

900 7th Street, NW, 2nd Floor
Washington, DC 20001
www.dcrb.dc.gov



Telephone (202) 343-3200
Facsimile (202) 566-5001
E-mail: dcrb@dc.gov

OPEN SESSION

NOTICE OF REGULAR BOARD MEETING JOSEPH W. CLARK, CHAIRMAN

AGENDA

**THURSDAY, SEPTEMBER 28, 2017
1:00 PM**

1:00 PM ROLL CALL

APPROVAL OF BOARD MEETING MINUTES FOR JUNE 22, 2017

CHAIR'S COMMENTS

- **MOTION:** TRAVEL REQUEST FOR TRUSTEE BLANCHARD
- **PRESENTATION:** CYBER INCIDENT RESPONSE PLAN
- **PRESENTATION:** PENSION INFORMATION SYSTEMS (PIMS) RFP SYNOPSIS (**EXECUTIVE SESSION**)
- **MOTION:** PROPOSED PERSONNEL MATTER (**EXECUTIVE SESSION**)

INTERIM EXECUTIVE DIRECTOR'S REPORT

INVESTMENT COMMITTEE REPORT -- ACTION ITEMS

OPERATIONS COMMITTEE REPORT -- ACTION ITEMS

- **MOTION:** TRUSTEE ELECTION RULES
- **MOTION:** PROCUREMENT RULES
- **MOTION:** CONTRACT ACTIONS

BENEFITS COMMITTEE REPORT

LEGISLATIVE COMMITTEE REPORT

AUDIT COMMITTEE REPORT

OTHER BUSINESS

- TRUSTEE COMPENSATION REPORTS FOR FY 2017
- EXPERIENCE INVESTIGATION REPORT 2010-2015, FINAL RESULTS

3:00 PM ADJOURNMENT

ADDITIONAL MEETING MATERIALS

- Σ CONFERENCES & MEETINGS LISTING
- Σ TRUSTEES & STAFF TRAINING AND TRAVEL REPORT

CYBER INCIDENT RESPONSE PLAN





OBJECTIVE

Prevents the loss of assets and maintain public confidence, by providing an immediate and effective response to any event involving computer information systems, networks, or databases.

INCIDENTS



DENIAL OF SERVICE

Attack that prevents normal authorized functionality of networks, systems, etc.



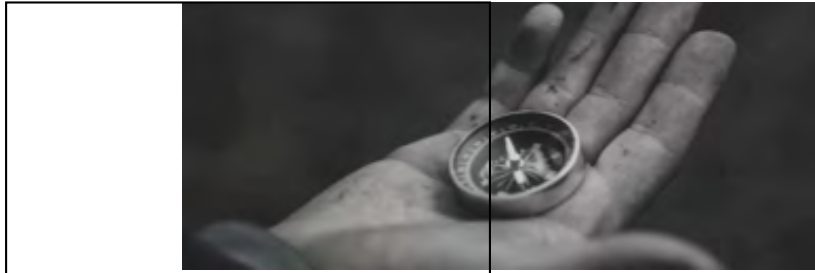
DATA BREACH

An unauthorized acquisition of electronic data that compromises the security, confidentiality, or integrity of personal information maintained



WEB ATTACK

Attack executed from a website or web-based application



RISK MITIGATION STRATEGIES



READINESS ASSESSMENT

Evaluate ability and readiness to support Incident Response Engagement

VULNERABILITY ASSESSMENT

Internal and external network penetration test to identify, validate and compromise vulnerabilities

INCIDENT RESPONSE PLAY BOOKS

Establish standardized methodologies for detection of and response to critical cyber security threats

TESTS

Perform simulations

CYBER-INSURANCE (AIG)

Third party claims, Direct first-party costs, Business interruptions caused by network security failure, an outsider attempting to extort money (Cyber-Extortion; ransomware).

KEY TEAMS



Infrastructure



Security and
Risk
Management



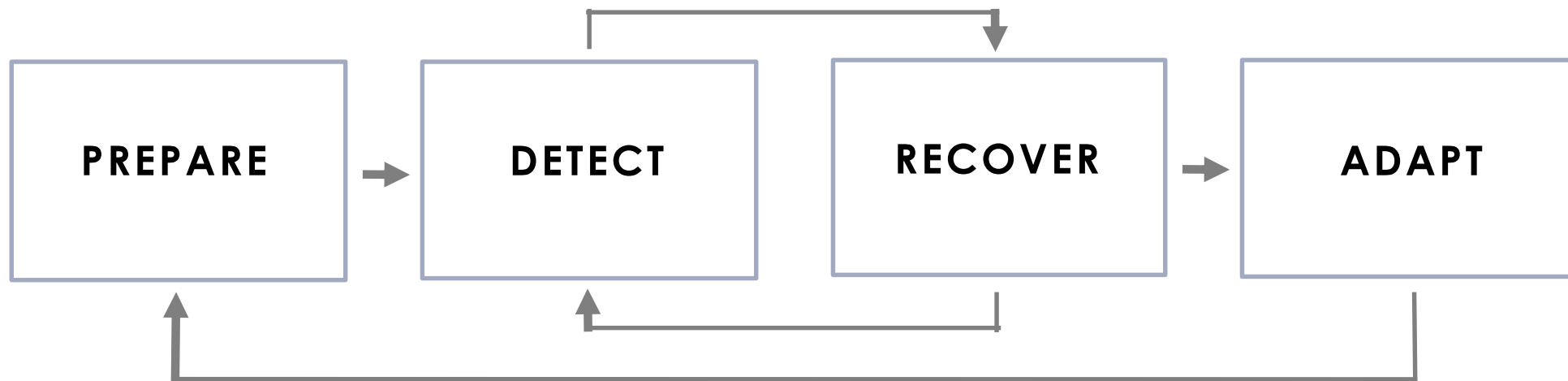
Communications

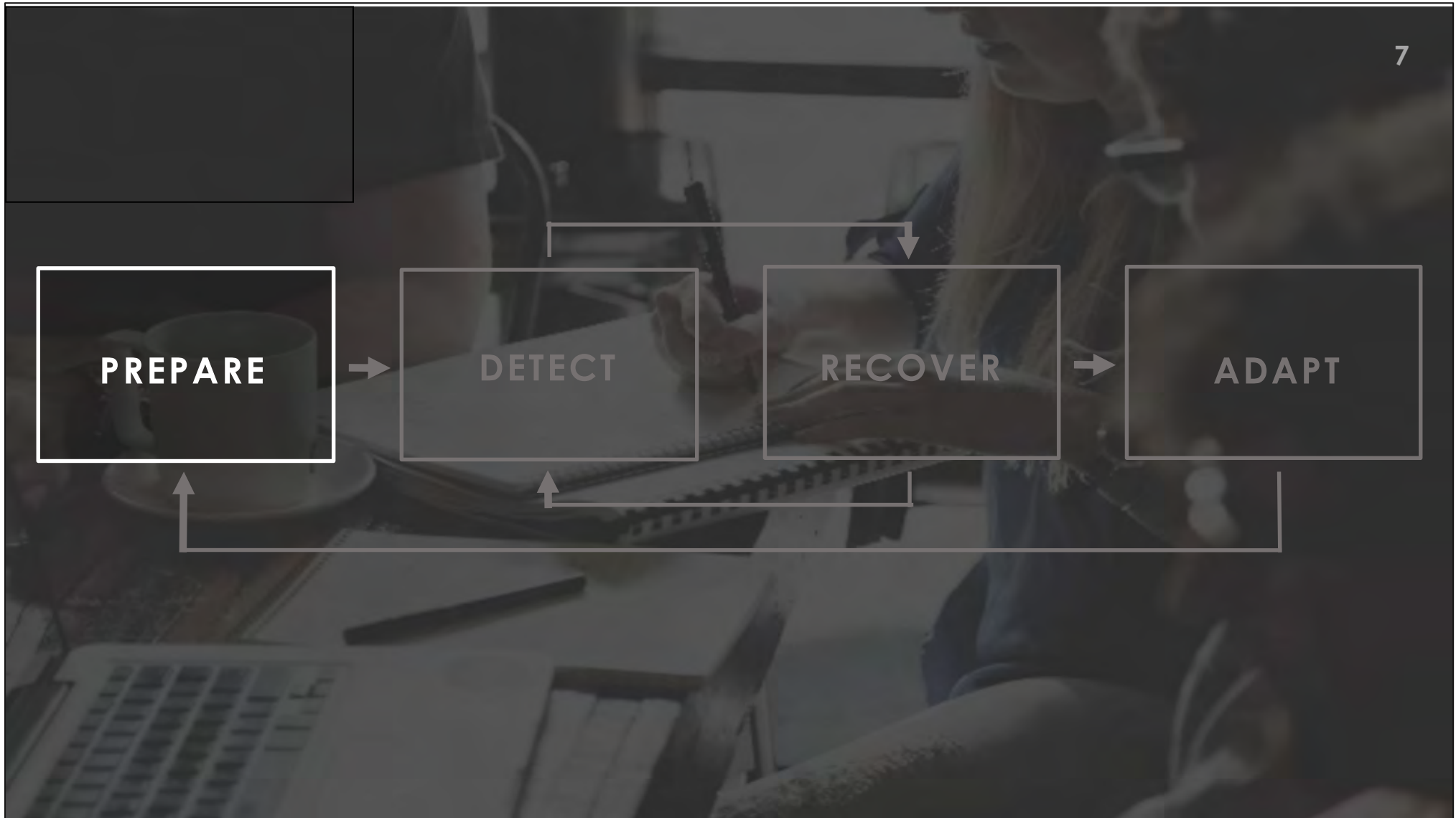


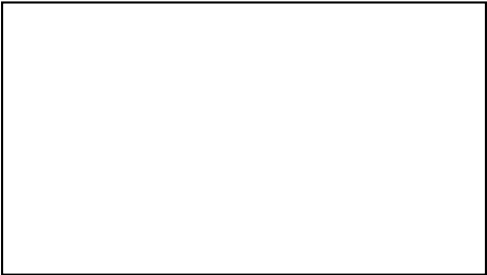
Information
Privacy/Legal



FireEye





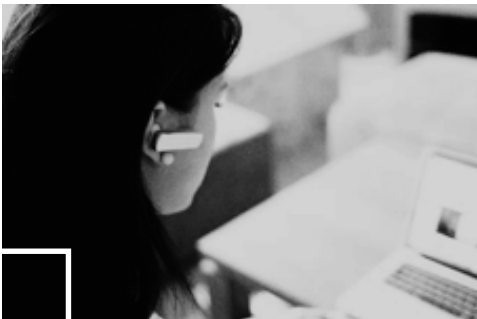


PREPARE

RISK
ASSESSMENT



USER AWARENESS
& TRAINING



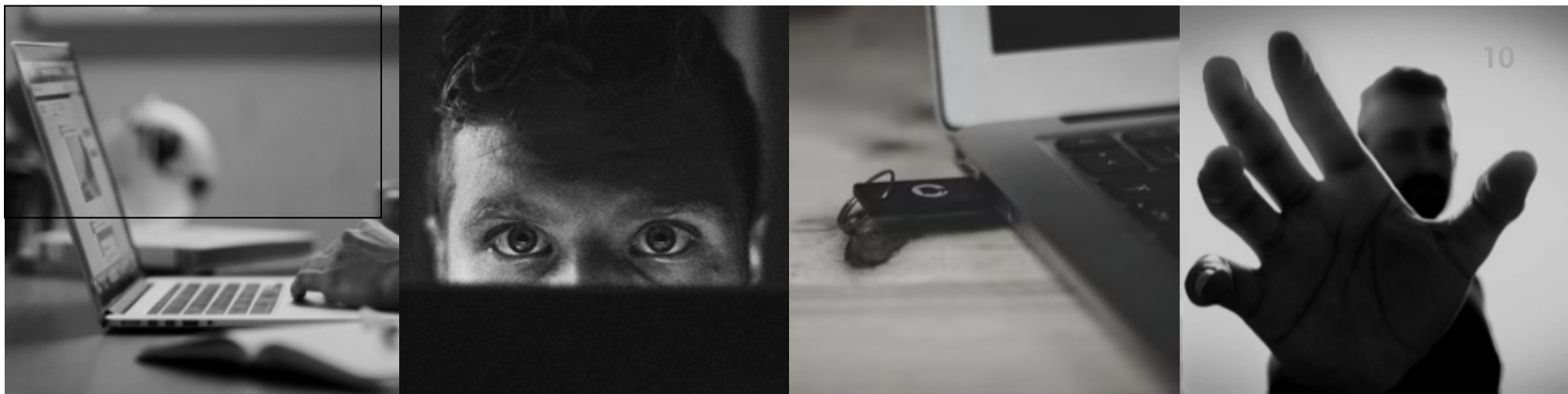
MALWARE/
VIRUS PREVENTION



NETWORK
SECURITY







DETECT

ATTACK VECTORS

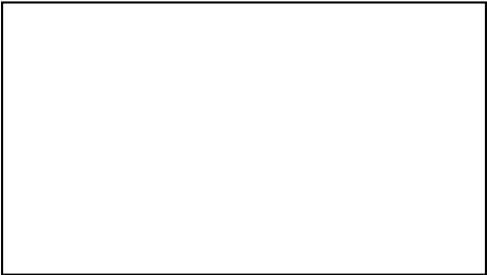
EMAIL

IMPERSONATION

EXTERNAL/
REMOVABLE
MEDIA

EQUIPMENT
LOSS
OR THEFT





RECOVER



- GATHER EVIDENCE
- IDENTIFY
- CONTAIN
- ERADICATE





ADAPT

14

LESSONS LEARNED

A photograph of two people sitting at a white table, working on laptops. The person on the left is a man with a beard, and the person on the right is a woman. They are in a modern office setting with a large window in the background.

INCIDENT DATA

A photograph of a computer screen displaying financial data. The screen shows several line charts and tables of data. The charts show fluctuations in data over time, with one chart showing a significant upward trend.

EVIDENCE RETENTION

A photograph of a server room. The room is filled with rows of server racks, each with multiple doors and handles. The racks are arranged in a long, narrow aisle, and the floor is made of dark tiles.

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Washington, DC 20001
www.dcrb.dc.gov



Telephone (202) 343-3200
Facsimile (202) 566-5000
E-mail: dcrb@dc.gov

DISTRICT OF COLUMBIA RETIREMENT BOARD

MOTION:

**TO APPROVE THE ATTENDANCE OF TRUSTEE BLACHAND, TO ATTEND
THE INSTITUTIONAL REAL ESTATE INC. 2018 VISIONS, INSIGHTS, &
PERSPECTIVES AMERCIAS CONFERENCE ON JANUARY 24-26, 2018.
THE REGISTRATION FEE WILL BE PAID BY INSTITUTIONAL REAL ESTATE INC.**

PRESENTED TO THE BOARD ON SEPTEMBER 28, 2017

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 Washington, DC 20001
www.dcrb.dc.gov



Telephone (202) 343-3200
 Facsimile (202) 566-5000
 E-mail: dcrb@dc.gov

INTERIM EXECUTIVE DIRECTOR REPORT

September 28, 2017

Activities	Updates
CEM Benchmarking Project	As noted in June, DCRB has engaged CEM Benchmarking, Inc. to analyze benefits administration and financial data to compare our benefits operations against a peer group of state and municipal retirement systems. The comparative data includes administrative costs, transactional volumes, website capabilities, member calls, and other service measures. CEM will provide the Board with the results of their analysis in the fall.
Alternative Work Schedule Policy (AWS)	In June 2017, DCRB announced to staff that it was adopting the District's AWS policy. The policy offers flexible scheduling options, which include compressed work schedules, flexible work hours, and telework. To assure continuity of operations, requests will be subject to supervisory approval, and some positions will not be appropriate for such schedules.
Retired Teacher Trustee Election	The Notice of Election and Request for Nominations for the Retired Teacher Trustee election was mailed, along with a Statement of Candidacy Form, to all eligible retired teachers on September 7, 2017. The due date for receipt of the forms by the Election Official, is September 29, 2017.
Organizational Design	As reported in June, DCRB will release an RFP later this month to engage a firm to assist our senior staff with updating our strategic plan and goals. This project is especially important as DCRB moves toward the acquisition of its own Pension Information Management System, and its expected effect on our organizational structure and staffing levels.
Summer Newsletter – Teachers' Edition	The DCRB Report – Teachers' Edition was mailed to all active and retired members of the District of Columbia Teachers' Retirement Plan on September 1, 2017. The newsletter included information from Chairman Clark on fund assets, Plan demographics, and updates on estimated benefit statements and the 2017 Summary Plan Description. It also included articles on the retired teacher trustee election, QDROs, and the spring teacher retirement workshops. A copy of the newsletter is attached.
Email and Office 365	DCRB has elected to stay with the District's hosting of email services. The District is migrating its email services to Microsoft's cloud infrastructure, and DCRB is working with the Office of the Chief Technology Officer (OCTO), to move DCRB's Microsoft Office 365 environment to OCTO's management. The technical details are currently being worked on, and the migration is expected to be completed by mid-November.

Staff Communication Disclosure Form	The attached staff Communications Disclosure Form was created to document instances where DCRB staff are approached by vendors who are seeking to do business with DCRB. The purpose of the form is to avoid conflicts of interest or the appearance of conflicts of interest.
Recent Retirement-Related Articles (attached)	Phased Retirement Gets a Second Look,” <u>International Foundation of Employee Benefit Plans</u> , Impact News Service, July 31, 2017.



