an essential contract element and shall be clearly stated in solicitations. Contracting Officers shall ensure that a delivery or performance schedule is realistic and meets the requirements of the procurement. A solicitation shall inform bidders or proposers of the basis on which their bids or proposals will be evaluated with respect to time of delivery or performance.
- (b) *Factors to Consider in Establishing Schedules.*
- *Supplies or services.* When establishing a contract delivery schedule or performance schedule for supplies or services, the Contracting Officer shall

consider applicable factors such as the:

- Urgency of need;
- Production time;
- Market conditions;
- Transportation time;
- Industry practices;
- Capabilities of certified minority businesses;
- Administrative time for obtaining and evaluating bids or proposals and awarding contracts; and
- Time for the Authority to perform its obligations under the contract, such as furnishing Authority property to the contractor.
- *Construction contracts.* When scheduling the time for completion of a construction contract, the Contracting Officer shall consider applicable factors, such as the:
 - Nature and complexity of the project;
 - Construction seasons involved;
 - Required completion date;
 - Availability of labor and resources, materials and equipment;
 - Capacity of the contractor to perform; and
 - Use of multiple completion dates.
 - Different completion dates may be established for separate items of work.
 - 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.

(c) *Establishing Delivery or Performance Schedules.*

- The Contracting Officer may establish contract delivery or performance schedules in terms of:
 - Specific calendar date or dates;
 - Specific period or periods from the date of the contract;
 - Specific periods from the date of receipt by the contractor of the notice of award or acceptance by the Authority;
 - Specific time for delivery after receipt by the contractor of each individual order issued under the contract, as in indefinite delivery contracts and federal supply schedules; or
 - 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.
- 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.
 - The time specified for contract performance shall not be curtailed to the prejudice of the contractor because of delay by the Authority in giving notice of award or acceptance;
 - If the delivery schedule is based on the date of the contract, 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 effective date of the contract, or as soon thereafter as possible; and
 - If the delivery schedule is based on the date the contractor receives the notice of award, or if the delivery schedule is expressed in terms of specific calendar dates on the assumption that the notice of award will be received by a specified date, the Contracting Officer shall send the contract, notice of award,

acceptance of proposal, or other contract document by certified mail, return receipt requested, or by any other method that will provide evidence of the date of receipt.

18-18 CLOSEOUT OF CONTRACT FILES

- (a) *General.* The Contracting Officer should exercise judgment and discretion in the closeout of files for a completed contract.
- (b) *Completed Contract.* A completed contract is one which is both physically and administratively complete, and in which all aspects of contractual performance have been accomplished, terminated or otherwise disposed of by contract modification.
 - A contract is physically complete only after all articles and services called for under the contract, including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by the Authority, including those articles and services for which no specific compensation may have been stipulated; and
 - A contract is administratively complete when all payments have been made and administrative actions accomplished.
- (c) *Review of Contract File.* The Contracting Officer or COR is responsible for review of the contract file and obtaining all necessary documentation to ensure that:
 - All deliverables and/or services (including any reports) required under the contract have been received and accepted;
 - The terms and conditions of the contract have been complied with;
 - Disposition of accountable property under the contract has been accomplished;
 - A final audit (cost reimbursement contracts) has been performed and all questioned costs have been resolved;
 - The final voucher for the contract has been certified and sent to Accounts Payable; and
 - All necessary actions required to close the contract are completed and documented.
- (d) *Written Statement Authorizing Closeout.* The Contracting Officer shall ensure that all required contractual actions have been completed and shall prepare a statement to that effect. This statement formally closes the contract file and must be made a part of the official contract file.

18-19 CONTRACT CLOSEOUT TIME PERIODS

- (a) Except as provided in paragraph (c) below, time standards for closing out contract files are as follows:
 - Files for simplified acquisitions shall be considered closed when the Contracting Officer receives evidence of receipt of goods and/or services and final invoice and payment have been made;
 - Files for all firm-fixed price contracts, other than those using simplified acquisition procedures, shall be closed within six months after the end of the month in which the Contracting Officer receives evidence of physical completion;
 - Files for contracts requiring settlement of indirect cost rates shall be closed within

- 18 months after the end of the month in which the Contracting Officer receives evidence of physical completion; and
 - Files for all other contracts shall be closed within 12 months after the end of the month in which the Contracting Officer receives evidence of physical completion;
- (b) A contract file shall not be closed if:
- The contract is the subject of a claim or dispute;
 - The contract is in litigation or under appeal;
 - The contract was terminated, but all termination actions have not been completed; or
 - FTA approval is required and has not been received.

18-20 AUTHORITY PROPERTY

- (a) *Policy.* Authority policy governing the accountability and control of property assets is set forth in P/I 5.16, Accountability for Capital and Sensitive Assets.. Specific guidance regarding the responsibilities of employees in the custody of, or in the transfer or disposal of, Authority property is outlined in the Property Accounting/Control Policies and Procedures Manual, which is prescribed by P/I 5.16.
- (b) *Contract Clause.* Contracting Officers shall include a provision in solicitations and contracts which provides for control and accountability of Authority property (except real property) furnished by the Authority under a contract or acquired by the contractor during contract performance and when the Authority reimburses the contracts for the acquisition. Appropriate solicitation and contract provisions are authorized by Chapter 23 of these procedures.
- (c) *Real Property.* The Program Office responsible for real estate transactions is responsible for reporting real estate property assets.

18-21 DELEGATION OF APPOINTMENT TO COTR/COR

- (a) *Policy.* The Chief Procurement Officer may delegate responsibilities to qualified Authority employees for the purpose of assisting the Contracting Officer with contract administration and day-to-day technical guidance to the contractor. The following are some of those responsibilities, the means of delegation, and the advisement of the delegation.
- (b) *General Description.* The Contracting Officer's Technical Representative ("COTR") and the Contracting Officer's Representative ("COR") are each an authorized representative of the Contracting Officer. The COTR/COR is responsible to and appointed by the Contracting Officer and performs contract administration functions specifically delegated in the letter of appointment from the Chief Procurement Officer. Appointments shall be made in writing to qualified Authority employees based on the recommendation of the individual and their qualifications, as provided by the requesting office.
- ☐ COTRs have no contractual authority and cannot enter into contractual agreements.
 - ☐ CORs have delegated limited contract authority and may enter into contractual

agreements consistent with the extent of the authority delegated.

- (c) Individuals appointed as COTR/COR are responsible to the Contracting Officer for proper performance of duties. This includes timely notification to the Contracting Officer of all significant events affecting contract performance, delivery, or price. Supervisors of individuals appointed as a COTR/COR are responsible for assuring that their subordinate satisfactorily performs assigned duties.
- (d) The Contracting Officer shall evaluate COTR/COR performance, when appropriate, and advise the appointee's supervisor as necessary. Performance is assumed to be satisfactory unless the Contracting Officer provides a different written evaluation of COTR/COR performance. The COTR/COR's supervisor shall consider comments provided by the Contracting Officer when evaluating the appointee's performance.
- (e) *Notification.* Upon the award of a contract where a COTR/COR appointment is to be made, a memorandum appointing the COTR/COR will be addressed to the COTR/COR, signed by the Contracting Officer. Notification of the appointment shall include the:
 - ☐ COTR/COR Supervisor;
 - ☐ Contractor, by attachment of the appointment memorandum to the award notice;
 - ☐ Office of Accounting; and
 - ☐ Contract file.
- (f) *Typical Delegated Functions.* Contracting Officers may, at their discretion, delegate contract administration functions to COTRs/CORs or any other designated Authority employee. The contract administration functions listed below may be delegated, by express authorization.
 - ☐ Inspection of the work for quality assurance and compliance with the contract.
 - ☐ Issuance of orders to stop and/or resume work where such orders are authorized by the contract, excluding suspension of work under Stop Work Order clause of the General Provisions.
 - ☐ Negotiation with the Contractor, within specified limits, as to adjustment of contract price and/or time, and recommendation of acceptance or rejection of negotiation results.
 - ☐ Preparation of the Authority independent cost estimate of contract modifications.
 - ☐ Modification of the contract in accordance with the CHANGES clause or other applicable clauses in the General Provisions, in each instance, not exceeding the dollar amount authorized by the Chief Procurement Officer, including the preparation of and furnishing to the Contractor drawings and clarification within that limitation.
 - ☐ Preparation and approval of payment estimates, including the COTR/COR's written recommendation to the Contracting Officer regarding the release of retention or remittance of liquidated damages.
 - ☐ Approval of the Contractor's progress schedule.
 - ☐ Initiating orders for supplies or services under the provisions of a blanket purchase agreement, a basic ordering agreement, or other contract type that provides for the placement of orders under the contract terms.Receiving from the contractor all Certified Payroll Reports and preparation of a log sheet indicating the following: (1) name of contractor and subcontractor (a separate log sheet must be prepared for each subcontractor); (2) the contract number; (3) the certified payroll number (number for the payroll for the project

starting with the number 1); (4) the time frame of the payroll period (i.e. 1/21/11-2/3/11); (5) the Statement of Compliance date (first page of the report); and (6) the date the report was received by WMATA.

- ☐ Other duties that the Contracting Officer may assign as required.

19 - CLAIMS AND LITIGATION ACTIONS

19-1 PURPOSE AND SCOPE

This Chapter establishes the Authority procedures for processing and resolving contractor claims and disputes.

19-2 GENERAL

- (a) The Authority shall promptly review and evaluate all contractor claims submitted in accordance with the Disputes clause of the contract between the contractor and the Authority. Decisions on claims shall be reduced to writing in a Contracting Officer's Final Decision ("COFD").
- (b) The Contracting Officer is responsible for the review, evaluation, and determination of the merit of contractor claims. In making merit determinations, the Contracting Officer shall obtain the advice from Authority technical and subject matter experts in the areas including, but not limited to contracting, finance, law, audit, and engineering and construction.
- (c) The General Manager, or delegate(s), will approve contract modifications resulting from settled claims or from claims finally decided as a result of judicial or Armed Services Board of Contract Appeals ("ASBCA") review or other dispute resolution procedure. For approval purposes, a claim settlement will result in a contract modification.

19-3 FTA REQUIREMENTS

- (a) The Federal Transit Administration ("FTA") has a vested interest in the settlement of disputes, contract claims, and litigation involving any federally assisted third party contract. FTA shall be kept advised of all disputes, claims, and litigation involving federally assisted contracts as required by the FTA Master Agreement and FTA Circular 4220.1 (latest revision).
- (b) The Authority must comply with the project management guidelines of FTA Circular 5010.1 (latest revision) in processing contractor claims against federally funded contracts.

- (c) PRMT is responsible for notifying FTA about all disputes, claims, and litigation involving federally assisted contracts as required by the FTA Master Agreement and FTA Circular 4220.1 (latest revision).
- (d) Although FTA does not become involved in the negotiation of disputes involving federally assisted contracts, FTA may review the reasonableness of a negotiated settlement for the purpose of determining the extent of its participation in the costs of settlement.
- (e) For federally assisted contracts, PRMT will obtain FTA's written concurrence in any proposed or final settlement involving a dispute, claim, or litigation when the settlement amount exceeds \$100,000, or the approved project lacks sufficient funds to cover the settlement costs, or there is an issue of special interest or concern.

19-4 CONTRACT DISPUTES

- (a) All Authority contracts that exceed \$250,000 shall include a Disputes clause:

DISPUTES

- (1) Any dispute or claim arising out of or relating to this Contract shall be decided by the Contracting Officer, who shall reduce his/her decision to writing and furnish a copy to the Contractor. A final decision by the Contracting Officer shall be conclusive and binding for the Authority.
- (2) The filing of a claim, lawsuit, arbitration or other legal proceeding, does not relieve the parties of their continuing obligations to proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's Final Decision.
- (3) After exhausting all administrative remedies, each party agrees that any suit, action or other legal proceeding arising out of or relating to this Contract shall be brought only in the United States District Court for the District of Columbia, the United States District Court for the Eastern District of Virginia, Alexandria Division, or in the United States District Court for the District of Maryland, Greenbelt Division.
- (4) The parties may mutually agree and consent to final and binding Alternate Dispute Resolution (ADR), including the Armed Service Board of Contract Appeals, in lieu of judicial review in the United States District Courts as set forth in subsection (3) above.

19-5 APPEALS TO THE ASBCA

- (a) At the sole discretion of the Authority's General Counsel, the Armed Services Board of Contract Appeals ("ASBCA") may be designated as the authorized representative of the Authority to hear, consider, and decide contractor appeals of

Contracting Officer's Final Decisions ("COFDs") arising under the DISPUTES clause of Authority contracts.

- (b) Rules for hearing and processing appeals from COFDs that are referred by the Authority to the ASBCA will be in substantial conformance with the guidelines for uniform board rules for Executive agencies prior to the effective date of the Contract Disputes Act of 1978 (Public Law 95-563, 41 USC 601-613), which was further amended by the Administrative Dispute Resolution Act (Public Law 101-552), but which are not applicable to Authority disputes. Nothing herein shall be construed to define the Authority as a federal agency.

19-6 AUTHORITY CLAIMS AGAINST THE CONTRACTOR

- (a) The Contracting Officer, in coordination with the Program Office, shall attempt to settle all Authority claims against the contractor. If unsuccessful, other remedies, including other dispute resolution proceedings, should be pursued to resolve the affirmative claim.
- (b) The Authority may initiate claims against the contractor for reasons such as, but not limited to, back-charges, either during the contract performance or warranty period, or A/E contractor liabilities for Authority costs resulting from deficiencies in services. The Contracting Officer must give the contractor written notice of the complaint and provide the contractor an opportunity to take corrective action. If the Contractor has not taken satisfactory corrective steps, the Contracting Officer will take action to make the required corrections and assess back-charges to the contractor. In back-charging on active contracts, if agreement cannot be reached with the contractor, a Contracting Officer's Final Decision ("COFD") and unilateral modification should be issued.

19-7 LITIGATION

- (a) The Office of General Counsel ("COUN") is responsible for all legal actions involving suits brought against the Authority by contractors and those against contractors by the Authority, including matters before the Armed Services Board of Contract Appeals ("ASBCA"). The affected Authority offices shall assist the General Counsel in preparing legal briefs and presenting the Authority's position during the dispute resolution process.
- (b) COUN shall provide periodic status reports of all pending contract court and ASBCA claims actions as necessary.

19-8 COST OR PRICE ANALYSIS

The Authority's position on all claims and litigation actions shall be supported by a cost or price analysis performed in accordance with the procedures prescribed in Chapter 16 (Cost and Price Analysis).

20 - SPECIAL AGREEMENTS

20-1 PURPOSE AND SCOPE

- (a) This chapter applies to special agreements including but not limited to: utility contracts; marketing agreements; bus charter service agreements; employee benefits contracts; or contracts for the purchase, lease or sale of real property; insurance contracts and other agreements between the Authority and other entities that are not covered by other chapters elsewhere in this Manual.
- (b) Contracting Officers are responsible for the sufficiency of the special agreements and shall secure necessary legal, engineering, technical or other appropriate advice within the Authority in fulfilling this responsibility. They are also responsible for administering special agreements including the assurance of performance on the part of the second parties of these agreements. The Chief Financial Officer shall be delegated Contracting Officer authority for entering into and administering financial agreements, such as Master Commodity Swap Agreements, financial leases, bonds, commercial paper and Clean Renewable Energy Bonds ("CREBS") and Operating Agreements, upon Board approval of the action. The Director of the Office of Real Estate and Parking ("LAND") shall be delegated Contracting Officer authority for entering into and administering agreements undertaken in accordance with subparts 20-4, 20-5, 20-6 and 20-10 of this chapter. This authority may not be redelegated although this authority may be exercised by a WMATA employee who has been designated the Director on an acting or interim basis, only.

