

DISTRICT OF COLUMBIA RETIREMENT BOARD

NOTICE OF FINAL RULEMAKING

The District of Columbia Retirement Board (the “Board”), pursuant to the authority set forth in § 121(e) of the District of Columbia Retirement Reform Act (the “Reform Act”), approved November 17, 1979 (Pub. L. 96-122, 93 Stat. 866; D.C. Official Code § 1-711(i)), hereby gives notice of the adoption of final rulemaking of substantive amendments to its procurement regulations under Chapter 16 (District of Columbia Retirement Board Procurement Rules) of Title 7 (Employment Benefits) of the District of Columbia Municipal Regulations (DCMR).

The Board pursues this rulemaking to adopt these Final Rules to ensure that its policies and procedures governing acquisitions are adequate to meet the Board’s benefit plan administration and investment management needs. The Final Rules: (a) increase transparency for contractors seeking to do business with, or currently doing business with, the Board; (b) provide the District’s Contract Appeals Board with jurisdiction to adjudicate protests, disputes, and appeals involving DCRB; (c) incorporate provisions related to contract disputes, contract file management, and inventory; (d) require annual acquisition planning to align with fiscal year budgeting to reduce dependency on sole source and emergency contracts; and (e) outline the instances in which the Board may authorize the use of special procurement methods to obtain services critical to fulfilling its fiduciary obligations, such as investment, legal and other fiduciary services. The Final Rules are drafted to adopt best practices consistent with the Board’s fiduciary duties.

In the Board’s Notice of Proposed Rulemaking published in the *District of Columbia Register* on August 13, 2021 at 68 DCR 008082, the Board stated its intent to adopt the proposed rules as final and to publish its Notice of Final Rulemaking after the proposed rules were approved by the Council of the District of Columbia. No comments were received and no substantive changes were made to the proposed rulemaking. The proposed rules were approved by the Council of the District of Columbia on December 21, 2021 (Resolution 24-0328) and are effective beginning December 21, 2021.

Chapter 16, DISTRICT OF COLUMBIA RETIREMENT BOARD PROCUREMENT RULES, of Title 7 DCMR, EMPLOYMENT BENEFITS, is amended as follows:

Section 1600, PURPOSE AND GOVERNANCE, is renamed and amended to read as follows:

1600 GENERAL PROVISIONS

1600.1 District of Columbia Retirement Board. In accordance with the “District of Columbia Retirement Reform Act,” as amended, [Public Law 96-122](#) (codified at [D.C. Official Code § 1-711 et seq. \(2001\)](#)), the District of Columbia Retirement Board (“Board”) was established as an independent agency of the Government of the District of Columbia. The Board and its Trustees are responsible for administering retirement and post-employment benefit programs (the “Retirement Program”), as well as managing and investing the assets, of the District of Columbia Police Officers and Fire Fighters’ Retirement Plan & Fund and the District of

Columbia Teachers' Retirement Plan & Fund. The Reform Act provides the Board with authority to promulgate rules and regulations, adopt resolutions, issue directives for the administration and transaction of its business, and perform other functions necessary to carry out its responsibilities. These Rules are for the benefit of the Board and are not intended to confer any rights or benefits to third-parties. The Board adopts these Rules with the principal purpose of carrying out its procurement activities in a manner which:

- (a) Achieves the greatest possible value or benefit compared to cost;
- (b) Ensures transparency, efficiency, effectiveness and integrity in its processes and controls; and
- (c) Encourages full, fair, and open competition while balancing the Board's fiduciary responsibilities as outlined in the Reform Act.

These Rules supersede and replace any existing procurement rules unless expressly referenced or incorporated herein.

1600.2 **District Procurement Law.** The Board's statutory contracting authority is unencumbered by the District's procurement provisions in Chapter 3 of title 2 of the D.C. Official Code ([D.C. Official Code § 2-303.20\(h\) \(2001\)](#)).

1600.3 **Appropriations.** The Mayor and the Council may not specify the purposes for which funds appropriated for the administrative expenses of the Board may be expended or the amounts which may be expended for the various activities of the Board. [Pub. L. 96-122 § 121\(f\)\(3\)](#) (codified at [D.C. Official Code § 1-711\(f\)\(3\) \(2001\)](#)).

1600.4 **Administration.** Pursuant to Title 7, Chapter 15, Section 1503.1 of the District of Columbia Municipal Regulations, the Executive Director, appointed by the District of Columbia Retirement Board of Trustees ("Board of Trustees"), serves as the Board's Chief Contracting Officer, and shall develop and administer operating policies, procedures, and guidelines implementing these Rules.

The procurement activities of the Board shall be conducted in a manner above reproach and, except as authorized by law, with complete impartiality and with preferential treatment for none. In all procurement activities, the Board shall take into account the unique considerations of the Retirement Program and shall consider the competence, experience, quality of product, and timeliness of performance of the Board's actual and potential contractors in order to promote security, fairness, and integrity.

1600.5 **Applicability.** These Rules apply to the Board's procurement of goods and services, except for contracts with the governments of the District of Columbia and the United States. By majority vote or written unanimous consent of the Board of

Trustees, the applicability of any provision of these Rules not specifically required by law may be waived if the Board of Trustees finds that waiver:

- (a) is in the best interest of the Board in carrying out its responsibilities under the Reform Act;
- (b) is consistent with fair, competitive, and transparent procurement practices and would not alter the terms of an existing contract; and
- (c) is documented in writing and saved in the Board's procurement files.

1600.6 **Rules of Construction.** The titles to sections and subparts of sections contained in these Rules are for convenience and reference only. Unless otherwise stated, a listing of factors, criteria, or subjects in these Rules does not constitute an order of precedence. Where any statute or regulation is referred to in these Rules, the reference shall be to the most recent version, and any amendments or revisions thereto.

1600.7 **Severability.** If any provision of these Rules is deemed by a court of competent jurisdiction to be invalid, void, or unenforceable for any reason, such a determination shall not affect the validity of any other provision of these Rules.

Section 1601, GENERAL PROVISIONS, is renamed and amended to read as follows:

**1601 COMPLIANCE WITH THE BOARD'S PROCUREMENT RULES;
PROHIBITION ON CONTINGENCY FEES**

1601.1 Except as otherwise set forth in these Rules, determinations and decisions made in accordance with these Rules shall be final and any contract entered into in violation of these Rules is void.

1601.2 Notwithstanding the provisions of §1601.1, a contract shall not be void if a determination is made that good faith has been shown by all parties and the violation of these Rules is de minimis. A determination of good faith may be made by any of the following:

- (a) The Executive Director;
- (b) The Contract Appeals Board; or
- (c) A court of competent jurisdiction.

1601.3 A determination of good faith made pursuant to §1601.2 shall be in writing and available for review by written request by the contractor. A determination of good faith shall fully describe the contract, the status of performance, the reason why the contract has been rendered void, and the grounds for the determination.

- 1601.4 Board employees involved in the procurement process shall conduct business impartially and in a manner above reproach, with preferential treatment for none. Board employees shall strictly avoid any conflict of interest or the appearance of a conflict of interest in the procurement process.
- 1601.5 Any attempt by a Board employee to realize personal gain by conduct inconsistent with the proper discharge of his or her duties is a breach of ethical standards. Any attempt by a Board member to realize personal gain through the exercise of his or her duties, or to influence any Board employee to violate the standards of ethical conduct set forth in these Rules, is a breach of ethical standards.
- 1601.6 Any attempt by a non-employee to influence any Board employee or Board member to breach the standards of ethical conduct set forth in these Rules is a breach of ethical standards. Any effort made by or on behalf of a non-employee, including an offeror or contractor, to influence a Board employee or Board member to breach the ethical standards set forth in these Rules is prohibited and may be referred to appropriate authorities for civil enforcement or criminal prosecution.
- 1601.7 No Board employee or Board member shall participate in or attempt to influence any procurement when the Board employee or Board member knows or has reason to know:
- (a) The Board employee or Board member, or any relative of a Board employee or Board member, has a financial interest in the procurement;
 - (b) A business or organization in which the Board employee or Board member, or any relative of Board employee or Board member has a financial interest in the procurement; or
 - (c) The Board member or Board employee or any relative of a Board member or employee has an agreement or arrangement for prospective employment with a business or organization involved with the procurement.
- 1601.8 To receive a contract from the Board, a contractor must be responsible. To be considered responsible, a contractor must:
- (a) Have or provide evidence that it can obtain the financial, technical, and organizational skills and resources, as well as the facilities and equipment, necessary to perform under the contract in accordance with its terms;
 - (b) Have a satisfactory performance record;
 - (c) Have a satisfactory record of professional integrity and business ethics;
 - (d) Not be suspended, debarred, or otherwise ineligible to receive contracts

from the District or Federal Government;

- (e) Meet any other qualification criteria that may be imposed by applicable law or regulation;
- (f) Have the necessary licenses, permits, and certifications to perform the contract; and
- (g) Provide adequate evidence of insurance coverage as required by the contract or award.

1601.9 In evaluating contractor responsibility, the Board may request information directly from the contractor and may also consider information available from other sources. The Board may also perform a pre-award survey which may include interviews with contractor or subcontractor personnel and site visits to the contractor or subcontractor facilities.

1601.10 For all contracts or agreements with a dollar value greater than one hundred thousand dollars (\$100,000), a bidder or offeror shall complete and submit with its bid or offer a responsibility questionnaire and certification developed by the Board. During the term of the contract, the contractor shall be responsible for updating its responses to the responsibility questionnaire:

- (a) within thirty (30) calendar days of a change in a response; and
- (b) prior to the exercise of any option year contract.

1601.11 The Board intends to avoid even the appearance of conflicts of interest or impropriety in connection with its procurement activities. As a result, even if a prospective bidder or offeror is determined to be responsible, the Board reserves the exclusive right to take measures it deems appropriate to avoid a conflict of interest, or the appearance thereof, or for other ethical considerations.