DCRB Report

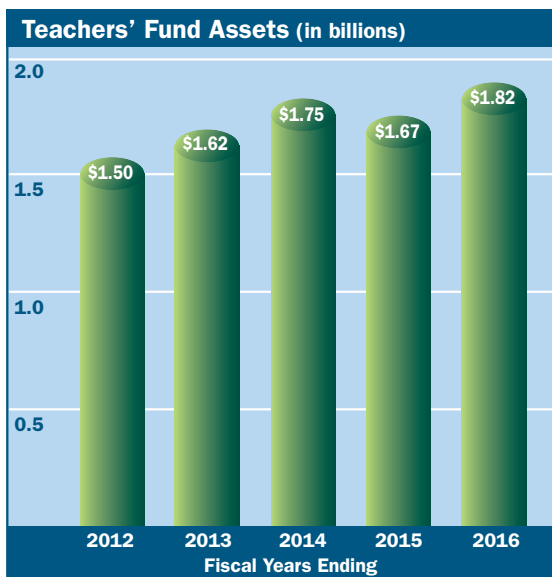
Teachers' Edition

SUMMER 2017

Inside

- 2 What Happens to Your Pension If You Divorce?
- 2 Questions You Asked
- 3 Retired Teacher Trustee Election
- 3 Teachers' Retirement Workshops
- 4 Useful Contacts

The District of Columbia Retirement Board's mission is to prudently invest the assets of the Police Officers, Firefighters, and Teachers of the District of Columbia, while providing those employees with total retirement services.



From the Chair of the Board

Teachers' Plan Information

Fund Assets

As reflected in the chart below, at the end of fiscal year (FY) 2016, the amount of assets in the District of Columbia Teachers' Retirement Fund (the Fund) was \$1.82 billion. The Fund was 90.9% funded on an actuarial basis. During FY 2016 (October 1, 2015, through September 30, 2016), the Board paid \$75.3 million from the Fund in annuity payments, refunds and rollover transfers to teachers who had retired or terminated their employment with the District of Columbia Public Schools (DCPS).



Joseph W. Clark

Plan Members

At the end of FY 2016, the District of Columbia Teachers' Retirement Plan (the Teachers' Plan) had 10,199 members. That total consisted of 5,141 active members, and 3,882 retirees and beneficiaries receiving payments from the District's Replacement Plan (an additional 2,301 retirees and beneficiaries receive benefits under the Federal Teachers' Plan), and there were 1,176 terminated vested members who are eligible to receive a deferred benefit when they reach age 62.

Estimated Benefit Statements

The District of Columbia Retirement Board's (DCRB) Benefits Department will be providing Estimated Benefit Statements (Statements) to all active members of the Police/Fire and Teachers' Plans within the next year. In preparation for the distribution of the Statements, a small Pilot group of plan members will be selected to ask questions and provide feedback on the information used to produce the Statements. This process will assure that all pertinent issues will be addressed before benefits are calculated and Statements are distributed. It is anticipated that a Pilot group for Teachers will be formed around November 2017, and that Statements will be distributed to active Teachers in early 2018. The DCRB Benefits Department is looking forward to working with you on this important project.

Summary Plan Description (SPD)

Among DCRB's duties as Plan Administrator is the preparation and distribution of your Plan's SPD, which is updated and issued every five years. Because the last SPD was produced in 2012, the next one is due this year. We expect to distribute it toward the end of the year. This year's distribution method will be somewhat different than previously, however, in that we will work with DCPS to deliver the SPD to active members electronically. Paper copies will be sent to annuitants and terminated vested members for whom we have valid home addresses. The current SPD is also available on DCRB's website at

www.dcrb.dc.gov/service/summary-plan-descriptions.

What Happens to Your Pension if You Divorce?

The Teachers' Plan is subject to the DC Spouse Equity Act (the Act) of 1988, which means that in the event you divorce, your retirement benefit from the Teachers' Plan may be divided between you and your former spouse as marital property in a court order. DCRB cannot pay a portion of your retirement benefit or a survivor annuity to your former spouse (the Alternate Payee) without an appropriate "qualifying court order" (QCO). For purposes of the Act, a court order is one that has been issued or approved by any state court or the District of Columbia in connection with a divorce, annulment, or legal separation. Such court orders are commonly referred to as a domestic relations order.

DCRB is responsible for reviewing and determining if your court order is a QCO under the Act and acceptable to the Teachers' Plan,

since the QCO cannot award greater benefits to your former spouse than the Teachers' Plan allows, or pay them in a form that does not comply with plan provisions (e.g., the Teachers' Plan does not pay lump-sums). Although a court may approve an order as a QCO (or as a qualified domestic relations order - QDRO), DCRB, as the Plan Administrator and custodian of the retirement fund, makes the final determination and will reject court orders that are deficient. DCRB will be happy to review any draft QCO before it is submitted to a court.

For a court order to be acceptable to the Teachers' Plan under the Act as a QCO, among other things, it must:

- state the name of the plan to which the QCO applies;
- state the name of the Act as the authority to enforce the QCO;
- clearly award the Alternate Payee all or a portion of your retirement

benefit as a fixed dollar amount, fraction, or percentage, and state if cost-of-living adjustments (COLAs) apply; and

- state if the Alternate Payee is entitled to a portion or all of any surviving spouse annuity, and if COLAs apply.

For your former spouse to be eligible for a survivor annuity, he/she:

- must have been married to you for at least 9 months while you were active or retired; and
- you must have at least 18 months of creditable service under the Teachers' Plan.

Under the Teachers' Plan, if you are divorced after you retired and the QCO includes a survivor benefit, the QCO must comply with the survivor option you chose when you retired. Also, your former spouse may lose eligibility for a survivor annuity if he/she remarries prior to age 55.

After acceptance, DCRB will calculate and process the Alternate Payee's portion of your retirement benefit. Payments from the Teachers' Plan are not retroactive. Therefore, it is important for you or your former spouse to make sure we have your QCO and current contact information to ensure timely processing. Further, you should be aware that DCRB does not accept or process QCOs issued after the death of a Teachers' Plan member.

The Act also allows your eligible former spouse to continue health insurance coverage at his/her own expense under certain conditions.

Information about the Act, including a DC Spouse Equity Act Information Statement and a model QCO, is available from DCRB by calling the DCRB Member Services Center at (202) 343-3272 or toll free at (866) 456-3272.

Questions You Asked

DCRB recently received a question from a retired DCPS teacher regarding the treatment of her retirement benefit under the Teachers' Plan upon being rehired by DCPS.

If you worked for DCPS and you retired under the Teachers' Plan, upon being rehired by DCPS, you continue to receive your retirement benefit in the same amount as before. However, there are a few things that change. First, your DCPS salary is reduced by the amount of your retirement benefit so that, when taken together, your retirement benefit and your salary equal the amount of the salary of your new position. Second, you are no longer eligible to actively participate in the Teachers' Plan, so you do not make contributions to the Teachers' Plan, accrue further benefits or acquire additional service. (If you are rehired as a substitute teacher, however, you would continue to receive your retirement benefit and there is no reduction in your teaching salary.)

Similarly, if you are hired after your DCPS retirement by another District agency, your salary received from the other agency is reduced by the amount of your retirement benefit, so that your salary plus your retirement benefit equals the amount of the total salary of the new position.



Retired Teacher Trustee Election

In the summer 2016 issue of the DCRB Report, Teachers' Edition, we introduced you to the trustees who represent you on the Board. Since we will be having an election later this year to fill the expiring term for one of those Board seats, we thought you might be interested in knowing the rules and the process for the election of Board members.

Under the District of Columbia Retirement Reform Act of 1979, the Board is responsible for conducting the election of Board members. In that regard, the Board hires an independent outside election official to perform the necessary tasks. The election official mails official documents to qualified voters, verifies candidates, counts ballots and certifies the election results.

To be an eligible candidate, the member must be a qualified voter, described as: a DCPS system employee in salary class position ET 1-15 (for the Active Teacher Trustee position) or who has retired under a voluntary, involuntary, disability or deferred retirement under the provisions of the Teachers' Plan

(for the Retired Teacher Trustee position). The candidate must also submit a valid Statement of Candidacy and meet the qualifications stated under the Election Rules.

To qualify as an eligible candidate for election to the Board, the candidate:

- Must be a qualified voter (as indicated above);
- May not be an "elected official" or a candidate for the office of an elected official in the District of Columbia as defined at D.C. Official Code §1-1001.02(13);
- Must otherwise qualify to serve as a fiduciary to the retirement Funds pursuant to the District of Columbia Retirement Reform Act of 1979; and
- Must file with the Board a valid statement of candidacy in accordance with the Election Rules.

In addition, each prospective candidate for election must file a qualifications statement with the statement of candidacy form. The qualifications statement presents the candidate's self-described qualifications to be a member of the Board. Board members normally



serve a four-year term that begins on January 28 of a given year and ends on January 27, four years later.

The election official provides all qualified voters with paper ballots, along with instructions on how to file those ballots or to vote electronically. The results of the election are announced in the D.C. Register in December, about a month before the winning candidate begins his/her term of office.

For your information, near the end of August of this year, qualified voters will receive materials announcing an election for the Retired Teacher Trustee seat on the Board for the term beginning January 28, 2018, and ending January 27, 2022.

2017 Teachers' Retirement Workshops

On March 23 and 28, 2017, DCRB hosted workshops for DCPS teachers who were either planning to retire this year or who were interested in receiving information about the Teachers' Plan for future use.

Teachers attending the workshops were welcomed by DCRB's Board Chair, Joseph W. Clark; Interim Executive Director, Sheila Morgan-Johnson; Active Teacher Trustee, Nathan Saunders; WTU

President, Elizabeth A. Davis; and CSO President, Aona Jefferson.

Following the welcomes and introductions, John Henderson of Voya Financial provided attendees with generic information about 403(b) plans. Next, a representative from the Social Security Administration's public affairs office presented information on both Social Security and Medicare, which included eligibility requirements for those programs, how benefits are

calculated, and tools available online.

The final portion of the program focused on the Teachers' Plan. Sheila Reid, DCPS's Coordinator, Benefits & Compensation, talked about eligibility to participate, how to calculate benefits, the types of retirement, service credit, and participation while working for a charter school. Johnetta Bond, DCRB's

Continued, next page

DC Retirement Board

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Inside this DCRB Report

**Information Specific to Members
of the District of Columbia
Teachers' Retirement Plan**

**Sheila Reid (DCPS)**

Chief Benefits Officer, then discussed benefit payment options, survivor benefits, post-retirement health and life insurance benefits, and the process in place to apply for benefits under the Teachers' Plan.

**Johnetta Bond (DCRB)**

Teachers who may be interested in reviewing the slides used during the workshops can access them on DCRB's website at:

www.dcrb.dc.gov, under the "Retirement" section, then, "Member Resources."

Useful**Contacts**

DCRB Member Services (202) 343-3272
(866) 456-3272
Fax: (202) 566-5001
dcrb.benefits@dc.gov

D.C. Public Schools Employee Services Division (202) 442-4090
dcps.hranswers@dc.gov

Office of Personnel Management (OPM) (202) 606-1800
Toll Free (724) 794-2005*
<http://www.opm.gov>

Social Security Administration (800) 772-1213
<http://www.ssa.gov>

Medicare (800) 633-4227
TTY (877) 486-2048
<http://medicare.gov>

*for health and life insurance issues

TRUSTEES

Janice M. Adams
Mayoral Appointee

Lyle M. Blanchard
*Treasurer
Council Appointee*

Joseph M. Bress
Council Appointee

Joseph W. Clark
*Chair
Mayoral Appointee*

Mary A. Collins
*Elected Retired
Teacher*

Gary W. Hankins
*Vice Chair/Secretary
Elected Retired
Police Officer*

Darrick O. Ross
*Elected Active
Police Officer*

Nathan A. Saunders
*Elected Active
Teacher*

Edward C. Smith
*Elected Active
Firefighter*

Thomas N. Tippet
*Elected Retired
Firefighter*

Michael J. Warren
Council Appointee

Lenda P. Washington
Mayoral Appointee

Jeffrey Barnette
*Ex Officio,
Non-Voting*

D.C. Retirement Board

900 7th Street, NW, 2nd Floor
Washington, DC 20001
Voice (202) 343-3200
Fax (202) 566-5000
www.dcrb.dc.gov

Sheila Morgan-Johnson
Interim Executive Director
Joan M. Passerino
Editor

900 7th Street, NW, 2nd Floor
Washington, DC 20001
www.dcrb.dc.gov



Telephone (202) 343-3200
Facsimile (202) 566-5000
E-mail: dcrb@dc.gov

DCRB STAFF COMMUNICATION DISCLOSURE FORM

Staff Name: _____

On _____, I had communication with
(DATE)
_____, who is interested in
(NAME, TITLE AND COMPANY AFFILIATION)
the _____.
(SUBJECT MATTER)

This was a [IN PERSON] / [TELEPHONIC] / [WRITTEN (INCLUDING EMAIL)] communication.
(CIRCLE ONE)

→ [IF WRITTEN] A copy is attached to this form.

→ [IN PERSON] The conversation took place at

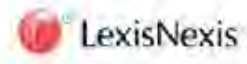
(LOCATION)

→ [IN PERSON OR TELEPHONIC]
During the conversation, we generally discussed the following issues:

Janice Adams • Jeffrey Barnette • Lyle M. Blanchard • Joseph M. Bress • Mary A. Collins • Gary W. Hankins
Darrick O. Ross • Nathan A. Saunders • Edward C. Smith • Thomas N. Tippet • Michael J. Warren • Lenda P. Washington

Joseph W. Clark
Chairman

Sheila Morgan-Johnson
Interim Executive Director



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Impact News Service

July 31, 2017 Monday

1078 words

Phased Retirement Gets a Second Look

London: Society for Human Resource Management has issued the following Press release:

Most Americans ages 61 to 66 who are still employed maintain a full-time work schedule. However, while about one-quarter of workers in this age group say they had planned to reduce their work hours as they transitioned to retirement, fewer than 15 percent subsequently reported that they were partially retired or were gradually retiring from their jobs, according to a new report from the U.S Government Accountability Office (GAO).

The June report, *Older Workers: Phased Retirement Programs, Although Uncommon, Provide Flexibility for Workers and Employers*, looks at employer-based programs in which older employees can reduce their working hours, often with a knowledge-transfer component that passes along their expertise to younger colleagues.

'As the large Baby Boomer generation retires, the workforce will lose much of their knowledge and experience,' stated the report by Charles A. Jeszeck, the GAO's director of Education, Workforce and Income Security Issues. Encouraging phased retirement is one way to mitigate this loss, he noted.

However, formal phased retirement programs present design and operational challenges for employers, including compliance with provisions and laws related to discrimination. Despite these challenges, most employers that the GAO interviewed that have phased retirement programs found them beneficial.

A Range of Approaches

Employers most likely to provide formal phased retirement programs had larger or technical and professional workforces, and tended to be in fields such as education, consulting and high-tech, the GAO found. The report summarizes the phased retirement programs at eight such (unnamed) companies, showing a range of approaches.

For instance, in one employer's program:

Older employees work 80 percent of full-time hours and receive 80 percent of pay and 80 percent of their bonus money. Despite working fewer hours, workers keep their health benefits and their share of the cost is unchanged. The defined benefit pension formula is based on full salary for up to five years because workers appear full time on paper. The defined contribution plan contribution is based on a worker's full-time salary and reduced bonus. Employees are eligible to participate in the program if they are at least age 55 with 10 or more years of service, have achieved or exceeded performance expectations, and have permission from management. Workers can stay in the program for any length of time as long as they are meeting program standards and have their manager's approval. For each year the worker participates, he or she creates a proposal that includes a knowledge transfer plan with recommendations on how it will ensure business continuity.

At another employer's program:

Participants must have reached age 60 and work at least 50 percent and no more than 80 percent of regular full-time hours. Participation in the program can last from six months to two years. The employer provides tools and guidelines to help phasing workers create a knowledge transfer plan. The employer provides a subsidy so that the health insurance rates for phased retirement participants are the same as if they were working full time. The defined contribution plan formula does not change with phased retirement, but the amount of pay on which the contribution is based changes in proportion to the worker's reduced salary.

[SHRM members-only toolkit: Managing Flexible Work Arrangements]

Informal Programs More Prevalent

While formal phased retirement programs have not been widely adopted, more employers are offering informal or ad hoc programs, according to the Society for Human Resource Management's 2017 Employee Benefits survey report.

One reason employers are more likely to offer informal programs is that they prefer to limit phased retirement opportunities to high-performers and those with in-demand skills and believe that an ad hoc approach makes that easier, suggested Jack Towarnicky, who has held HR and benefits leadership positions at four Fortune 500 companies, during a May 9 presentation at WorldatWork's Total Rewards conference in Washington, D.C.

An informal approach, however, 'could pose legal issues regarding nondiscrimination based on who is offered the right to shift to part time, but this hasn't been tested' in the courts, said Towarnicky, who noted he was speaking for himself and not on behalf of any organization.