20-2 MASTER AGREEMENTS

- (a) Master agreements include service agreements with members of the Compact and agreements with the various utility companies, the railroads, and other agencies in the Compact jurisdictions or the Federal government. These agreements may include joint policing agreements and mutual support agreements entered into by the Metro Transit Police Department ("MTPD").
- (b) The Office of Procurement and Materials ("PRMT") shall maintain originals of all master agreements and a Central Register for recording all master utility, bond service and other agreements entered into by the Authority. The majority of master agreements will involve utility work during construction. Master Agreements and other similar non-expenditure agreements are to be numbered within the Central Register. All agreement numbers will be assigned by PRMT.
- (c) Master Agreements shall be executed on behalf of the Authority by General Manager/Chief Executive Officer or designee. The General Manager/Chief Executive Officer or designee may appoint a representative from other Authority offices to monitor and direct technical performance and to coordinate the work in accordance with §18-21.
- (d) Office of Capital Program Delivery ("CAPD") has the responsibility for initiating utility

master agreements, work authorizations and payment authorizations for the payment of utility invoices.

- (e) Master Agreements will contain standard Authority contract clauses unless their use is prevented by conflicting utility regulatory requirements. Where the situation indicates that only a single project will be performed by a utility, a specific agreement, as opposed to a Master Agreement, may be appropriate.
- (f) Where there is insufficient time for a Master Agreement, a letter contract executed by the Contracting Officer may be used when a project is deemed urgent.

20-3 MASTER AGREEMENT: WORK AUTHORIZATIONS AND INVOICES

- (a) Each work authorization shall be based on an estimate of the cost to perform the work, either supplied by the utility company and determined by CAPD to be reasonable or supplied by CAPD. CAPD must include in each request for a work authorization a determination whether it includes utility improvements.
- (b) *Invoices.*
 - A *non-final utility invoice* will be paid only if it is part of a numbered series of invoices and it identifies the work authorization number, the reasons for the charges (including the work performed) and the time period of the service.
 - A *final invoice* must be clearly marked "FINAL" and must cite the amount of the contract, the amount previously paid, the time period of the services rendered and the balance due.
 - A *recapitulation invoice*, submitted by a utility company prior to Authority audit, which asks for an additional Authority payment (such as a net amount due after the utility has comprehensively reviewed its charges), may be paid without a specific identification by the utility company, of the reasons for each adjustment. Recapitulation adjustments (as a percentage of project cost), will not be paid prior to Authority audit without specific utility justification of each adjustment.
- (c) *Payment Authorization.* CAPD is responsible for certifying payment authorizations that the invoiced services have been performed, and materials and equipment supplied. CAPD will monitor the presence of utility personnel, material, and equipment on work sites and obtain records of man hour charges by the utility. CAPD will examine each invoice for possible back charge to the Authority's construction contractor on the site of the utility work. In situations where a utility seeks a payment before work can be performed, (e.g., for a permit), the Project Manager will certify that payment is necessary for required utility work to proceed. CAPD will prepare modifications to work authorizations where original work authorizations prove insufficient to fund required utility projects.
- (d) *Audit Requirements.* Final payment will not be made on any work authorization, and closeout will not be completed, until applicable Authority audit requirements are met. For Master Agreements with work authorizations totaling \$100,000 or less, the Contracting Officer may proceed with closeout. An audit is required by the OIG when the value of the total number of work authorizations issued under a Master Agreement exceeds \$100,000.
- (e) *Orders for Services.* Orders for services under Master Agreements may be placed by

the Contracting Officer. Orders for services or work authorizations under Master Agreements for relocation of utility facilities will be processed and administered in accordance with procedures issued by the Senior Vice President, Department of Rail Services (RAIL) and approved by the Chief Procurement Officer.

20-4 REAL PROPERTY ACQUISITIONS

- (a) Section 12(d) of the Authority's Compact, as amended, gives WMATA authority to acquire real property generally by the methods enumerated in this Section, including condemnation. The Authority's Real Estate Policies and Procedures Manual contains detailed policies and procedures for the acquisition and disposal of real property.
- (b) Action to acquire any interest in real property will not be initiated until the real property to be acquired has been certified in accordance with the requirements of P/I 4.9, as amended.
- (c) Real property that has been certified, as required by paragraph (b) above, shall be acquired in accordance with the policies and procedures set forth in Part 24 - Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (49 CFR Part 24). All acquisitions must be approved by COUN for legal sufficiency.
- (d) Real property acquisitions require concurrence as follows: by the Director of the Office of Real Estate and Parking ("LAND"), the Senior Vice President, RAIL, the Comptroller for fund availability and Counsel ("COUN") for legal sufficiency. Approval by the WMATA Board of Directors is required in the case of acquisition of property valued at over \$1 million, as required by Resolution 2011-30.
- (e) FTA approval is required for the acquisition of real property where the fair market value of the property exceeds \$1,000,000, and where the purchase price exceeds the Authority offer by \$50,000 or more.
- (f) Whenever possible, acquisitions will be by master forms approved by COUN. All acquisitions must be approved by COUN for legal sufficiency.

20-5 REAL PROPERTY DISPOSAL

- (a) Section 12(d) of the Authority's Compact, as amended, gives WMATA authority to dispose of real property by sale, exchange, lease, easement, license or permit. Action to dispose of any interest in excess real property whether on a permanent or temporary basis (by sale, exchange, lease, easement, license or lesser interests) will not be initiated until the real property interest to be disposed of has been certified for disposition in accordance with this policy. The requirements in §20-5 do not apply to the disposal of real property available for Joint Development.
- (b) Disposal of real property acquired under a federal grant or subgrant shall be accomplished in accordance with 49 CFR Part 18.31. The Disposal of other WMATA real property shall also follow procedures that implement the policy of Section 18.31 to obtain the highest possible economic return, under competitive participation to the extent practicable.

- Action to dispose of any fee interest or any permanent interest in Real property which is tantamount to a fee will not be initiated until the real property, with a disposal plan, has been screened throughout the Authority and the jurisdictions and the General Manager determines that the property is excess and authorizes disposition in accordance with an approved disposal plan;
- Disposition of real property by sale or by other authorized methods of disposal requires either FTA approval or notification. (Approval is required if property was acquired with grant funds and notification is given if property was acquired with 2/3 - 1/3 appropriated funds); and
- Approval by the WMATA Board of Directors is required in the case of disposal of property valued at over \$1 million, as required by Resolution 2011-30.

20-6 PERMITS AND EASEMENTS

Permits, easements, revenue producing instruments, and other rights as described in P/I 4.7, "Permits or Easements in WMATA [Metro] Property" are to be executed by the Vice President of LAND in accordance with P/I 4.7.

20-7 BUS CHARTER SERVICE AGREEMENTS

- (a) As a general rule, the Authority does not provide charter service. WMATA is authorized to provide charter bus service in very limited circumstances in accordance with FTA regulations (see 49 CFR, Part 604).
- (b) The Authority shall enter into written agreements with charter service customers in a standard format with terms and conditions acceptable to the Chief Procurement Officer and the General Counsel. Each agreement shall be prepared by the Department of Bus Services and signed for the Authority by a designated Contracting Officer.
- (c) Charter Service Orders completed in accordance with the Charter Service Agreements shall be processed and administered by the Department of Bus Services (Bus Subcontract Section).

20-8 OTHER CONTRACTS AND AGREEMENTS

- (a) *Application.* This Section applies to all other contracts and special agreements (including marketing and insurance) prepared for signature by the Contracting Officer under authority delegated by the Chief Procurement Officer. This Section does not apply to marketing documents which do not require a Contracting Officer's signature, such as Fare Media Order Forms, Metrorail One Day Pass Order Forms, Bonus Fares Farecard Request and orders issued under indefinite delivery-indefinite quantity and requirements-type contracts.
- (b) Prior to entering into any type of contract or special agreement not previously authorized by other provisions of these procedures, the requesting office will provide the Contracting Officer with an acquisition plan and will comply with existing Authority policies and procedures pertaining to General Manager or Board approval. The

requirement for an acquisition plan does not apply to routine marketing agreements, such as Metrochek Voucher Program agreements; blanket purchase agreements with government agencies; WMATA advertising contracts, both A and B versions; Metrochek Voucher Program Farecard Reader Equipment Agreements; Metropool Sales Consignment Agreements; and Retail (off-site) Sale Consignment Agreements. Notwithstanding the waiver of the acquisition plan requirement for these documents, it is required that they be executed by a Contracting Officer.

- (c) The designated Contracting Officer must be party to all discussions/negotiations with the individual, organization, or contractor intended to be a party to the Authority agreement.
- (d) All contracts and special agreements entered into pursuant to this Section shall:
 - Comply with appropriate regulations and laws applicable to the Authority;
 - Be coordinated with the COUN prior to requesting Contracting Officer signature;
 - Be properly coordinated with the Department of Finance if the agreement constitutes a financial commitment on the part of the Authority or revenue to the Authority;
 - Be properly documented as to the need for the agreement and the reasons for selecting the source if services or products available from a competitive marketplace are being obtained; and
 - Be executed by an authorized Contracting Officer.

20-9 ASSURANCE FOR USE OF REAL PROPERTY

The use of Authority real property by others is to be permitted only upon adequate assurance by the user against loss by the Authority arising out of such use. The use requires advance approval of COUN. Additionally, the Authority may not provide assurances against loss arising out of WMATA use of property owned by others without Board approval. Refer to Board Resolution #93-23, adopted May 13, 1993, for further guidance.

20-10 JOINT DEVELOPMENT PROCUREMENT REGULATIONS

Joint development will be conducted in accordance with applicable resolutions of the WMATA Board of Directors (such as Resolution 2011-30) and the Joint Development Guidelines.

21 - QUALITY ASSURANCE AND WARRANTIES

21-1 PURPOSE AND SCOPE

This chapter prescribes the procedures to ensure that Authority contracts conform to the Authority's quality assurance requirements in accordance with the Quality Assurance Policy and Procedures Manual.

Authority contracts may include inspection and other quality requirements, including warranty clauses that are determined necessary to protect the Authority's interest. Additionally, the following is required:

- Supplies, services, or construction tendered by contractors must meet contract requirements;
- Authority contract quality assurance is conducted before acceptance, by or under the direction of Authority personnel;
- No contract precludes the Authority from performing inspections;
- Specification nonconformance be identified and rejected; and
- Quality assurance and acceptance services of other agencies may be used when this will be effective, economical or otherwise in the Authority's best interest.

21-2 AUTHORITY RESPONSIBILITIES

- (a) *Contracting Officer Responsibilities.* The Contracting Officer is responsible for ensuring that:
- Any specifications for warranty, inspection, testing, and other contract quality assurance requirements (e.g., contractor's control of quality) are included in all solicitations and contracts;
 - The contract clearly indicates the level of quality required by referring to established standards, procedures, tests and equipment, or by providing acceptance criteria and tolerances;
 - The contractor complies with the aforementioned quality and quantity requirements for the contract; and
 - Matters of insurance and insurability pre- and post award are properly coordinated with RISK.
- (b) *Delegable Responsibilities.* The Contracting Officer may delegate contract quality assurance and warranty responsibility to the Contracting Officer's Technical Representative (§18-21), unless functional responsibility exists within the Authority for the performance, management or control of the quality assurance and warranty issues for specific operational units.

21-3 CONTRACTOR RESPONSIBILITIES

- (a) The contractor shall be responsible for carrying out its obligations under the contract by doing the following:
- Controlling the quality of supplies, services, or construction;

- Ensuring that vendors or suppliers of raw materials, parts, components; and subassemblies have an acceptable quality control system;
 - Tendering to the Authority for acceptance only those items that conform to contract requirements;
 - Maintaining evidence that contract quality requirements have been met and furnishing such information to the Authority as required; and
 - Ensuring the quality of all subcontractor services.
- (b) The Contracting Officer may require the contractor to provide and maintain an inspection system or program for the control of quality that is acceptable to the Authority.
- (c) The contractor's quality control may relate to, but is not limited to:
- Manufacturing processes, to ensure that the product is produced to and meets the contract's technical requirements;
 - Technical documentation including drawings, specifications, handbooks, manuals, other technical publications, training and engineering changes to ensure that manufacturing methods and operations meet the contract's technical requirements required by the contract;
 - Testing and examination, to ensure that practices and equipment provide the means for optimum evaluation of the characteristics subject to inspection;
 - Reliability and maintainability assessments, including life, endurance and continued readiness;
 - Fabrication and delivery of products to ensure that only conforming products are tendered to the Authority; and
 - Preservation, packaging, packing, marking, shipping and storage.
- (d) The contractor shall be responsible for performing all quality control activities required by the contract except those specifically reserved for performance by the Authority (§21-5).

21-4 CONTRACT QUALITY REQUIREMENTS

- (a) The Contracting Officer shall include appropriate quality requirements in each solicitation and contract. The type and extent of contract quality requirements needed in each solicitation or contract depends on the particular procurement and may range from inspection at time of acceptance to a requirement for the contractor's implementation of a comprehensive program for controlling quality.
- (b) A solicitation or contract may provide for alternative, but substantially equivalent, quality control methods to obtain broader competition and reduce costs. The Contracting Officer may, during negotiation, authorize an alternative quality control or inspection method recommended by the contractor.
- (c) Except as otherwise specified by the contract, required contractor testing may be performed in the contractor's or a subcontractor's testing facility or in another testing facility acceptable to the Contracting Officer.

21-5 TYPES OF CONTRACT QUALITY REQUIREMENTS

- (a) *Authority Reliance on Inspection by the Contractor.*
- Except as provided in this section when supplies, services, or construction are procured by simplified acquisition procedures (pursuant to Chapter 8), the Authority shall rely on the contractor to accomplish all quality control needed to ensure compliance with contract quality requirements before the supplies, services or construction are tendered to the Authority; and
 - The Authority shall not rely on quality control by the contractor if it is determined that there is a need for testing of the supplies, services or construction by the Authority in advance of their tender for acceptance, or that there is a need to review the adequacy of the contractor's internal work processes. In making the determination, the Contracting Officer or his designated representative shall consider:
 - The nature of the supplies, services, or construction being procured and their intended use;
 - The potential losses in the event of defects;
 - The likelihood of uncontested replacement or correction of defective work; and
 - The cost of a detailed inspection by the Authority.
- (b) *Standard Inspection Requirements.*
- With respect to contracts other than simplified acquisitions, the Contracting Officer shall include in each solicitation and contract a standard inspection requirements clause, or clause authorized for construction contracts) setting forth quality control guidelines that requires the contractor to:
- Provide and maintain a quality control and inspection system that is acceptable to the Authority;
 - Gives the Authority the right to make inspections and conduct tests while work is in progress; and
 - Keep complete records of its quality control work which are to be submitted to the Authority upon request.

21-6 QUALITY ASSURANCE REQUIREMENTS

- (a) Contract quality assurance shall be performed at the time and place(s) necessary to determine conformance to contract requirements. Each contract shall designate the place(s) where the Authority reserves the right to perform quality assurance.
- (b) Inspection shall be performed by or under the direction or supervision of Authority.
- (c) The individual delegated responsibility for the Authority inspection shall document the inspection on an inspection or receiving report form, or on a commercial shipping document or packing list.

21-7 CONTRACT QUALITY ASSURANCE AT SOURCE

- (a) The Authority shall perform contract quality assurance, including inspection, at the source in the following circumstances:
- Performance at any other place would require uneconomical disassembly or

- destructive testing;
 - Considerable loss would result from the manufacture and shipment of unacceptable supplies or from the delay in making necessary corrections;
 - Specially required instructions, gauges or facilities are available only at the source;
 - Performance at any other place would destroy or require the repayment of costly special packing and packaging;
 - Inspection by the Authority during manufacturing is required; or
 - The Contracting Officer determines that source inspection is in the best interest of the Authority.
- (b) If the contract provides for performance of Authority quality assurance at the source, the place(s) of performance shall not be changed without the authorization of the Contracting Officer.