1601.12 If the Board determines that there is a conflict of interest, the Board may:

- (a) Disqualify a contractor at any point during procurement;
- (b) Rescind an award or terminate a contract; or
- (c) Take other appropriate corrective measures, such as canceling a pending solicitation and initiating a new procurement, subject to the written approval of the Executive Director.

1601.13 Ethical considerations giving rise to disqualification or other corrective measure extend beyond any violation which may be prescribed in the ethics and conflict of interest rules of the District or of any bidder or offeror. The Board may properly

take corrective measures whenever necessary or prudent to avoid the appearance of impropriety or otherwise eliminate doubts about the integrity and fairness of procurement. Examples of instances in which the Board may consider other appropriate corrective measures include, but are not limited to, instances in which:

- (a) A Board employee or Board member involved in a procurement has a relationship with a bidder or offeror that does not violate the District's ethics and conflict of interest rules, but nonetheless raises questions about the integrity of the procurement;
- (b) A bidder or offeror hires a former Board employee or Board member who was privy to non-public information about the procurement and involves that individual in its proposal preparation efforts;
- (c) There is clear evidence suggesting collusive bidding or similar anti-competitive practices by the bidder or offeror; or
- (d) There is clear evidence of organizational conflicts of interest which may cause a contractor to be unable to render impartial and objective assistance or advice or to have an unfair advantage over its competitors.

1601.14 **Prohibition Against Contingent Fees.** Each Board solicitation shall contain language substantially similar to § 416(b) of PPRA, approved by the Board's General Counsel, giving notice to bidders and offerors of the prohibition against contingent fee arrangements.

1601.15 Except as determined to be permissible after applying the factors provided in § 416(b) of the PPRA, no contract shall be awarded to a bidder or offeror that has arranged to pay a contingent fee or other consideration for soliciting or obtaining the contract.

1601.16 If a Board employee or Board member has reason to believe that a bidder, offeror, or contractor is or has been involved in a prohibited contingent fee arrangement the Board employee or Board member shall report the findings in writing to the Board's General Counsel and include any evidence or documentation of the alleged prohibited contingent fee arrangement.

- (a) If the Board's General Counsel determines that a prohibited contingent fee has been paid or that a contractor has entered into an arrangement to pay a prohibited contingent fee under an existing contract, the General Counsel may recommend, and the Executive Director shall have the right, to terminate an existing contract or take any other remedial action in the best interest of the Board.
- (b) The Board shall provide a written determination to any bidder or offeror whose eligibility to receive an award or to continue performance is impacted

by the existence of a prohibited contingent fee arrangement.

- 1601.17 The Board may take action against any Board employee, Board member, or third-party who violates any provision of these Rules. Any Board employee or Board member who violates these Rules may be subject to remedial action, up to and including termination of employment or removal from the Board of Trustees.

Section 1602, GENERAL STANDARDS OF ETHICAL CONDUCT, is renamed and amended to read as follows:

1602 PROCUREMENT PLANNING AND MARKET RESEARCH

- 1602.1 The Board shall perform procurement planning and conduct market research to promote and provide for full and open competition with due regard to the nature of the goods and services to be acquired.
- 1602.2 When full and open competition is not required by these Rules, the Board shall perform procurement planning and conduct market research to obtain competition to the maximum extent practicable.
- 1602.3 The Board shall develop an annual procurement plan outlining the Board's anticipated procurement needs for the upcoming fiscal year. Generally, procurement planning shall begin as soon as a need is identified and preferably well in advance of the fiscal year in which the contract award is needed. For each solicitation, Board's Procurement Office may seek input and advice from Board employees or consultants who will be responsible for significant aspects of the procurement, such as technical, financial, and legal personnel.
- 1602.4 Before issuing a solicitation or making a purchase, the Board shall:
- (a) Estimate the likely cost of the proposed procurement and confirm that adequate funds are available; and
 - (b) Conduct appropriate market research and establish the Board's minimum needs.
- 1602.5 Market research is used to familiarize the Board with the current market for the goods or services it seeks and to develop an appropriate strategy for conducting procurements that promote full and open competition. The extent of market research will vary depending on factors such as urgency, size and complexity of the proposed procurement, and the Board's existing knowledge of the market based on its own experience or the experience of its key personnel in procuring similar goods or services.
- 1602.6 In conducting market research, generally, the Board should seek information regarding the:

- (a) Customary practices in the relevant market;
- (b) Prospective bidders or offerors that may be able to supply the goods or services;
- (c) Benchmarks available to determine the estimated cost for goods or services and evaluate the reasonableness of prices/costs proposed by bidders and offerors; and
- (d) Requirements of any law, regulation, or governance structure unique to the procurement.

Section 1603, ETHICS SANCTIONS, is renamed and amended to read as follows:

1603 INVENTORY AND SURPLUS PROPERTY

- 1603.1 The Board is responsible for its inventory and any surplus property. The Executive Director shall oversee the acquisition, management, utilization, and disposal of Board property.
- 1603.2 The Board shall maintain an inventory control system to monitor the Board's property. The system shall contain the following information for each item of Board property:
- (a) The date of receipt or acquisition of property;
 - (b) A description of the property, which may include a photograph of the property, including quantity and condition;
 - (c) The estimated value of the property.
- 1603.3 The Executive Director is authorized to recycle, donate, sell for scrap, abandon, or destroy Board surplus property upon making a determination that the property has no commercial value, or the estimated cost of its continued care and handling exceeds the property's value to the Board.

Section 1604, CONFLICT OF INTEREST, is renamed and amended to read as follows:

1604 APPOINTMENT OF CONTRACTING OFFICERS; DELEGATIONS OF AUTHORITY; DUTIES AND RESPONSIBILITIES OF CONTRACTING OFFICERS

- 1604.1 The Executive Director is the Board's Chief Contracting Officer ("CCO") unless the Executive Director:

- (a) Has duly appointed a Board employee to act as Chief Contracting Officer; and
- (b) Has delegated contracting authority, in whole or in part, to the duly appointed Board employee who shall serve as the Chief Contracting Officer.

1604.2 The Chief Contracting Officer shall have full and complete contracting authority, including authority to enter into, administer, modify, and terminate contracts, and is responsible for overseeing the Board's Procurement Office and supervising the Board's procurement activities.

- (a) Subject to compliance with these Rules, the CCO shall have wide latitude to exercise business judgment in conducting procurements. Consequently, the ability to exercise that discretion wisely and responsibly is critical to the CCO's decision to delegate contracting authority.
- (b) The CCO shall not issue an award or enter into contract unless the CCO is reasonably sure that the applicable requirements of these Rules, and any other applicable law, have been met.
- (c) The CCO shall approve the standard contract format(s) and standard or special contract terms and conditions to be included in the Board's contracts, consistent with these Rules. The CCO may substitute or waive approved contract terms and conditions where the CCO, after conferring with the Board's General Counsel, determines that it is reasonable and in the best interest of the Board to do so.
- (d) The CCO shall ensure that these Rules are made available to and accessible by Board employees, Board members, and other individuals who participate in the Board's procurement processes. The CCO shall also ensure that Board employees and Board members adhere with the policies and procedures developed by the Board to affect its procurements.
- (e) The CCO shall ensure that Board employees and Board members periodically receive training to strengthen and update their skills and knowledge concerning procurement matters.

1604.3 The Chief Contracting Officer may delegate contracting authority to other qualified Board or District employees who are considered Contracting Officers ("COs"). Where the CCO delegates contracting authority to a CO, that CO is authorized to act on behalf of the Board only to the extent of the contracting authority set forth in his or her delegation. In no instance shall a CO presume greater contracting authority than what has been delegated to him or her. Unless explicitly permitted by their delegation, COs are not authorized to sub-delegate or re-delegate their authority to another.

- 1604.4 Where a Contracting Officer is delegated authority to bind the Board in contract or agreement, the CO shall not:
- (a) Issue an award or enter into contract unless the CO is reasonably sure that the applicable requirements of these Rules, and any other applicable law, have been met; or
 - (b) Issue an award, make a purchase, or enter into any contract or agreement for an amount in excess of his or her specifically delegated contracting authority, if applicable.
- 1604.5 The Chief Contracting Officer shall make each delegation or modification of contracting authority in writing. A written delegation or modification of contracting authority shall be signed by the CCO and include:
- (a) The scope of contracting authority being delegated; and
 - (b) The conditions upon which contracting authority expires or terminates, if applicable.
- 1604.6 Termination of a Contracting Officer's delegation shall be in writing unless the written delegation or modification of contracting authority contains a provision for automatic termination or expiration. No termination shall operate retroactively.
- 1604.7 For each solicitation or award for which a Contracting Officer is responsible, the CO shall:
- (a) Make determinations and findings required by these Rules;
 - (b) Identify resources needed for the initiation, management, execution, and ongoing monitoring of procurement activities;
 - (c) Consider the advice of subject matter experts and specialists when necessary or appropriate to ensure that the Board's procurement activities are carried out in the best interest of the Board;
 - (d) Ensure that contractors receive fair and equitable treatment in accordance with these Rules;
 - (e) Ensure that sufficient unencumbered budget authority is available for each award obligation;
 - (f) Maintain the contract file which serves as the repository for all required documentation concerning the procurement and any resulting award.