Employees' desire for phased retirement opportunities is growing, and eventually that will drive more employers to offer formal programs that they can use to attract and retain talent, Towarnicky said.

'Increasingly now and in the future, the lines between employment and retirement are going to become almost imperceptible,' and HR will be challenged with finding ways to respond, Towarnicky noted, or older employees will depart with their knowledge and find organizations that will allow them to work fewer hours.

'If you're thinking that people are going to call it quits at 65, it's just not going to happen,' Towarnicky remarked. 'A lot of employers still have this full-stop concept. People end up having to leave the organization.'

However, companies such as financial services firm S&T Bancorp are making concerted efforts to hire part-time retirees, he pointed out.

He also referenced Northern Arizona University's phased retirement program as a model.

Benefit Decisions

8/2/2017 www6.lexisnexis.com/publisher/EndUser?Action=UserDisplayFullDocument&orgId=2778&topicId=100023346&docId=I:2787020123&utm_campa...

When putting phased retirement opportunities in place, employers must decide whether to maintain full health care and retirement plan benefits for those who are phasing into retirement—which is the approach most likely to keep older employees onboard.

Alternatively, they can classify program participants as part-time employees not entitled to group benefits, or provide a different benefit approach such as subsidies for program participants to purchase health care on the individual market or through public exchanges.

Organizations with defined benefit pension plans can permit near-retirees to reduce their hours worked and use partial distributions from their pension plans to make up for their reduced wages (IRS rules allow in-service distributions from defined benefit plans under certain circumstances.)

If choosing not to offer full benefits for phased retirees, organizations should keep close watch on these employees' hours to ensure their part-time status is maintained, Towarnicky said.

August 1, 2017

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WILL BE PROVIDED AT THE MEETING.

WILL BE PROVIDED AT THE MEETING.



Updates to DCRB Trustee Election Rules

District of Columbia Retirement Board
Operations Committee
September 26, 2017



Updates to DCRB Trustee Election Rules

- Trustee Election Rules were reviewed and updated by Board staff to:
 - Address ambiguous provisions that have raised questions in prior elections;
 - Encourage continued impartiality and ease of administration for independent election officials; and
 - Promote the use of electronic methods in an effort to decrease costs while increasing participation.



Updates to DCRB Trustee Election Rules

- With the approval of the Board, the updated Election Rules would be implemented during the 2018 election cycle.
 - The Retired Teacher Trustee election cycle is currently underway and will not be impacted by any of the proposed updates to the Election Rules.
 - DCRB expects to release an RFP for an independent election official in early 2018 and anticipates including the updated Election Rules with the solicitation.



Summary of Updates

- Begin election cycles on August 1st of each year.
- Increase word limitation from 50 to 250 words on the Qualifications Statements.
- Include “campaigning” provisions to ensure compliance with BEGA rules and requirements.
- Allow “provisional” ballots for qualified voters who are mistakenly excluded from the roll.
- Require proofs of all election materials, as well as electronic systems testing.
- Authorize voting via paper ballots, telephone, and online voting.



Summary of Updates

- Authorize the Executive Director to utilize an electronic method, similar to the in-person lottery, in lieu of the drawing of lots in person.
- Hold special elections for trustee vacancies only where the remainder of the vacated term is greater than six (6) months.
- Other technical additions and corrections to clarify provisions already included in the Rules.
 - Expand methods of delivery to include, in addition to postal mail, email, the Board's website and other Board communication portals
 - Clarify rules for counting words included in Qualifications Statements and the recount of election ballots
 - Permit candidates to create or use their own website or other form of social media to promote candidacy



Item for Additional Discussion

- Include a requirement for a background investigation for all eligible candidates?
 - To qualify as an “eligible candidate” a member must “qualify to serve as a fiduciary” to the Retirement Plans and Funds.
 - Prospective candidates attest on their Statement of Candidacy Form that, within the last 5 years, they have not been convicted of, or imprisoned as a result of a conviction, for crimes cited in D.C. Code §1-744(a) which include, but are not limited to:
 - robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, felony violation involving a controlled substance, murder, rape, kidnapping, perjury, assault with intent to kill, or conspiracy/attempt to commit any such crime; and
 - any person who within 10 years has been convicted of any felony or misdemeanor involving the purchase or sale of any security.

900 7th Street, NW, 2nd Floor
Washington, DC 20001
www.dcrb.dc.gov



Telephone (202) 343-3200
Facsimile (202) 566-5000
E-mail: dcrb@dc.gov

DISTRICT OF COLUMBIA RETIREMENT BOARD

MOTION:

TO ADOPT SUBSTANTIVE AND TECHINCAL AMENDMENTS TO THE DISTRICT OF COLUMBIA RETIREMENT BOARD TRUSTEE ELECTION RULES, AND APPROVE THE USE OF THE UPDATED ELECTION RULES BEGINNING WITH THE 2018 TRUSTEE ELECTION CYCLE.

PRESENTED TO THE BOARD ON SEPTEMBER 28, 2017

DISTRICT OF COLUMBIA RETIREMENT BOARD
TRUSTEE ELECTION RULES
CHAPTER I. GENERAL

100 DEFINITIONS

- 100.1 “Act” means the District of Columbia Retirement Reform Act, Pub. Law 96-122, Nov. 17, 1979, as amended (codified in D.C. Official Code §§ 1-701 et seq.).
- 100.2 “Replacement Plan Act” means the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Act of 1998 (D.C. Official Code §§ 1-901.01 et seq.).
- 100.3 “Board” or “Board of Trustees” means the District of Columbia Retirement Board established by Section 121(a) of the Act (D.C. Official Code § 1-711(b)(1)(A)).
- 100.4 “Chairman” means the chairman or chairperson, or his or her designee, of the District of Columbia Retirement Board (“DCRB”).
- 100.5 “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.
- 100.6 “Election official” means the person or entity appointed by the Board to undertake the activities outlined in these Rules. The election official must be independent, experienced and qualified to conduct elections and may be any one, or combination, of the following:
- (a) an officer or employee of the Board;
 - (b) an officer, employee, or agency of District of Columbia Government; or
 - (c) an individual, partnership, firm, or corporation.
- A qualified voter of any category may not be an election official. An election official will be considered qualified and experienced if the election official has successfully performed independent electoral services of, at least, a similar like, kind and volume as the services described in these Rules.
- 100.7 “Election cycle” means the timeframe during which an election of a trustee or trustees is conducted. Except in the event of a special election, or where extenuating circumstances result in a delay, an election cycle shall begin on August 1st of any year in which a qualified voter position is eligible for election to the Board.
- 100.8 “Eligible candidate” means a qualified voter who has submitted valid Statements of Candidacy and Qualification and meets all of the criteria to be eligible for election to the Board as defined under these Rules.
- 100.9 “Executive Director” means the Executive Director, or his or her designee, of the District of Columbia Retirement Board.
- 100.10 “Qualified voter” means an active or retired member of the Retirement Plans as reflected in the records of the applicable personnel office, payroll office, or DCRB, as the benefits administrator of the Retirement Plans, at the start of an election cycle.

A qualified voter must be:

- (a) An “active firefighter” who is a sworn member or officer of the District of Columbia Fire and Emergency Medical Services Department (“FEMS”);
- (b) A “retired firefighter” who has retired from FEMS under the provisions of the Police Officers & Firefighters’ Plan;
- (c) An “active police officer” who is a sworn member or officer of the District of Columbia Metropolitan Police Department (“MPD”);
- (d) A “retired police officer” who has retired from MPD under the provisions of the Police Officers & Firefighters’ Plan;
- (e) An “active teacher” who is an employee of District of Columbia Public Schools (“DCPS”) in a salary class position ET 1-15 or an employee of a District of Columbia public charter school who is an active member of the Teachers’ Plan; or
- (f) A “retired teacher” who has retired from DCPS or a District of Columbia public charter school under the provisions of the Teachers’ Plan.

100.11 “Retirement Plans” means the following:

- (a) District of Columbia Police Officers and Firefighters’ Retirement Plan (“Police Officers & Firefighters’ Plan”), which includes the benefits established under the Replacement Plan Act that applies to service accrued after June 30, 1997 (D.C. Official Code §§ 5-701 et seq.) and the benefits in place under Title XI of the Balanced Budget Act of 1997, Pub. Law 105-33, Aug. 5, 1997 (codified in D.C. Official Code §§ 1-801.01 et seq.), that apply to service accrued on or before June 30, 1997 (former D.C. Official Code §§ 4-601 et seq.).
- (b) District of Columbia Teachers’ Retirement Plan (“Teachers’ Plan”), which includes the benefits established under the Replacement Plan Act that applies to service accrued after June 30, 1997 (D.C. Official Code §§ 38-2021.01 et seq.) and the benefits in place under Title XI of the Balanced Budget Act of 1997, Pub. Law 105-33, Aug. 5, 1997 (codified in D.C. Official Code §§ 1-801.01 et seq.) that apply to service accrued on or before June 30, 1997 (former D.C. Official Code §§ 31-1221 et seq.).

101 ELECTION OF TRUSTEES

101.1 In accordance with the Act, the Board of Trustees is responsible for and shall conduct elections to allow qualified voters to elect:

- (a) One (1) active member representative and one (1) retired member representative from FEMS;
- (b) One (1) active member representative and one (1) retired member representative from MPD;
- (c) One (1) active member representative and one (1) retired member representative from DCPS.

101.2 The Board is authorized to act as the election official or to enter into an agreement with an election official to delegate certain functions and

responsibilities vested in the Board by the Act. The election official shall adhere to these Rules without partiality toward any candidate.

- 101.3 The election official shall be the primary point of contact for all matters pertaining to a Board election during an election cycle. To avoid the appearance of a conflict of interest or partiality, the Board and Board staff shall refrain from communicating with qualified voters, including prospective or eligible candidates, on matters related to a Board election during an election cycle and shall direct any inquiries or concerns to the attention of the election official immediately.
- 101.4 The election official shall prepare a schedule for conducting the election of a trustee or trustees during each election cycle. The election schedule shall include:
- (a) The date on which Statement of Candidacy forms shall be made available to qualified voters by the election official;
 - (b) The date on which completed Statement of Candidacy forms must be submitted to the election official by qualified voters;
 - (c) The date on which the election official will distribute ballots to qualified voters;
 - (d) The last date on which the completed ballots must be received by the election official from qualified voters; and
 - (e) The date on which the certified election results will be published.
- 101.5 Timing.
- (a) The election schedule shall:
 - (1) Allow for no fewer than twenty (20) days for qualified voters to complete and submit a Statement of Candidacy form;
 - (2) Provide for notification to nominated qualified voters of their eligibility or ineligibility to stand for election no later than ten (10) days after the due date for submission of Statement of Candidacy forms has passed and the forms have been validated;
 - (3) Allow qualified voters no less than thirty (30) days to complete and submit election ballots;
 - (4) Allow eligible candidates no fewer than seven (7) days to request a recount of the election ballots after the publication of the certified election results in accordance with Section 407 of these Rules.
- 101.6 Method of Delivery.
- (a) Election materials, which include any related schedules and notices, shall be provided in a manner that is contemplated to reach the greatest number of qualified voters, including, but not limited to, mail, electronic mail, and publication on the Board's website or other Board communication portal, provided that the method of distribution allows qualified voters a reasonable time to comply with the dates included in the election schedule for an election cycle.
 - (b) The method or methods used to distribute election materials shall clearly and prominently state:
 - (1) That the communication is made on behalf of the Board;
 - (2) The category of qualified voter to which the communication is

addressed; and

(3) That the communication contains election materials.

- 101.7 Any substantive amendment to election materials, which impacts any date included in the election schedule for an election cycle, must be made available to qualified voters as soon as administratively possible in the same manner provided for in Section 101.5 of these Rules.
- 101.8 Election materials may also be made available by the election official upon request from a qualified voter.
- 101.9 The Board shall make election materials available to a list of qualified voters assembled as of a payroll or pension roll paid within thirty (30) days, but no more than sixty (60) days, prior to distribution of election notices.

CHAPTER II. NOTICE OF BOARD ELECTIONS

200 ELECTION NOTICE

- 200.1 During any election cycle, the election official must notify all qualified voters of the impending election of a trustee or trustees within the timeframe provided in the election schedule.
- 200.2 The election notice shall include:
- (a) A copy of the election schedule;
 - (b) A Statement of Candidacy form (or location where such a form may be accessed), which includes:
 - (1) The category of qualified voter slated for trustee election;
 - (2) An explanation of the qualifications, duties, responsibilities, and compensation of Board trustees;
 - (3) A blank section for input of a prospective candidate's name (written how he or she would like his or her name to be listed on the ballot), address, and contact information. By providing an email address, the prospective candidate consents to receiving official communication by email to the email address provided;
 - (4) Instructions for the submission and completion of the Qualifications Statement;
 - (5) An oath, signed and dated by the prospective candidate, attesting that the candidate meets the qualifications for holding the office sought and, if elected, he or she understands and agrees to comply with the duties and responsibilities of Board trustees;
 - (6) A declaration, signed and dated by the prospective candidate, affirming that all of the information included in and with the Statement of Candidacy form, is true and correct to the best knowledge and belief of the prospective candidate;
 - (7) Instructions for filling out and submitting the Statement of Candidacy form, including the date, time, location, and method(s) of submission.
 - (c) A reference to where qualified voters may access these Rules in their entirety; and
 - (d) Any other information the election official considers necessary for qualified voters to fully understand the purpose and procedures of the

election.

- 200.3 The election notices shall be distributed to qualified voters in a manner consistent with Section 101.5 of these Rules.

CHAPTER III. ELIGIBILITY FOR ELECTION TO THE BOARD

300 ELIGIBILITY OF CANDIDATES

- 300.1 Any qualified voter may nominate himself or herself for election.
- 300.2 To qualify as an eligible candidate for election to the Board and have his or her name printed on a ballot, a prospective candidate must:
- (a) Be a qualified voter in the category in which the prospective candidate is seeking election;
 - (b) qualify to serve as a fiduciary to the District of Columbia Police Officers and Fire Fighters' and the Teachers' Retirement Funds (the "Funds") pursuant to D.C. Code §1-744(a);
 - (c) file with the election official a valid Statement of Candidacy form in accordance with Section 301 of these Rules; and
 - (d) not be an "elected official" or be a candidate for the office of an elected official in the District of Columbia, as defined in D.C. Code §1-1001.02(13).

301 VALIDATION OF STATEMENTS OF CANDIDACY

- 301.1 A Statement of Candidacy shall be considered valid if it satisfies all of the following conditions:
- (a) the Statement of Candidacy is received by the election official on or before the date and time designated by the election official;
 - (b) the Statement of Candidacy is on a form provided or authorized by the Board and all sections have been completed in legible font or print;
 - (c) the Statement of Candidacy is filed by a person who is a qualified voter in the category for which the trustee election is being held;
 - (d) the Statement of Candidacy is accompanied by a valid Qualifications Statement;
 - (e) the Statement of Candidacy contains a signed oath and declaration.
- 301.2 A Qualifications Statement shall be considered valid if it satisfies all of the following conditions:
- (a) The Qualifications Statement shall be submitted with the Statement of Candidacy form pursuant to Section 200.2(b)(4) of these Rules; either typed or printed on the Statement of Candidacy form or on a separate blank sheet of paper.
 - (b) The Qualifications Statement shall identify the eligible candidate and the qualified voter category for which the candidate is seeking election. The statement may also state the candidate's qualifications and experience, and outline his or her plans and goals if elected;
 - (1) The statement shall not include any endorsements by a current trustee, Board employee or union organization.

(c) The Qualifications Statement shall not exceed two hundred and fifty (250) words in length. For purposes of this section, the following rules shall apply to the counting of words in a Qualifications Statement:

- (1) Punctuation is not counted;
- (2) Each word shall be counted as one (1) word, except as specified in this subsection;
- (3) All geographical names shall be considered as one (1) word; for example, "District of Columbia" shall be counted as one (1) word;
- (4) Each abbreviation of a word, phrase, or expression shall be counted as one (1) word;
- (5) Hyphenated words that appear in any generally available dictionary shall be considered as one (1) word. Each part of all other hyphenated words shall be counted as a separate word;
- (6) Dates consisting of a combination of words and digits shall be counted as two (2) words. Dates consisting of only a combination of digits shall be counted as one (1) word; and

Any number consisting of a digit or digits shall be considered one (1) word. For example, any number which is spelled, such as "one," shall be considered as a separate word or words. "One" shall be counted as one (1) word whereas "one hundred" shall be counted as two (2) words. The number one hundred "100" expressed in digits shall be counted as one (1) word.

- 301.3 The election official shall exclude from print on the ballot or other election materials any portion of a Qualifications Statement that exceeds the maximum word limitation or that includes a statement that is false or misleading. The election official may, but is not required to, allow a candidate the opportunity to correct a false or misleading statement included within a Qualifications Statement.
- 301.4 The election official may, but is not required to, provide acknowledgement of receipt of a prospective candidate's Statement of Candidacy.
- 301.5 Upon receipt of Statement of Candidacy forms, the election official shall determine whether the statements are valid. The election official shall document how the eligibility or ineligibility of each candidate was determined and provide a report, including each candidate's Statement of Candidacy form, to the Executive Director no later than three (3) days after the date Statements of Candidacy are due to the election official.
- 301.6 The determination by the election official as to the validity of Statements of Candidacy shall be final and only subject to further administrative review at the discretion of the Executive Director. A determination of eligibility or ineligibility shall be based solely on information contained in the Statements of Candidacy and upon information contained in other public records and documents available to the election official. The Executive Director may reverse a determination of eligibility prior to the certification of election results based upon evidence that was not known to the election official at the time of the initial determination of eligibility or upon evidence of a change in circumstances.
- 301.7 The election official shall provide notification to a prospective candidate of his or her ineligibility to stand for election no later than ten (10) days after the due date for the submission of Statement of Candidacy forms has passed and the

statements have been validated.