21-8 CONTRACT QUALITY ASSURANCE AT DESTINATION

- (a) Contract quality assurance that can be performed at destination shall be limited to inspection of the supplies or services.
- (b) Inspection shall be performed at destination under the following circumstances;
- Safety sensitive supplies are purchased from the Original Equipment Manufacturer ("OEM") and require technical inspection;
 - Necessary testing equipment is located only at destination;
 - The supplies have a limited shelf life;
 - The contract is for services performed at the destination;
 - The Contracting Officer determines that inspection at destination is in the best interest of the Authority; or
 - The components are assembled on site and operation of components together is critical.
- (c) If the contract provides for delivery and acceptance at destination, and the Authority inspects the supplies at a place other than the destination, the supplies shall not be re-inspected at the destination but shall be examined for quantity, damage in transit, and possible substitution or fraud.

21-9 CONTRACT QUALITY ASSURANCE FOR SIMPLIFIED ACQUISITIONS

- (a) In determining the type and extent of Authority contract quality assurance to be required for small purchases, the Contracting Officer shall consider the criticality of application of the supplies or services, the amount of possible losses and the likelihood of uncontested replacement of defective work.
- (b) Except as provided in (e) below, when circumstances set forth in §21-5(a) exist, the Authority shall inspect small purchases at destination only for type and kind, quantity, damage, and operability, and may inspect for preservation, packaging, packing, and marking, if applicable.
- (c) Except as provided in §21-5(a), detailed Authority inspections may be limited to those

characteristics that are special or likely to cause harm to personnel or property.

- (d) Except as provided in §21-5(a), when repetitive purchases of the same item are made from the same manufacturer with a history of defect-free work, Authority inspection may be reduced to a periodic check.
- (e) In special situations such as those specified in §21-7, the Contracting Officer may require more detailed quality assurance.

21-10 CONTRACT QUALITY ASSURANCE OF SUBCONTRACTS

- (a) Authority contract quality assurance on subcontracted supplies or services shall be performed only when required in the best interest of the Authority and shall not relieve the prime contractor of any responsibilities under the contract.
- (b) The Contracting Officer or his/her delegated representative (see also §21-7) shall perform quality assurance at the subcontract level in the following circumstances:
 - The item is to be shipped from the subcontractor's plant directly to the Authority and inspection at source is required;
 - The conditions for quality assurance at the source pursuant to §21-7 are applicable;
 - The contract specifies that certain quality assurance functions, which can be performed only at the subcontractor's plant, are to be performed by the Authority; or
 - It is otherwise required by the contract or determined by the Contracting Officer to be in the best interest of the Authority.
- (c) All oral and written statements and contract terms and conditions relating to Authority quality assurance actions at the subcontract level shall be worded so as not to do any of the following:
 - Affect the contractual relationship between the prime contractor and the Authority, or between the prime contractor and the subcontractor;
 - Establish a contractual relationship between the Authority and the subcontractor; or
 - Constitute a waiver of the Authority's right to accept or reject the supplies or services.

21-11 NONCONFORMING SUPPLIES, SERVICES, OR CONSTRUCTION

- (a) *General.* The Contracting Officer, or his delegated technical representative, shall reject supplies or services not conforming in all respects to contract requirements, except as otherwise authorized in this section.
- (b) *Correction of Nonconformance.* The contractor shall be given an opportunity to correct or replace nonconformance when the correction or replacement can be accomplished within the required delivery or performance schedule. Unless the contract specifies otherwise, correction or replacement shall be accomplished without additional cost to the Authority.

- (c) *Rejecting Nonconformance.* In situations not covered by §21-11 (b), the Contracting Officer shall reject the supplies or services when the nonconformance adversely affects safety, health, reliability, durability, performance or any other basic objective of the specification. However, the nonconformance may be accepted if the Contracting Officer determines that acceptance or conditional acceptance is in the best interest of the Authority (e.g., reasons of economy or urgency). The Contracting Officer shall consider the following when making a determination whether nonconforming items will be accepted based upon:
- Advice of the delegated technical representative by written supporting rationale that the material is safe to use and will perform its intended purposes.
 - Information regarding the nature and extent of the nonconformance.
- (d) *Documentation of Considered Factors.* The delegated technical representative shall furnish the data required in §21-11 (c) to the Contracting Officer in writing. When it is in the best interest of the Authority, the data may be furnished verbally and later confirmed in writing.
- (e) *Concurrence Prior to Acceptance.* Before making a decision to accept nonconforming supplies or service, the Contracting Officer shall obtain the written concurrence of the appropriate Assistant General Manager or Department Director.
- (f) *Repeated Tender of Nonconformance.* The Contracting Officer shall discourage the repeated tender of nonconforming supplies or services by appropriate action, including rejection of nonconformance, and documentation of the contractor's performance.
- (g) *Equitable Price Reduction.* Except when the nonconformance is minor (i.e., the nonconformance is not likely to reduce the usability of the supplies or services for their intended purpose), each contract under which the nonconformance is accepted shall be modified by the Contracting Officer to provide for an equitable price reduction or other consideration.
- (h) *Notice of Rejection.* When the Contracting Officer rejects nonconforming supplies or services, he/she shall issue a notice of rejection in writing and include the reasons for rejection. The notice of rejection is to be coordinated with the delegated technical representative and shall be issued to the contractor within five working days of the rejection.

21-12 ACCEPTANCE

- (a) *Definition.* "Acceptance" means the act of an authorized representative of the Authority to assume ownership of existing identified supplies tendered, or approve specific services rendered as partial or complete performance of the contract. Acceptance shall constitute acknowledgment that the supplies, services, or construction conform to the applicable contract quality and quantity requirements, except as provided in this Section and subject to other terms and conditions of the contract.
- (b) *Time of Acceptance.* Acceptance may take place before delivery, at the time of delivery, or after delivery, depending on the terms and conditions of the contract. Supplies, services or construction shall not be accepted before completion of

Authority contract quality assurance actions.

- (c) *Evidence of Acceptance.* Acceptance shall be evidenced by execution of an acceptance certificate on an inspection or receiving report form or on a commercial shipping document or packing list.

21-13 RESPONSIBILITY FOR ACCEPTANCE

The Contracting Officer is responsible for the acceptance of supplies or services. When the Contracting Officer assigns the responsibility for acceptance to another employee, it shall be in writing and the notice placed in the contract file. Acceptance by that employee shall be binding on the Authority.

21-14 PLACE OF ACCEPTANCE

- (a) Each contract shall specify the place of acceptance. Contracts that provide for Authority contract quality assurance at the source shall provide for acceptance at the source. Similarly, contracts that provide for Authority contract quality assurance at destination shall provide for acceptance at destination.
- (b) *No Re-inspection.* Supplies accepted at a place other than destination shall not be re-inspected at destination for acceptance purposes, but shall be examined at destination for quantity, damage in transit, and possible substitution or fraud.

21-15 CERTIFICATION OF CONFORMANCE

- (a) *Substituting Certificate for Source Inspection.* The Contracting Officer has the discretion to determine whether a certificate of conformance may be used instead of source inspection, whether the contract calls for acceptance at the source or at destination, provided the following conditions apply:
 - Acceptance on the basis of a contractor's certificate of conformance is in the best interest of the Authority; and
 - Either small losses would be incurred in the event of a defect; or, based on the contractor's reputation or past performance, it is likely that the supplies or services furnished will be acceptable and any defective work would be replaced, corrected, or repaid without contest.
- (b) *Authority's Right to Inspect.* Even when a certificate of conformance is used pursuant to §21-15 (a) the Authority's right to inspect supplies, services and construction under the inspection provisions of the contract shall not be prejudiced.

21-16 TRANSFER OF TITLE AND RISK OR LOSS

- (a) *Passage of Title.* Title to supplies, equipment and construction shall pass to the Authority upon formal acceptance, regardless of when or where the Authority takes physical possession, unless the contract specifically provides for earlier passage of title. Title to stock items shall pass to the Authority upon receipt at destination and initial inspection for completeness and absence of damages.

- (b) *Risk of Loss or Damage.* Unless the contract specifically provides otherwise, risk of loss or damage to supplies shall remain with the contractor until, and shall pass to the Authority upon:
- Delivery of the supplies to a carrier if transportation is F.O.B. origin; or
 - Acceptance by the Authority or delivery of the supplies to the Authority at the destination specified in the contract, whichever is later, if transportation is F.O.B. destination.
 - o *Exceptions.* If any of the items are excepted from formal acceptance by the Authority due to defects or failure to conform to the requirements and specifications of the contract; or are subject to contingent acceptance pending cure of defects, the risk of loss or damage shall remain with the contractor until the defects are cured and the contingency is removed or the construction is formally accepted by the Authority.
- (c) *Right of Rejection.* The provisions of §21-16 (b) shall not apply if contractor fails to conform to contract requirements. The risk of loss or damage to nonconforming items shall remain with the contractor until cure or acceptance. After cure or acceptance, the provisions of §21-16 (b) shall apply.
- (d) *Authority's Negligence.* The contractor shall not be liable for loss or damage to supplies caused by the negligence of officers, agents or employees of the Authority.

21-17 WARRANTIES

- (a) *General.* The Contracting Officer shall ensure that the warranty provisions in Authority contracts: (1) clearly delineate the rights and obligations of the contractor and the Authority for defective items and services; and (2) foster quality performance.
- (b) *Construction Contracts.* Unless additional warranty provisions are specifically justified by the cognizant user or Program Office, Contracting Officers shall include the "Warranty of Construction" provision in all construction contracts and the "Warranty" and "Correction of Deficiencies" provisions in all supply and service contracts. Deviations to the above warranty provisions must be coordinated with the General Counsel.

22 - PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION

22-1 PURPOSE AND SCOPE

This chapter prescribes the procedures and contract clauses pertaining to patents, data, copyrights and proprietary information.

22-2 GENERAL PROVISIONS

- (a) Contractors shall obtain permission from the lawful owner(s) of copyrighted materials before including any copyrighted work on any item to be delivered under a contract, unless permission is not required under the fair use or other applicable provisions of Federal copyright statutes or regulations.
- (b) The Authority shall not unreasonably restrict the commercial use, outside of contract performance with the Authority, of inventions made while performing Authority contracts. The Authority shall limit its demands for rights in proprietary information resulting from private developments to those reasonable for present and future use by the Authority, and to those required by Federal Transit Administration (FTA), pursuant to the terms and conditions of a Federal grant.
- (c) The Contracting Officer shall not refuse to award a contract solely on the basis of a suspicion that the contractor may infringe a patent, unless the Contracting Officer determines that refusal is in the best interest of the Authority.
- (d) Except as provided in §22-4 (c), the Contracting Officer shall include in all solicitations and contracts a clause, approved by the Chief Procurement Officer, requiring the contractor to indemnify the Authority against infringement of rights in patents, copyrights, or proprietary information.

22-3 PATENT AND COPYRIGHT INFRINGEMENT

- (a) *General.* The Authority shall require notice and assistance from its contractors regarding any suits or claims for patent or copyright infringement.
- (b) *Contract Clause.* The Contracting Officer shall insert the following clause in each solicitation and contract (except simplified acquisitions) for supplies, services and construction:

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

- (1) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.

- (2) In the event of any claim or suit against the Authority on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished, work or services performed hereunder, the Contractor shall furnish to the Authority, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Authority except where the Contractor has agreed to indemnify the Authority.
- (3) The Contractor shall include the substance of this clause, including this paragraph, in all subcontracts that are expected to exceed the simplified acquisition threshold.

22-4 INDEMNIFICATION

- (a) *General.* The Contracting Officer shall not include in any solicitation or contract any provision by which the Authority expressly agrees to indemnify the contractor against liability for patent or copyright infringement or misappropriation of proprietary information.
- (b) *Contract Clause.* The Contracting Officer shall ensure that each solicitation and contract for supplies, services and construction, requiring indemnification includes the following clause, which provides for reimbursement to the Authority for any liability incurred as the result of an infringement of rights in patents, or copyrights:

PATENT INDEMNITY

The Contractor shall indemnify the Authority and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 USC 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property ("hereinafter referred to as "construction work") under this Contract. This indemnity shall not apply unless the Contractor is informed as soon as practicable by the Authority of the suit or action alleging such infringement, and is given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to:

- (1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner or performance of the Contract not normally used by the Contractor;
- (2) An infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed that was made subsequent to delivery or performance by the Contractor; or
- (3) A claimed infringement which is unreasonably settled without the consent of the Contractor, unless required by final decree of court of competent

jurisdiction.

- (c) The Contracting Officer shall not require the inclusion of an indemnity clause in the following situations:
 - When the contract is awarded using the simplified acquisition procedures (Chapter 8); or
 - When the contract is solely for Architect-Engineering Services.
- (d) *Waiver of Indemnity.* If it is in the best interest of the Authority to exempt one or more specific United States patents from a patent indemnity clause, the Contracting Officer may grant the exemption upon written approval of the Chief Procurement Officer. The Contracting Officer shall include the Chief Procurement Officer's written approval in the contract file and shall include a clause in the contract that allows for waiver of indemnity of one or more specific patents.

22-5 LICENSING AND ROYALTIES

- (a) *Reporting of Licenses and Royalties.*
 - *General.* A contractor or prospective contractor shall furnish to the Contracting Officer, upon written request, licensing and royalty information sufficient to determine whether royalties anticipated or actually paid under Authority contracts are excessive, improper, or inconsistent with any Authority rights in particular inventions, patents, patent applications, copyrights, or proprietary information. The Contracting Officer shall take appropriate action to reduce or eliminate excessive or improper royalties.
 - *Exception.* The Contracting Officer shall require bidders to provide royalty and licensing information in sealed bids if he/she determines that the information is necessary for the proper protection of the Authority's interests.
 - *Solicitation Provisions.* With the exception of simplified acquisitions, the Contracting Officer shall include the following provision in each solicitation or contract, requesting information relating to any proposed charge for royalties or need to obtain a license for use of any rights in patents or copyrights:

ROYALTY INFORMATION

- (i) When the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be furnished with the offer, proposal, or quote on each separate item of royalty or license fee:
 - (A) Name and address of licensor;
 - (B) Date of license agreement;
 - (C) Patent numbers, patent application serial numbers or other basis on which the royalty is payable;
 - (D) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
 - (E) Percentage or dollar rate of royalty per unit;
 - (F) Unit price or Contract item;
 - (G) Number of units; and

(H) Total dollar amount of royalties.

(ii) In addition, if specifically requested by the Contracting Officer prior to execution of the Contract, a copy of the current license agreement and identification of applicable claims of specific patents shall be furnished.

- *Subcontracts.* The Contracting Officer may require and obtain the same royalty and licensing information and reports and take the same action with respect to subcontracts in relation to royalties and licenses, as required by §22-5 (c) for prime contracts. Consent to subcontract does not have to be withheld pending receipt of the required information and reports.

(b) *Notice of the Authority as a Licensee.*

- When the Authority is obligated to pay a royalty on a patent, copyright, or proprietary information because of a license agreement between the Authority and the licensor, the Contracting Officer shall furnish information relating to the royalty to prospective proposers. The Contracting Officer must include in the solicitation a notice of the license, the number or description of the patent, copyright, or proprietary information, the royalty rate stated in the license, and any other pertinent information.
- When the Authority is obligated to pay a royalty because of a license agreement between the Authority and a licensor, the solicitation will require each proposer to furnish information indicating whether it is a licensee. The solicitation clause must be approved by the Chief Procurement Officer. Based on this information, the Contracting Officer may do one of the following:
 - Evaluate a proposer's price by adding an amount equal to the royalty; or
 - Negotiate a price reduction with a proposer-licensee when the proposer is licensed under the same patent at a lower royalty rate.

(c) *Adjustment of Royalties.*

- If the Contracting Officer has reason to believe that any royalties paid or to be paid are inconsistent with the Authority's rights, or are excessive or otherwise improper, the Contracting Officer must promptly report these matters to the Office of General Counsel ("COUN").
- After consultation with COUN, the Contracting Officer shall act to protect the Authority against payment of royalties on supplies or services in the following instances:
 - When the Authority has a royalty free license with respect to the supplies or services;
 - When the rate is in excess of the rate at which the Authority is licensed; or
 - When the royalties, in whole or in part, otherwise constitute an improper charge.