Section 1605, EXECUTIVE DIRECTOR, is renamed and amended to read as follows:

1605 REQUEST FOR PROPOSALS

- 1605.1 The solicitation used to initiate a procurement conducted by competitive negotiation is known as a Request for Proposals (“RFP”). Each RFP shall be publicized, at a minimum on the Board’s website, and include a deadline for offerors to submit a proposal consistent with the requirements of this section.
- 1605.2 The Contracting Officer shall compile a list of at least three (3) vendors that the CO reasonably believes are qualified to provide the goods or services specified in the RFP. If the CO is unable to locate at least three (3) potential vendors, the CO shall provide the RFP to as many vendors as he or she can reasonably identify.
- 1605.3 When information or qualifications are necessary for planning the release of the RFP but cannot be obtained by more economical and less formal means, the CO may conduct a Request for Information (“RFI”) or Request for Qualifications (“RFQ”), if it is advantageous to the Board to do so.
- 1605.4 The RFP shall be advertised for at least twenty-one (21) days before the date set for the receipt of proposals, unless the Chief Contracting Officer determines in writing that it is appropriate to shorten the notice period to not less than fourteen (14) days. The Chief Contracting Officer shall consider the following factors in determining whether it is appropriate to shorten the notice period:
- (a) The complexity of the procurement;
 - (b) Subcontracting requirements;
 - (c) The degree of urgency;
 - (d) The impact of a shortened notice period on competition; and
 - (e) Any other relevant factors.
- 1605.5 The RFP shall specify all evaluation criteria and their relative importance. The evaluation criteria provided for in the RFP shall include detailed price or cost information along with any other factors appropriate to the particular procurement such as:
- (a) A description of the goods or services sought (including quantity or estimated quantity, if applicable);
 - (b) Past performance and experience;
 - (c) The anticipated delivery or performance schedule (including any permitted

variations to the delivery or performance schedule);

- (d) A description of any special qualification requirements the contractor must satisfy;
- (e) Instructions for submitting proposals, including:
 - (1) The deadline for proposal submission;
 - (2) The method(s) for submitting proposals (for example, hand delivery, mailing, electronic transmission, or fax);
 - (3) The information to be provided in the proposal;
 - (4) Any representations or certifications the offeror must submit; and
 - (5) The period during which proposals must remain open for acceptance;
- (f) Permitted methods by which proposals may be submitted; and
- (g) The anticipated contract terms and conditions and the extent to which they are negotiable.

1605.6 Any changes in the information set forth in the RFP must be made by an amendment to the RFP. Amendments shall be made no less than three (3) business days before the proposal submission date specified by the RFP.

1605.7 A proposal may be withdrawn or modified at any time before final proposal submission date by any of the methods permitted for submitting proposals.

1605.8 A late proposal (or late modification or withdrawal) shall not be considered unless such delay is caused by the Board.

1605.9 The Contracting Officer shall evaluate proposals based solely on the evaluation criteria specified in the RFP. In evaluating past performance, the CO shall not be limited to considering only the information from references listed by the offeror.

1605.10 After initial proposals have been evaluated, the Contracting Officer may:

- (a) Make an award based on initial proposals; or
- (b) Establish a competitive range consisting of those proposals that remain under consideration, which shall include all proposals that, in the CO's judgment, could be awarded the procurement. The CO may begin discussions with only the top three (3) ranked offerors in the competitive

range. Discussions with the offerors are preferably conducted in writing, including electronic format; however, oral discussions are permitted. The primary objective of discussions is to maximize the Board's ability to obtain the best value based on the evaluation criteria set forth in the RFP. The scope and extent of discussions are a matter of the CO's judgment.

- 1605.11 At the conclusion of discussions, if applicable, the Contracting Officer shall request that the offerors submit best and final offers by a common submission date. If the CO is unable to award a contract after best and final offers have been evaluated and negotiated, the CO may proceed to negotiate with the next three (3) highest ranked offerors. The CO may proceed to select a contractor by this method until a contract is awarded or the solicitation cancelled.
- 1605.12 The contract shall be awarded to the qualified offeror whose proposal is responsive to the RFP and is most advantageous to the Board considering only the evaluation criteria identified in the RFP and the Contracting Officer's determination that the offeror is responsible. The CO shall prepare documentation explaining the basis for the contract award decision which shall be maintained in the contract file.
- 1605.13 The Contracting Officer should endeavor to develop clear and concise procurement documents, including contracts and agreements. Contracts or agreements which consist of the solicitation, the proposal, and other documents attached together but not integrated into a single contract document are discouraged.
- 1605.14 RFP awards shall be published on the Board's website within seven (7) business days of award and shall include:
- (a) The solicitation and all amendments thereto;
 - (b) The name of the vendor awarded contract; and
 - (c) The total contract value.

All information published under this section shall be removed from the Board's website upon the expiration or termination of the contract, or after five (5) years of award, whichever is longer.

Section 1606, CONTRACTING OFFICERS, is renamed, and amended to read as follows:

1606 INVITATION FOR BIDS

- 1606.1 The solicitation used to initiate a procurement conducted by sealed bidding is known as an Invitation for Bids ("IFB"). Each IFB shall be publicized, at a minimum, on the Board's website and include a deadline for offerors to submit a bid consistent with the requirements of this section.

- 1606.2 The Contracting Officer shall compile a list of at least three (3) vendors that the CO reasonably believes are qualified to provide the goods or services specified in the IFB. If the CO is unable to locate at least three (3) potential vendors, the CO shall provide the IFB to as many vendors as the CO can reasonably identify.
- 1606.3 The IFB shall be advertised for at least fourteen (14) days before the date set for the receipt of bids, unless the Executive Director determines in writing that it is appropriate to shorten the notice period to not less than three (3) days. The Executive Director shall consider the following factors in determining whether it is appropriate to shorten the notice period:
- (a) The complexity of the procurement;
 - (b) Subcontracting requirements;
 - (c) The degree of urgency;
 - (d) The impact of a shortened notice period on competition; and
 - (e) Any other relevant factors.
- 1606.4 The evaluation criteria used in sealed bid procurements are limited to price and price-related factors. The IFB shall specify all evaluation criteria and their relative importance. The evaluation criteria provided for in the IFB shall include:
- (a) Any information necessary to explain how the Contracting Officer will evaluate price;
 - (b) Any price-related factors that will be evaluated and their relative importance in the overall evaluation scheme;
 - (c) A description of the goods or services sought (including quantity or estimated quantity, if applicable);
 - (d) Past performance and experience;
 - (e) The contract delivery schedule (including any permitted variations in the delivery schedule);
 - (f) A description of any special qualification requirements the contractor must satisfy;
 - (g) Instructions for submitting bids, including:
 - (1) The deadline for bid submission;

- (2) The method(s) for submitting bids (for example, hand delivery, mailing, electronic transmission, or fax);
 - (3) The information to be provided in the bid;
 - (4) Any representations or certifications the offeror must submit; and
 - (h) The period during which bids must remain open for acceptance;
 - (i) Permitted methods by which bids may be submitted; and
 - (j) The anticipated contract terms and conditions and the extent to which they are negotiable.
- 1606.5 Any changes in the information set forth in the IFB must be made by an amendment to the IFB. Amendments shall be made no less than one (1) business day before the proposal submission date specified by the IFB.
- 1606.6 A bid may be withdrawn or modified at any time before bid opening by any of the methods permitted for submitting bids.
- 1606.7 A late bid (or late modification or withdrawal) shall not be considered unless such delay is caused by the Board.
- 1606.8 The contract shall be awarded to the qualified bidder whose bid is responsive to the IFB and is most advantageous to the Board considering only price and the price-related evaluation factors identified in the IFB and the Contracting Officer determines that the bidder is responsible. The Contracting Officer shall prepare an abstract listing the bid prices which shall be maintained in the contract file.
- 1606.9 To be considered responsive, a bid must comply in all material respects with the IFB. Responsiveness involves matters that relate to the bid itself as opposed to the responsibility or other qualifications of the bidder. In determining whether a bid is responsive, the Contracting Officer has the discretion to permit correction of minor informalities or irregularities.
- 1606.10 The Contracting Officer should endeavor to develop clear and concise procurement documents, including contracts and agreements. Contracts or agreements which consist of the solicitation, the bid, and other documents attached together but not integrated into a single contract document are discouraged.
- 1606.11 IFB awards shall be published on the Board's website within seven (7) business days of award and shall include:
- (a) The solicitation and all amendments thereto;

- (b) The name of the vendor awarded contract; and
- (c) The total contract value.

All information published under this section shall be removed from the Board's website upon the expiration or termination of the contract, or after five (5) years of award, whichever is longer.

Section 1607, CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE, is renamed, and amended to read as follows:

**1607 SIMPLIFIED PURCHASES; SUPPLY SCHEDULES;
BLANKET PURCHASE AGREEMENTS**

1607.1 The use of simplified purchases should:

- (a) Promote economy, efficiency, and innovation in contracting;
- (b) Reduce administrative costs to the Board; and
- (c) Avoid unnecessary burdens or complexities that could reduce competition.

1607.2 Simplified purchases may be used only with contracts that have an estimated dollar value equal to or less than one hundred thousand dollars (\$100,000).

1607.3 Simplified purchase awards shall be published on the Board's website within seven (7) business days of award and shall include:

- (a) The solicitation and all amendments thereto;
- (b) The name of the vendor awarded contract; and
- (c) The total value of the awarded contract, including any options.

All information published under this section shall be removed from the Board's website upon the expiration or termination of the contract, or after five (5) years of award, whichever is longer.

1607.4 Goods or services procured under this section shall not be parceled, split, divided, or purchased in a manner intended to circumvent the simplified purchase limits or other requirements.

1607.5 The Contracting Officer shall conduct simplified purchases in the manner that promotes competition to the greatest extent practicable and efficient. As appropriate, the CO may elect to use or adapt procedures from the IFB or RFP procurement processes. Simplified purchases are not required to specify the

relative importance of evaluation criteria.

1607.6 Each simplified purchase solicitation must include:

- (a) A clear description of the Board's requirements, such as the type of goods or services sought, the quantity or estimated quantity, and delivery or service schedule;
- (b) The basis upon which the award will be made, which may be price or cost alone, as well as price or cost and other factors;
- (c) Reasonable instructions and deadlines for the submission of responses to solicitations; and
- (d) Evaluate quotations or offers in an impartial manner on the evaluation criteria established in the solicitation.

1607.7 If a simplified purchase has an estimated dollar value greater than twenty-five thousand dollars (\$25,000), the Contracting Officer shall obtain written quotes from at least two (2) potential contractors or suppliers.