- (a) A prospective candidate who is ineligible for election because his or her Statement of Candidacy is rejected for reasons other than those outlined in Sections 300.2 and 301.1(a) of these Rules, may submit one (1) new or amended Statement of Candidacy, which must be received by the election official no later than five (5) days after the date his or her notice of deficiency was mailed.
- 301.8 Once all eligible candidates have been identified, a notification of eligibility, including a copy of the eligible candidate's Qualifications Statement, shall be provided to each eligible candidate no fewer than seven (7) days prior to the scheduled date of the drawing of lots to determine ballot position. The notification of eligibility shall include:
- (a) The time, date, and location for drawing lots; and
 - (b) Notification of the eligible candidate's sole opportunity to proofread and correct any transcription errors, such as spelling and grammatical errors, which may be included in the eligible candidate's Qualifications Statement, with instructions on how to make any such corrections.
- 301.9 A candidate may withdraw his or her candidacy only by written notice to the election official. A candidate is presumed to have withdrawn from the election if he or she fails to submit a new or amended Statement of Candidacy, upon request, pursuant to Section 301.7(a) of these Rules. A withdrawal shall be irrevocable only for the election cycle in which it occurs. The election official shall inform the Executive Director of any withdrawals. Where a withdrawal impacts the accuracy of information included on the ballots, after ballots have been printed or made available to qualified voters, the election official shall provide notice to all qualified voters within the impacted qualified voter category as soon as administratively possible in accordance with Section 101.5 of these Rules.
- 301.10 If the election official determines that there are no prospective candidates eligible to stand for election, the election official shall:
- (a) Terminate the election for which no candidate is eligible to be placed on the ballot;
 - (b) Promptly prepare a new election schedule in substantial conformity with Section 101.4 of these Rules;
 - (c) Proceed, if applicable, with any other election of trustees with more than one eligible candidate; and
 - (d) Conduct an election for the impacted qualified voter category in accordance with the new election schedule.
- 301.11 Uncontested Election – One Eligible Candidate in a Category
- (a) If an election official certifies that only one (1) eligible candidate exists in a qualified voter category, the election official shall:
 - (1) Declare an uncontested election and discontinue the election process for the qualified voter category;
 - (2) Distribute a notice informing impacted qualified voters that they will not receive an election ballot due to an uncontested election and that the results of the uncontested election shall be certified with the

election results of the other qualified voter categories included in the election cycle, in accordance with Section 406 of these Rules.

- (3) If an election cycle does not include another qualified voter category for election, the Board shall proceed with certifying the results of the uncontested election in accordance with Section 406 of these Rules.

302 CAMPAIGNING

- 302.1 A candidate must behave in an ethical and professional manner when engaged in any activities related to his or her candidacy.
- 302.2 A candidate may not campaign or otherwise advance his/her candidacy for election in any way prior to receiving notice from the election official that he/she is eligible for election.
- 302.3 No staff, officer, or trustee of the Board shall campaign on behalf of, or endorse, any candidate in preference to any other candidate.
- 302.4 A candidate may not engage in any unfair campaign practice, including, but not limited to: libeling or slandering another candidate; maliciously disrupting another candidate's campaign; making verbally or in writing, potentially defamatory or discriminatory remarks or comments, either orally or in writing; or otherwise violate any provisions of Section 302 of these Rules.
- 302.5 A candidate may not, in connection with his or her candidacy, make or repeat any statement that is untruthful, deceptive, or misleading, or that omits material information that renders a statement untruthful or misleading.
- 302.6 A candidate may not campaign by offering any gift, favor, sticker, badge, button or other object or paraphernalia to a qualified voter; or by buying or offering any food, beverage, accommodation or other hospitality to any qualified voter.
- 302.7 A candidate may not imply that the way a qualified voter votes will result in any reward or retaliation of any funding, benefit or opportunity under the Retirement Plans.
- 302.8 A candidate may not use any resources for campaign purposes that belong to or that are exclusively available to the candidate in his or her capacity as a trustee, officer, appointee or representative of the Board.
- 302.9 Each candidate is responsible for activity that another undertakes on his or her behalf, as if the candidate is undertaking the activity himself or herself, unless the candidate sincerely and affirmatively discourages such activity publicly.
- 302.10 A candidate may create a website or use other forms of social media to promote his or her candidacy in accordance with this Section. Upon its creation or use for campaign purposes, the candidate must notify the election official and provide the election official with a link to the website or social media page.

CHAPTER IV. BALLOTS AND VOTING PROCEDURES

400 DRAWING OF LOTS FOR BALLOT ORDER

- 400.1 In each election cycle, for each qualified voter category, the election official shall determine, by drawing lots, the order of eligible candidate names on the

ballots.

400.2 Drawing lots shall be conducted by the election official in the following manner:

- (a) The name of each eligible candidate shall be typed or written on separate slips of paper and placed in a container in a manner such that the names on the slips of paper shall be hidden from the view of the individual drawing.
- (b) The election official shall draw from the container one slip of paper at a time until all names have been drawn.
- (c) The eligible candidate whose name is pulled first from the container shall have his or her name appear first on the ballot. The eligible candidate whose name is pulled second shall have his or her name placed second on the ballot. This order shall continue until all eligible candidate ballot positions have been determined.
- (d) In the event of the withdrawal or disqualification of an eligible candidate prior to the printing of the ballots, the position of each eligible candidate that appears beneath the name of the former candidate shall be raised to the next higher position. The election official shall make reasonable efforts to remove or strike from the ballots the name of an eligible candidate who has withdrawn or been disqualified after the ballots have been printed.

400.3 Upon approval by the Executive Director, where appropriate and available, the election official may utilize an electronic method which closely resembles the in-person lottery outlined in this section, provided that the election official attests, in writing, that method used is confidential, secure, reliable and results in a randomized order of eligible candidates on the ballots.

400.4 An eligible candidate, or his or her designated authorized representative, may view the drawing of lots. An eligible candidate must notify the election official of their intent to view the drawing of lots, in writing, no later than twenty-four (24) hours prior to the scheduled date of the drawing of lots.

401 BALLOT CONTENT AND FORM

401.1 The election official shall provide official ballots to all qualified voters to be used by the voter for selecting an eligible candidate preference in an election.

401.2 Official ballots shall include the following information:

- (a) The category of qualified voter from which the person is eligible to elect a representative;
- (b) The name and Qualifications Statement of each eligible candidate. Qualifications Statements need not be printed on, but must be included with, the ballots. Names of eligible candidates shall appear on the ballot:
 - (1) in the same form as each eligible candidate's name appears on his or her Statement of Candidacy form. No titles, ranks, prefixes, or degrees associated with a name shall appear on the ballot; and
 - (2) in the order determined by the drawing of lots conducted in accordance with Section 400 of these Rules;
- (c) Instructions for completing and submitting ballots drafted specifically for any form or method of balloting being used.

- 401.3 Ballots shall be distributed or made available to each qualified voter no fewer than thirty (30) days before the date balloting shall be completed.
- 401.4 A qualified voter may contact the election official to request the issuance of a replacement ballot. The election official shall maintain a record identifying the voter to ensure that the issuance of a replacement ballot does not result in unauthorized or duplicate balloting. When a qualified voter requests a replacement ballot within fewer than five (5) days before the date balloting is scheduled to be completed, the qualified voter shall only have the option of submitting an electronic or telephone ballot.
- 401.5 An individual who did not receive a ballot due to his/her name not being included on the list of qualified voters at the time such list was provided to the election official, may contact the election official to request the issuance of a provisional ballot. The election official shall maintain a record identifying the voter to ensure that the issuance of a provisional ballot does not result in unauthorized or duplicate balloting. When an individual requests a provisional ballot within fewer than five (5) days before the date balloting is scheduled to be completed, the individual shall only have the option of submitting an electronic or telephone ballot.
- (a) The Executive Director shall have an individual verified as a qualified voter in the applicable qualified voter category prior to the completion of ballot counting. The election official shall not count as valid any provisional ballot submitted by an individual who has not been verified to be a qualified voter in the applicable qualified voter category.
- 401.6 The election official shall not issue more than three (3) ballots, one (1) original and two (2) replacements, to any qualified voter during an election cycle. Before the election official issues a replacement ballot, the election official shall inform the qualified voter of the qualified voter's limited remaining replacement ballots.
- 401.7 Completed ballots shall be received by the election official on or before the date and time designated on the ballot.
- 401.8 The Executive Director shall authorize the election official to use a balloting system that consists of paper balloting, telephonic balloting, electronic balloting, or any combination thereof, provided that the election official shall conduct the balloting in a manner that is consistent with the principles and objectives enumerated in this Chapter. The election official shall take every reasonable precaution to safeguard the authenticity and secrecy of the balloting system and process, as well as individual ballots.
- 401.9 The election official shall distribute or make available an official ballot for each qualified voter category that shall be separate and distinct from the ballot for any other qualified voter category in an election cycle. Each ballot shall contain a unique control number and be readily identifiable from the ballot for any other qualified voter category. The election official shall maintain a record identifying the unique control number for each ballot.
- 401.10 A ballot shall have a selection method immediately next to the name of each eligible candidate included on the ballot where a qualified voter must indicate his or her choice with a single mark.
- 401.11 If applicable, paper ballots shall be returned to the election official in pre-addressed, postage paid return envelopes, preprinted with the unique control number included on the ballot.

402 VALIDITY OF BALLOTS AND VOTES

- 402.1 Only official ballots shall be validated and counted. Improper ballots or votes shall be deemed invalid and not counted. Improper ballots or votes shall include, but are not limited to:
- (a) Any ballot which is received by the election official after the date and time determined by the election official for return of ballots, except for those ballots mailed prior to the deadline but delayed in the mail;
 - (b) Any ballot which is not an original, replacement, or provisional ballot issued by the election official to a qualified voter;
 - (c) Any ballot cast in which the qualified voter fails to mark a choice;
 - (d) Any ballot which is signed, initialed, or otherwise marked in a manner which serves to reveal the identity of the qualified voter;
 - (e) Any ballot on which the qualified voter has filled in the voting positions for more than one eligible candidate name included on the ballot (extraneous marks or other matter on a ballot which do not lead to confusion as to the intention of the qualified voter, may be disregarded and the ballot considered valid);
 - (f) Any ballot on which a qualified voter has written in the name of a person other than an eligible candidate whose name is pre-printed on the ballot;
 - (g) Any paper ballot which is not returned within a pre-addressed, postage paid return envelopes with a unique control number corresponding with the unique control number included on the ballot (except for any ballot submitted by an authorized electronic means).
- 402.2 No qualified voter shall cast more than one ballot, in any form, in an election or vote in a category other than the category in which he/she is a qualified voter. Duplicate or unauthorized ballots or votes shall be deemed improper.
- 402.3 Nothing contained in Section 402.1 of these Rules shall be construed as invalidating any ballot solely because of a voter's failure to follow the instructions for filling out an official ballot provided pursuant to Section 401.2(c) of these Rules. If a voter draws an arrow pointing to an eligible candidate's name, circles an eligible candidate's name or the voting box next to an eligible candidate's name, places a check, asterisk, or other mark in such a manner that clearly indicates his or her intended choice, the ballot shall be considered valid and shall be counted as a vote for such eligible candidate.
- 402.4 The election official shall make determinations of the validity of ballots or votes. The determination of the election official in charge as to the validity of any ballot or vote shall be final and only subject to further administrative review at the discretion of the Executive Director.
- 402.5 Any ballot counter or authorized watcher who is uncertain whether a ballot or vote is valid shall refer the ballot to the election official in charge for a determination.
- 402.6 No ballot counter shall mark on any ballot. The election official in charge may only mark a ballot to denote that the ballot has been determined to be invalid. The election official in charge shall initial the ballot below his/her marking. A ballot determined to be invalid shall remain in the custody of the election official in charge and stored in a secure location, separate from ballots deemed valid.

403 BALLOTING SYSTEM STANDARDS AND TESTING

- 403.1 The election official shall allow the Executive Director the opportunity to review and approve proofs of final election materials, including official ballots, prior to their printing or distribution to qualified voters.
- 403.2 The election official shall use a balloting system that a qualified voter can quickly and easily use to cast a ballot for the eligible candidate of the qualified voter's choice. The balloting system shall be capable of:
- (a) Creating an accurate record of every ballot and vote cast;
 - (b) Generating a final report of the election, as well as interim reports, as necessary;
 - (c) Identifying errors, including system errors, which impact qualified voters' ability to cast ballots or which impact the overall validity of the election;
 - (d) Allowing secured voting in absolutely secrecy; and
 - (e) Providing a confirmation of the vote cast by a qualified voter, except in the case of paper balloting.
- 403.3 The election official shall allow the Executive Director to conduct testing of any telephonic or electronic balloting system before the use of such system for an election.
- 403.4 The testing shall ensure that the balloting system:
- (a) Contains correct ballot information, including the names and Qualifications Statements of all eligible candidates;
 - (b) Records votes accurately, consistently and securely; and
 - (c) Is free of any evidence of malfunction.
- 403.5 The balloting system configuration tested and approved during the testing period shall be the same configuration used during the balloting period.
- 403.6 The election official shall immediately correct any errors or deficiencies identified in or with the balloting system during the testing or balloting period.

404 BALLOT COUNTING

- 404.1 The election official shall designate an election official in charge who shall be responsible for the direct supervision and oversight of the ballot counting process. The election official shall also designate ballot counters authorized to count and tally ballots. No person who is a qualified voter may be a ballot counter for the category in which he or she is eligible to vote.
- 404.2 The election official shall strive to count the ballots and complete its official voting record for the Board within two (2) days after the date that balloting is completed, but no later than seven (7) days after such date.
- 404.3 The election official shall maintain returned ballots by secure means and shall use appropriate safeguards to ensure that the security of each ballot is preserved.
- 404.4 When paper ballots are counted by hand, the election official in charge shall have full authority to maintain order in the designated ballot counting location.
- 404.5 The only persons permitted to be present in a designated ballot counting

location while ballots are being counted shall be the election official in charge, ballot counters, designated representatives of the Board, police officers requested by the Board and authorized watchers.

- 404.6 The election official shall count the number of valid ballots cast for each eligible candidate in each qualified voter category by every form or method of balloting used in an election.
- 404.7 The eligible candidate receiving the highest number of votes in each qualified voter category included in an election shall be declared the winner for that category.
- 404.8 Following the tally of all ballots, the election official shall provide the Board with an official voting record for each category of qualified voter. The record shall identify for each qualified voter category:
- (a) The method or methods of balloting used;
 - (b) The number of ballots cast and counted for each eligible candidate;
 - (c) The total number of ballots issued;
 - (d) The total number of replacement and provisional ballots issued;
 - (e) The total number of ballots issued, but not cast;
 - (f) The total number of ballots cast and counted;
 - (g) The total number of ballots cast in each method of balloting, if more than one method is used;
 - (h) The total number of blank ballots returned;
 - (i) The total number of ballots returned and invalidated or voided;
 - (j) Any claims of discrepancy or error in the counting of the ballots made during the balloting process; and
 - (k) The results of the election.
- 404.9 The election official in charge shall attest that the ballots and balloting procedures used in the election conform with the requirements set forth in Chapter IV of these Rules.
- 404.10 The Board may declare the results of any election in any qualified voter category void and conduct a new election for that category, where the Board determines the winner to be ineligible for service on the Board due to:
- (a) fraud, bribery, intimidation, or interference with voting in that category;
 - (b) tampering with ballots in that category;
 - (c) violation of the campaigning rules included in Section 302 of these Rules;
or
 - (d) any other mistake or defect serious enough to vitiate the election in that category as a fair expression of the will of the voters voting therein.

405 AUTHORIZED WATCHERS

- 405.1 When paper ballots are counted by hand, an eligible candidate shall be notified of his or her right to be present to observe the counting of ballots in person as an authorized watcher, or to designate another to act as an authorized watcher to attend the ballot counting on his or her behalf.