(d) *Refund of Royalties.* If the Contracting Officer, after consultation with COUN, determines that the Authority has paid or will pay royalties that are inconsistent with the Authority's rights or are excessive or otherwise improper, and if it is in the best interest of the Authority, the Contractor Officer shall obtain a refund (pursuant to a clause that must be inserted into the solicitation, approved by the Chief Procurement Officer, providing for a refund) or shall negotiate for a reduction of royalties.

22-6 PATENT RIGHTS UNDER AUTHORITY CONTRACTS

- (a) *General.* This section prescribes the procedures, solicitation provisions and contract clauses pertaining to inventions made in the performance of work under an Authority contract or subcontract and that govern patent rights. The Chief Procurement Officer shall prescribe standard solicitation provisions and contract clauses governing patent rights under Authority contracts for inclusion in solicitations and contracts.
- (b) *Definition.* “Invention” means, for the purposes of this section, an invention made in the performance of work under an Authority contract if it is conceived or first actually reduced to practice in the performance of work under an Authority contract.
- (c) *Authority License.* If the contract permits the contractor to retain title, and the contractor elects to retain title to an invention, the Authority shall have at least a nonexclusive, non-transferable, irrevocable paid-up license to use or have used, for or on behalf of the Authority, any invention made in the performance of work under a contract. The Authority may have additional rights to sublicense the invention if provided in the contract.
- (d) *Authority Right to Receive Title.* The Authority shall have the right to receive title to any invention made in the performance of a contract unless the contract provides otherwise. If the contract extends a limited right to the contractor to acquire patent rights, the Authority shall have the right to receive title to an invention or original work in the following circumstances:
- If the contractor does not disclose the invention within the time specified in the contract;
 - In any instance where the contractor does not elect to retain rights or fails to elect to retain rights to the invention within the time specified in the contract;
 - In any instance where the contractor has not filed a patent application within the time specified in the contract;
 - In any instance where the contractor decides not to continue prosecution of a patent application, pay maintenance fees, or defend in a re-examination or opposition proceeding on the patent; and
 - In any instance where the contractor no longer desires to retain title.
- (e) *Contractor Right to Elect Title.* The Authority has the right to acquire title to a subject invention; the contractor may request greater right to a subject invention.
- (f) *Greater Rights Determination.* Whenever the contract gives a limited right to the contractor to acquire patent right, the contractor may request greater rights to an identified invention within the period specified in the contract. The Contracting Officer may grant a request for greater rights if the Contracting Officer determines that the grant of greater rights is in the best interest of the Authority and is in compliance with FTA grant requirements. In making the determination, the Contracting Officer shall consider the following objectives:
- Ensuring that inventions are used in a manner that will promote full and open competition and free enterprise; and
 - Ensuring that the Authority obtains sufficient rights in Authority-supported inventions to meet the needs of the Authority and protect the public against nonuser or unreasonable use of inventions.
- (g) *Retention of Rights by the Contractor.* If the contract permits the contractor to retain

title to an invention and the contractor elects not to retain title, the Authority may, after consultation with the contractor, grant a request for retention of rights by the inventor.

- (h) *Authority Employee is a Co-inventor.* If an Authority employee is a co-inventor of an invention made under an Authority contract and the Authority acquires all or part of the rights of the invention, the Chief Procurement Officer may take any of the following actions that are consistent with the best interest of the Authority:
- Assign all or part of the Authority's rights to its employee while retaining for the Authority any rights set forth in §22-6 (b);
 - Assign all or part of the Authority's rights to the contractor, after negotiation by the Contracting Officer, for reasonable consideration;
 - Assign all or part of the Authority's rights without consideration, if the contractor is a nonprofit organization or is a certified Disadvantaged Business Enterprise (see Chapter 7); or
 - Retain the Authority's rights.

22-7 PATENT RIGHTS

- (a) *Provisions and Clauses.* The Contracting Officer must include solicitation provisions and/or contract clauses approved by the Chief Procurement Officer requiring the contractor to do the following:
- For Federally funded contracts, immediately notify the Contracting Officer and FTA if any invention, improvement or discovery is conceived or first actually reduced to practice in the course of or under the contract and is patentable under the laws of the United States of America or any foreign country. The notice shall include a detailed report (see Chapter 23 for contract provision);
 - Submit any or all of the following reports to the Contracting Officer (and FTA for Federally funded projects):
 - Periodic reports (at least annually), listing all inventions required to be disclosed during the period;
 - Report prior to the closeout of the contract a listing of all inventions or a statement that there were no inventions; and
 - Any report(s) required by the Contracting Officer in accordance with the contract.
 - Provide the patent application filing date, serial number and title, a copy of the patent application, patent number and issue date for any subject invention in any country in which the contractor has applied for patents;
 - Furnish the Authority an irrevocable power to inspect and make copies of the patent application file within six months after submitting the invention disclosure, if the application has been previously filed;
 - Submit to the Contracting Officer a document confirming all rights to which the Authority is entitled; and
 - Establish and maintain effective procedures to ensure that its patent rights obligations are met, that subject inventions are timely identified and disclosed, and that patent applications are filed when required.
- (b) *Modification, Waiver or Omission.* If the Contracting Officer determines that it is in the best interest of the Authority, the Contracting Officer may modify, waive, or omit any of the rights set forth in §22-6 (d). The modification, waiver or omission shall be in

writing and shall be accompanied by a written statement of facts justifying the determination. The statement of facts shall include the following:

- A description of the extent to which the Authority's rights are to be modified, waived, or omitted;
- The facts and justification for the modification, waiver or omission; and
- A statement explaining how the interests of the Authority will be better served by the modification, waiver, or omission.

- (c) *Authority Follow Up Actions.* The Contracting Officer shall establish follow up procedures to protect the Authority's interest and to ensure that subject inventions are identified and disclosed; that, when required, patent applications are filed; and that the Authority's rights are established and protected.

22-8 RIGHTS IN DATA AND COPYRIGHTS

- (a) *General.* This section prescribes the procedures, solicitation provisions and contract clauses pertaining to rights in data and copyrighted material. The Chief Procurement Officer shall prescribe standard solicitation provisions and contract clauses governing rights to copyrighted material and proprietary information under Authority contracts for inclusion in solicitations and contracts.
- (b) To carry out its missions and programs, the Authority acquires or obtains access to many kinds of data produced during or used in the performance of its contracts. Contractors may have proprietary interests in data. In order to prevent the compromise of these interests, the Authority shall protect proprietary data from unauthorized use and disclosure.
- (c) *Definition.* "Data," as used in this subsection, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
- (d) *Data Rights: General.* All contracts that require data to be produced, furnished, acquired, regardless of form or characteristic of an administrative, scientific or technical nature or used in meeting contract performance requirements, must contain terms that delineate the respective rights and obligations of the Authority and the contractor regarding the use, reproduction and disclosure of that data. The Rights in Technical Data clause specifies the respective rights of the Authority and the contractor regarding the use, disclosure, or reproduction of the data. Accordingly, the solicitation or the contract must specify the data to be delivered.
- (e) *Federally Funded Contracts.* Contracts that obligate Federal funds shall include a provision in the solicitation that provides the Department of Transportation, Federal Transit Administration with a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes:
- The copyright in any work developed under an Authority contract; and
 - Any rights of copyright to which a contractor purchases ownership with grant support.

When federal funding supports the costs of a research, development, demonstration, or a special studies project, the contractor may not publish or reproduce subject data in whole or in part, or in any manner or form without the advance written consent of the Federal Government.

22-9 PROPRIETARY OR CONFIDENTIAL DATA IN BIDS AND PROPOSALS

- (a) *General.* When necessary for the evaluation of bids or proposals, a Contracting Officer may include a request for proprietary data in a solicitation, in accordance with the provisions of this section.
- (b) Bidders and proposers shall be afforded the opportunity to designate information contained in their response to a solicitation as proprietary or confidential.
- (c) *Solicitation Provision.* Each solicitation must contain a provision which indicates the right of the contractor to designate confidential or proprietary information in response to the solicitation. A provision, approved by the Chief Procurement Officer, shall be included in every solicitation and shall essentially require:
 - Bidders/proposers who include proprietary or confidential information in their bid/offer, and who do not want the information disclosed to the public for any purpose or used by the Authority except for evaluation purposes, to conspicuously display the following information on the cover of their submission:
 - That the bid/proposal includes proprietary or confidential information that shall not be disclosed outside the Authority and shall not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate the bid or proposal;
 - That if a contract is awarded to the bidder/proposer, the Authority shall have the right to duplicate, use, or disclose the proprietary or confidential information to the extent provided in the contract;
 - That this restriction does not limit the Authority's right to use the proprietary or confidential information if it is obtained from another source without restriction; and
 - That the bidder/proposer has specifically identified, by page number or otherwise, the proprietary or confidential information subject to the restriction.
 - Bidders/proposers to conspicuously mark each page containing proprietary or confidential information, with a notation to the effect that use or disclosure of proprietary or confidential information contained on the page is subject to the restriction set forth on the cover page of the bid or proposal; and
 - Bidder/proposers to not designate as confidential or proprietary, the bidder/proposer name, bid/proposal price, or any information that is not actually proprietary or confidential.
- (d) *Determination and Notification Procedure.*
 - If, after inspection of a bid/proposal, the Contracting Officer or other Authority official determines that all or any part of the information designated as confidential or proprietary may be disclosed subject to redaction following the Public Access to Records Program ("PARP") procedures, the Contracting Officer shall notify the bidder/proposer of the determination and allow the prospective contractor ten days to respond.

- If the Contracting Officer does not agree that the additional evidence presented by the bidder/proposer supports the confidential or proprietary designation of the information identified, or the bidder/proposer did not provide additional evidence, the Contracting Officer shall take one of the following actions:
 - Declare the bid non-responsive and eliminate it from consideration; or
 - If the Contracting Officer determines that it would be in the best interest of the Authority to consider the bid/proposal, the Contracting Officer may, with the concurrence of COUN, remove the confidential or proprietary designation and consider the bid or proposal.
- The Contracting Officer shall notify the bidder/proposer in writing of the decision under §22-9 (d). If the bid/proposal will be considered, the notice to the bidder/proposer shall include a “warning” that the bidder’s or proposer’s designation has been removed, and the information may be disclosed.
- If the bid/proposal is eliminated under §22-9 (d), the designated information shall not be disclosed. If the bid/proposal is modified by the Contracting Officer to remove any designation of information as confidential or proprietary under §22-9 (d), the bidder/proposer may appeal the Contracting Officer’s determination to the Office of General Counsel after award. COUN shall consider the evidence submitted by the bidder/proposer and the findings and determination of the Contracting Officer and shall render a decision upholding or overruling the Contracting Officer’s determination, in whole or in part.

22-10 PROVISIONS AND CLAUSES

Solicitations and contracts for the requirements listed below shall include the following clauses, as approved by the Chief Procurement Officer:

- (a) Solicitations and contracts for experimental, developmental or research work shall include the provision “Patent Rights - Retention by the Contractor.”
- (b) Contracts for Architect-Engineer or related services shall include the clause, “Designs and Data -Authority Rights.”
- (c) Supply and Service contracts (except simplified acquisitions) shall include a provision in solicitations and contracts entitled “Rights in Technical Data.”

23 - PROCUREMENT FORMS AND PROVISIONS

23-1 PURPOSE AND SCOPE

This chapter establishes a system for the accountability, control, and maintenance of procurement forms, provisions, and clauses in solicitations and/or contracts.

23-2 RESPONSIBILITY

The Chief Procurement Officer is responsible for: (a) the maintenance and revisions of Authority procurement forms, clauses, and provisions; (b) coordinating revisions with the Office of the General Counsel ("COUN"); (c) submitting substantive changes to procurement forms, provisions, and clauses for review by the OIG, SAFE, and MTPD as appropriate; and (d) as applicable, communicating and distributing updated or new forms, clauses, and provisions to appropriate Authority personnel.

23-3 LIMITATIONS

All forms, provisions, and clauses shall comply with the WMATA Compact, Federal laws and regulations applicable to Federal grantees, and with the management policies established by the Board and General Manager.

- (a) Changes that affect a management policy change must be authorized by the Board or the General Manager, as appropriate.
- (b) Changes resulting from new Federal requirements will be made subject to approval by the General Counsel. However, the Chief Procurement Officer is authorized to make changes which do not require Board approval.

23-4 PROVISIONS AND CLAUSES: NUMBERING SYSTEM

Clauses and provisions shall be maintained for each major type of contract and shall be controlled by title or numbering system. The system must identify a unique identifier for each provision or clause, and the date of its creation. Since they are subject to revision from time to time, all provisions and clauses shall be dated (e.g., JUN 2008). To avoid questions concerning which version of any provision or clause is operative, its date shall be included whether it is incorporated by reference or in full text in a solicitation or contract.

23-5 INCORPORATING PROVISIONS AND CLAUSES

- (a) All FTA funded contracts should include federal statutory and regulatory requirements clauses.

- (b) Provisions and clauses should be incorporated in full text rather than incorporated by reference to the maximum extent possible. If any provision or clause is incorporated by reference that provision or clause must be readily accessible electronically by the proposer or prospective contractor. The Contracting Officer, upon request, shall provide the full text of any provision or clause incorporated by reference. The conformed contract must include the full text of all provisions and clauses including those incorporated by reference in the solicitation document.
- (c) When incorporating provisions and clauses by reference, the Contracting Officer shall include in solicitations a statement that:
 - Identifies all provisions and clauses that require completion by the proposer or prospective contractor;
 - Specifies that the provisions and clauses must be completed by the proposer or prospective contractor and must be submitted with the quote or proposal; and
 - Identifies to the proposer or prospective contractor at least one electronic address where the full text may be accessed.
- (d) A provision or clause that is not available electronically to proposers and prospective contractors shall be incorporated in solicitations and/or contracts in full text.

23-6 IDENTIFICATION OF PROVISIONS AND CLAUSES

Whenever any Authority provision or clause is used without deviation in a solicitation or contract, whether it is incorporated by reference or in full text, it shall be identified by title or number and date. This identification shall also be used if the Authority provision or clause is used with an authorized deviation (e.g., modification). The Contracting Officer shall then insert ("Deviation") after the date.

23-7 MODIFYING AND COMPLETING PROVISIONS AND CLAUSES

- (a) The Contracting Officer shall not modify provisions and/or clauses in the General Provisions section of the solicitation and/or contract, or in the Terms and Conditions for simplified acquisitions.
- (b) When modifying provisions or clauses incorporated by reference, insert the changed wording directly below or next to the title of the provision or clause identifying to the lowest level necessary (e.g., paragraph, sentence, word), to clearly indicate what is being modified.
- (c) When modifying provisions or clauses incorporated in full text, modify the language directly by substituting the changed wording as permitted.
- (d) When completing blanks in provisions or clauses incorporated by reference, insert the fill-in information directly below or next to the title of the provision or clause identifying to the lowest level necessary to clearly indicate the blanks being filled in.
- (e) When completing blanks in provisions or clauses incorporated in full text, insert the

fill-in information in the blanks of the provision or clause.

23-8 FORMS: CURRENT EDITIONS AND NUMBERING SYSTEM

Standard and common use forms shall be maintained for solicitation and contract related activities and shall be controlled by a form title or numbering system. The numbering system must identify a unique title or number for each form, and the current edition date.

23-9 TYPES OF FORMS

- (a) Standard forms include, as an example:
 - Cover page for solicitations/contracts, and contract modification actions;
 - Standard requirements for solicitations (including certifications and special instructions);
 - Price/bid schedule;
 - General provisions; and
 - Simplified acquisition terms and conditions.
- (b) Internal Authority forms include standardized purchase requests and requisition documents, and all common forms used in conducting contract award and contract administration functions.

23-10 DISTRIBUTION OF FORMS, CLAUSES, AND PROVISIONS

Responsible Authority officials will be provided a copy of or access to authorized procurement forms, clauses, and provisions. Contractors and other interested parties may be provided with an electronic copy of contract forms, clauses, and provisions. Printed versions shall be made available upon request, for a reasonable fee set by the Chief Procurement Officer, if determined appropriate for the circumstance.

24 - DEFINITIONS

24-1 PURPOSE AND SCOPE

This chapter defines words and terms commonly used in these procedures.