1607.8 The Contracting Officer may solicit quotations orally when doing so is practical and economical. However, potential contractors or suppliers are, at all times, required to respond to solicitations in writing to be eligible for award.

1607.9 The contract shall be awarded to the qualified offeror whose response is most advantageous to the Board considering only the evaluation criteria identified in the solicitation and the Contracting Officer determines that the offeror is responsible. The Contracting Officer shall prepare documentation explaining the basis for the contract award decision which shall be maintained in the contract file.

1607.10 **District and Federal Supply Schedules.** The Contracting Officer may utilize District and Federal supply schedules that offer programs to the District following the applicable schedule procedures.

1607.11 When using a supply schedule, District or Federal supply schedule contract terms and conditions shall apply to contracts entered into between a contractor and the Board, to the extent the terms and conditions are advantageous to the Board.

1607.12 **Blanket Purchase Agreements.** A blanket purchase agreement ("BPA") is not a contract and may be established without a requisition or the obligation of funds.

1607.13 The Contracting Officer may use a BPA to fill anticipated repetitive needs for goods or services by establishing charge accounts with sources of supply if at least one (1) of the following criteria apply:

- (a) There is a wide variety of items in a broad class of goods or services that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably; or
- (b) The administrative cost of writing numerous purchase orders can be avoided through the use of this procedure.

1607.14 The Contracting Officer shall include the following information in each BPA:

- (a) A statement that the supplier will furnish goods or services, described in general terms, if and when requested by the CO during a specified period and within a stipulated total amount not to exceed one hundred thousand dollars (\$100,000);
- (b) A statement that the Board is only obligated to the extent that authorized purchases are actually made under the BPA;
- (c) A statement that the price or cost to the Board shall be as low or lower than those charged to the supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment;
- (d) A statement that specifies the dollar limitation for purchases under the BPA (not to exceed \$100,000); and
- (e) A requirement that all deliveries or shipments under the BPA shall be accompanied by delivery tickets or sales slips which contain the following minimum information:
 - (1) The name of the supplier;
 - (2) The BPA number;
 - (3) The date of purchase;
 - (4) The purchase order number;
 - (5) An itemized list of goods or services furnished;
 - (6) The quantity, unit price, and extension of each item, less applicable discounts; and
 - (7) The date of delivery or shipment.

1607.15 To the extent practicable, BPAs for items of the same type shall be placed concurrently with more than one (1) supplier. All competitive sources may be

given an equal opportunity to furnish goods, services, or other items under a BPA if it is advantageous to the Board to do so.

- 1607.16 A BPA shall be considered terminated when the procurements under it are equal to its total dollar limitation or when the stated time period expires.

Section 1608, METHODS OF PROCUREMENT, is renamed and amended to read as follows:

1608 SOLE SOURCE PROCUREMENTS

- 1608.1 A sole source procurement may be awarded through non-competitive negotiations when the Chief Contracting Officer determines, in writing, that there is only one (1) qualified source for the required good or service.

- 1608.2 The Chief Contracting Officer's written determination supporting a sole source procurement shall include:

- (a) A description of the goods or services sought; and
- (b) An explanation of why the goods or services are only available from one (1) qualified source.

- 1608.3 The Contracting Officer shall publish a notice of intent to award a sole source contract on the Board's website for at least ten (10) business days prior to contract award. A notice of intent to award a sole source contract shall include:

- (a) The proposed determination and findings supporting the sole source procurement;
- (b) A clear description of the goods or services to be procured;
- (c) The intended sole source contractor.

- 1608.4 A sole source procurement shall not be justified on the basis of:

- (a) Lack of adequate procurement planning;
- (b) Administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
- (c) Pending expiration of budget authority.

- 1608.5 Sole source awards, regardless of dollar value, shall be published on the Board's website within seven (7) business days of award and shall include:

- (a) The determination and findings supporting the sole source procurement;
- (b) The name of the vendor awarded contract; and
- (c) The total value of the awarded contract, including any options.

1608.6 All information published under this section shall be removed from the Board's website upon the expiration or termination of the contract, or after five (5) years of award, whichever is longer.

Section 1609, COMPETITIVE PROCUREMENT METHODS, is renamed and amended to read as follows:

1609 EMERGENCY PROCUREMENTS

1609.1 An emergency procurement may be awarded through non-competitive negotiations when the Executive Director determines, in writing, that there is an immediate and serious need for goods or services that cannot be met through normal procurement and the lack of such goods or services would seriously threaten:

- (a) The function of the Board;
- (b) The preservation or protection of Board property or Retirement Program assets; or
- (c) The health or safety of any person.

1609.2 Where an emergency exists with respect to Board Property or Retirement Program assets, the Executive Director may take any actions necessary and appropriate to safeguard the assets for a temporary period until a permanent decision regarding the endangered property or assets can be made pursuant to these Rules.

1609.3 The Chief Contracting Officer or Contracting Officer shall provide, for the Executive Director's approval, a written determination supporting an emergency procurement which must include:

- (a) A statement that emergency procurement procedures will be used for the procurement and a citation to the applicable provisions of these Rules that prove legal authority for the emergency procurement;
- (b) A clear description of the goods or services to be procured;
- (c) A description of the emergency that meets the requirements of § 1609.1;
- (d) A description of steps taken to solicit bids or proposals from as many potential competitors as possible under the emergency condition;

- (e) A determination that the anticipated costs to the Board will be fair and reasonable in light of the emergency; and
 - (f) Any other pertinent information supporting the emergency justification.
- 1609.4 The Contracting Officer shall publish a notice of intent to award an emergency contract on the Board's website for at least one (1) business day prior to contract award. A notice of intent to award an emergency contract shall include:
 - (a) The proposed determination and findings supporting the emergency procurement;
 - (b) A clear description of the goods or services be procured;
 - (c) The intended emergency contractor.
- 1609.5 An emergency procurement shall not be justified on the basis of:
 - (a) Lack of adequate procurement planning;
 - (b) Administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
 - (c) Pending expiration of budget authority.
- 1609.6 Emergency procurements shall be limited to those goods or services necessary to meet the emergency and shall be made with as much competition as is practicable under the circumstances.
- 1609.7 For emergency procurements, the Chief Contracting Officer shall have the authority to issue oral orders or notices to proceed to contractors to provide goods or services to the Board, provided the directive is reduced to writing within three (3) business days after issuance and the funding for the goods or services provided is certified by the Board's Chief Financial Officer.
- 1609.8 A contract procured on an emergency basis shall not exceed one hundred twenty (120) calendar days and shall not be modified to expand the scope or extend the period of award unless a limited number of additional goods or services are needed to fill an ongoing emergency requirement until regular procurement action procedures can be completed.
- 1609.9 Emergency awards, regardless of dollar value, shall be published on the Board's website within three (3) business days of award and shall include:
 - (a) The determination and findings supporting the emergency procurement;

- (b) The name of the vendor awarded contract; and
- (c) The total value of the awarded contract, including any options.

1609.10 All information published under this section shall be removed from the Board's website upon the expiration or termination of the contract, or after five (5) years of award, whichever is longer.

Section 1610, EXEMPTIONS, is renamed and amended to read as follows:

1610 CONTRACT TYPES

1610.1 The type of contract awarded by the Board will generally depend on factors such as the particular goods or services to be acquired, whether the costs of the goods or services can be estimated in advance with reasonable accuracy, and the degree to which the precise nature and extent of the contract work is known at the time of award.

1610.2 The Contracting Officer may use a variety of contract types, including but not limited to:

- (a) Fixed Price contracts;
- (b) Cost Reimbursement contracts;
- (c) Ordering agreements (Reimbursement or Indefinite Quantity contracts); and
- (d) Time-and-Materials or Labor-Hours contracts.

1610.3 The Contracting Officer may also award any alternative type of contract that will produce reasonable value to the Board in the context of a particular procurement. However, the CO may not award cost-plus-percentage-of-cost contracts.

1610.4 **Fixed Price Contracts** may take three (3) forms:

- (a) **Firm Fixed Price.** A firm fixed price contract obligates the contractor to complete the contractual work for a fixed price. A firm fixed price contract provides for a price that is not subject to adjustment, except in the event of a change to the scope of work;
- (b) **Fixed Price with Economic Price Adjustment.** A fixed price contract with economic price adjustment provides for an upward or downward adjustment in the stated contract price based on changes in certain benchmarks specifically identified in the contract, subject to a ceiling on

upward adjustments; and

- (c) **Fixed Price Incentive.** A fixed price incentive contract generally provides for establishing a final price by applying a formula based on the relationship between the total cost actually incurred by the contractor and a total target cost. A fixed price incentive contract results in the parties sharing in the cost savings or increases associated with differences between the actual and target cost. These contracts also can include incentive formulas based on the contractor's schedule or technical performance.

1610.5 **Cost Reimbursement Contracts** provide for the contractor to recover the reimbursable costs it incurs during contract performance, plus a fee or profit.

1610.6 A reimbursable cost must be:

- (a) Reasonable in nature and amount;
- (b) Properly allocable to the contract;
- (c) Determined in accordance with generally accepted accounting principles; and
- (d) Not identified as non-reimbursable under these Rules or the terms of the particular contract.

1610.7 To ensure that the Board's payment obligations are not open-ended, each cost reimbursement contract must specify a not-to-exceed price that the contractor cannot exceed, except at its own risk, without the Chief Contracting Officer's written approval. The contractor may cease performance once it reaches the not-to-exceed price, unless the Chief Contracting Officer approves an increase, and is not obligated to complete the contract work unless it can do so within the not-to-exceed price.