- (a) Eligible candidates shall be notified of the time, date, and location of the counting of ballots no fewer than five (5) days before the date of ballot counting.
 - (b) An eligible candidate must notify the election official, in writing, of their intent to be, or designate, an authorized watcher no later than twenty-four (24) hours prior to the scheduled date of the ballot counting.
- 405.2 An authorized watcher shall be required to show a valid form of photo identification to enter the ballot counting location.
- 405.3 Each authorized watcher shall be issued a badge with space for the watcher's name and, if a designee of an eligible candidate, the name of the eligible candidate represented by the authorized watcher.
- 405.4 Badges shall be worn in plain view by the authorized watcher at all times, when he or she is inside the ballot counting location while ballot counting is being conducted.
- 405.5 An authorized watcher shall comply with any measures put in place by the election official in charge to maintain order in the ballot counting place and shall conform to the provisions of Section 405 of these Rules.
- 405.6 No authorized watcher shall, at any time during the ballot counting process, do any of the following:
 - (a) touch any official record or ballot;
 - (b) obstruct or interfere with the progress of the counting; or
 - (c) talk to any ballot counter while the count is under way, except to request that a ballot be referred to the election official in charge for a determination as to its validity.
- 405.7 If an authorized watcher has any questions, or claims any discrepancy or error in the counting of the vote, the authorized watcher shall direct the question or complaint to the election official in charge.
- 405.8 Any authorized watcher who, in the judgment of the election official in charge, has failed to comply with any of the requirements contained in Section 405 of these Rules, failed to obey any reasonable order of the election official in charge, or acted in a disorderly manner, shall be warned to cease and desist such conduct. If the authorized watcher fails to cease and desist such conduct, the election official in charge may order such authorized watcher to leave the ballot counting location. In such event, the authorized watcher's credentials shall be deemed cancelled, and he or she shall leave the ballot counting location immediately. The election official in charge may request a member of MPD to evict the authorized watcher or otherwise enforce his or her lawful orders.

406 CERTIFICATION OF ELECTION RESULTS

- 406.1 The Board shall certify the results of each election and publish the results in the District of Columbia Register and on the Board's website.
- 406.2 The election results shall be deemed final and not subject to further administrative review thirty (30) days after publication in the District of Columbia Register of the certified election results, or any amendment to the certified election results required after a petition for recount, which resulted

in a change to an election winner.

- 406.3 Following certification of the results of the election, the Board shall retain and store in a secure and locked storage location, all election materials used during the election cycle where they shall remain for at least thirty (30) days after the certified election results have been published in the District of Columbia Register.

407 RECOUNTS AND RESOLVING TIE VOTES

- 407.1 An eligible candidate in any election may, within seven (7) days after the Board certifies the election results, petition the Board, in writing, for a recount of the ballots cast in that election. Such petition shall explicitly state the justification for a ballot recount.
- 407.2 Upon receipt of a recount petition, the Board shall direct the election official to prepare an estimate of the time and cost to perform the recount, which shall be provided to the petitioner in writing.
- 407.3 If the petitioner chooses to proceed, the petitioner shall deposit with the Board the estimated cost of the recount within seven (7) days of receipt of the estimate of the time and cost of the recount.
- 407.4 Deposits shall be paid by certified check or money order made payable to the "District of Columbia Retirement Board." No cash deposit will be accepted.
- 407.5 Upon receipt of a recount petition, the Board shall direct the election official to conduct a recount, at no cost to any eligible candidate, if the certified election results show a margin of victory for an eligible candidate that is less than one percent (1%) of the total votes cast or fifty (50) votes, whichever is less, for the qualified voter category.
- 407.6 At the conclusion of the recount, a report of the recount results shall be presented to the Board and posted on the Board's website.
- 407.7 If the recount changes the results of the election, the entire amount deposited by the petitioner shall be refunded.
- 407.8 If the result of the election is not changed, the petitioner is liable for the actual cost of the recount, minus the deposit already made. If the actual cost of the recount is less than the deposit made, the difference shall be refunded to the petitioner.
- 407.9 There shall only be one (1) recount per election in a qualified voter category. The results of a recount are final and not subject to further administrative review.
- 407.10 The Board shall not publish an amended certification of election results in the District of Columbia Register, unless the outcome of an election has changed as a result of a recount.
- 407.11 In the event of a tie vote for a winner of an election, the election official shall conduct an automatic recount, at no cost to any eligible candidate. If the recount confirms the tie vote, the election official shall determine, by drawing lots, the resolution of the tie vote and winner of the election.
- 407.12 After a recount confirms the tie vote, a notification of the drawing of lots for the resolution of a tie vote, shall be provided to each eligible candidate no fewer than three (3) days prior to the scheduled date of the drawing of lots. The

notification shall include the time, date, and location of the drawing of lots.

- 407.13 An eligible candidate, or his or her designated authorized representative, may view the drawing of lots for the resolution of a tie vote. An eligible candidate must notify the election official of his or her intent to view the drawing of lots, in writing, no later than twenty-four (24) hours prior to the scheduled date of the drawing of lots.
- 407.14 Drawing of lots for the resolution of a tie vote shall be conducted by the election official in the following manner:
- (a) The name of each of the tied eligible candidates shall be typed or written on separate slips of paper and placed in a container in a manner such that the names on the slips of paper shall be hidden from the view of the individual drawing.
 - (b) The election official shall draw from the container one slip of paper.
 - (c) The eligible candidate whose name is pulled first from the container shall be deemed the winner of the election.

CHAPTER V. SPECIAL ELECTION

500 SPECIAL ELECTION FOR VACANCY OF TRUSTEE POSITION DURING TERM

- 500.1 If a Board trustee dies or resigns before completion of his or her term, where the remainder of the term is greater than six (6) months, the Board shall authorize the election official to conduct a special election to elect a successor trustee to serve for the remainder of the trustee's term. The election shall be conducted in substantial conformity with the procedures set forth in these Rules.



Updates to DCRB Procurement Rules

District of Columbia Retirement Board
Operations Committee
September 26, 2017



Updates to DCRB Procurement Rules

- Procurement Rules were reviewed and updated by Board staff to:
 - Prepare for the release of the PIMS RFP;
 - Provide the District's Contract Appeals Board ("CAB") with jurisdiction to adjudicate appeals of contract disputes involving DCRB;
 - Align DCRB's Procurement Rules *more closely* with the District's Procurement Rules under Title 27 of the DCMR to (1) streamline operations and (2) simplify adjudication for CAB;
 - Increase transparency of DCRB Procurement Rules for reference by vendors and contractors;



Updates to DCRB Procurement Rules

- Procurement Rules were reviewed and updated by Board staff to:
 - Facilitate standardized procurement training;
 - Support the use of standard contract terms and conditions; and
 - Streamline recordkeeping and processes to simplify audits.



Updates to DCRB Procurement Rules

- Procurement Rules continue to explicitly state that:
 1. DCRB is vested with statutory contracting authority;
 2. that such contracting authority is unencumbered by the District's procurement provisions;
 3. that the Mayor and the Council may not specify the purpose or amount for which funds appropriated for the administrative expenses of the Board may be expended; and
 4. the Procurement Rules are not applicable to the retention of investment counsel and investment-related services, which are governed by separate rules developed and adopted by the Board's Investment Committee.



Summary of Updates

- Flush out certain information historically provided in DCRB's Procurement Manual and transition such information to DCRB's Procurement Rules to increase transparency. For example:
 - Notice and posting requirements for solicitations and contracts;
 - Solicitation and contract content requirements; and
 - Contract cost principles.
- Incorporate provisions related to:
 - Bid protests and contract disputes;
 - Contract file management; and
 - Inventory and surplus Board property.
- Provide CAB with jurisdiction to adjudicate appeals of contract disputes, involving DCRB.

900 7th Street, NW, 2nd Floor
Washington, DC 20001
www.dcrb.dc.gov



Telephone (202) 343-3200
Facsimile (202) 566-5000
E-mail: dcrb@dc.gov

DISTRICT OF COLUMBIA RETIREMENT BOARD

MOTION:

TO APPROVE AND ADOPT SUBSTANTIVE AND TECHNICAL AMENDMENTS TO THE RULES GOVERNING THE PROCUREMENT OF GOODS AND SERVICES FOR THE DISTRICT OF COLUMBIA RETIREMENT BOARD (“DCRB PROCUREMENT RULES”).

PRESENTED TO THE BOARD ON SEPTEMBER 28, 2017

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7 DCMR § 1600

1600. GENERAL PROVISIONS

1600.1 **Board.** In accordance with section 121(i) of the “District of Columbia Retirement Reform Act,” as amended, [Public Law 96-122](#) (codified at [D.C. Official Code § 1-711\(i\) \(2001\)](#)), the District of Columbia Retirement Board (“Board”) is vested with contracting authority and is required to issue rules governing the procurement of goods and services pursuant to such authority to carry out its responsibilities under the Reform Act.

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 Board, who serves as the Chief Contracting Officer, shall develop and administer operating policies, procedures, and guidelines implementing this Chapter.

1600.5 **Applicability.** These Rules apply to the procurement of goods and services, except for contracts with the governments of the District of Columbia and the United States. These Rules are not applicable to the retention of investment counsel and investment-related services, which is governed by separate rules developed and adopted by the Board’s Investment Committee and approved by a majority vote of the Board.

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.

1600.7 **Severability.** If any provision of this Chapter 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 this Chapter.

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7 DCMR § 1601

1601. DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD; PROTESTS, CLAIMS, AND DISPUTES

1601.1 Applicability. Appeals of all protest and dispute proceedings involving the procurement rules, policies and procedures of the District of Columbia Retirement Board 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.

1601.2 Scope. The provisions of Title 27, Chapters 1, 2, 3 and 4, govern proceedings in cases filed with the District of Columbia Contract Appeals Board ("CAB").

1601.3 Each solicitation issued by the Board shall inform prospective bidders or offerors that protests must be filed in accordance with the provisions of §1601 of these Rules.

1601.4 Protests. All protests shall be filed with the Executive Director in accordance with this section.

1601.5 An actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract, or who is aggrieved in connection with the solicitation of a contract, may protest to the Executive Director a solicitation issued by the Board for the procurement of property or services, or a proposed award, or the award of such a contract.

1601.6 All protests shall be in writing, addressed to the Executive Director, and shall include the following:

- (a) The name, address, telephone and facsimile numbers, and email address of the protester;
- (b) The number and date of the solicitation, and if a contract has been awarded, the number and date of the contract and to whom the contract was awarded, if known;
- (c) A clear and concise statement of the legal and factual grounds of the protest, including copies of relevant documents, and citations to statutes, regulations, or solicitation provisions claimed to be violated;
- (d) Information establishing the timeliness of the protest under §1601.9;
- (e) Information establishing that the protester meets the requirements of § 1601.4; and
- (f) The relief sought by the protester. In addition, a protest may request a stay, request specific documents relevant to the protest grounds, and request a conference.

1601.7 Protests shall be signed by the protester or by an authorized representative or attorney.

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1601.8 Protests are not required to be formal or technical but shall be logically arranged and legally sufficient.

1601.9 The protester shall file an original and two (2) paper copies of its protest, including all attachments, with the Board by hand delivery, certified mail return receipt, or commercial carrier within the time limitations set forth below in section 1601.9.

1601.10 **Time Limitations.** Filing occurs when the protest is received, in writing, by the Board. The following paragraphs specify the time limitations associated with the filing of a protest.

- (a) A protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed with the Board prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into this solicitation, must be protested not later than the next closing time for receipt of proposals following the incorporation.
- (b) Protests other than those covered in paragraph (a) shall be filed with the Board not later than ten (10) business days after the basis of the protest is known or should have been known, whichever is earlier.

1601.11 When a protest has been accepted by the Board, within five (5) business days of receipt of the protest filing, the Executive Director shall provide an acknowledgment to the protestor, the Chief Contracting Officer and any other participating parties, that a protest has been initiated and accepted.

1601.12 The acknowledgment shall notify the Chief Contracting Officer to file a Board Protest Report as prescribed in §1601.13.

1601.13 The Chief Contracting Officer shall, within three (3) business days, give notice of the protest to:

- (a) In the case of a protest alleging solicitation improprieties, prospective bidders or offerors who can reasonably be ascertained;
- (b) In protests, other than those covered in paragraph (a):
 - (1) if a contract has not been awarded, to all bidders or offerors who appear to have a reasonable prospect of receiving an award; and
 - (2) if a contract has been awarded, to the contract awardee and all other bidders or offerors who appear to have a reasonable prospect of receiving an award if the protest is sustained.

The Chief Contracting Officer shall furnish copies of the protest submissions to those parties, except where disclosure of the information is prohibited by law, with instructions to communicate further directly with the Chief Contracting Officer. All parties shall furnish copies of all protest communications to the Board

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and to other participating parties.

1601.14 All protest communications shall be sent by means reasonably calculated to effect timely delivery.

1601.15 **Automatic Stay Procedures.** Except as provided by law, no contract may be awarded in any procurement after the contracting officer has received the notice of protest pursuant to §1601.10 and while the protest is pending.

1601.16 If an award has already been made but the Executive Director receives the notice of protest within ten (10) business days after the date of award, the Chief Contracting Officer shall immediately direct the awardee to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the Board under that contract. Except as provided by law, performance and related activities suspended pursuant to these Rules may not be resumed while the protest is pending.

1601.17 **Chief Contracting Officer Determination to Proceed with Performance.** Performance under a protested procurement may proceed, or award may be made, while a protest is pending only if the Chief Contracting Officer makes a written determination, supported by substantial evidence, that urgent and compelling circumstances that significantly affect interests of the Board will not permit waiting for the decision concerning the protest. A copy of the determination shall be provided within one (1) business day of issuance to the protester.

1601.18 **Protester Challenge of Determination to Proceed with Performance.** If the protester wishes to challenge a determination made by the Chief Contracting Officer pursuant to §1601.16, the protester may do so by filing a written request with the Executive Director within five (5) business days of receipt of a copy of the Chief Contracting Officer's determination. The Chief Contracting Officer shall file a written response with the Executive Director (with same day service on the protester) within five (5) business days of receipt of the protester's motion. The protester may file a reply within one (1) business day of receipt of the Chief Contracting Officer's response.

1601.19 **Executive Director Decision on Protester Challenge.** The Executive Director shall issue a decision on the protester's motion within ten (10) business days after the date the written motion is filed by the protester.

1601.20 **Chief Contracting Officer Protest Report.** As expeditiously as possible but no later than twenty (20) business days of receipt of the Board acknowledgment specified in §1601.10, the Chief Contracting Officer shall file a Protest Report with the Executive Director which shall include, where relevant:

- (a) The procurement solicitation;
- (b) The bid or proposal submitted by the protester;
- (c) The bid or proposal which is being considered for award, or which has resulted in an award, if any;

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- (d) Bid tabulation sheets or proposal selection reports and evaluation reports, work papers, and scoring sheets;
- (e) The Chief Contracting Officer 's position and defense for each ground of the protest, including the facts, legal principles, and precedents supporting its position; and
- (f) Any other documents and exhibits that are relevant to the protest.

1601.21 The Chief Contracting Officer shall also provide a copy of the Protest Report to the protester and all interested parties.

1601.22 Copies of the Protest Report provided under §1601.20 shall include all relevant documents including documents containing protected information. Copies of the Protest Report served on the protester or an intervenor shall be redacted to exclude protected information. The Executive Director may require parties to supplement the Protest Report by filing other documents and tangible things.

1601.23 All exhibits in the Protest Report shall be considered, without further action by the parties, a part of the record upon which the Executive Director will render his or her decision.

1601.24 Documents in the Protest Report may be originals or legible paper or electronic facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

1601.25 Original copies of documents may be withdrawn from the Protest Report, with the Executive Director's consent, if an acceptable copy is substituted.

1601.26 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.

1601.27 Within five (5) business days after receipt of the Protest Report, the protester and interested parties may file a reply or response to either which shall state the party's factual and legal agreement or opposition to the Protest Report.

1601.28 The protestor shall supply all parties with a copy of the protestor's reply or response to the Protest Report.

1601.29 Failure of the protester to file comments, or to file a statement requesting that the case be decided on the existing record, or to request an extension of time for filing, shall result in closing the record of the case and may result in dismissal of the protest.

1601.30 When a protester fails to file comments on a Protest Report, factual allegations in the Protest Report's statement of facts not otherwise contradicted by the protest, or the documents in the record, may be treated by the Executive Director as conceded.

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1601.31 When a protest is, on its face, invalid or untimely filed, or otherwise not for consideration, the Executive Director shall summarily dismiss the protest without requiring submission of a Protest Report.

1601.32 **Frivolous Protests.** The Executive Director may dismiss, at any stage of the proceedings, any protest, or portion of a protest, he or she deems frivolous. If the entire protest is dismissed on frivolous grounds, the Executive Director may assess the protester damages for each day the contract was suspended equal to the amount of liquidated damages specified in the contract for late completion of the contract.

1601.33 **Discovery.** Discovery in protest cases shall be permitted only with approval by the Executive Director and is available only to the protester, the contracting agency, and an intervenor.

1601.34 **Conference.** A conference may be held at the discretion of the Executive Director upon the request of the protester, the Chief Contracting Officer, or another proper party who filed comments on the Protest Report in accordance with §1601.27.

1601.35 A request for a conference shall be made promptly in order to receive favorable consideration.

1601.36 The protester, all proper parties who filed comments and the Chief Contracting Officer may attend the conference and the Executive Director may request the attendance of other persons as it deems appropriate.

1601.37 The conference shall be an informal meeting between the Executive Director and the parties to discuss matters relevant to the protest without strict regard to formal rules of evidence or procedure. These matters may include:

- (a) Simplifying or clarifying the issues including the elimination of frivolous allegations or defenses;
- (b) Stipulations, admissions, or agreements which will avoid unnecessary proof;
- (c) Clarification of matters already in the record; and
- (d) Any other matter which might aid in a just and expeditious disposition of the protest.