24-2 DEFINITIONS

As used throughout these procedures, the following words and terms are used as defined in this Chapter unless:

- The context in which they are used clearly requires a different meaning; or
- A different definition is prescribed for a particular chapter or portion of a chapter.

Acceptance. The act of an authorized representative of the Authority to assume ownership of existing identified supplies received, or acceptance of specific services rendered, as partial or complete performance of the contract. Acceptance shall constitute acknowledgment that the supplies, services, or construction conform to the applicable contract quality and quantity requirements.

Actual Costs. All direct and indirect cost incurred for services, supplies, or construction, as distinguished from estimated or forecasted costs.

Adequate Evidence. Information that is sufficient to support the reasonable belief that a particular act or omission has occurred.

Administrative Dispute Resolution Act. Authorizes and encourages Federal agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes.

Advance Payments. Agreed upon payments between a buyer and a seller made prior to the actual receipt or delivery of the contracted good or services. Payments may be for a stated amount or a percentage of the purchase price. Sometimes referred to as cash in advance. FTA prohibits advance payments; however, FTA does occasionally make exceptions to its advance payment prohibitions, if the Authority can provide sound business reasons for doing so and has obtained FTA's advance written concurrence.

Affiliates. Business concerns, organizations, or individuals are affiliates of each other if, directly, or indirectly; (a) either one controls or has the power to control the other, or (b) a third-party controls or has the power to control both. Examples of control include, but are not limited to, interlocking management or ownership, identical interests among family members, shared facilities and equipment, common use of employees, or business entity organized following the debarment, suspension, or proposed debarment or suspension of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment or suspension.

Alternative Dispute Resolution ("ADR"). A process or procedure used voluntarily between parties to resolve issues in controversy without the need to resort to litigation. ADR may include

but is not limited to mediation, fact-finding and arbitration.

Allocable Costs. Cost (s) that is specifically related to the contract. A cost that can be assigned or charged as an item of cost to one or more cost objectives, in accordance with the terms of the contract and applicable laws and regulations.

Allowable Costs. Costs that are recognized by law, regulation or the contract.

Appendix B. The “Notice of Requirements for Affirmative Action-Disadvantaged Business Enterprise,” which when attached to a solicitation, implements the DBE requirements of the Authority’s DBE Program Plan in the award and administration of federally assisted Authority contract(s).

Armed Services Board of Contract Appeals (“ASBCA”). Designated as the authorized representative of the Authority to hear, consider, and decide on contractor appeals of Final Decisions arising under the Disputes clause of Authority contracts.

Assignment of Payments. An authorization from a supplier that allows for their accounts receivable to be paid to a third party. Payments made to a supplier’s creditor.

Assistant General Manager. Any Assistant General Manager, the General Counsel or the Secretary of the Board.

Authority. The “Washington Metropolitan Area Transit Authority” or “Metro.”

Bid. The response submitted by a bidder to an Invitation for Bid (“IFB”) or to a multi-step bid. Sometimes the complete bid document may be referred to as “the bid.” The response to a Request for Proposal (“RFP”) is called a proposal.

Bid Bond. An insurance agreement, accompanied by a monetary commitment, by which a third party (surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

Bid Samples. A sample to be furnished by a bidder to show the characteristics of the product offered in a bid.

Bid Security. A bond or deposit that guarantees that the bidder/proposer, if awarded the contract, will accept the contract as bid.

Bidder. Any individual, firm, partnership, corporation, or combination thereof, submitting a bid in response to an Invitation for Bid (“IFB”).

Blanket Purchase Agreement (“BPA”). A simplified procurement method for filling the anticipated repetitive needs for supplies or services through the award of competitive line item contracts or discount off of a supplier’s catalog, usually through competition. A BPA is used to reduce administrative expenses resulting from small, repetitive requirements.

Board. The Board of Directors of the Washington Metropolitan Area Transit Authority appointed pursuant to the Authority Compact (PL 89-774).

Bona Fide Agency. An established commercial or selling agency maintained by a contractor for

the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Authority contracts nor holds itself out as being able to obtain any contract or contracts through improper influence.

Bona Fide Employee. A person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Authority contracts and does not hold him/herself out as being able to obtain any Authority contract or contracts through improper influence.

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

Brand-Name Product. A product distinguished from its competitor's products by name, term, symbol, design or any other combination of these identifiers.

Cardinal Change. A change which cannot be redressed within the contract by an equitable adjustment to the contract price.

Certified Cost or Pricing Data. Cost or pricing data that has been required to be submitted and has been certified or is required to be certified.

Certified Disadvantaged Business Enterprise. A contractor certified as a disadvantaged business enterprise by the DBE Liaison Officer.

Change Order. A written alteration issued to modify or amend a contract or purchase order. A bilateral (agreed to by all parties) or unilateral (the Authority orders a contract change without the consent of the contractor) request which directs the contractor to make changes to the contracted scope of work or specification. In reference to construction contracts, it relates primarily to changes caused by unanticipated conditions encountered during construction not covered by the drawings, plans or specifications of the project.

Chief Procurement Officer. The Chief Procurement Officer serves as the General Manager's principal official to exercise the proper controls over the Authority procurement process. The Chief Procurement Officer also serves as the Authority's Head of Contracting Activity (HCA).

Civil Judgment. A judgment or finding of a civil offense by any court of competent jurisdiction.

Clerical Mistake. A mistake contained in a bid or proposal that results from a contractor's clerical error. When such mistakes are apparent on the face of a bid, they may be corrected by contracting officers in accordance with the procedures identified in the Authority's BPM.

Commercial Product. An item, material, component, sub-system 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.

Compact. Washington Metropolitan Area Transit Authority Compact, PL 89-774, as amended.

Competitive Negotiation. A procurement method for obtaining goods, services and construction for public use in which discussions and negotiations may be conducted with responsible proposers who submit responsive proposals.

Competitive Range. That group of proposals, as determined during the evaluation process for competitive negotiation, which includes only those proposers considered to have a reasonable chance of being selected for award and who are selected for additional discussions and negotiations. Proposals not in the competitive range are given no further consideration.

Confidential Information. Information such as trade secrets or test data made known only to those who need to know. Such information must be protected and is not a matter of public knowledge. Best practice requires that such information be clearly identified and labeled.

Consent of Surety. An acknowledgment by a surety that its bond given in connection with a contract continues to apply to the contract as modified.

Construction. The process of building, altering, repairing, improving or demolishing any public infrastructure facility, structure, building, or other improvements of any kind to real property. It does not include the routine operation, repair, or maintenance of any existing public infrastructure facility, including structures, buildings, or real property.

Construction Manager at Risk. Construction Manager at Risk ("CM at Risk") is a project delivery method which includes a commitment by the Construction Manager ("CM") to deliver a project within a Guaranteed Maximum Price ("GMP"). The CM at Risk method has some of the benefits of a design/build project approach (improved quality based on the qualifications of the design/build team and fast track construction capability). The process is based on team building between the owner, the designer of record, and the contractor/construction manager from project inception through the final construction and operation of the facility. This approach allows for input from all team members throughout the design and construction phases of the project. It relies on the ability of the CM to conduct constructability reviews, construction phasing analyses, material availability reviews throughout the design process which reduces the potential for change orders, construction delays and increased project costs through the early identification and remediation of issues in the design phase of the project.

The CM at Risk project management concept relies on the establishment of a team including the Authority, designer, and CM/contractor. The selection of the architect/engineer to develop the project design is the first step in the process. The design firm is contracted through project completion and its scope of work must include site investigations, alternative analyses, cost estimates, detailed design, construction bid documents, and construction management services. The selection of the CM/contractor is similar to the design firm. The CM however is obtained through an RFP that should detail the CM's personnel to be assigned to the project, previous experience on similar projects, financial resources, the availability of a local office to support the project team, and the CM's approach to the project. The CM contract should include document review, constructability reviews, cost estimating and scheduling. The CM's compensation is based on actual hours, overhead and profit.

When the detailed design reaches between 50% and 75% complete, the CM and the Authority will negotiate a GMP for the project. The GMP includes work, overhead, profit and a contingency which is normally between 2% and 5%. (The contingency, if unused, reverts back to the Authority at project completion.) The Authority and the designer participate in the determination of the GMP through cost estimates prepared at the 30%, 60%, and 90% design points. The CM and design firm interaction during the design process allows the CM to develop cost and construction information to perform its GMP calculations.

Construction contractors are selected by the CM through a low bid process using a pool of contractors pre-qualified by the Authority, including contractors necessary to meet the DBE

participation goal. The construction contractors are subcontractors to the CM and their selection should be based on their quality of work and area of specialty. The CM coordinates the flow of information between its construction subcontractors and the designer to develop detailed construction plans and schedules.

The project construction is the responsibility of the CM and its subcontractors. The selection process of the CM and prequalification of the CM's construction subcontractors reduces the risk of bid protests. Involvement of the CM and its subcontractors in the design process likewise reduces the number of Requests for Information and change order requests during construction. The flow of information between the design firm, CM and contractors is the benefit of the CM at Risk contracting method.

Contingency Costs. Costs based on a possible future event or condition arising from currently known causes, the outcome of which is not determinable at the present time.

Contingent Fee. A commission, percentage or other fee that is conditional upon the success that a person or concern has in securing a contract.

Contract. A mutually binding legal relationship in which the seller furnishes supplies or services (including construction) and the buyer pays for them. It includes all types of commitments that obligate the Authority to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications.

Contract Administration. Following the award of a contract, the management actions that must be taken to assure full compliance with all the terms and conditions contained within the contract document, including price. Action steps that assure that the contractor is in full compliance with the entire contract. Contract administration activities include payment, monitoring of progress, inspection and acceptance, quality assurance, monitoring and surveillance, modifications, negotiations, contract closeout, and other activities.

Contract Drawings. The official plans, profiles, typical cross-sections, general cross-sections, elevations, and details listed or referenced in the Specifications or amendments thereto, and supplemental drawings approved by the Authority which show the locations, characteristics, dimensions, and details of the work to be performed.

Contract Modification. Any written alteration in the specifications, delivery point, frequency of delivery, period of performance, price, quantity, or other contract provisions of the contract.

Contracting Officer. The "Contracting Officer" is the Authority's Chief Procurement Officer or such persons(s) or positions as shall be designated in writing by the Chief Procurement Officer to act in her behalf. Wherever the term "Contracting Officer" shall appear in this document, the term also includes her designee(s).

Contractor. Any individual or other legal entity that directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, an Authority contract, including a contract for carriage or commercial bills of lading, or a subcontract under a contract.

Conviction. A judgment or conviction of a criminal offense by any court of competent jurisdiction,

whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of Nolo Contendere.

Copeland “Anti-Kickback” Act. This act provides that each contractor or subcontractor shall be prohibited from inducing by any means any person employed in the performance of the work under the contract or subcontract to give up any part of the compensation to which he is otherwise entitled.

Copyright. The exclusive rights to publish, perform, copy or sell an original work.

Corporate Surety. A corporation licensed under applicable insurance laws which, under its charter, has legal power to act as surety for others.

Co-Surety. One of two or more sureties jointly liable for a bond. A limit of liability for each surety may be stated.

Cost. The actual expenses incurred in delivering a product, service, or construction; includes both direct and indirect costs, but does not include fee or profit for the vendor.

Cost Analysis. The review and evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred. May include cost benefit analysis or total cost of ownership. A cost analysis should be employed when price analysis is impractical or does not allow a purchaser to reach the conclusion that a price is fair and reasonable. Cost analysis is most useful when purchasing nonstandard items and services.

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

Cost Incentive. A contract which includes cost incentives in the form of a profit or fee adjustment formulae is intended to motivate the contractor to effectively manage costs.

Cost Objective. A function, organizational unit, or contract for which costs are to be determined and cost data accumulated.

Cost or Pricing Data. All facts as of the date of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable.

Cost-Plus-A-Percentage-Of-Cost Contract (“CPPC”). A contract containing some element that obligates the Authority to pay the contractor an amount (in the form of either profit or cost) undetermined at the time the contract was made and to be incurred in the future, based on a percentage of future costs.

Cost-Plus-Award-Fee Contract (“CPAF”). A cost-reimbursement contract that provides for a base fee amount fixed at inception of the contract, and an additional fee to be determined at the time of fee award that is based on an evaluation by the purchaser as to the quality of the contract performance, and the evaluator’s assessment as to the fee amount necessary to motivate the contractor toward excellence.

Cost-Plus-Fixed-Fee Contract (“CPFF”). A contract whereby the contractor is reimbursed for its actual incurred cost for material, labor and other agreed to incidentals, plus a fixed sum established in the contract.

Cost-Plus-Incentive-Fee Contract (“CPIF”). A contract whereby the contractor receives

additional compensation for keeping the total amount expended below the agreed-upon maximum contract amount or for achieving certain pre-specified goals during the performance of the contract. Often used in construction contracts in order to ensure completion of the building project prior to the targeted completion date.

Cost Realism Analysis. The process of independently reviewing and evaluating specific elements of each proposer's proposed cost estimate to determine whether the estimated proposed cost elements: a) are realistic for the work to be performed; b) reflect a clear understanding of the requirements; and c) are consistent with the unique methods of performance and materials described in the proposer's technical proposal.

Cost-Reimbursement Contract. Reimburses a contractor for all costs incurred which are allowable and allocable under the terms of the contract and applicable laws and regulations and may include profit or fee. May also be referred to as a Cost Plus contract.

Cost-Sharing Contract. A type of contract that is used when it is impossible to firmly estimate costs and there is a high probability that the contractor will receive a substantial present or future commercial benefit. This type of contract may be used in research and development areas, as well as public/private partnerships.

Contracting Officer Representative ("COR"). A COR is a representative of the Contracting Officer appointed by the Chief Procurement Officer. The COR performs those contract administration functions specifically delegated in writing by the Chief Procurement Officer. CORs are delegated limited Contracting Officer authority and may enter into contractual agreements consistent with the extent of the authority delegated.

Contracting Officer Technical Representative ("COTR"). A COTR is a representative of the Contracting Officer responsible to and appointed by the Chief Procurement Officer. The COTR performs those contract administration functions specifically delegated in writing by the Contracting Officer. COTRs have no contractual authority and cannot enter into contractual agreements.

Counsel. The Authority's Office of General Counsel ("COUN").

Data. Recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

The Davis-Bacon Act. Requires that each contract over \$2,000 to which the United States or the District of Columbia is a party for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Under the provisions of the Act, contractors and their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. The Davis-Bacon Act directs the Secretary of Labor to determine such local prevailing wage rates.

Debarment. Debarment is an action taken by the Chief Procurement Officer intended to exclude a contractor from contracting or subcontracting for a reasonable period of time. Debarment should not exceed three years and should be consistent with the seriousness of the offense.

Definite-Quantity Contract. A contract providing for delivery of a definite quantity of specific

supplies or services for a fixed period, with deliveries at designated locations scheduled upon order.

Descriptive Literature. Information such as charts, illustrations, brochures, and technical data, furnished by a bidder, on request as part of a bid, to describe the items offered, show the characteristics or construction of a product or explain its operation to determine the acceptability of the item.

Determination and Findings (“D&F”). A legal document prepared by a purchasing official to justify a decision to take a certain action; includes a conclusion, or determination, and the reason(s) for findings of fact.

Direct Cost. The cost of materials or services identified.

Directly Associated Cost. Any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the cost not been incurred.

Direct Materials. Those materials that enter directly into the end product or that are used or consumed directly in connection with the furnishing of the end services.

Disadvantaged Business Enterprise (“DBE”). A for-profit small business concern that has been certified by the Authority to be at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more individuals, and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Disbursing Officer. The Authority employee responsible for making payments in settlement of a debt.

Dispute Review Board. A Board comprising an Authority representative, a contractor representative, and a third representative selected by the other two that is charged to resolve matters involving contract disputes, usually in construction contracts.

e-Buy. An online Request for Quotation (“RFQ”) tool designed to facilitate the request for submission of quotations for a wide range of commercial supplies and services offered by GSA Schedule contractors who are on GSA Advantage!®.