1610.8 The differences between the types of cost reimbursement contracts relate to the manner in which the contractor's fee is determined. Cost reimbursement contracts may take three (3) forms:

- (a) **Cost-Plus-Fixed-Fee.** A cost-plus-fixed-fee contract provides for a fee that is fixed at the contract's inception and is not subject to adjustment unless the contract is modified to change the scope of work;
- (b) **Cost-Plus-Incentive-Fee.** A cost-plus-incentive-fee contract provides for a fee that generally is determined by applying a formula based on the relationship between the contractor's total reimbursable cost and a total target cost, subject to a specified minimum and maximum. These contracts also can include incentive formulas based on the contractor's schedule or

technical performance; and

(c) **Cost-Plus-Award-Fee.** A cost-plus-award-fee contract provides for:

- (1) A base fee fixed at the contract's inception; and
- (2) An award fee that the contractor may earn (in whole or in part) during performance, which is designed to motivate superior performance. The award fee is determined unilaterally by the Contracting Officer, based on the CO's evaluation of how well the contractor has performed in relation to the award fee criteria identified in the contract. In no event shall the total award fee available to the contractor exceed ten percent (10%) of the total value of the awarded contract, including any options.

1610.9 **Ordering Agreements.** Under an ordering agreement, the contractor's performance obligations are triggered when the Contracting Officer issues task or purchase orders pursuant to the contract.

1610.10 Ordering agreements may take two (2) forms:

- (a) **Requirements Contracts.** A requirement contract allows the Contracting Officer to order from one (1) source, all of the designated supplies or services required during a specified period. This type of contract should only be used when the Contracting Officer determines that a requirement contract will provide superior economic benefits as compared to an indefinite quantity contract; and
- (b) **Indefinite Quantity Contracts.** An indefinite quantity contract provides for an indefinite quantity of goods or services to be furnished during a fixed period. An indefinite quantity contract:
 - (1) Requires the Board to order and the contractor to deliver, at least, the stated minimum quantity of goods or services; and
 - (2) Requires the contractor to deliver any additional quantities the Board may order during the contract period, subject to any maximum quantity limitations provided for in the contract.

1610.11 The Board may award a single indefinite quantity contract for specified goods or services or may award multiple contracts and choose between the selected contractors in awarding subsequent task or purchase orders.

1610.12 Each task or purchase order shall specify:

- (a) The specific goods or services required;

- (b) A delivery date; and
 - (c) Such other information as the Contracting Officer may reasonably request.
- 1610.13 **Time-and-Materials Contracts.** A time-and-materials contract acquires goods or services on the basis of:
 - (a) Direct labor hours charged at fixed hourly rates inclusive of the contractor's overhead, expenses, and profits; and
 - (b) Materials charged either at their actual cost or at fixed unit prices.
- 1610.14 **Labor-Hours Contracts.** A labor-hours contract acquires goods or services on the basis of direct labor hours charged at fixed hourly rates inclusive of the contractor's overhead, expenses, and profits.
- 1610.15 Both time-and-materials and labor hours contracts must specify a not-to-exceed price.
- 1610.16 **Contracts with Federal Agencies.** The Chief Contracting Officer may authorize agreements with any Federal agency for goods or services of any kind that such Federal agency may be in a position to supply.
- 1610.17 **Contracts with District Agencies.** The Chief Contracting Officer may authorize agreements with any District agency for goods or services of any kind that such District agency may be in a position to supply.
- 1610.18 **Letter Contracts.** The Chief Contracting Officer may only use a letter contract after the CCO determines, in writing, that no other type of contract is suitable. A letter contract shall not commit the Board to a definitive contract in excess of the funds available at the time the letter contract is executed. The CCO may use a letter contract when the Board's interests demand that the contractor be given a binding commitment so that work can start immediately and executing a definitive contract is not possible in sufficient time to meet the requirement.
- 1610.19 Each letter contract shall be as complete and definite as possible under the circumstances and subject to legal sufficiency review by Board's General Counsel.
- 1610.20 Each letter contract shall include the not-to-exceed price for the anticipated final contract. Each letter contract shall also include a clause stating that the maximum liability of the Board under the letter contract shall be the amount estimated to cover the contractor's funding requirements prior to the execution of the final contract. The Board's maximum liability shall not exceed fifty percent (50%) of the not-to-exceed price for the term of the anticipated final contract.

- 1610.21 The Chief Contracting Officer shall execute a final contract within sixty (60) calendar days after the date of execution of the letter contract or before completion of fifty percent (50%) of the work to be performed, whichever occurs first. The CCO may authorize an additional period to complete the final contract; however, no letter contract shall exceed one hundred and twenty (120) calendar days.
- 1610.22 Prior to execution of the letter contract, the Chief Contracting Officer shall ensure that funds are encumbered in the amount of the Board's maximum liability under the letter contract.

Section 1611, UNSOLICITED PROPOSALS, is renamed and amended to read as follows:

1611 MULTIYEAR CONTRACTS; EXERCISING OPTION YEARS; CONTRACT MODIFICATION; CONTRACT TERMINATION

- 1611.1 The Board may enter into multiyear contracts to obtain goods and services for any period of time deemed to be in the best interest of the Board provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to availability and appropriations of funds.
- 1611.2 The Board may utilize a multiyear contract where:
- (a) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - (b) The multiyear term would encourage effective competition, promote economies in the Board's procurements, or otherwise be in the best interest of the Board; and
 - (c) The multiyear term does not exceed a period of more than five (5) years unless, with respect to a particular contract, the Board, by a majority vote of its members present and voting, authorizes the extension of such period for such contract.
- 1611.3 Budget authority to fund a multiyear contract shall be obligated on an annual basis. The initial obligation of funds shall be for the period between the dates of contract award through the end of the fiscal year in which the contract award occurs. Thereafter, each subsequent obligation of funds shall be made one (1) fiscal year at a time and must cover the contract amount that will be incurred in the fiscal year in which the contract work will be performed. First fiscal year requirements of the contract, and funds for requirements in each subsequent contract term, shall be obligated one (1) fiscal year at a time.
- 1611.4 At the end of each fiscal year, a multiyear contract shall be canceled if sufficient

budget authority is not available to fund the contract during a subsequent fiscal year.

- 1611.5 If a multiyear contract is canceled due to unavailability of funds, the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the goods delivered and accepted or services delivered and accepted under the contract.
- 1611.6 If a multiyear contract is terminated for the convenience of the Board, including items subject to cancellation, the Board's obligation shall not exceed the amount specified for contract performance plus the reasonable value of any nonrecurring costs incurred but not amortized in the price of the goods delivered or services performed under the contract.
- 1611.7 The costs of cancellation or termination may be paid from appropriations available for such purposes.
- 1611.8 Any solicitation for a multiyear contract shall include:
- (a) The goods or services required;
 - (b) The proposed contract period; and
 - (c) A clause stating that the multiyear contract will be cancelled if funds are not appropriated or otherwise made available to support the continuation of performance in any fiscal period succeeding the first and a statement that this clause does not affect either the District's rights or the contractor's rights under any termination clause in the contract.
- 1611.9 **Option Years.** Exercising an option year requires the written approval of the Chief Contracting Officer.
- 1611.10 Prior to exercising any option regardless of dollar value:
- (a) The Contracting Officer shall ensure that the Board's contract files include an evaluation of the contractor's performance under the contract and that such performance evaluation reasonably supports exercising the option;
 - (b) The Board's Chief Financial Officer shall certify the availability of funds for the exercise of the option;
 - (c) When exercising a contract option amount greater than one hundred thousand dollars (\$100,000), the Contracting Officer shall confirm that the Board approved such amount; and

- (d) The Contracting Officer shall provide written notice to the contractor within the time period specified in the contract.
- 1611.11 **Contract Modifications.** The Contracting Officer may modify a contract. All contract modifications must be in writing and submitted electronically.
- 1611.12 A modification must be within the scope of the original contract. Any requirement for extra work that goes beyond the contract's general scope shall be the subject of a new procurement.
- 1611.13 A contract modification greater than one hundred thousand dollars (\$100,000) shall be approved by the Chief Contracting Officer and made effective by bilateral agreement, unless the contract includes a changes clause permitting the Contracting Officer to make unilateral changes to the contract scope.
- 1611.14 **Contract Terminations.** All contracts shall include "Termination for Default" and "Termination for Convenience" clauses specifically defining the Board's termination rights.
- 1611.15 When exercising the Board's rights under a termination clause in the contract, the Contracting Officer shall provide the contractor with a written notice specifying:
 - (a) Whether the termination is for default or for convenience;
 - (b) The effective date of the termination;
 - (c) Whether the contract is terminated in whole, or in part; and
 - (d) Any special instructions that apply to the termination, such as the return or disposal of Board property.
- 1611.16 If terminating a contract for convenience, the Contracting Officer shall request a settlement proposal from the contractor and, with the assistance of the Board's General Counsel, attempt to negotiate a settlement that resolves the parties' rights and liabilities, except those arising from any portion of the contract remaining in effect.
- 1611.17 If a settlement is negotiated, the Contracting Officer shall prepare a memorandum describing the principal elements of the settlement and include the memorandum, along with the settlement agreement (if applicable) in the contract file.
- 1611.18 If a settlement is unable to be reached within one (1) year from the effective date of termination, the Chief Contracting Officer shall make a final determination of settlement.
- 1611.19 In determining whether to terminate a contract, the Chief Contracting Officer shall

consider the following additional factors:

- (a) Extent of contract performance;
- (b) Impact of termination on the Board's activities and mission;
- (c) Estimated cost to the Board resulting from termination; and
- (d) Urgency of need for the goods or services.

1611.20 **Contract Closeout.** Upon the expiration or termination of a contract, the Contracting Officer shall closeout the contract and ensure that the Board's contract files include:

- (a) Notice to the contractor of the expiration or termination of the contract;
- (b) The effective date of expiration or termination;
- (c) Evidence of the contractor's completion, to the satisfaction of the Board, of the requirements of the contract;
- (d) A reconciliation of the contract costs and evidence that the payment obligations of the Board under contract have been satisfied;
- (e) Evidence that contractor has returned or disposed of any Board property in the contractor's possession in accordance with these Rules or the particular terms of the contract; and
- (f) A final evaluation of the contractor's performance under the contract.