1601.38 The Executive Director may require or permit the submission of supplemental information or documentation after the conference has been completed. A party failing to attend the conference shall not be permitted to submit a post-conference submission.

1601.39 **Protest Decisions.** The decision of the Executive Director shall be final and not subject to review unless an appeal under § 1601.40 is timely commenced. All decisions shall be in writing, based solely on the record, and transmitted to each party who has participated in the protest before the Executive Director.

1601.40 **Appeals of the Executive Director's Decisions.** A protester may seek judicial review of the Executive Director's decision by filing a petition for review of the Board's action with the District of

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Columbia Contracts Appeal Board (“CAB”).

1604.41 **Remedies.** If the Executive Director determines, in sustaining a protest, that the solicitation, proposed award, or award does not comply with these Rules, applicable law, or terms and conditions of the solicitation, the Executive Director may order the Chief Contracting Officer to do one or more of the following:

- (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 shall direct that the contract be canceled and cause a determination to be made pursuant to these Rules.

1601.42 In determining the appropriate remedy, the Executive Director shall consider the circumstances surrounding the procurement, including, but not limited to, the following factors:

- (a) Best interest of the Board;
- (b) Seriousness of the procurement deficiency or violation;
- (c) Existence of prejudice to other bidders or offerors;
- (d) Maintaining the integrity of the procurement system; and
- (e) Good faith of Board officials and other parties.

1601.43 In determining whether to terminate a contract, the Executive Director shall consider the following additional factors:

- (a) Extent of contract performance;
- (b) Impact of termination on the Board’s activities and mission;

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(c) Costs to the Board from termination; and

(d) Urgent need for the procurement.

1601.44 The Executive Director shall not award a protester's bid or proposal preparation costs, costs of pursuing the protest, or related legal fees.

1601.45 **Contract Disputes.** Each Board contract shall contain a disputes clause, approved by the Chief Contracting Officer, providing for resolution of disputes in accordance with the provisions of this section.

1601.46 Any dispute arising under or relating to a contract which is not resolved by informal discussions between the contracting officer and the contractor may be treated as a claim and pursued under the appropriate provisions of this section.

1601.47 Claims by the Board against a contractor shall be decided by the Executive Director in accordance with this section.

1601.48 Claims by a contractor against the Board shall be filed with and decided by the Executive Director in accordance with this section.

1601.49 **Claims by the Board Against Contractors.** All claims by the Board against a contractor arising under or relating to a contract shall be decided by the Executive Director. The contracting officer shall send the written decision regarding the claim to the contractor.

1601.50 The Executive Director's written decision shall do the following:

- (a) Provide a description of the claim or dispute;
- (b) Refer to the pertinent contract terms;
- (c) State the factual areas of agreement and disagreement;
- (d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
- (e) Indicate that the written document is the Executive Director's final decision; and
- (f) Inform the contractor of the right to seek further redress by appealing the Executive Director's decision to the District of Columbia Contract Appeals Board.

1601.51 **Dispute Decisions.** The decision of the Executive Director shall be final and not subject to review unless an appeal under §1601.40 is timely commenced. All decisions shall be in writing, based solely on

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the record, and transmitted to each party who has participated in the protest before the Executive Director.

1601.52 The authority contained in this section shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation.

1601.53 This section shall not authorize the Executive Director to settle, compromise, pay, or otherwise adjust any claim involving fraud.

1601.54 Pending final decision of an appeal, action, or final settlement, the contractor shall proceed diligently with performance of the contract in accordance with the decision of the Executive Director.

1601.55 **Claims by Contractors Against the Board.** If a contractor is unable to resolve a dispute arising under or relating to a contract through informal discussions, the contractor may file a written claim with the Executive Director in accordance with this section.

1601.56 The contractor's claim shall be in writing, shall be delivered in person or mailed by certified mail, return receipt requested, to the Executive Director, and shall contain at least the following:

- (a) A description of the claim and the amount in dispute;
- (b) Any data or other information in support of the claim;
- (c) A brief description of the contractor's efforts to resolve the dispute prior to filing the claim; and
- (d) The contractor's request for relief or other action by the Executive Director.

1601.57 The Executive Director may meet with the contractor in a further attempt to resolve the claim by agreement.

1601.58 The Executive Director shall issue a written decision on any claim within one-hundred twenty (120) days of receipt of such a claim, whenever possible taking into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim that the contractor provides.

1601.59 The Executive Director's written decision shall do the following:

- (a) Provide a description of the claim or dispute;
- (b) Refer to the pertinent contract terms;
- (c) State the factual areas of agreement and disagreement;

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- (d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
- (e) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
- (f) Indicate that the written document is the Executive Director's final decision; and
- (g) Inform the contractor of its right to seek further redress by appealing the decision to the District of Columbia Contract Appeals Board.

1601.60 The Executive Director's decision shall be delivered in person or mailed by certified mail, return receipt requested, to the contractor.

1601.61 Any failure by the Executive Director to issue a decision on a claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the District of Columbia Contract Appeals Board.

1601.62 If a contractor is unable to support any part of its claim and the Executive Director determines that the inability is attributable to a material misrepresentation of fact or fraud on the part of the contractor, the contractor shall be liable to the Board for an amount equal to the unsupported part of the claim in addition to all costs to the Board attributable to the cost of reviewing that part of the contractor's claim.

1601.63 Liability under § 1601.62 shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

1601.64 The Executive Director's decision shall be final and not subject to review unless the contractor timely commences an administrative appeal in accordance with §1601.40.

1601.65 Pending final decision of an appeal, action or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the decision of the Executive Director.

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7 DCMR § 1602

1602. INVENTORY AND SURPLUS PROPERTY

1602.1 The Board is responsible for all personal property in its custody whether purchased from appropriations or other authorized funds, or acquired by transfer, donation, or other authorized means. The Board shall ensure that the personal property is properly utilized and managed in the best interest of the Board.

1602.2 The Board may utilize the services of the Office of Contracting and Procurement Surplus Property Division for disposing of the Board's surplus property.

1602.3 The Executive Director shall designate in writing:

- (a) An administrative employee who shall serve as an Accountable Property Officer ("APO"); and
- (b) An administrative employee who shall serve as an alternate APO.

1602.4 The APO shall be responsible for:

- (a) Maintaining records that reflect accountability of property of the Board;
- (b) Ensuring the proper utilization and care of all property of the Board;
- (c) Reconciling physical inventories with property records and inventory databases; and
- (d) Approving transfers of, accounting for, and reporting dispositions of Board personal property.

1602.5 The APO shall maintain an electronic inventory control system to monitor all of the Board's personal property. The system shall contain the following information for each item of personal property:

- (a) The date of receipt 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.

1602.6 When it is in the Board's best interest, the Executive Director may authorize the disposal or sale of surplus personal property using any of the following disposal methods:

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- (a) Auctions;
- (b) Competitive sealed bidding;
- (c) Competitive electronic sales; or
- (d) Other appropriate method.

1602.7 If an on-line auction occurs, items shall be placed on an on-line auction site for a period of seven (7) days. After the auction period has expired, the winning bidder shall be awarded the property after payment has been received.

1602.8 During an on-line auction, the record of the bid prices received will be available for public viewing on the auction site.

1602.9 Property with an estimated value exceeding ten thousand dollars (\$10,000) shall only be sold subject to a minimum bid established by the APO. If the APO determines that property cannot be sold at the established minimum bid price, the APO may extend the bidding period or reject the bids.

1602.10 The APO may reject any bid received during any disposal method.

1602.11 No Board or District employee or member of a Board or District employee's household may purchase surplus personal property.

1602.12 The Board may donate its surplus personal property to an organization qualified as a tax-exempt under Section 501 of the Internal Revenue Code of 1986 (26 U.S.C. § 501), or state, county, or municipal jurisdictions only after an attempt has been made to:

- (a) Transfer the property within internal Board departments;
- (b) Transfer the property between District agencies; and
- (c) Auction the property for sale.

1602.13 The APO must determine whether an applicant is eligible to receive a donation of the Board's surplus property prior to distribution of the property.

1602.14 Before receiving a donation of the Board's surplus personal property, a tax-exempt organization must:

- (a) Demonstrate it meets any approval, accreditation, or licensing requirements for operation of its program;

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- (b) Certify that it is not debarred, suspended, or excluded from any federal or District program, including procurement programs;
- (c) Operate in compliance with applicable federal nondiscrimination law; and
- (d) Certify that it is a non-profit tax-exempt organization.

1602.15 If it is in the best interest of the Board, and upon the approval of the Executive Director, the APO may recycle, sell for scrap, abandon, or destroy undistributed Board surplus personal property upon making a determination that the property has no commercial value, or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale.

1602.16 The Board may assess a service charge for services performed under this section. Service charges shall be fair and equitable in relation to the services performed. The Board must take into account the amount of screening, packing, crating, removal, transportation and other efforts required to perform the services when determining the amount of a service charge.

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7 DCMR § 1603

1603. COMPLIANCE WITH THE BOARD'S PROCUREMENT RULES

1603.1 Except as otherwise provided in this section, a contract which is entered into in violation of these Rules is void.

1603.2 Notwithstanding the provisions of §1603.1, a contract shall not be void if a determination is made that good faith has been shown by all parties and the violation of the provisions of these Rules are de minimis. The 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.

1603.3 The Executive Director's determination of good faith and that a violation of these Rules is de minimis made pursuant to §1603.2(a) shall be in writing based upon a written request for review by the contractor or contracting officer. The request shall fully describe the contract, the status of performance, the reason why the contract is void, and the grounds for the determination.

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7 DCMR § 1604

1604. APPOINTMENT OF CONTRACTING OFFICERS

1604.1 The Executive Director shall be the Chief Contracting Officer (“CCO”) for the Board. The Executive Director may appoint a Chief Contracting Officer and delegate the Executive Director’s responsibilities under these Rules, in whole or in part, as well as contracting authority, in whole or in part, to his or her appointee. The Executive Director may also delegate contracting authority, in whole or in part, to other contracting officers (“CORs”).

1604.2 The Executive Director may only delegate authority to Board employees.

1604.3 Each delegation of contracting authority under this section shall be in writing and shall include clear instructions on the limitations of the contracting authority being delegated.

1604.4 The Executive Director shall make each delegation or modification of contracting authority in writing. The written delegation or modification shall include the following:

- (a) The limitations on the scope of delegated authority to be exercised;
- (b) The limitations on the authority set forth in applicable laws and regulations; and
- (c) The signature of the Executive Director.

1604.5 In no instance shall the individual being delegated contracting authority presume any greater contracting authority than what has been given.

1604.6 Termination of a COR’s appointment shall be in writing unless the written delegation or modification of authority contains a provision for automatic termination or expiration. No termination shall operate retroactively.

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7 DCMR § 1605

1605. AUTHORITY AND RESPONSIBILITIES OF CONTRACTING OFFICERS

1605.1 The Executive Director shall be authorized to enter into, administer, and terminate contracts. However, where the Executive Director delegates contracting authority to the CCO, or another COR, the CCO or COR may bind the Board only to the extent of the contracting authority set forth in his or her delegation.

1605.2 A COR shall:

- (a) Prepare a clear and concise statement of work;
- (b) Appoint personnel with subject matter expertise significant to aspects of the procurement, solely for the purpose of providing advice and guidance, to serve as contracting officer technical representatives (“COTRs”);
- (c) Have wide latitude to exercise business judgment;
- (d) Ensure that contractors receive impartial, fair, and equitable treatment in accordance with these Rules;
- (e) Request and consider the advice of specialists in auditing, law, and other fields when necessary or appropriate to the exercise of the COR’s authority;
- (f) Ensure that sufficient unencumbered budget authority is available for obligation for each contract;
- (g) Ensure contractor compliance with contractual quality assurance requirements;
- (h) Ensure contractor compliance with contractual safety requirements;
- (i) Perform surveillance, with the assistance of the CA, to assess compliance with contractual terms for schedule, cost, and technical performance in the areas of design, development and production;
- (j) Prepare evaluations of contractor performance and ensure that each contractor’s performance is evaluated in accordance with these Rules;
- (k) If delegated with authority to bind the Board, not enter into a contract unless he or she has ensured that all requirements of law and rules applicable to the Board, and all other applicable procedures (including approvals) have been met; and

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- (l) If delegated with authority to bind the Board, not make any purchase or enter into any contract for an amount in excess of his or her specifically delegated contracting authority.

1605.3 The procurement business 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.

1605.4 The CCO shall ensure that each COR, COTR and contract administrator is thoroughly familiar with the Board's Procurement Rules and Manual, conflict of interest and other employee conduct provisions of the District of Columbia Municipal Regulations, and the applicability of those regulations to CORs and the procurement process.

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7 DCMR § 1606

1606. CONTRACT ADMINISTRATION

1606.1 The CCO shall appoint a contract administrator (“CA”) for all or each contract.

1606.2 A CA shall:

- (a) Review contract terms and conditions and identify any terms which deviate from or conflict with the Board’s standard terms and conditions;
- (b) Obtain approval from the Board’s legal counsel on any term or condition which deviates from or conflicts with the Board’s standard terms and conditions;
- (c) Ensure that the person signing a contract on behalf of the contractor has the authority to bind the contractor;
- (d) Ensure that the Executive Director, or his or her designee, signs the contract after it has been properly signed by the contractor;
- (e) Determine the allowability, suspension, or disapproval of costs;
- (f) Approve or disapprove contractor invoices;
- (g) Review and approve or disapprove a contractor’s requests for payments under progress payments or performance-based payment structures;
- (h) Take action to recover overpayments from the contractor;
- (i) Perform production support, oversight, and status reporting, including timely reporting of potential and actual slippages in contract delivery schedules;
- (j) Advise the COR of any actual or potential labor disputes;
- (k) Report to the COR any inadequacies noted in the specifications;
- (l) Ensure timely submission of required reports;
- (m) Monitor contractor compliance with specifications or other contractual requirements; and

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- (n) Any other function relating to contract administration not expressly reserved by these Rules to the COR, including contract file updates and maintenance.

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7 DCMR § 1607

1607. STANDARDS OF ETHICAL CONDUCT; PROHIBITION AGAINST CONTINGENT FEES

1607.1 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.

1607.2 Any attempt by an employee to realize personal gain through employment with the Board by conduct inconsistent with proper discharge of duties is a breach of ethical standards.

1607.3 Any attempt by a non-employee to influence any Board employee to breach the standards of ethical conduct set forth in these Rules is a breach of ethical standards.

1607.4 Any attempt by a Board member to realize personal gain through the exercise of the duties or responsibilities of Board members or to influence any employee to violate the standards of ethical conduct set forth in this section is a breach of ethical standards.

1607.5 The Executive Director shall designate an Ethics Officer to provide guidance on ethical matters.

1607.6 No Board member or Board employee shall participate in or attempt to influence any procurement when the Board member or employee knows or has reason to know:

- (a) The Board member or employee, or any relative of a Board member or employee, has a financial interest pertaining to the procurement;
- (b) A business or organization in which the Board member or employee, or any relative of Board member or employee has a financial interest pertaining to the procurement; or
- (c) The Board member or 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.

1607.7 It is a breach of ethical standards for any employee to receive or attempt to realize personal gain or advantage, either directly or indirectly, as a result of their participation in any action related to any procurement. No Board member or employee may solicit or accept, directly or indirectly any benefit, such as a gift, gratuity, favor, compensation, offer of employment or anything having more than a nominal monetary value from any person or entity having or seeking to have a contractual, business, or financial relationship with the Board.

1607.8 In the event a Board employee, other than the Executive Director, is offered or receives any benefit in violation of this section from any person or entity, the employee shall report the matter to the Ethics Officer who shall determine the disposition of the benefit. The failure to report such offer or benefit to the Ethics Officer is a breach of these ethical standards.

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1607.9 In the event the Executive Director or a Board member other than the Board Chairperson receives any offer or benefit in violation of any provision of this section from any person or entity, the Board member or Executive Director shall report the benefit to the Board Chairperson who shall jointly determine the disposition of the matter or benefit, with the counsel of the Ethics Officer. In the event that the Board Chairperson receives any offer or benefit in violation of any provision of this section from any person or entity, the Board Chairperson shall report the benefit to the full Board who shall determine the disposition of the matter or benefit, with the counsel of the Ethics Officer.

1607.10 **Prohibition Against Contingent Fees.** The COR shall ensure that each solicitation, other than those for small purchases, contains language approved by the CCO giving notice to prospective contractors of the prohibition against contingent fee arrangements.

1607.11 The CA shall ensure that the language included in § 416(b) of the Act is inserted into each contract, except contracts for small purchases.

1607.12 The COR shall not award any contract to a contractor that has made arrangements to pay a contingent fee or other consideration for soliciting or obtaining the contract.

1607.13 If the COR has reason to believe that a prospective contractor or contractor is or has been involved in a prohibited contingent fee arrangement the COR shall inform the CCO in writing, which shall include any evidence or documentation of the alleged prohibited arrangement.

1607.14 If the CCO 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 CCO 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.

1607.15 If the CCO determines that a prospective contractor has entered into an arrangement to pay a prohibited contingent fee, he or she shall direct the COR to notify the prospective contractor that it is no longer eligible for contract award.

1607.16 The Board may take action against employees and others who violate any provision of this section.

1607.17 Any employee who violates any provision of this section will be subject to discipline, up to and including termination.