Electronic Commerce (“e-Commerce”). The integration of electronic funds transfer and similar techniques into a comprehensive electronic-based system of procurement functions; could include the posting of IFBs and RFPs on electronic bulletin boards, the receipt of bids via email or facsimile, and payment via electronic funds transfer.

Emergency Condition. Is a situation (such as flood, epidemic, riot, equipment failure or equipment destruction, or other reason declared by the General Manager), which creates an immediate threat to the public health, welfare, or safety.

Energy Policy and Conservation Act. An Act to increase domestic energy supplies and availability; to restrain energy demand; to prepare for energy emergencies; and for other purposes.

Evaluated Bid/Offer. The price to be evaluated which results from applying the five percent

factor to the bid/offered price of any large business that is competing against a small, local business.

Excluded Parties List System. See System for Award Management

Executed. Agreed to and signed by the parties to a transaction.

FedBizOpps. FedBizOpps is the origination source for federal government procurement opportunities that exceed \$25,000.

Federal Acquisition Regulation (“FAR”). The Federal Acquisition Regulation contains uniform policies and procedures that govern the acquisition activities of federal agencies. The FAR is prepared, issued and maintained jointly by the Secretary of Defense, the NASA Administrator, and GSA.

Final Acceptance. Final acceptance of the work occurs when the work is fully, completely, and finally accomplished in strict compliance with the contract documents to the satisfaction of the Authority.

Final Cost Objective. A cost objective whose costs are not assigned to any other cost objective and is therefore one of the final points for accumulating costs in the accounting system.

Firm-Fixed-Price Contract (“FFP”). A fixed-price contract that provides for a price that is not subject to any adjustment in the basis of the contractor’s cost experience in performing the contract. This type of contract places full responsibility for all costs and resulting profit or loss upon the contractor and provides maximum incentive for the contractor to control cost and performance effectively.

Fiscal Year. The 12-month period used for accounting purposes (usually from July 1 through June 30).

Fixed Assets. Physical assets such as property, plant and equipment.

Fixed-Price Contract with Economic Price Adjustment. A fixed-price contract providing for upward and downward revisions to the contract price based upon certain contingencies that are specifically defined in the contract.

Fixed-Price Incentive Contract. A fixed-price contract providing an incentive to reduce cost by allowing for adjustment of profit and establishing the final contract price by a formula based on the relationship of final cost to total target cost.

Fixed-Price with Prospective Price Redetermination. A contract type that provides a firm fixed-price for initial contract deliveries or performance with a re-determination of the price at a stated time (or times) during performance.

General Manager. The Chief Executive Officer of the Authority responsible for all Authority activities, subject to policy direction by the Board.

GSA Advantage!®. The online shopping and ordering system administered by the General Services Administration providing access to contractors, supplies (products) and services.

Good Faith Effort. Efforts to meet the established contract specific DBE goal or other requirements of the Authority’s DBE Program Plan which by their scope, intensity, and

appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Hourly Rate. The rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract.

Identical Bids. Bids for the same line item that are determined to be identical as to unit price or total line item amount with or without the application of factors such as discount or transportation cost.

Imprest Fund. A petty cash fund. A cash reserve for expenditures made in accordance with established policies and controls.

Improper Influence. Any influence that induces, or tends to induce, an Authority employee or officer to give consideration to or to act regarding an Authority contract, on a basis other than the merits of the matter.

Incentive Contract. Any contract that includes a means to reward the contractor for reaching certain predetermined goals to reduce cost and reach a level of performance above the level contracted for or produces results that are beneficial and exceed contract requirements.

Indefinite Delivery. A contract in which the time of delivery is unspecified in the original contract but established by the Contracting Officer during performance.

Indefinite-Quantity Contract. A type of contract that provides for the delivery of indefinite quantities, within written stated limits, of supplies or services to be furnished during a fixed period, with deliveries to be scheduled by placing orders with the contractor. The contract may require the Authority to order and the contractor to furnish at least a stated minimum of supplies or services.

Indemnification. The agreement of a contracting party to hold the other party harmless, or to secure the other party against loss or damage in case of an unanticipated loss.

Independent Authority Estimate. The independent Authority cost estimate represents the Authority's best estimate of the most current price for the supplies, services, or construction being procured.

Indictment. Indictment for a criminal offense. Any information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Indirect Costs. Any cost not directly identified with a specific contract.

Indirect Cost Pools. Groupings of incurred costs identified with two or more contracts.

Individual Surety. A person who is liable for the entire amount of a bond.

Ineligible. Excluded from Authority contracting and subcontracting, pursuant to Executive order, statutory or regulatory authority other than these procedures and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive orders, the Walsh-Healey Public Contracts Act, or the Environmental Protection Acts and Executive orders.

Insurance. A contract between an insurance company and a person or group which provides

for a monetary payment in case of a covered loss, accident, death or other insurable exposure. A form of risk mitigation.

Interested Party. An actual or prospective proposer whose direct economic interest would be affected by the award of a contract or failure to award a contract.

Invention. Any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the U.S. Code.

Joint Development. A joint development is a public/private land development program designed to blend the Authority's transit facilities with office, retail, and/or residential development. The Authority's joint development opportunities consist of property interests owned or controlled by the Authority and approved by inclusion in the Joint Development Work Program by the Board.

Joint Venture. An association of two or more businesses (one of which is a Certified Business Enterprise (CBE) with at least 51% ownership, management, and control), temporarily formed to carry out a single business activity or project for profit in which they combine their property, capital, efforts, skills, and knowledge. The association is limited in scope and duration. The CBE venture partner must remain certified with the Authority in order to qualify for approval.

Labor-Hour Contract. A variant of the time-and-materials type contract differing in that only labor is supplied by the contractor. Provides for the acquisition of services on the basis of direct labor hours at specified fixed hourly rates; is generally used when it is not possible to estimate the extent or duration of required work.

Legal Proceedings. Any civil judicial proceeding to which the Authority is a party or any criminal proceeding. The term includes appeals from such proceedings.

Letter Contract. Typically, a quickly crafted document, where exigency requires an immediate binding agreement so work can begin, but time does not permit the development of a complete contract; an interim contractual agreement.

Licenses. A legal instrument granting permission to do a particular thing, exercise a certain privilege, carry on a particular business, or pursue a certain occupation. When granted by an appropriate government body, licenses are permits allowing a person, firm, or corporation to pursue some occupation or business, subject to regulation.

Liquidated Damages. Damages paid, usually in the form of a monetary payment, agreed by the parties to a contract, which are due and payable as damages by the party who breaches all or part of the contract. Liquidated Damages may be applied on a unit of time basis for as long as the breach is in effect, but not be imposed as an arbitrary penalty. The key to establishing liquidated damages is *reasonableness*.

Local Business. A business that has a principal place of business within the District of Columbia, State of Maryland or Commonwealth of Virginia; is licensed to do business within the District of Columbia, State of Maryland or Commonwealth of Virginia and is not owned or controlled by one or more persons or entities not qualified as a local business.

Local Trading Area. The Greater Washington Metropolitan Statistical Area as defined by the Greater Washington Research Center or any successor entity recognized by the Authority.

Made. When used in relation to any invention, means the conception or first actual reduction to practice of such invention.

Materials. (i) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control; (ii) Subcontractors for supplies and incidental services for which there is not a labor category specified in the contract; (iii) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and (iv) Applicable indirect costs.

Material Costs. Costs of items such as raw materials, parts, sub-assemblies, components, and manufacturing supplies, purchased or manufactured by the contractor, which may include such collateral items as inbound transportation and in transit insurance.

Maximum Liability. The amount obligated by a letter contract over which the Authority cannot be liable if the letter contract is terminated. The Maximum Liability may not exceed 50% of the contract not-to-exceed amount.

Maximum Order Threshold. The point where it is advantageous to seek price reduction from GSA Schedule contractor(s) appearing to provide the best value.

Metro. The “Washington Metropolitan Area Transit Authority” or “Authority.”

Micro Business Program. A race-neutral contracting program that sets aside purchases for competition amongst very small businesses only. Eligibility is restricted to businesses that have their principal place of business located in Maryland, the District of Columbia or Virginia.

Micro-Purchase. An acquisition of supplies or services (except construction) not exceeding \$10,000 in the aggregate shall be distributed equitably among qualified suppliers.

Minority Business Enterprise. Any legal entity that is organized to engage in commercial transactions and is verified as being at least 51% owned, managed, and controlled by one or more socially and economically disadvantaged individuals. In order to be certified by Metro as an MBE, a business must be ready, willing, and able to sell goods and services that are sought by Metro.

Minor Irregularity. A variation from the solicitation that does not affect the price or other material term of the contract or does not give a respondent an advantage or benefit not enjoyed by other respondents or does not adversely impact the interest of the contracting party.

Multi-Year Contract. Multi-year contracts have a term of years which exceeds the current funding period. Such contracts must be contingent upon future funding by the Authority, vesting in WMATA the right to cancel without penalty if such funding is not available for any budget period beyond the funded period. The contract requires the contractor to deliver the entire requirements of the contract. Option provisions are not necessary. Multi-year contracting may be used in either competitive or non-competitive procurements.

Negotiate. To communicate or confer with another party to reach an agreement or compromise to settle some matter.

Negotiation. Conferring, discussing, or bargaining to reach agreement in business transactions. A bargaining process between two or more parties seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern.

Negotiation Memorandum. A memorandum prepared by the Contracting Officer at the conclusion of each negotiation detailing the elements of negotiation (special clauses,

specifications, costs, etc.).

Non-Competitive Negotiation. The process of arriving at an agreement when one source is available to meet the requirement.

Nonprofit Organization. A university or other institution of higher education or an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1954, 26 USC 501 (c) and exempt from taxation under section 501(a) of the Internal Revenue Code [26 USC 501 (a)], or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Notice-to-Proceed (“NTP”). A notice issued to successful bidder or proposer advising them that it is the Authority’s intent to award a contract. In construction contracting, it is common practice to require completion of performance in a specified number of days after issuance of the notice to proceed.

Officer. One of the principal Authority managers as authorized by the Compact, including the General Manager, the Deputy General Managers, the Assistant General Managers, the General Counsel, and the Secretary.

Opening. The date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

Option. A unilateral right in a contract by which, within a specified period, the Authority may elect to purchase additional supplies or services called for by the contract or may elect to extend the contract.

Organizational Conflict of Interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract or subcontract may, without some restrictions on future activities, result in an unfair competitive advantage to the contractor, one of its affiliates or subcontractor, impair its objectivity in performing the contracted work or result in biased Ground Rules.

Out of Scope Change. A change that is beyond the scope of the contract and, thus, cannot be ordered under the contract’s Changes clause without a sole source justification and agreement of the Contractor.

Overhead Cost. Indirect recurring costs of running a business.

Partial Payment. Payment of contractor invoices coinciding with the delivery and acceptance of incremental amounts of supplies and/or services.

Patent. A set of exclusive rights granted to an inventor or applicant for a fixed period of time, usually 20 years in the U.S. It gives the grantee the right to exclude others from making, using, selling, offering for sale, or importing the patented invention. There are a number of international treaties governing patent law. In the U.S., the Patent and Trademark Office gets its authority from Article One, Section 8 of the U.S. Constitution.

Payment Bond. An instrument, issued by a surety, that guarantees that subcontractors will be paid for labor expended on the contract.

Penal Sum or Penal Amount. The amount of money specified in a security (or a percentage of the bid price in a bid security) as the maximum payment for which the surety is obligated.

Performance Bond. An instrument executed, subsequent to award, by a successful bidder that protects the Authority from loss due to the bidder's inability to complete the contract as agreed. A risk mechanism that secures the fulfillment of all contract requirements.

Period of Performance. The period of time allowed in the contract documents for completion of the work from effective date through final date.

Petty Cash Fund. A cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from the Authority's finance and disbursing officer to a duly appointed cashier, for distribution as needed from time to time in making payment in cash for relatively small amounts.

Piggyback (Piggyback Cooperative). A form of intergovernmental cooperative purchasing which extends the pricing and terms of a contract entered into by one government agency to other agencies. Generally, a larger agency will competitively award a contract that will include language allowing other agencies to utilize the contract which may be to their advantage in terms of pricing, thereby gaining economies of scale that they normally would not receive if they competed on their own.

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

Power of Attorney. The authority given to a person or corporation to act for and obligate another as specified in the instrument creating the power. An instrument under seal which appoints an attorney-in-fact to act on behalf of a surety in signing bonds.

Pre-Construction Meeting. For a construction project, a meeting with representatives of the Contractor and the Authority before beginning the construction work.

Pre-Contract Costs. Costs incurred before the effective date of the contract directly pursuant to the negotiation and in anticipation of the contract award when those costs are necessary to comply with the proposed contract delivery schedule.

Preponderance of the Evidence. Proof by the amount of supporting information that, compared with that amount of information opposing it, leads to the conclusion that the issue is more probably true than not.

Price. The amount the Authority 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 prospective price without evaluating the separate cost elements and profit of the bidder/proposer included in that price. The end result of price analysis is to ensure fair and reasonable pricing of a product or service. Price analysis may include a variety of techniques such as comparing proposed prices with prices of same or similar items obtained through market research.

Price Ceiling. Upper limit imposed on the price of a good. The highest price that a buyer is willing to pay for goods, services or construction.

Privacy Act of 1974. An omnibus "code of fair information practices" that attempts to regulate the collection, maintenance, use, and dissemination of personal information by federal executive branch agencies.

Progress Payment. A timed sequence of payments made during the performance of a contract; periodic payments made over the life of a contract; allow the contractor to submit invoices for payment as progress is made toward completing the contract.

Proposal. A proposal is a document submitted by a vendor in response to a solicitation to be used as the basis for discussions or entering into a contract.

Proprietary Information. Information owned by a private individual or corporation under a patent, copyright, trademark or other exclusive right and protected from release to the general public.

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

Protest. a written objection by an interested party to any of the following: (i) A solicitation or other request by the Authority for offers for a contract for the procurement of property or services; (ii) The cancellation of solicitation or other request; (iii) An Award or proposed award of the contract; and (iv) A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

Purchase Card. The Authority Purchase Card provides authorized employees who have been delegated contracting authority with a means of purchasing approved services and commodities in an efficient, cost-effective manner. Authority purchase cards may be used for: (a) Purchases at or below \$5,000 for non-federally funded requirements; or (b) Orders against established contracts or purchase orders up to the simplified acquisition threshold of \$250,000 for non-federally funded purchases.

Purchase Order. A purchaser's written documentation to a vendor formalizing all the terms and conditions of a proposed transaction, such as a description of the requested items, delivery schedule, terms of payment, and transportation.

Quotation. A statement of price, terms of sale, and description of goods and services offered by a vendor to a prospective purchaser; may be non-binding if solicited to obtain market information for planning purposes.

Race-Conscious. A measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral. A measure or program that is, or can be, used to assist all small businesses. For the purpose of the DBE program, race-neutral includes gender-neutrality.

Receiving Report. A written document used in the receiving and inspection process that identifies the item, quantity, and date of delivery. It may also note any discrepancies or problems.

Regulation. A statement by the Authority or governmental body to implement, interpret, or prescribe law or policy, or to describe organization, procedure, or practice, often promulgated in accordance with an administrative procedures act.

Reinsurance. A contract in which an insurance company agrees to indemnify another insurance company in whole or in part against risks the first company has assumed.

Request for Proposal ("RFP"). The document used to solicit proposals from potential providers

for goods and services (Proposers). Price must be an evaluation factor. RFPs provide for discussions with proposers and Best and Final Offers prior to award. RFPs may be a single step or multi-step process.

Requirements Contract. A contract used to order only the material or services actually required during a contract term. An indefinite quantity contract for frequently used commodities or products.

Responsive Bidder/Proposer. A contractor, business entity or individual who submitted a bid or proposal that fully conforms in all material respects to the IFB/RFP, including form and substance.