1611.21 **Freedom of Information and Privacy and Disclosure.** If a contractor collects, retains, or has in its possession any document, record, or other information obtained in the performance of a Board contract which document, record, or information may be exempt or prohibited from disclosure by any District or Federal law or regulation, including the District's Freedom of Information Act (title II of the District of Columbia Administrative Procedure Act, effective March 29, 1977 (D.C. Law 1-96; D.C. Official Code §§ 2-531 et seq. (2012 Repl.)), the contractor shall not disclose the document, record, or other information to any person other than an authorized Board employee or agent. A contractor shall timely report any requests for the Board's information to the Contracting Officer.

Section 1612, REQUESTS BEFORE SOLICITING OFFER, is renamed, and amended to read as follows:

1612 PAYMENT REQUESTS

- 1612.1 A contractor's request for payment must:
- (a) Be in writing and include a certification that the contractor is entitled to payment of the requested amount;
 - (b) Include or attach information necessary to demonstrate entitlement to payment, such as the contract or other contract identifier, a statement that specified work has been completed in a satisfactory manner, documentation showing that contract deliverables have been accepted by the Board, or information detailing the reimbursable costs incurred by the contractor.
- 1612.2 Payment shall not be made unless authorized by the Chief Contracting Officer and approved by Board's Chief Financial Officer prior to making any payment. A Contracting Officer's payment authorization shall not preclude the Board from seeking a refund or pursuing other remedies if it subsequently concludes that the contractor was overpaid or otherwise did not conform with the terms of the contract.
- 1612.3 No payment shall be made without a valid written contract or agreement. Any vendor who enters into an oral agreement with a Board employee or Board member to provide good or services to the Board without a valid written contract shall not be paid. This subsection shall not apply to a payment required by court order, including a final decision of the District of Columbia Contract Appeals Board.
- 1612.4 No Board employee or Board member, unless delegated with the appropriate contracting authority, shall:
- (a) Act in a manner that causes or could reasonably cause a vendor to believe that they have authority to bind the Board; or
 - (b) Direct or encourage a contractor to perform work or modify the way work is being performed, which should be the subject of a contract modification.

Section 1613, DISPUTES, is renamed and amended to read as follows:

1613 PAYMENT OBLIGATIONS; DIRECT VOUCHER PAYMENTS

- 1613.1 All expenditures shall be obligated by Board's Chief Financial Officer, with the exception of the items listed below, before being paid. An obligation is a definite commitment that creates a legal liability for the Board for the payment of appropriated funds, even though payment may not occur until sometime in the future.
- 1613.2 The following types of expenditures are excluded from the requirement that all expenditures shall first be obligated by Board's Chief Financial Officer because the

payees cannot be determined in advance or because the nature of the expenditure does not lend itself to prior obligation and shall be paid by direct voucher payment:

- (a) Settlement and judgement payments pursuant to a settlement agreement approved by the Board or a court order, including a final decision of the District of Columbia Contract Appeals Board.
- (b) Board litigation costs, excluding Board-controlled litigation costs, that are created by plaintiffs or the court, including but not limited to:
 - (1) Plaintiff experts;
 - (2) Deposition of plaintiff experts;
 - (3) Litigation court reporter costs;
 - (4) Court trial transcripts; and
 - (5) Arbitrator fees.
- (c) Payments for legal services including but not limited to court witness fees, deposition witness fees, and subpoena fees.
- (d) Employee tuition reimbursements or membership dues or fees for licenses or certifications related to, and necessary for, job performance, such as CPAs, lawyers, counselors, Board fiduciary training, pursuant to applicable laws.
- (e) Payments to Board employees for approved travel expenses associated with job-related training, seminars, or conferences or for approved pre-employment travel, reasonable relocation expenses, and reasonable temporary housing allowance.
- (f) Payments to the appointed and elected members of the Board of Trustees for meeting attendance and meeting preparation, and other authorized costs related to the performance of their role on the Board.
- (g) Refunds of taxes, fees, charges for services, fines, and forfeits that were collected in excess or in error.
- (h) Vendor check replacements resulting from incorrect addresses, names, amounts, disbursement bank account closing or system errors.
- (i) Payments associated with the acquisition of property, land and/or buildings, either by bid, direct negotiation, or through the use of eminent domain.

- (j) Payments for costs incurred by the Board for rent, electricity, water, gas, sewer, and telecommunications.
- (k) Payments made directly to District Government agencies or instrumentalities, or to other state or local governments, or to the Federal government as authorized by the Board or required by the Federal government, or through an agreement with another state or local government.
- (l) Payments that did not follow the normal required procurement process, for example do not have contracts or purchase orders, but for which the Chief Contracting Officer prepared and submitted a written ratification order, executed by the Executive Director and Board's Chief Financial Officer, establishing contract authority and authorizing payment for the transaction. Direct voucher payments made pursuant to a written ratification order shall be reported to the Board of Trustees.
- (m) Payments on invoices that relate to a properly executed contract, for the appropriate time period of the contract, but without a purchase order which would have established funding availability. A contract reconciliation must be performed to ensure that the payment would not exceed the total contract amount.
- (n) Miscellaneous direct vouchers that result from "prior year procurement actions," i.e., a purchase order being closed out prior to payment or payment being applied to it. The total miscellaneous direct voucher payment amount may not exceed the total amount closed out on the purchase order.
- (o) Payments for subscription services and incidental merchant fees, for use of or access to a product or service (i.e., magazines, newspapers, books, cable television, online access, and merchant fees, such as PayPal); not including major subscription services, such as computing and cloud hosting services.

1613.3 Direct voucher payment requests that are not explicitly identified above shall be submitted by the Board's Chief Financial Officer to the Board of Trustees for consideration and approval.

1613.4 Board's Chief Financial Officer shall also update and inform Board employees whenever there is a change in the policies and procedures governing the review and consideration of direct voucher payment requests.

1613.5 All Board employees or Board members who obligate or certify funds, or who approve or process payments, must do so in accordance with applicable laws and regulations. A Board employee or Board member's violation of applicable law, including the Federal and/or District anti-deficiency laws, may result in reprimand, suspension, repayment of the improperly committed or expended funds,

termination or removal from the Board, or civil and/or criminal prosecution.

Section 1614 is added to read as follows:

1614 COMPETITION EXEMPTIONS

- 1614.1 The expenditures provided for in this section are exempt from competition under these Rules. However, the Chief Contracting Officer shall in these cases endeavor to use, or use reasonably adapted, procedures from the IFB or RFP procurement processes as well as other procurement processes available under these Rules in a manner that promotes efficiency while ensuring that the Board receives the greatest value for its payments.
- (a) Legal services or negotiation services in connection with proceedings before administrative agencies or state or federal courts, including experts, attorneys, and mediators, and services in connection with present or anticipated proceedings, or services procured to provide advice or to prevent litigation.
 - (b) Investment or investment-related services, including but not limited to investment consulting and research and analytics services. The selection and retention of the Fund's investment managers are exempted, in their entirety, from these Rules because their selection is governed by separate Board rules, investment policies, and internal procedures.
 - (c) Actuarial services, custody banking, fee and expense validation services, enterprise risk management and operational due diligence services, and insurance.
 - (d) Job-related seminars, speakers, and training offered to the general public for Board trustees and Board employees intended to enhance the Board trustee or employees' knowledge, skill, and ability to perform the duties of their position.
 - (e) Goods or services provided by District Government agencies or instrumentalities, or by other state or local governments, or by the Federal government as authorized by the Board or required by the Federal government, or through an agreement with another state or local government.
 - (f) Postage and other shipping and mailing services required to conduct Board business.
 - (g) Acquisition or leasing of real property, including goods or services provided as part of, or related to, a lease of real property, including security and surveillance systems, products, or services.

- (h) Employment and compensation arrangements or other employee benefit-related services for Board employees.
- (i) Maintenance agreements for products previously contracted where there is a single source of service for a fixed amount or when the compatibility of equipment, accessories, replacement parts, or the current business process/continuation of flow is a substantial consideration in the procurement and only a limited number of sources meet the Board's reasonable requirements.
- (j) Goods or services needed to conduct Board business which can be obtained at a substantial savings pursuant to a unique and time-sensitive opportunity or at prices equal to or less than prices stipulated in current District or Federal supply schedules.
- (k) Goods or services which require long-term support or maintenance and have a high initial purchase price, high implementation or integration costs, or high conversion costs relative to the amount of savings that might be realized from making a change in the service provider.

Section 1615, BUSINESS DEVELOPMENT PROGRAMS, is renamed and amended to read as follows:

1615 DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD; PROTESTS, CLAIMS, AND DISPUTES

- 1615.1 **Applicability.** All protests and disputes involving the procurement rules, policies and procedures of the Board shall be resolved in accordance with these Rules. Each solicitation issued by the Board shall inform prospective bidders or offerors of their rights and responsibilities related to protest and disputes in accordance with these Rules. Each Board solicitation or contract shall contain protest and dispute clauses, approved by the Chief Contracting Officer.
- 1615.2 **Protests and Disputes.** Where a protest arises involving a solicitation in which the Board acknowledges that a mistake or deficiency exists, the Executive Director may, in lieu of accepting the protest, elect to cancel and re-issue the solicitation, in whole or in part, to cure the mistake or deficiency. Where a dispute arises involving a Board contract or agreement, the Board shall first attempt to resolve the matter by informal discussions between the Contracting Officer and the contractor. These Rules do not authorize the Board to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- 1615.3 The Executive Director shall review all protests and disputes involving solicitations or awards with a dollar value equal to or less than one hundred thousand dollars (\$100,000).

1615.4 Protests and disputes involving solicitations or awards with a dollar value greater than one hundred thousand dollars (\$100,000) shall be heard and decided by the District of Columbia Contract Appeals Board, pursuant to a written agreement between the District of Columbia Retirement Board and the District of Columbia Contract Appeals Board, in accordance with 27 DCMR § 101.8 The provisions of Title 27, Chapters 1, 2, 3 and 4, govern proceedings in cases filed with CAB.