1607.18 Any Board member who violates any provision of this section or who violates fiduciary responsibilities will be subject to sanctions in accordance with District law.

1607.19 Any effort made by or on behalf of a non-employee, including an offeror or contractor, to influence an employee to breach the ethical standards set forth in this section is prohibited and may be referred to appropriate authorities for civil enforcement or criminal prosecution.

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7 DCMR § 1608

1608. PROCUREMENT PLANNING

1608.1 The Board's procurement office shall perform procurement planning and conduct market surveys to promote and provide for full and open competition with due regard to the nature of the goods and services to be acquired.

1608.2 When full and open competition is not required by these Rules, the Board's procurement office shall perform procurement planning and conduct market surveys to obtain competition to the maximum extent practicable.

1608.3 The CCO shall prescribe procurement planning procedures for the following purposes:

- (a) To ensure that contracts are awarded after full and open competition with adequate procurement planning and availability of funds;
- (b) To ensure that procurement planning addresses the requirement to specify needs, develop specifications, and to solicit offers in a manner that promotes and provides for full and open competition;
- (c) To establish criteria and thresholds at which increasingly greater detail and formality in the procurement planning process is required in those cases in which a written procurement plan must be prepared;
- (d) To ensure that the principles of this section are applied, as appropriate, for all procurements whether or not a written plan is required;
- (e) To review and approve procurement plans and revisions to those plans; and
- (f) To authorize the waiver of standard procurement planning formats in cases of emergency.

1608.4 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 necessary. In developing the plan, the Board's procurement office may form a team consisting of all those who will be responsible for significant aspects of the procurement, such as the COR, COTR, CA, and other fiscal, legal, and technical personnel.

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7 DCMR § 1609

1609. CONTRACT EXECUTION AND FILING

1609.1 Only the Executive Director, or his or her designee, is authorized to sign and enter into a contract on behalf of the Board.

1609.2 The Executive Director's, or his or her designee's, name and official title shall be typed or printed on the contract.

1609.3 A contract with an individual shall be signed by that individual.

1609.4 A contract with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's typed, stamped or printed name and, if applicable, the "doing business as" (DBA) name.

1609.5 A contract with a partnership shall be signed in the partnership name by a general partner with authority to bind the partnership.

1609.6 A contract with a corporation shall be signed in the corporate name followed by the word "By", and the signature and title of the person authorized to sign for the corporation.

1609.7 A contract with a joint venture shall be signed by a person authorized by the joint venture to bind the joint venture.

1609.8 The CCO shall determine the documents required to be included in a contract file and how those files must be logged, tracked and maintained.

1609.9 A contract file shall contain the original fully executed documents. A contract file may also contain a digital or electronic copy of any original fully executed documents.

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7 DCMR § 1610

1610. NOVATION AND CHANGE-OF-NAME AGREEMENTS

1610.1 Novation Agreement. A request by a contractor to recognize a successor in interest shall be submitted in writing to the CA.

1610.2 When a contractor asks the Board to recognize a successor in interest, the contractor shall submit to the CA two (2) signed copies of the proposed novation agreement and one (1) copy of each of the following:

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

1610.3 The COR, in conjunction with the CA, shall make a recommendation to the CCO as to whether it is in the best interests of the Board to recognize the proposed successor in interest. The CCO's decision shall include a determination of responsibility for the proposed successor.

1610.4 When it is in the best interest of the Board not to concur in the transfer of a contract to another company, the original contractor shall remain under contractual obligation to the Board, and the contract may be terminated for reasons of default if the original contractor does not perform.

1610.5 If recognizing a successor in interest to a Board contract is consistent with the best interest of the Board, the responsible COR shall execute a novation agreement with the transferor and the transferee.

1610.6 The novation agreement shall contain the following requirements:

- (a) The transferee assumes all of the transferor's obligations under the contract including those incurred in the past unless the CCO waives these obligations in writing after determining waiver to be in the best interest of the Board;
- (b) That the transferor waives all rights under the contract against the Board and the District, except as otherwise provided in the novation agreement;

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- (c) That the transferor guarantees performance of the contract by the transferee or provides a satisfactory performance bond; and
- (d) That nothing in the agreement shall relieve the transferor or transferee from compliance with any applicable law or regulation.

1610.7 Any of the requirements set forth in §1610.6 may be waived by the CCO if waiver is in the best interest of the Board. Each proposed waiver shall be reviewed by the Board's General Counsel in its pre-execution review required under §1610.8.

1610.8 The Board's General Counsel shall review a contractor's proposed novation agreement to determine its legal sufficiency before execution by the CCO.

1610.9 The CA shall forward signed copies of the executed novation agreement to the transferor and transferee and retain a signed copy in the contract file.

1610.01 **Change of Name Agreement.** A contractor's request to recognize a change in name shall be formally submitted in writing to the CA.

1610.11 The contractor shall submit to the CA two (2) signed copies of the proposed change of name agreement and one (1) copy of each of the following:

- (a) A list of all affected contracts and purchase orders remaining unsettled between the contractor and the Board showing for each the contract number and type, the name and address of the Board's office, the total dollar value of each contract, as amended, and the remaining unpaid balance; and
- (b) A copy of the document effecting the name change.

1610.12 The Board's General Counsel shall review a contractor's proposed change-of-name agreement to determine its legal sufficiency before execution by the CCO.

1610.13 The CA shall forward a signed copy of the executed change-of-name agreement to the contractor and retain a signed copy in the contract file.

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7 DCMR § 1611

1611. PUBLICIZING CONTRACT ACTIONS

1611.1 The CCO shall use and maintain the Board's website to provide the public with notice of opportunities to participate in the Board's procurement process, notice of contract awards and other relevant information about Board's procurements.

1611.2 **Notice of Solicitations.** The Board shall give public notice of all solicitations not exempted under §1611.5 of these Rules.

1611.3 Except as provided in §1611.5 of this section, the CA shall publish each proposed solicitation over ten thousand dollars (\$10,000) on the Board's website and may publish the solicitation using any other methods reasonably available, such as newspapers or trade publications, when it is in the best interest of the Board.

1611.4 The requirements for advertisement of solicitations set forth in this section shall not apply to the following:

- (a) Emergency procurements;
- (b) Small purchases; and
- (c) Procurements exempt from competition under these Rules.

1611.5 **Notice of Invitation for Bids.** An Invitation for Bids (IFB) shall be advertised for at least fourteen (14) days before the date set for the receipt of bids, unless the CCO determines in writing that it is appropriate to shorten the notice period to not less than three (3) days. The CCO shall consider the following factors in determining whether it is appropriate to shorten a 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.

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1611.6 Notice for Requests for Proposals. A Request for Proposals (RFP) shall be advertised for at least twenty-one (21) days before the date set for the receipt of proposals, unless the CCO determines in writing that it is appropriate to shorten the notice period to not less than fourteen (14) days. The CCO 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.

1611.7 Notice of Intent to Award a Sole Source Contract. A notice of an award of a sole source contract shall be published on the Board's website within ten (10) days of contract award.

1611.8 A notice of an award of a sole source contract shall include:

- (a) A clear description of the item to be procured;
- (b) Justification for the sole source contract award; and
- (c) The sole source contractor.

1611.9 Notice of Contract Awards Over Ten Thousand Dollars (\$10,000). A notice of contract award for each contract over ten thousand dollars (\$10,000) shall be published on the Board's website within ten (10) days of award and shall include:

- (a) The solicitation identifier;
- (b) The contract identifier, contract start and expiration dates;
- (c) Summary description of products or services; and
- (d) The selected contractor;

1611.10 Notice of Emergency Procurements. Emergency procurement awards, regardless of dollar value, shall be published in accordance with the provisions in §1611.9 of this section.

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1611.11 Notice of Special Pilot Procurements. Unless otherwise determined by the CCO, a notice of intent to use the special pilot procurement method shall be published on the Board's website for at least ten (10) days prior to discussions. The notice shall include:

- (a) A copy of the justification for the use of the special pilot procurement method;
- (b) A clear description of the goods or services to be procured;
- (c) The name of the proposed contractor, if the Board has identified a proposed contractor;
- (d) How vendors may express their interest in providing the required goods or services;
- (e) A point of contact; and
- (f) A response due date.

1611.12 Special pilot awards, regardless of dollar value, shall be published in accordance with the provisions in §1611.9 of this section.

1611.13 All information published under this §§1611.7 through 1611.11 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.

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7 DCMR § 1612

1612. USE OF ELECTRONIC COMMERCE

1612.1 The Board shall accomplish the purposes of these Rules by using electronic commerce whenever practicable.

1612.2 The use of the terms in these Rules commonly associated with paper transactions (for example, “typewritten”, “copy”, “document”, “signed in ink”, “written legibly”, “page”, “postmark”, “envelope”) shall be deemed to include their electronic analogues and shall not be interpreted to discourage the use of electronic commerce.

1612.3 As a condition of participation in an electronic transaction, the CCO may require potential bidders and offerors to:

- (a) Register with the Board or any other entity designated by the Board, before participating in an electronic transaction; and
- (b) Agree to the terms, conditions, or other requirements of an electronic transaction, or to agree to terms and conditions governing the electronic transaction, such as procedures that the Board may use to attribute, authenticate, or verify the accuracy of an electronic offer or the actions that constitute an electronic signature.

1612.4 CORs may allow the use of other media, including but not limited to hard copies of drawings, specifications, or bid samples, to supplement electronic submissions to meet the requirements of the electronic transaction.

1612.5 Each electronic solicitation shall comply with the requirements of these Rules for the procurement method being utilized.

1612.6 If a failure of the Board’s electronic system interferes with the ability of bidders or offerors to participate in an electronic transaction, the Board shall amend the notice or solicitation when the electronic system becomes available to extend the date and time for receipt of electronic bids or offers.

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7 DCMR § 1613

1613. PROCUREMENT BY COMPETITIVE SEALED BIDDING – INVITATION FOR BIDS

1613.1 The COR may solicit goods and services for contracts exceeding one hundred thousand dollars (\$50,000) using the competitive sealed bidding process unless the CCO determines that use of competitive sealed bidding is not practicable or in the best interest of the Board.

1613.2 An invitation for bids (IFB) shall be used to solicit goods or services under competitive sealed bidding procedures.

1613.3 Each IFB shall include the following:

- (a) Instructions and information to bidders concerning bid submission requirements, including the time and date set for receipt of bids and the location where bids are to be delivered;
- (b) The purchase description, delivery, or performance schedule, and any special instructions necessary; and
- (c) A statement indicating whether contract award will be made on the basis of the lowest bid price or the lowest evaluated bid price, whichever is applicable.

1613.4 If the lowest evaluated bid price is the basis of contract award, the objective measurable criteria to be used shall be set forth in the IFB. The objective measurable criteria must be related to price.

1613.5 The IFB shall require acknowledgement by each bidder of the receipt of all issued amendments, addenda, and changes.

1613.6 The Board shall evaluate bids without discussions with bidders.

1613.7 Information concerning proposed acquisitions shall not be released outside the Board before solicitation, except for pre-solicitation notices.

1613.8 The CA shall publicize IFBs in accordance with the provisions of §1611.5 of these Rules.

1613.9 Prospective bidders that are debarred or suspended from District or federal contracts or otherwise determined to be ineligible to receive awards shall not be eligible to bid.

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7 DCMR § 1614

1614. PROCUREMENT BY COMPETITIVE SEALED BIDDING – TIME FOR SUBMISSION OF BIDS

1614.1 The COR shall provide a reasonable time for prospective bidders to prepare and submit bids in all IFBs, consistent with the needs of the Board, but in no event less than fourteen (14) days from the first day of publication, unless the CCO determines that it is appropriate to shorten the notice period to a period not less than three (3) days.

1614.2 When establishing a reasonable bidding time, the COR shall consider the following factors:

- (a) The complexity of the procurement;
- (b) The subcontracting requirements;
- (c) The impact of a shortened notice period on competition;
- (d) The degree of urgency; and
- (e) Any other relevant factors.

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7 DCMR § 1615

1615. PROCUREMENT BY COMPETITIVE SEALED BIDDING –BID SAMPLES AND DESCRIPTIVE LITERATURE

1615.1 **Bid Samples.** Each IFB shall state whether the bidder is required to furnish samples.

1615.2 The COR shall not require bidders to furnish bid samples unless there are characteristics of the product that cannot be described adequately in the specifications or purchase description.

1615.3 The COR shall only use bid samples to determine the responsiveness of the bid, and shall not be used to determine a bidder's ability to produce the required items.

1615.4 The COR shall reject a bid as nonresponsive if the sample fails to conform to each of the characteristics listed in the IFB.

1615.5 **Descriptive Literature.** Each IFB shall state whether the bidder is required to furnish descriptive literature.

1615.6 The COR shall not require bidders to furnish descriptive literature unless the COR needs it to determine, before award, whether the product offered meets the specifications or to establish exactly what the bidder proposes to furnish.

1615.7 The COR shall document, in writing, the reasons why product acceptability cannot be determined without submission of descriptive literature and shall include the document in the contract file.

1615.8 The IFB shall clearly identify the following:

- (a) The descriptive literature required to be furnished;
- (b) The purpose for which the literature is required;
- (c) The extent to which the literature shall be considered in the evaluation of bids; and
- (d) The rules that shall apply if a bidder fails to furnish the literature before bid opening or the literature furnished does not comply with the requirements of the IFB.

1615.9 After receipt of bids, the COR may waive the requirement for furnishing descriptive literature if either of the following occurs:

- (a) The bidder states in its bid that the product being offered is the same as a product previously or currently being furnished to the Board; or

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- (b) The COR determines that the product offered by the bidder complies in all material respects with the specification requirements of the IFB.

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7 DCMR § 1616

1616. PROCUREMENT BY COMPETITIVE SEALED BIDDING – PREQUALIFICATION PROCESS

1616.1 Before issuing an IFB, the COR may prequalify bidders by establishing a prequalification process to certify the financial and professional qualifications of prospective bidders.

1616.2 The COR may use a prequalification process when he or she determines that this process will be the most advantageous to the Board. The COR may limit participation in certain procurements to prospective contractors who have been prequalified under the process.

1616.3 The COR shall conduct the prequalification process as follows:

- (a) The CA shall first advertise a Request for Qualifications in accordance with the provisions of §1611.6 of these Rules for prospective bidders to submit financial and professional responsibility information; and
- (b) The COR may only issue an IFB to those prospective bidders determined to be qualified after evaluation of the responses to the Request for Qualifications. Only qualified prospective bidders may submit bids in response to the IFB.

1616.4 The Request for Qualifications shall include, at a minimum:

- (a) A detailed description of the contract requirements; and
- (b) Submission requirements that will be used to determine whether a prospective bidder is qualified.

1616.5 The COR may conduct oral or written discussions with prospective bidders who submitted responses to the Request for Qualifications.

1616.6 The COR may provide the information submitted by all prospective bidders in response to the request to an evaluation panel. The panel may recommend to the COR, based upon the panel's analysis of the information according to the criteria set forth in the request, whether a prospective bidder is qualified.

1616.7 After determining the most qualified prospective bidders, the COR shall issue an IFB only to the bidders who have been determined most qualified.

1616.8 The IFB shall not be advertised in newspapers or publicly posted.

1616.9 The use of the prequalification process shall not nullify the requirement for a determination of contractor responsibility under these Rules.

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1617. PROCUREMENT BY COMPETITIVE SEALED BIDDING – PRE-BID CONFERENCES

1617.1 The COR may conduct pre-bid conferences to explain the procurement requirements.

1617.2 The COR shall announce pre-bid conferences in the IFB to all prospective bidders.

1617.3 The COR shall hold a pre-bid conference as early as possible after an IFB has been issued and before bids are due.

1617.4 Nothing stated at the pre-bid conference shall change an IFB unless a change is made by the COR by written amendment.

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7 DCMR § 1618

**1618. PROCUREMENT BY COMPETITIVE SEALED BIDDING – AMENDMENT OR
CANCELLATION OF INVITATIONS FOR BIDS BEFORE OPENING**

1618.1 Amendment of IFB before Opening. The COR shall identify amendments to an IFB and require the bidders to acknowledge receipt of each amendment issued.

1618.2 The COR shall amend the solicitation if it becomes necessary to make changes in quantity, specifications, delivery schedules, opening time or date, or to correct a defective or ambiguous IFB.

1618.3 The CA shall send each amendment to all prospective bidders and post the amendment on the Board's website.

1618.4 The CA shall distribute and post each amendment within a reasonable time to allow prospective bidders to consider the information before submitting or modifying their bids.

1618.5 Cancellation of IFB before Opening. The COR shall not cancel an IFB unless the CCO determines, in writing, that cancellation is in the best interest of the Board.

1618.6 If an IFB is canceled before bid opening, the COR shall:

- (a) Return to the bidders unopened bids that have been received via mail or hand-delivery; or
- (b) Purge all bids that have been received electronically from primary and backup data storage systems.

1618.7 The CA shall promptly publish on the Board's website a notice of cancellation.

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7 DCMR § 1619

**1619. PROCUREMENT BY COMPETITIVE SEALED BIDDING – BID SUBMISSION
REQUIREMENTS; RECEIPT AND SAFEGUARDING OF BIDS**

1619.1 To be considered for award, a bid shall comply in all material respects with the IFB.

1619.2 Bidders shall complete and submit bids in accordance with the instructions in the IFB.

1619.3 Bidders shall submit bids so that they are received at the location designated in the IFB no later than the exact time specified in the IFB.