Responsible Bidder/Proposer. A contractor, business entity or individual that is fully capable to meet all of the requirements of the solicitation and subsequent contract. Must possess the full capability, including financial and technical, to perform as contractually required. A responsible bidder/proposer must be able to fully document the ability to meet any DBE requirements.

Revenue Generating Contract. Revenue generating contracts are contracts whose primary purpose is to generate revenues or to create business opportunities for the Authority.

Royalties. Compensation for the use of property.

Sealed Bid. A formal submission from a bidder submitted in response to an Invitation for Bid ("IFB"). It is submitted in a sealed envelope to prevent its contents from being revealed before the time and date set for the opening.

Simplified Acquisition Method. The simplified acquisition procedures may only be used for the procurement of supplies, services or construction when the anticipated aggregate dollar value of the procurement does not exceed the simplified acquisition threshold of \$250,000 for operating funded procurements and \$250,000 for federally funded procurements.

Single Bid. After solicitation, response is received from only one source. In these instances, the acquisition is handled like a sole-source procurement or non-competitive negotiation.

Small Business. With respect to firms seeking to participate as a small local business in simplified acquisitions, a small business as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121).

Small Business Concern. With respect to firms seeking to participate as DBE's in U.S. Department of Transportation ("DOT") assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65 (b).

Small Local Business (Small Local Vendor). A small business that is located in the District of Columbia ("DC"), State of Maryland ("MD"), or Commonwealth of Virginia ("VA"), collectively referred to as the transit zone.

Small Business Enterprise (SBE). A for-profit Small Business Concern that is at least 51% owned by one or more individuals who are economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the economically disadvantaged individuals who own it.

Small Business Enterprise Set-Aside. A solicitation that is limited to SBE bidders/offers only. If it is determined that a DBE goal is not in the best interest of the Authority to satisfy a requirement, SBE set-aside will be used. The total value of the requirement must be less than \$1,000,000 and there must be a reasonable expectation that at least two or more SBE firms can provide the service/product. The CPRO may increase the threshold for an SBE Set aside on a case-by-case basis.

Small Purchase. Any procurement not exceeding a given upper monetary limit, as established by law, regulation, executive order, etc.: usually applies to purchases of small dollar amounts under a certain monetary threshold.

Sole Source Procurement. A procurement in which one vendor or supplier possesses the unique ability or capability to meet the particular requirements of the solicitation. The Program Office must prepare a D&F justifying the requirement.

Special Item Number. A group of generically similar (but not identical) supplies or services that are intended to serve the same general purpose or function.

Standard Cost. Any cost computed with the use of pre-established measures.

Statement of Work/Scope of Work (“SOW”). The portion of a contract or Request for Proposal that describes specifically what is to be done by the contractor. It may include specifications, performance outcomes, dates and time of performance, quality requirements, etc.

Subject Invention. Any invention of the contractor conceived or first actually reduced to practice in the performance of work under an Authority contract.

Surety Bond. A pledge or guarantee by an insurance company, bank, individual or corporation on behalf of the bidder/proposer which protects against default or failure of the principal to satisfy the contractual obligations.

Suspension. Prohibiting a supplier from submitting bids and offers for a definite or indefinite period of time. A temporary determination to exclude a supplier from obtaining any contracts for a period of time, usually before initiating debarment. Reasons for this action may include poor performance, late deliveries, violations of previous contract terms, etc.

System for award Management (“SAM”). (Formerly the Excluded Parties List System) A list compiled, maintained, and distributed by the General Services Administration, containing the names of contractors debarred, suspended, or proposed for debarment or suspension as well as contractors declared ineligible under other statutory or regulatory authority other than Executive Order 12549. The System for Award Management identifies those parties excluded throughout the U.S. Government from receiving Federal contracts or certain subcontracts and from certain types of Federal financial and nonfinancial assistance and benefits.

Tag-On. The addition of work (supplies, equipment, or services) that is beyond the scope of the original contract.

Task Order Contract. An indefinite-delivery contract for a service(s) that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the performance of tasks during the period of the contract.

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.

Technical Evaluation Memorandum. A document supporting the analysis of the Bidders'/Proposers' technical responsiveness to the solicitation documents.

Term Contract. A type of contract in which a source of supply is established for a specified period of time for specified services or supplies; usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price.

Termination for Convenience. A contract clause that allows for contract cancellation at the discretion of the Authority. Action by which the Authority, in accordance with contract provisions, unilaterally cancels all or part of the contract work for the best interest of the Authority, and with no reflection on the contractor's performance.

Termination for Default. A contract clause that allows the Authority to cancel a contract, either in whole or in part, due to the contractor's failure to perform satisfactorily.

Time-and-Materials Contract. A contract which provides for contractor payments based on direct labor, hourly rate that includes benefits, payroll taxes, and overhead and contractor profit and for the cost of materials and equipment used in performance of the contract.

Trade Discount. A discount or reduction from a list price based on the position of the purchaser in the distribution channel, for example as a distributor, retailer, or original equipment manufacturer.

Transit Zone. The Washington Metropolitan Area Transit Zone which includes the District of Columbia, the cities of Alexandria, Falls Church and Fairfax, and Loudoun and political subdivisions of the Commonwealth of Virginia located within those counties, and the counties of Montgomery and Prince George's in the State of Maryland and political subdivisions of the State of Maryland located in said counties.

Two-Step Procurement. A combination of competitive procedures designed to obtain benefits of sealed bidding when adequate specifications are not available. May also be applied to a request for proposal negotiated procurement. Step One consists of a request for technical proposals, evaluations and discussion without pricing, and the selection of bidders whose proposals are considered most acceptable; Step Two consists of the submission of sealed priced bids by those who submitted acceptable technical proposals in Step One.

Unallowable Cost. Any cost which, in accordance with pertinent laws or regulations, cannot be included in prices or cost-reimbursements under a contract to which the cost is allocable.

Underwriting Limitation. The maximum amount for which a surety can be liable under a bond or other security.

Un-priced 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. An un-priced Purchase Order may be used only when: (1) the transaction is not expected to exceed the simplified acquisition threshold; (2) it is impractical to obtain pricing before issuing the purchase order; and (3) the purchase is for repairs to equipment requiring disassembly to determine the nature and extent of repairs, or for material that is available from only one source and for which the cost cannot be readily established, or for supplies or services for which prices are known to be competitive but exact prices are not known (for example, miscellaneous repair parts or maintenance services).

Walsh-Healey Public Contracts Act. A 1936 Act, 41 U. S. C. § 35-45, requiring that contracts over \$10,000 for the manufacture or furnishing of materials, supplies, articles, or equipment include or incorporate by reference the stipulations required by the Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor and safe and sanitary working conditions.

Work Breakdown Structure (WBS). A product-oriented family tree, organized hierarchically, and composed of hardware, services, and data which result from project engineering efforts during development and production of a system, and which completely defines the project/program.

25 ACRONYMNS

ACCT:	Office of Accounting
ADR:	Alternate Dispute Resolution
A&E:	Architect and Engineer
ARRA:	American Reinvestment and Recovery Act
ASBCA:	Armed Services Board of Contract Appeals
BAFO:	Best and Final Offer
BPA:	Blanket Purchase Agreement
BPM:	Best Practices Manual
CA:	Contract Administrator
CAPD:	Office of Capital Program Delivery
CBE:	Certified Business Enterprise
CCB:	Change Control Board
CCR:	Contract Compliance Reviews
C.F.R.:	Code of Federal Regulations
CFO:	Chief Financial Officer
CLM:	Contract Lifecycle Management
CM:	Construction Manager
CO:	Contracting Officer
COFD:	Contracting Officer's Final Decision
COG:	Council of Governments
COR:	Contracting Officer Representatives
COTR:	Contracting Officer Technical Representatives
COTS:	Commercially Available Off-the-Shelf
COUN:	Office of General Counsel
CPAF:	Cost-Plus-Award-Fee Contract
CPFF:	Cost-Plus-Fixed-Fee Contract

CPIF:	Cost-Plus-Incentive-Fee Contract
CPPC:	Cost-Plus-A-Percentage-Of-Cost Contract
CPRO:	Chief Procurement Officer
CREBS:	Clean Renewable Energy Bonds
DAU:	Defense Acquisition University
DAWIA:	Defense Acquisition Workforce Initiative
DBE:	Disadvantaged BusinessEnterprise
DCUCP:	District of Columbia Unified Certification Program
D&F:	Determinations and Findings
DMV:	The District of Columbia, Maryland and Virginia
DOL:	U.S. Department of Labor
DOT:	U.S Department of Transportation
EDI:	Electronic Data Interchange
EEO:	Equal Employment Opportunity
EFT:	Electronic Funds Transfer
EPLS:	Excluded Parties List System
FAI:	Federal Acquisition Institute
FAR:	Federal Acquisition Regulations
FFP:	Firm-Fixed-Price Contract
F.O.B.:	Free on Board
FSCM:	Financials and Supply Chain Management
FSS:	Federal Supply Schedule
FTA:	Federal Transit Administration
G&A:	General and Administrative
GAO:	Government Accountability Office
GFE:	Good Faith Efforts
GM/CEO:	General Manager/Chief Executive Officer
GMP:	Guaranteed Maximum Price

GSA:	General Services Administration
FSS:	Federal Supply Schedule
FY:	Fiscal Year
HC:	Department of Human Capital
HCA:	Head of Contracting Activity
IDIQ:	Indefinite Delivery / Indefinite Quantity
IFB:	Invitation for Bids
JOC:	Job Order Contract
LAND:	Office of Real Estate and Parking
LNTP:	Limited Notice to Proceed
MA:	Master Agreement
MATOC:	Multiple Award Task Order Contract
MBE:	Minority Business Enterprise
MBP:	Micro Business Program
MOD:	Modification
MTPD:	Metro Transit Police Department
MWCOG:	Metropolitan Washington Council of Governments
NAICS:	North American Industry Classification System
NIGP:	National Institute of Government Purchasing
NCMA:	National Contract Management Association
NTIS:	National Technical Information Service
ODC:	Other Direct Costs
OIG:	Office of Inspector General
OMBS:	Office of Management and Budget Services
PARP:	Public Access to Records Policy
P/I:	Policy Instruction
PLA:	Project Labor Agreement
PO:	Purchase Order

POC:	Plan of Contracts
PRMT:	Office of Procurement and Materials
PMIS:	Project Management Information System
PNW:	Personal Net Worth
Pub. L.:	Public Law
RFI:	Request for Information
RFP:	Request for Proposals
RFQ:	Request for Quotes
RISK:	Office of Risk Management
SAFE:	Department of Safety and Environmental Management
SAFETEA-LU:	Safe, Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for Users
SAM:	System for Award Management
SBA:	Small Business Administration
SBE:	Small Business Enterprise
SBP:	Small Business Program
SBPO:	Small Business Programs Office
SOW:	Scope of Work
TET:	Technical Evaluation Team
T&M:	Time and Material
TSR:	Termination Reduction Substitution
UPPCC:	Universal Public Procurement Certification Council
U.S.	United States
U.S.C.:	United States Code Annotated
US DOT:	United States Department of Transportation
VP:	Vice President
WBS:	Work Breakdown Structure
WCP:	Washington Metropolitan Area Transit Authority Certification Program
WMATA:	Washington Metropolitan Area Transit Authority (the “Authority” or “WMATA” or “Metro”)

26 REFERENCES

1. Accommodations for Physically Handicapped, 41 C.F.R. 101-1-6
2. Administrative Dispute Resolution Act, Public Law 101-552
3. Affirmative Action Programs, 41 C.F.R. 60-2
4. American Reinvestment and Recovery Act, Pub. L. 111-5 (Feb 17, 2009)
5. Americans with Disabilities Act of 1990 (ADA), 42 USC 2101 *et seq.*
6. Brooks Act, 40 USC 1101 – 1104
7. Bus Charter Services, 49 C.F.R. Part 604
8. Bus Testing, 49 C.F.R. Part 665
9. Bus Testing Facility, 49 USC 5318
10. Buy America, Federal Acquisition Regulations (FAR) Subparts 25.1 and 25.2
11. Buy America Provisions, 49 CFR Part 661
12. Cargo Preferences Requirements, 46 USC 1241 (b) and 46 C.F.R. Part 381.7(b)
13. Clean Air Act, 42 USC 7401
14. Clean Water Act, 33 USC 1251
15. Common Grant Rule, 49 C.F.R. 18.1 *et seq.*
16. Competitive Preference for Recycled Products, 42 USC § 6962 and 40 C.F.R. Part 247
17. Contract Disputes Act of 1978, Public Law 95-563, 41 USC 601-613
18. Contract Work Hours and Safety Standards Act, 40 USC 327-333
19. Convict Labor, PL 89-176, 18 USC 4082 c (2)
20. Copeland “Anti-Kick Back” Act, 18 USC 874
21. Davis-Bacon Act, 40 USC 267a-276a-7
22. Department of Labor Contract Work Hours, 29 C.F.R. Part 5
23. Drug and Alcohol Guidance, 49 C.F.R. Parts 655 and 40
24. Energy Policy and Conservation Act, PL 94-163, 42 USC 6321 *et seq.*
25. Environmental Protection Agency (EPA) Violating Facilities List, 40 C.F.R. Part 15
26. Federal Acquisition Regulation (FAR), 2 C.F.R. 200
27. Federal Emission Standards, 40 C.F.R. Parts 84 and 85
28. Fly America Act, 49 USC § 40118
29. FTA Circular 4220.1F, Third Party Contracting Guidance
30. FTA Circular 5010.1D, Grant Management Requirements
31. FTA Grant Recipients and Full an Open Competition, 49 USC 5325(a)
32. FTA Master Grant Agreement
33. FTA National ITS Architecture Policy on Transit Projects, 66FR1455 *et seq.* (January 8, 2001)
34. Good Faith Efforts Guidance, 49 CFR, Appendix A, §V
35. Guidelines for Federal Procurement of Cement and Concrete Containing Fly Ash, 40 C.F.R. Part 247
36. Infrastructure Investment and Jobs Act of 2021 Section 30019 (d)(2)(B)
37. Limitations on Use of Appropriated Funds, 31 USC 1352
38. National Intelligent Transportation System (ITS) Architecture and Standards, 23 USC 517(d)
39. Policy Instruction 1.1, Document Governance and Hierarchy
40. Policy Instruction 4.9, Acquisition of Real Estate for Metro Needs
41. Policy Instruction 5.16, Accountability for Capital and Sensitive Assets
42. Policy Instruction 8.6, Processing Construction Contract Change Orders
43. Policy Instruction 8.11, Purchase Card Policy
44. Pre-Award and Post-Delivery Audits of Rolling Stock Purchases, 49 C.F.R. Part 663

45. Real Property, 49 C.F.R. Part 18.31
46. Rehabilitation Act of 1973
47. Restrictions on Lobbying, 49 C.F.R. Part 20
48. Small Business Act, 15 USC § 631
49. Small Business Administration Small Business Size Standard, 13 C.F.R. §121.103
50. Solicitation Provisions and Contract Clauses, 48 C.F.R. Parts 2 and 52
51. Surety Companies Doing Business with the United States, 31 C.F.R. Part 223
52. Surface Transportation and Uniform Relocation Assistance Act of 1987
53. Surface Transportation Assistance Act of 1982, 49 USC 1601
54. Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, 49 C.F.R. Part 24
55. Vietnam Era Veterans Readjustment Assistance Act of 1974
56. Walsh-Healy Public Contract Act, 41 USC 35-45
57. WMATA Compact Section 73

27 APPENDIX A

Contract Administrators must assemble all relevant written records for all procurements. The records will be collected into a single file and placed into the Authority's record keeping system. The appropriate checklist shown on the following pages must be completed by the Contract Administrator to ensure that the proper procurement processes have been followed, all considerations relevant to the procurement process have been addressed, and all components of the procurement file shall be assembled no later than 90 days after contract award.