1615.5. To initiate a protest or dispute, a vendor must:

- (a) Have a direct economic interest that is, or would be, impacted by the award which is the subject of the protest or dispute; and
- (b) Claim a violation of these Rules in connection with the solicitation or award which is the subject of the protest or dispute.

1615.6 All protests and disputes must be made in writing, signed by the protester or the protester's authorized representative, and include:

- (a) The name, physical address, website address, telephone numbers, and email address of the protester;
- (b) The number and date of the solicitation being protested, or if a contract has been awarded, the number and date of the contract and the pertinent provisions being disputed;
- (c) A clear and concise statement of the legal and factual grounds of the protest or dispute, including copies of relevant documents, and citations to these Rules and other applicable statutes, regulations, or solicitation provisions claimed to be violated;
- (d) Information establishing the timeliness of the protest or dispute under §1615.8;
- (e) Information establishing that the protester's direct economic interest is, or would be, impacted by the award; and
- (f) The relief sought by the protester.

1615.7 All protest and dispute communications shall be sent by means reasonably calculated to effect timely delivery and provide for delivery confirmation; this includes electronic delivery. The Board reserves the exclusive right to determine acceptable methods of delivery.

1615.8 **Time Limitations.**

- (a) A protest of a solicitation shall be considered timely filed if it is received by the Executive Director prior to the final date for receipt of proposals or of bid opening.
- (b) Protests or disputes other than those covered by §1615.8(a) shall be considered timely filed if received by the Executive Director no later than ten (10) business days after the basis of the protest or dispute is known or should have been known to the protester, whichever is earlier.

1615.9 Protesters initiating a protest or dispute in accordance with §1615.5 shall receive written acknowledgement of the Board's acceptance or denial of the protest or dispute. The Board reserves the exclusive right to determine whether a protest or dispute is filed in accordance with §1615.5 and to deny any protests or disputes it determines not to have been filed in accordance with §1615.5. The Board may allow a protester to cure deficiencies in its filings where doing so is in the Board's best interest.

1615.10 When a protest or dispute is accepted by the Board, the Contracting Officer shall give notice of the protest or dispute to parties reasonably known by the Board to be impacted by the initiation of the protest or dispute, including actual or prospective bidders or offerors with reasonable prospect of receiving an award.

1615.11 An award may be made, and performance under a Board contract or agreement may diligently proceed, while a protest or dispute is pending. The Executive Director shall provide a written determination describing any impediment(s) to the Board's functions if the award or performance under a Board contract or agreement is delayed until the protest or dispute is resolved.

1615.12 An award may be made while a protest is pending. The Executive Director shall provide a written determination describing any impediment(s) to the Board's functions if the award is delayed until the protest is resolved. Unless the Executive Director temporarily suspends work when a dispute is filed, Board contracts and agreements shall require the contractor to initiate or proceed diligently with performance while a dispute is pending final decision, action, or settlement.

1615.13 **Report of Protest or Dispute Claim.** Within fifteen (15) business days of the Board's acceptance of a protest or dispute, the Contracting Officer shall submit a Report of Protest or Dispute Claim ("Protest Report") to the Executive Director and to the protester which shall include, where relevant to the particular protest or dispute:

- (a) The protest or dispute filed by the protester;
- (b) The applicable solicitation, contract, or agreement, and all amendments;
- (c) The bid or proposal and all amendments submitted by the protester;

- (d) The bid or proposal which is being considered for award, or which has resulted in an award, if any;
- (e) Bid tabulation sheets or proposal selection reports and evaluation reports, work papers, and scoring sheets;
- (f) The Contracting Officer's response for each of the legal and factual grounds of the protest or dispute, including the facts, legal principles, and precedents supporting the Board's position; and
- (g) Any and all other relevant documents and exhibits that are relevant to the protest.

- 1615.14 The Executive Director may require the Contracting Officer to supplement the Protest Report with any information material to the Executive Director's consideration of the protest or dispute. The Protest Report and any documentation or exhibits provided in connection with a protest or dispute shall be treated as confidential; however, the protester shall clearly identify for the Board any information, documents or exhibits which the protester reasonably considers confidential and proprietary.
- 1615.15 Exhibits to the Protest Report shall be arranged in chronological order, where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.
- 1615.16 The Protest Report shall be considered a part of the record upon which the Executive Director will render a decision.
- 1615.17 The Chief Contracting Officer may request an extension of the deadline for filing the Protest Report and shall supply an explanation of why an extension is needed. Extensions are to be considered exceptional and will be granted only for good cause.
- 1615.18 Within five (5) business days after receipt of the Protest Report, the protester may file a reply or response to either which shall provide the protester's factual and legal opposition to the Protest Report.
- 1615.19 The protester shall supply all parties with a copy of the protester's reply or response to the Protest Report.
- 1615.20 If the protester does not file a reply or response to the Protest Report or does not request an extension of time for filing, the Executive Director may treat the Protest Report's statement of facts, not otherwise contradicted by the protest or dispute, and the exhibits included therein, as agreed to by the parties.
- 1615.21 The Executive Director may dismiss, at any stage of any protest or dispute, any

portion of a protest or dispute, he or she deems frivolous.

- 1615.22 **Discovery.** Discovery in protest cases shall be permitted only with approval by the Executive Director and is available only to the protester and the Board.
- 1615.23 **Conference.** A conference may be held at the discretion of the Executive Director upon the request of the protester or the Contracting Officer. The Executive Director may require or permit the submission of supplemental information or documentation after the conference has been completed.
- 1615.24 The conference is intended to allow the Executive Director and the parties to discuss matters relevant to the protest including, but not limited to:
- (a) Simplifying or clarifying issues identified in the Protest Report and protester's reply or response (if applicable);
 - (b) Identifying any stipulations, admissions, or agreements between the parties, or any other circumstances which might aid in the just and expeditious disposition of the protest or dispute; and
 - (c) Settling the protest or dispute.
- 1615.25 **Protest and Dispute Decisions.** The Executive Director shall issue a decision in writing, based solely on the record, and transmit to the protester and Contracting Officer. The record upon which the Executive Director shall base his or her decision shall include:
- (a) The Protest Report and all accompanying exhibits;
 - (b) The protestor's reply or response to the Protest Report and any other requests or pleadings of the protester, if applicable;
 - (c) Any settlement agreement reached between the parties, if applicable; and
 - (d) Any other information which might aid the Executive Director in a just and expeditious disposition of the protest or dispute.
- 1615.26 The protest or dispute decision of the Executive Director shall be final and not subject to review unless an appeal, pursuant to, and in accordance, with these Rules is timely commenced. A protester may seek an administrative hearing to review the Executive Director's decision by filing a petition with the District of Columbia Contracts Appeal Board.
- 1615.27 **Remedies.** Where the protest or dispute decision concludes that the solicitation, proposed award, or award does not comply with these Rules, applicable law, or terms and conditions of the solicitation or contract, the Executive Director may

prescribe one or more of the following where relevant:

- (a) Terminate the contract for the convenience of the Board;
- (b) Refrain from exercising any options under the contract;
- (c) Re-compete the contract;
- (d) Issue a new solicitation;
- (e) Award a contract consistent with these Rules; or
- (f) Take such other action as the Executive Director may direct. If the Executive Director determines that a contract is void, the Executive Director may direct that the contract be canceled and determine whether a ratification of any unauthorized expenditure pursuant to these Rules is appropriate.

1615.28 In determining an appropriate remedy, the Executive Director shall select a remedy which reflects:

- (a) The best interest of the Board;
- (b) The seriousness of the procurement deficiency or violation;
- (c) The likelihood of prejudice to other bidders or offerors, if applicable;
- (d) Maintaining the integrity of the procurement system; and
- (e) Good faith of Board officials and other parties.

1615.29 The Executive Director shall not award a protester's bid or proposal preparation costs, costs of pursuing the protest, or related legal fees.

1615.30 **Appeals.** Appeals of protests and disputes shall be heard and decided by the District of Columbia Contract Appeals Board, pursuant to a written agreement between the District of Columbia Retirement Board and the District of Columbia Contract Appeals Board, in accordance with 27 DCMR § 101.8 The provisions of Title 27, Chapters 1, 2, 3 and 4, govern proceedings in cases filed with CAB.

Section 1616, PROTECTING THE ENVIRONMENT, is deleted.

Section 1699, DEFINITIONS, is amended to read as follows:

1699 DEFINITIONS

Board property - all property owned by or leased to the Board or acquired by the Board under the terms of the contract, including property in the possession of or directly acquired by the Board and subsequently made available to the contractor.

Board quality assurance - the various functions, including inspection, performed by the Board and/or the District to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity.

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

Confidential information - proprietary information of the Board and/or District.

Consultant - a firm or individual with knowledge and special abilities not generally available to the Board who renders services of a purely advisory nature relating to governmental functions or agency administration and management.

Contingency costs - costs based on a possible future event or condition arising from presently known or unknown causes, the outcome of which is not determinable at the present time.

Contingent fee -- any commission, percentage, brokerage, or other fee that is dependent upon or tied to the success that a person or concern has in securing a Board contract.

Contract -- a mutually binding agreement between the Board and a contractor, which must be in writing unless otherwise authorized by the Act, including agreements in which a party other than the Board is obligated to pay the contractor.

Contract Administrator or "CA" -- the individual responsible for overseeing the conduct of contract work.

Contract modification -- any written change in the terms of a contract.

Contracting Officer or "CO" -- an individual who has been granted contracting authority, in whole or in part, by the Executive Director in accordance with §1604.

Contract quality requirements - the technical requirements in the contract relating to the quality of the product or service and those contract clauses prescribing inspection, and other quality controls incumbent on the

contractor, to assure that the supply, service, or installation conforms to the contractual requirements.

Correction - the elimination of a defect.

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

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

Cost-plus-award-fee contract - a cost-reimbursement type contract that provides for a fee consisting of an amount fixed at the beginning of the contract and potential award of additional fee amounts based upon a judgmental evaluation by the CO, sufficient to provide motivation for excellence in contract performance.

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

Cost-plus-incentive-fee contract - a cost-reimbursement type contract that provides for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. After performance of the contract, the fee payable to the contractor is determined in accordance with a negotiated formula.

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

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

Council - the Council of the District of Columbia.

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

Day -- means a calendar day unless expressly stated otherwise. Any day on which a submission is due or other action occurs must be a day on which the District of Columbia Government is open for regularly scheduled business.

Debarment -- action taken by the Board and/or District to exclude a contractor from Board and/or District contracting and Board- or District-approved subcontracting for a reasonable, specified period. A contractor so excluded is “debarred.”

Deficiency -- a material failure of a proposal to meet a Board requirement or a combination of significant weaknesses in a proposal that increase the risk of unsuccessful contract performance to an unacceptable level.

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

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

Destination - the point designated in the contract at which the end product is received.

Direct cost - any cost that can be identified specifically with a final cost objective or is incurred directly for a particular contract.

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.

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

District supply sources - sources available to the District and/or the Board from which the contractor or subcontractor may obtain supplies for use in certain contracts.

Effective date of termination - the date on which the notice of termination requires the contractor to stop performance under the contract. If the termination

notice is received by the contractor after the date fixed for termination, then the effective date of termination is the date the notice is received by the contractor.

Emergency Condition -- A situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, or equipment failures. The existence of such condition creates an immediate and serious need for goods or services that cannot be met through normal procurement methods and the lack of which would seriously threaten: (a) the function of the Board; (b) the preservation or protection of property; or (c) the health or safety of any person.

Estimating costs - the process of forecasting a future result in terms of cost based upon information available at the time.

Executed - agreed to and signed by the parties to a transaction.

Executive Director -- the Executive Director of the District of Columbia Retirement Board.

Expert - a person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field, whose knowledge and mastery of the principles, practices, problems, methods, and techniques of his or her field or activity, or of a specialized area in the field, are clearly superior to those usually possessed by ordinarily competent persons in that activity, and whose attainment is such that he or she usually is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity.

Expressly unallowable cost - a item or type of cost which, under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable.

Facilities - property used for production, maintenance, research, development, or testing. The term “facilities” includes personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing goods, in performing services, or for any administrative or general plant purpose, and real property (land and rights in land, ground improvements, utility distribution systems, and buildings and other structures), but does not include material.

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

contractor and provides maximum incentive for the contractor to control cost and perform effectively.

Fiscal year - the accounting period for which annual financial statements are regularly prepared.

Fixed assets - property used in operating a business which will not be consumed or converted into cash or its equivalent. It includes machinery, land, and buildings.

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

Fixed-price incentive contract - a fixed-price type contract that provides for adjusting profit and establishing the final contract price by a formula based on the relationship of final negotiated total costs to total target costs. After performance of the contract, the final cost is negotiated, and the final contract price is then established in accordance with the formula.

Incentive contract - a fixed-price or cost-reimbursement type contract which provides for relating the amount of profit or fee payable under the contract with the contractor's performance in order to obtain specific procurement objectives.

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

Indirect costs - any cost not directly identified with a single contract but identified with two (2) or more final cost objectives or an intermediate cost objective.

Ineligible -- excluded from Board and/or District contracting or subcontracting under authority of federal statute or regulation applicable to the District (such as the Davis-Bacon Act, 40 U.S.C. §§ 276a-276a-7, the Service Contract Act, 41 U.S.C. §§ 351-358, or the Equal Employment Opportunity Act of 1972, 5 U.S.C. §§ 5108, 5314 et seq., and 42 U.S.C. § 2000e), or excluded under authority of a District statute or regulation other than the Board's procurement regulations.

Inspection - examining and testing goods, services, or installation to determine whether they conform to contract requirements. This includes, when

appropriate, examination and testing of raw materials, components, and intermediate assemblies.

Insurance - a contract which provides that, for a stipulated consideration, the insurer undertakes to indemnify the insured party against risk of loss, damage, or liability arising from an unknown or contingent event.

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

Legal proceedings -- any civil judicial proceeding to which the Board and/or District is a party or any criminal proceeding, including appeals from these proceedings.

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

Lowest evaluated bid price -- the lowest bid price after considering all price related factors.

Market research - the process used for collecting and analyzing information about the entire available market that will satisfy the minimum agency need used to arrive at the most suitable approach for acquiring, distributing, and supporting goods and services.

Market survey -- a testing of the marketplace to ascertain whether other qualified sources capable of satisfying the Board's requirement exist. It may range from written or telephone contacts with knowledgeable experts regarding similar or duplicate requirements, and the results of any market test recently undertaken, to the more formal sources-sought announcements in pertinent publications (such as technical or scientific journals, or the Commerce Business Daily) or solicitations for information or planning purposes.

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

Material costs - costs of items such as raw materials, parts, sub-assemblies, components, and manufacturing supplies, whether purchased or manufactured by the contractor, which may include such collateral items as inbound transportation and in transit insurance.

Maximum liability - the amount, not to exceed fifty percent (50%) of the overall contract price ceiling, obligated by the letter contract over which the Board cannot be liable if the letter contract is terminated.

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

Multiyear contract -- a contract for a period longer than twelve (12) months that is funded by annual appropriations.

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

Normal cost - the annual cost attributable to years after a valuation date under the actuarial cost method in use.

Novation Agreement -- a legal instrument executed by a contractor (transferor), the successor in interest (transferee), and the Board by which, among other things, the Board recognizes the transfer of the rights and obligations of a contractor under a contract to a new contractor.

Off-the-shelf item - an item produced and placed in stock by a contractor, or stocked by a distributor, before receiving orders or contracts for its sale.

Option -- a unilateral right in a contract under which, for a specified time, the Board may elect to extend the term of a contract.

Organizational conflict of interest -- when the nature of the work to be performed under a proposed Board contract might, without some restraint on future activities, result in an unfair competitive advantage to a contractor or impair a contractor's objectivity in performing contract work.

Organization costs - costs such as incorporation fees and costs of attorneys, accountants, brokers, promoters, organizers, management consultants, and investment counselors, including employees of the contractor.

Partial payment - the reduction of any debt or demand for payment of a sum less than the whole amount originally due.

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

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

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

Pre-award survey -- a detailed review (sometimes on-site) of a contractor to ascertain information sufficient to make a determination regarding responsibility.

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.

Pre-solicitation -- prior to the transmittal by the Board of any proposed contract documents to the proposed contractor before the issuance of a solicitation or in a proposed sole source procurement.

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

Price -- cost plus any fee or profit applicable to the contract type. The amount the Board anticipates it will pay the contractor for full performance under the terms of a contract.

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

Pricing - the process of establishing a reasonable amount or amounts to be paid for goods or services.

Procurement planning -- the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the Board's needs in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

Progress payment - a payment made based on services completed or goods delivered.

Property - all property, both real and personal, including facilities and material.

Proposal - any offer or other submission used as a basis for pricing a contract, contract modification, or termination settlement or for securing payments thereunder.

Proprietary information - information, including trade secrets, data, formulas, patterns, compilations, programs, devices, methods, techniques, or processes, that have the following characteristics:

- (a) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; or
- (b) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Purchase description - a description of the essential physical characteristics and functions required to meet the Board's minimum needs.

Purchase order -- an offer by the Board to buy certain goods or services from commercial sources upon specified terms and conditions.

Quotation -- a citation of price and delivery terms or a period of performance by a contractor.

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

Rental costs - costs of renting or leasing real or personal property.

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

Residual value - the proceeds, less removal and disposal costs, if any, realized upon disposition of a tangible capital asset. It usually is measured by the net proceeds from the sale or other disposition of the asset or its fair market value if the asset is traded in on another asset. The estimated residual value is a current forecast of the residual value.

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

Service life - the period of usefulness of a tangible capital asset or group of assets to its current owner. The period may be expressed in units of time or output. The estimated service life of a tangible capital asset or group of assets is a current forecast of its service life and is the period over which depreciation cost is to be assigned.

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

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

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

Small purchase -- a procurement of goods or services in an aggregate amount not exceeding the small purchase authority limitations set forth in these Rules.

Solicitation -- request for proposals (RFP), excluding a request for information (RFI) or request for qualifications (RFQ).

Source - the point designated in the contract from which the end product is shipped.

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

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

Standard cost - any cost computed with the use of pre-established measures.

Stop-work order - a written document issued by the CO advising a contractor to cease work.

Subcontract -- a contract between a prime contractor (or, in some instances, a subcontractor) and a subcontractor to furnish goods or services for performance of a part of a prime contract or another subcontract, including, but not limited to, purchase orders, changes, and modifications to purchase orders.

Subcontractor -- a supplier, distributor, vendor, or firm that furnishes goods or services to or for a prime contractor or another subcontractor.

Supplemental agreement -- a bilateral contract modification.

Suspension -- action taken by the Board and/or District to disqualify a contractor temporarily from Board and/or District contracting and Board- or District-approved subcontracting. A contractor so disqualified is “suspended.”

Systems engineering -- developmental, analytical, or other non-production activities, including determining specifications, identifying, and resolving interface problems, developing test requirements, evaluating test results, or supervising design.

Tangible capital asset - an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the services it yields.

Target price - an amount established by the CO 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 analysis -- the examination and evaluation by personnel having specialized knowledge, skills, experience, or capability in factors set forth in a proposal.

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

Terminated portion of the contract - the portion of a terminated contract that relates to work or end items not completed and accepted before the effective date of termination and is the portion of the contract which the contractor is not to continue to perform. For installation or service contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of or payment for individual items of work before termination.

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

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

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

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

Unallowable cost - any cost that, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost-reimbursements, or settlements under a Board contract to which it is allocable.

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

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

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

Variance - the difference between a pre-established measure and an actual measure.

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