The checklists are attached in the following order:

- Micro-Purchase Review Checklist
- Small Purchase Review Checklist
- Sealed Bids Checklist
- Competitive Proposals Checklist
- Other Than Full and Open Competition Checklist
- Contract Modifications Checklist
- Task/Delivery Orders Checklist
- Architect and Engineering (Supplement) Checklist
- Construction (Supplement) Review Checklist
- Rail Vehicle (Supplement) Review Checklist
- Bus Vehicle (Supplement) Review Checklist

Procurement Checklists

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MICRO-PURCHASE FILE REVIEW CHECKLIST			
PO #	Date of Award	Contractor	PO Value
☐ Federal Funded ☐ Non-Federal Funded			

MICRO-PURCHASES				
Review Description	Compliance			Explanation
	Yes	No	N/A	
1) No Splitting				
2) Fair and Reasonable Price Determination				
3) Micro - Purchase Davis Bacon If this is not for construction, check N/A.				

I certify that the items checked above are true and accurate and have been documented in the procurement file. I further understand that this Addendum is considered part of the procurement file and shall be incorporated therein.	
Purchasing Agent/Contract Administrator Signature	Date
Contracting Officer Signature	Date

SMALL PURCHASE FILE REVIEW CHECKLIST			
PO #	Date of Award	Contractor	PO Value
☐ Federal Funded ☐ Non-Federal Funded			

Review Description	Compliance			Explanation
	Yes	No	N/A	
1) Independent Cost Estimate				
2) Unreasonable Qualification Requirements				
3) Arbitrary action				
4) Brand Name Restrictions				
5) Geographic Preferences				
6) Quotes From Three Sources				
7) No Splitting				
8) Clear, Accurate, and Complete Specification				
9) Cost or Price Analysis				
10) Written Record of Procurement History				
11) Organizational Conflict of Interest (OCI)				

I certify that the items checked above are true and accurate and have been documented in the procurement file. I further understand that this Addendum is considered part of the procurement file and shall be incorporated therein.	
Purchasing Agent/Contract Administrator Signature	Date
Contracting Officer Signature	Date

INVITATION FOR BID FILE REVIEW CHECKLIST

This checklist is used for all procurements where the sealed bid method of procurement is used. If the contract is for construction, the Construction (Supplement) File Review Checklist must also be used.

Contract #	Date of Award	Contractor	Award Value

☐ Federal Funded ☐ Non-Federal Funded

Review Description	Compliance			Explanation
	Yes	No	N/A	
1) Independent Cost Estimate				
2) Unreasonable Qualification Requirements				
3) Unnecessary Experience and Excessive Bonding				
4) Organizational Conflict of Interest (OCI)				
5) No Known Arbitrary Action				
6) Brand Name Restrictions				
7) Geographic Preferences				
8) Solicitation Prequalification Criteria				
9) Award to Responsible Contractor				
10) Clear, Accurate, and Complete Specification				
11) Two Bidders				
12) Firm Fixed Price				
13) Selection on Price				
14) Advertising				
15) Adequate Number of Sources Solicited				
16) Sufficient Bid Time				
17) Bid Opening				
18) Responsiveness				

Review Description	Compliance			Explanation
	Yes	No	N/A	
19) Lowest Price				
20) Rejecting Bids				
21) Evaluation of Options				
22) Cost or Price Analysis				
23) Written Record of Procurement History				
24) Advance Payment Provisions				
25) Progress Payment Provisions				
26) Liquidated Damages Provisions				
27) Piggybacking				
28) Clauses				
29) Representations and Certifications				
30) Insurance				
31) Amendments				

I certify that the items checked above are true and accurate and have been documented in the procurement file. I further understand that this Addendum is considered part of the procurement file and shall be incorporated therein.

Contract Administrator Signature _____ Date _____

Contracting Officer Signature _____ Date _____

COMPETITIVE REQUEST FOR PROPOSAL FILE REVIEW CHECKLIST			
This checklist is used for all procurements where the competitive proposal method of selection is based on technical or qualification factors as well as price. If the contract is for construction, architectural and engineering services, or for rail and bus purchases, the respective checklist supplement must be used.			
Contract #	Date of Award	Contractor	Award Value
☐ Federal Funded ☐ Non-Federal Funded			

Review Description	Compliance			Explanation
	Yes	No	N/A	
1) Independent Cost Estimate				
2) Unreasonable Qualification				
3) Unnecessary Experience and Excessive Bonding				
4) Organizational Conflict of Interest (OCI)				
5) Arbitrary action				
6) Brand Name Restrictions				
7) Geographic Preferences				
8) Written Procurement Selection Procedures				
9) Solicitation Prequalification Criteria				
10) Award to Responsible Contractors				
11) Clear, Accurate, and Complete Specification				
12) More Than One Source				
13) Publicized				
14) Adequate Number of Sources Solicited				
15) Evaluation Factors in Request for Proposals				
16) Price and Other Factors				
17) Evaluation of Options				

Review Description	Compliance			Explanation
	Yes	No	N/A	
19) Written Record of Procurement History				
20) Advance Payment Provisions				
21) Progress Payment Provisions				
22) Time and Materials Contracts				
23) Cost Plus Percentage of Cost				
24) Liquidated Damages Provisions				
25) Piggybacking				
26) Clauses				
27) Representations and Certifications				
28) Insurance				
29) Amendments				

I certify that the items checked above are true and accurate and have been documented in the procurement file. I further understand that this Addendum is considered part of the procurement file and shall be incorporated therein.

Contract Administrator Signature

Date

Contracting Officer Signature

Date

NON-COMPETITIVE REQUEST FOR PROPOSALS (SOLE SOURCE)**FILE REVIEW CHECKLIST**

This checklist is used for all procurements where WMATA has only solicited or negotiated with one source for the product or service and the amount is greater than \$3,000. It should also be used for changes that are outside the scope of the contract and for the exercise of options that were not evaluated in awarding the base contract containing the option.

Contract #	Date of Award	Contractor	Award Value

☐ Federal Funded ☐ Non-Federal Funded

Review Description	Compliance			Explanation
	Yes	No	N/A	
1) Independent Cost Estimate				
2) Unnecessary Experience and Excessive Bonding				
3) Organizational Conflict of Interest (OCI)				
4) Brand Name Restrictions				
5) Geographic Preferences				
6) Award to Responsible Contractor				
7) Clear, Accurate, and Complete Specification				
8) Sole Source if Other Award is Infeasible				
9) Cost Analysis Required				
10) Evaluation of Options				
11) Written Record of Procurement History				
12) Advance Payment Provisions				
13) Progress Payment Provisions				
14) Time and Materials Contracts				
15) Cost Plus Percentage of Cost				
16) Liquidated Damages Provisions				

Review Description	Compliance			Explanation
	Yes	No	N/A	
17) Piggybacking				
18) Clauses				

I certify that the items checked above are true and accurate and have been documented in the procurement file. I further understand that this Addendum is considered part of the procurement file and shall be incorporated therein.	
Purchasing Agent/Contract Administrator Signature	Date
Contracting Officer Signature	Date

CONTRACT MODIFICATIONS FOR INCREASED DOLLARS OR ADDITIONAL TIME FILE REVIEW CHECKLIST			
Contract #	Date of Award	Contractor	Award Value
☐ Federal Funded ☐ Non-Federal Funded			

CONTRACT MODIFICATIONS				
Review Description	Compliance			Explanation
	Yes	No	N/A	
1) Cost Analysis				
2) No Out of Scope Changes				
3) Time Extension				
4) File Documentation				

I certify that the items checked above are true and accurate and have been documented in the procurement file. I further understand that this Addendum is considered part of the procurement file and shall be incorporated therein.	
Contract Administrator Signature	Date
Contracting Officer Signature	Date

TASK/DELIVERY ORDERS (SUPPLEMENT)			
FILE REVIEW CHECKLIST			
This checklist is used whenever the procurement is for Task or Delivery Orders under an Indefinite Delivery/Indefinite Quantity (IDIQ) contract, including a Job Order Contract (JOC).			
Contract #	Date of Award	Contractor	Award Value
☐ Federal Funded ☐ Non-Federal Funded			

TASK/DELIVERY ORDERS (SUPPLEMENT)				
Review Description	Compliance			Explanation
	Yes	No	N/A	
1) Competition				
2) Independent Cost Estimate				
3) No Known Arbitrary Action				
4) Task/Delivery Order Price				
5) Complete Specification or Purchase Description				
6) Documentation				
7) Order Consistent with IDIQ Scope				
8) Fair and Reasonable Price				

I certify that the items checked above are true and accurate and have been documented in the procurement file. I further understand that this Addendum is considered part of the procurement file and shall be incorporated therein.	
Contract Administrator Signature	Date
Contracting Officer Signature	Date

Architectural & Engineering (A&E) SERVICES (SUPPLEMENT)**FILE REVIEW CHECKLIST**

This checklist is used in addition to either the Small Purchase Checklist or the Competitive Proposal Checklist whenever the specifications require a licensed architect or engineer to perform the services. This checklist should also be used in contracts for design-build services (when preponderance of work is A&E), program management, construction management, feasibility studies, preliminary engineering, design, surveying, and mapping which require performance by a registered or licensed architect or engineer. (This does not apply to forms of turnkey procurements that combine design with construction and/or operation or to contracts with a value less than \$10,000.)

Contract #	Date of Award	Contractor	Award Value

☐ Federal Funded ☐ Non-Federal Funded

A&E SERVICES (SUPPLEMENT)

Review Description	Compliance			Explanation
	Yes	No	N/A	
1) A&E Geographic Preferences				
2) Qualifications Exclude Price				
3) Serial Price Negotiations				

I certify that the items checked above are true and accurate and have been documented in the procurement file. I further understand that this Addendum is considered part of the procurement file and shall be incorporated therein.

Purchasing Agent/Contract Administrator
Signature

Date

Contracting Officer Signature

Date

CONSTRUCTION (SUPPLEMENT) FILE REVIEW CHECKLIST			
This checklist is used in addition to the Small Purchases Checklist, the Invitation for Bids Checklist, or the Competitive Proposals Checklist whenever the procurement is for construction or facility improvement.			
Contract #	Date of Award	Contractor	Award Value
☐ Federal Funded ☐ Non-Federal Funded			

Review Description	Compliance			Explanation
	Yes	No	N/A	
1) Bid Security				
2) Performance Security				
3) Payment Security				

I certify that the items checked above are true and accurate and have been documented in the procurement file. I further understand that this Addendum is considered part of the procurement file and shall be incorporated therein.	
Contract Administrator Signature	Date
Contracting Officer Signature	Date

RAIL VEHICLES (SUPPLEMENT) FILE REVIEW CHECKLIST			
This checklist is used in addition to the other checklists whenever the procurement is for rail vehicles.			
Contract #	Date of Award	Contractor	Award Value
☐ Federal Funded ☐ Non-Federal Funded			

Review Description	Compliance
Pre-Award Review (Before signing a contract with a supplier)	Buy America Certification A. ___ Reviewed and Verified 60% Domestic Content; AND ___ Reviewed and Verified Proposed U.S. Final Assembly Location, Operations, and Total Cost OR B. ___ Requested and Received Buy America Waiver Purchaser's Requirements Certification A. ___ Checked Bid Specification Compliance with Solicitation Specifications; AND ___ Completed Manufacturer Capability Study

I certify that the items checked above are true and accurate and have been documented in the procurement file. I further understand that this Addendum is considered part of the procurement file and shall be incorporated therein.	
Contract Administrator Signature	Date
Contracting Officer Signature	Date

(Note: All certifications must be kept on file. Supporting documentation should accompany each certification.)

BUS VEHICLES (SUPPLEMENT) FILE REVIEW CHECKLIST			
This checklist is used in addition to the other checklists whenever the procurement is for one or more buses.			
Contract #	Date of Award	Contractor	Award Value
☐ Federal Funded ☐ Non-Federal Funded			

Review Description	Compliance
Pre-Award Review (Before signing a contract with a supplier)	Buy America Certification A. ____ Reviewed and Verified 60% Domestic Content; AND ____ Reviewed and Verified Proposed U.S. Final Assembly Location, Operations, and Total Cost OR B. ____ Requested and Received Buy America Waiver Purchaser's Requirements Certification A. ____ Checked Bid Specification Compliance with Solicitation Specifications; AND ____ Completed Manufacturer Capability Study Federal Motor Vehicle Safety Standards (FMVSS) Certification Requested and Received Manufacturer's Letter Stating: A. ____ The Information to be Included on the FMVSS Stickers OR B. ____ The Buses Are Not Subject to FMVSS

I certify that the items checked above are true and accurate and have been documented in the procurement file. I further understand that this Addendum is considered part of the procurement file and shall be incorporated therein.	
Contract Administrator Signature	Date
Contracting Officer Signature	Date

APPENDIX B



WMATA FORM FOR WORK AUTHORIZATION Department of
Transit Infrastructure & Engineering Services Office of Chief
Infrastructure Services

CONTROL NO _____

CONTRACTOR	_____	ORIGINATION DATE	_____
CONSTRUCTION ENGR	_____	ORIGINATOR	_____
PROJECT NO	_____	CONTRACT NO	_____
PROJECT MANAGER	_____	SR PROGRAM MANAGER	_____
CP NO	_____	PCO NO	_____

TITLEWHATWHERE

HAS CONTRACTOR STARTED WORK WHICH WOULD BE AFFECTED BY THIS CHANGE?

WHYWHENREASONFORPENDINGCHANGE

1. ☐ DESIGN CHANGE	5. ☐ OUTSIDE AGENCY
☐ ERROR ON OMISSION	A.
☐ REVISION TO DESIGN DIRECTIVES	6. ☐ VECF NO.
☐ SPECIFIC DIRECTION	A.
A.	7. ☐ MISCELLANEOUS
2. ☐ NON-COMPENSABLE DELAYS	A.
A.	8. ☐ OUT-OF-SCOPE (SUPPLEMENTAL AGREEMENT)
3. ☐ DIFFERING SITE CONDITIONS	A.
A.	9. ☐ EQUIPMENT FAILURE
4. ☐ COMPENSABLE DELAYS	A.
A.	10. ☐ FACILITY REPAIR
	A.



WMATA FORM FOR WORK AUTHORIZATION Department of
Transit Infrastructure & Engineering Services Office of Chief
Infrastructure Services

CONTROL NO _____

CONTRACTOR	_____	ORIGINATION DATE	05/04/2015
CONSTRUCTION ENGR	_____	ORIGINATOR	James Joseph Perkowski
PROJECT NO	_____	CONTRACT NO	_____
PROJECT MANAGER	_____	SR PROGRAM MANAGER	_____
CP NO	_____	PCO NO	_____

Budget Summary

Contract Award Amount:	[1]	\$0.00
Approved Contingency:	[2]	\$0.00
Total Contract Budget [1]+[2]	[A]	\$0.00
Contract Modifications Issued To Date:	[3]	\$0.00
Pending Change Orders	[4]	\$0.00
THIS ACTION:	[5]	\$0.00
Total Contract Exposure [1]+[3]+[4]+[5]	[B]	\$0.00
Remaining Contract Budget	[A]-[B]	\$0.00

Approval

This Action is Within Contingency and Budget

Approved by OMBS _____

This Action is Within Scope

Approved by PRMT _____

CHANGE CONTROL BOARD COMMENTS

ESTIMATED CONTRACT TIME CHANGE _____		<u>CONCURRENCE IN PRINCIPLE</u>	
INVOLVES A BETTERMENT	YES _____	Deputy Chief or Director	DATE _____
	NO _____	CCB/Chief Infrastructure Services	DATE _____

ATTACHMENTS



C-35B PENDING CHANGE ORDER

PENDING CHANGE ORDER

CONTRACT NO.:

PCO NO.:

CLAIM NO.:

PREPARED BY:

PROJECT MANAGER:

RELVELANT DOCUMENTS:

DRAWINGS:

SPEC'S:

OTHER:

TITLE OF PCO:

It is expected that this change will result in a modification to the contract.

This change is issued without a notice to proceed. The Contractor is not to proceed with this change.

This change is issues with a limited notice to proceed in the amount of \$. The Contractor is to proceed with the portions of the change outlined below to the dollar limit stated:

DESCRIPTION OF CHANGE:

The Contractor's proposal in price and time is required for the following change to the subject contract in accordance with

not later than