1619.4 Unless the solicitation states another time, the deadline for receipt of bids shall be 2:00 p.m. Eastern time on the date that bids are due.

1619.5 Upon its receipt, each bid and modification shall be time- and date-stamped but not opened, and shall be stored in a secure place until the date and time set for bid opening. Bids submitted through electronic means shall be received in such a manner that the time and date of submittal, along with the contents of such bids shall be securely stored until the time and date set for bid opening.

1619.6 Except as provided in §§1619.10 and 1619.11, all bids shall remain unopened until the time and date set for bid opening.

1619.7 If an IFB is canceled before bid opening, bids shall be handled in accordance with §§1618.5, 1618.6 and 1618.7.

1619.8 Before bid opening, information concerning the identity and number of bids received shall be made available only to Board employees, and then only as required in the execution of their duties.

1619.9 When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

1619.10 Envelopes or documents marked as bids which do not identify the bidder or the solicitation may be opened solely for the purpose of identification or to determine whether a bidder is eligible to bid, and then only by an official designated for this purpose.

1619.11 Any person who opens a sealed bid by mistake shall deliver it to the CA. The CA shall immediately write the following on the envelope and then sign and reseal the envelope:

- (a) An explanation of the opening;
- (b) The date and time opened; and

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(c) The IFB number.

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7 DCMR § 1620

**1620. PROCUREMENT BY COMPETITIVE SEALED BIDDING – PRE-OPENING
MODIFICATION OR WITHDRAWAL OF BIDS**

1620.1 Bid Modification or Withdrawal. Bids may be modified or withdrawn by written notice received at the location designated in the IFB prior to the time and date set for bid opening. An electronic modification or withdrawal received from the bidder prior to the time and date set for bid opening will be effective; provided that, there is objective evidence in electronic form confirming that the modification or withdrawal was received prior to the time and date set for bid opening.

1620.2 If a bid is withdrawn in accordance with this section, the bid security, if any, shall be returned to the bidder.

1620.3 Late Bids. Any bid received at the location designated in the solicitation after the time and date set for receipt of bids shall be considered a “late” bid unless it was received prior to the contract award and any of the following applies:

- (a) It was sent by registered or certified mail not later than five (5) calendar days before the bid receipt date specified;
- (b) It was sent by mail and the COR determines that the late receipt was due solely to mishandling by the Board after receipt at the location specified in the IFB; or
- (c) It was sent electronically by the bidder prior to the time and date specified and there is objective evidence in electronic form confirming that the bid was received prior to the bid receipt time and date specified.

1620.4 Any request for withdrawal or request for modification of a bid received after the bid receipt time and date is late.

1620.5 A late bid, late request for modification, or late request for withdrawal shall not be considered, except as provided §1620.6.

1620.6 A late modification of a successful bid which makes its terms more favorable to the Board shall be considered at any time it is received and may be accepted.

1620.7 A late bid, late modification of bid, or late withdrawal of bid that is not considered shall be held unopened, unless opened for identification, until after award and then retained with unsuccessful bids.

1620.8 The CA shall promptly notify the bidder if a bid, modification of bid, or withdrawal of bid is received late, and it is clear from available information that it cannot be considered.

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7 DCMR § 1621

1621. PROCUREMENT BY COMPETITIVE SEALED BIDDING – OPENING BIDS

1621.1 Bids and modifications shall be opened publicly, in the presence of one (1) or more witnesses, at the time, date, and location designated in the IFB.

1621.2 The name of each bidder, the bid price and such other information as the COR deems appropriate, shall be read aloud or otherwise made available. Such information also shall be recorded at the time of bid opening; that is, the bids shall be tabulated or a bid abstract made.

1621.3 The names and addresses of required witnesses shall be recorded at the bid opening.

1621.4 The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in § 1621.7. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid.

1621.5 Prices, makes and models, or a catalogue of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

1621.6 The CA shall publish a bid abstract containing the requirements of this section on the Board's website as soon as practicable after bid opening.

1621.7 The CA shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. The CA may request that a bidder provide the justification for withholding information.

1621.8 The COR shall certify the accuracy of the bid abstract prior to contract award.

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1622. PROCUREMENT BY COMPETITIVE SEALED BIDDING – POSTPONEMENT OF BID OPENING

1622.1 The COR may postpone a bid opening until after the time scheduled for bid opening under the following circumstances:

- (a) If the COR has reason to believe that the bids of an important segment of bidders have been delayed in the mail or in the electronic system specified for transmission of bids, for causes beyond the control of bidders and without their fault or negligence, such as flood, fire, accident, weather conditions, strikes, or Board equipment blackout or malfunction when bids are due; or
- (b) If an emergency or unanticipated event interrupts normal governmental processes so that the conduct of bid openings as scheduled is impractical.

1622.2 At the time of a determination to postpone a bid opening, an announcement of the determination shall be publicly posted on the Board's website. If practical, before issuance of a formal amendment to the IFB, the determination shall be otherwise communicated to prospective bidders.

1622.3 When a bid opening is postponed, the time of the rescheduled bid opening shall be communicated to prospective bidders.

1622.4 The COR may proceed with bid opening as soon as practical after the original scheduled bid opening time without amendment to the IFB or notice to bidders whenever any delay incident to the issuance of the amendment or notice would not be in the best interest of the Board.

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7 DCMR § 1623

1623. PROCUREMENT BY COMPETITIVE SEALED BIDDING – CANCELLATION OF AN INVITATION FOR BIDS AFTER OPENING

1623.1 Cancellation of an IFB after Opening. An IFB may be canceled, or all bids rejected, only if the CCO determines that the action taken is in the best interest of the Board. If all bids have been rejected, the COR shall cancel the solicitation.

1623.2 After bid opening, an IFB shall not be canceled and resolicited due solely to increased requirements for the items being procured. Contract award shall be made on the initial IFB and any additional quantity shall be treated as a new procurement.

1623.3 After bid opening, an IFB may be canceled and all bids rejected before being awarded if the CCO determines that cancellation is in the best interest of the Board for any reason, including the following:

- (a) Inadequate or ambiguous specifications were cited in the IFB;
- (b) Specifications have been revised;
- (c) The goods or services being contracted for are no longer required;
- (d) The IFB did not provide for consideration of all factors of cost to the Board;
- (e) Bids received indicate that the needs of the Board can be satisfied by a less expensive article differing from that for which the bids were invited;
- (f) All otherwise acceptable bids received are at unreasonable prices, or only one (1) bid is received and the COR cannot determine the reasonableness of the bid price;
- (g) No responsive bid has been received from a responsible bidder; or
- (h) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

1623.4 If administrative difficulties arise after bid opening which may delay award beyond the bidders' acceptance period, the COR should request the lowest bidders to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for re-advertisement.

1623.5 The COR shall post on the Board website a notice of cancellation which shall briefly explain the reason the IFB is being canceled.

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1623.6 Negotiations after Cancellation. By determination, the CCO may authorize the use of negotiations if an IFB is canceled after bid opening for any of the following reasons:

- (a) All otherwise acceptable bids received are at unreasonable prices, or only one (1) bid is received and the COR cannot determine the reasonableness of the bid price;
- (b) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
- (c) No responsive bid has been received from a responsible bidder.

1623.7 If the CCO determines that an IFB should be canceled and that the use of negotiations is in the Board's best interest, the COR may negotiate and award a contract without issuing a new solicitation, provided that:

- (a) All responsible bidders under the IFB have been given notice that negotiations shall be conducted and have been given the opportunity to participate in the negotiations; and
- (b) The contract is awarded to the responsible bidder with the lowest negotiated price.

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7 DCMR § 1624

1624. PROCUREMENT BY COMPETITIVE SEALED BIDDING – REJECTION OF INDIVIDUAL BIDS

1624.1 The COR shall reject any bid that fails to conform to the essential requirements of the IFB.

1624.2 The COR shall reject any bid that does not conform to the applicable specifications unless the IFB authorized the submission of alternate bids and the goods offered as alternates meet the requirements specified in the IFB.

1624.3 Any bid that fails to conform to the delivery schedule or permissible alternates stated in the IFB shall be rejected.

1624.4 A bid shall be rejected if the bidder imposes conditions that would modify the requirements of the IFB or limit the bidder's liability to the Board. For example, a bid shall be rejected if the bidder:

- (a) Protects against future changes in conditions, such as increased costs, if total possible costs to the Board cannot be determined;
- (b) Fails to state a price and indicates that price shall be "price in effect at time of delivery" or words of equivalent meaning;
- (c) States a price but qualifies it as being subject to "price in effect at time of delivery" or words of equivalent meaning;
- (d) When not authorized by an IFB, conditions or qualifies a bid by stipulating that it is to be considered only if the bidder receives, or does not receive, an award under a separate solicitation;
- (e) Requires the Board to determine that the bidder's product meets applicable specifications; or
- (f) Limits the rights of the Board under any contract clause.

1624.5 A low bidder may be requested to delete objectionable conditions from a bid, so long as the conditions do not go to the substance, as distinguished from the form, of the bid or would give the bidder an unfair advantage over other bidders. A condition goes to the substance of a bid when it affects price, quantity, quality, or delivery of the items or services offered.

1624.6 The COR may reject any bid if he or she determines that the bid price is unreasonable. Unreasonableness of price includes not only the total price of the bid, but the prices for individual line items as well.

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1624.7 A bid received from any bidder that is suspended, debarred, or otherwise ineligible shall be rejected if the period of suspension, debarment, or ineligibility has not expired by the bid opening date.

1624.8 The COR shall reject low bids received from bidders determined not to be responsible.

1624.9 When bid security is required and a bidder fails to furnish the security in accordance with the requirements of the IFB, the rules set forth in §1644.58 shall apply.

1624.10 If a bid received by the Board by electronic data interchange is unreadable to the degree that conformance to the essential requirements of the IFB cannot be ascertained, the COR shall immediately notify the bidder that the bid will be rejected unless the bidder provides clear and convincing evidence:

- (a) Of the content of the bid as originally submitted; and
- (b) That the unreadable condition of the bid was caused by the Board's software or hardware error, malfunction, or other Board mishandling.

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7 DCMR § 1625

**1625. PROCUREMENT BY COMPETITIVE SEALED BIDDING – ALL OR NONE
QUALIFICATIONS**

1625.1 Unless the solicitation provides otherwise, a bid may be responsive even though the bidder specifies that award will be accepted only on all, or a specified group, of the items.

1625.2 Bidders shall not be permitted to withdraw or modify an “all or none” qualification after bid opening because “all or none” qualifications are substantive and affect the rights of other bidders.

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7 DCMR § 1626

1626. PROCUREMENT BY COMPETITIVE SEALED BIDDING – MINOR INFORMALITIES OR IRREGULARITIES AND MISTAKES IN BIDS

1626.1 Minor Informalities and Irregularities in Bids. The COR may determine that it is in the best interest of the Board to waive a minor informality or irregularity in a bid or to give a bidder an opportunity to cure the deficiency.

1626.2 The COR may determine that the following, among others, are minor informalities or irregularities:

- (a) When a bidder fails to return the number of copies of signed bids required by the IFB;
- (b) When the bidder fails to furnish information concerning the number of its employees;
- (c) When a bidder fails to sign its bid, but only if one (1) of the following applies:
 - (1) The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself); or
 - (2) The firm submitting the bid has formally adopted or authorized, before the time set for bid opening, the execution of documents by typewritten, printed or stamped signature; submits evidence of that authorization; and the bid carries the proper signature; or
- (d) When a bidder fails to acknowledge receipt of an amendment to the IFB, but only if one (1) of the following applies:
 - (1) The bid received clearly indicates that the bidder received the amendment (such as where the amendment added another item to the IFB and the bidder submitted a bid on the item); or
 - (2) The amendment involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item bid upon.

1626.3 When a bidder fails to provide timely certifications or information with respect to Equal Opportunity and Affirmative Action Programs, the COR may allow additional time to submit the information prior to contract award.

1626.4 Mistakes in Bids before Award. After bid opening, the CA shall examine each bid for mistakes.

1626.5 In cases of apparent mistakes and when the contract administrator has reason to believe that a mistake may have been made, the contract administrator shall request from the bidder a verification of the bid and call attention to the suspected mistake.

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1626.6 If the bidder alleges a mistake, the matter shall be processed before award in accordance with this section.

1626.7 If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

1626.8 If the mistake and the intended correct bid are not clearly evident, a bidder may be permitted to withdraw a low bid if:

- (a) A mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- (b) The bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

1626.9 The authority to permit corrections of bids is limited to bids that, as submitted, are responsive to the IFB, and shall not be used to permit correction of bids to make them responsive.

1626.10 Correction of bids submitted by electronic means shall be effected by including in the electronic solicitation file the original bid, the verification request, and the bid verification.

1626.11 When a bid is corrected or withdrawn, or correction or withdrawal is denied, the COR shall prepare a determination showing that the relief was granted or denied in accordance with this section.

1626.12 **Mistakes in Bids after Award.** If a mistake in a bid is not discovered until after award, the mistake may be corrected by contract amendment if correcting the mistake would be favorable to the Board without changing the essential requirements of the specifications.

1626.13 In addition to the cases contemplated in §1626.12, or as otherwise authorized by law, if a mistake in a bid is not discovered until after the contract is awarded, the Executive Director shall make one (1) of the following determinations:

- (a) Rescind the contract;
- (b) Reform the contract to delete the items involved in the mistake or to reform the contract to increase the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original IFB; or
- (c) Make no change to the contract as awarded.

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1626.14 Determinations made under §§1626.13(a) and 1626.13(b) shall be made only on the basis of clear and convincing evidence that a mistake was mutual or unilaterally made by a contractor, and was so apparent as to give the COR notice of the probability of the mistake.

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7 DCMR § 1627

**1627. PROCUREMENT BY COMPETITIVE SEALED BIDDING – BID EVALUATION;
RESOLVING TIE BIDS; CONTRACT AWARDS**

1627.1 Bid Evaluations. The CA, in conjunction with the COR, shall determine whether a prospective contractor is responsible and whether the prices offered are reasonable.

1627.2 Prompt payment discounts shall not be considered in the evaluation of bids. However, any discount offered shall form a part of the award and shall be taken by the Board if payment is made within the discount period specified by the bidder.

1627.3 Resolving Tie Bids. When two (2) or more low bids are equal in all respects, priority may be given in the following order of priority to:

- (a) A certified small business enterprise certified by the DSLBD; and
- (b) A certified business enterprise other than a small business enterprise described in § 1627.3(a).

1627.4 If two (2) or more bidders remain equally eligible for contract award, award shall be made by a drawing by lot limited to those bidders.

1627.5 The drawing shall be witnessed by at least three (3) persons, and the contract file shall contain the names and addresses of the witnesses and the person supervising the drawing.

1627.6 Contract Awards. The COR shall award each contract to the responsible and responsive bidder whose bid meets the requirements set forth in the IFB, and is the lowest bid price or lowest evaluated bid price, considering only price and price-related factors included in the IFB.

1627.7 A bid shall not be evaluated for any criterion that is not set forth in the IFB.

1627.8 A contract shall not be awarded until all required approvals have been obtained by the CA.

1627.9 The Executive Director shall award a contract by written notice within the time for acceptance specified in the bid or an extension.

1627.10 Unless otherwise specified in the contract, the date of contract award shall be the date that the Executive Director, or his or her designee, signed the contract. If there is any ambiguity surrounding the date of contract award, the default date shall be the date that the Executive Director, or his or her designee, signed the contract.

1627.11 Notice of Contract Award. The CA shall send written notice of award to the successful bidder.

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1627.12 The CA shall publish notice of contract awards in accordance with the requirements of §1611 of these Rules.

1627.13 The CA shall notify unsuccessful bidders promptly in writing that their bids were not accepted, and shall return any bid security to the unsuccessful bidders.

1627.14 **Barred Payment of Stipends.** The Board shall not pay stipends to compensate bidders for any costs associated with bid development or submission.

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**1628. PROCUREMENT BY COMPETITIVE SEALED BIDDING – ECONOMIC PRICE
ADJUSTMENTS**

1628.1 If a solicitation does not contain an economic price adjustment clause, but a bidder proposes an adjustment clause with a ceiling that the price will not exceed, the COR shall evaluate the bid on the basis of the maximum possible economic price adjustment of the quoted base price.

1628.2 If a bid received with an unsolicited economic price adjustment clause is eligible for award, the COR shall request the bidder to agree to the inclusion in the award of the Board's standard economic price adjustment clause, approved by the CCO, which is subject to the same ceiling. If the bidder will not agree to an approved clause, the COR may award the contract on the basis of the bid as originally submitted.

1628.3 The COR shall reject a bid that contains an economic price adjustment with no ceiling unless a clear basis for evaluation exists.

1628.4 If an IFB contains an economic price adjustment clause and no bidder takes exception to the provisions, the COR shall evaluate bids on the basis of the quoted prices without the addition of the allowable economic price adjustment.

1628.5 If a bidder increases the maximum percentage of economic price adjustment stipulated in the IFB or limits the downward economic price adjustment provisions of the IFB, the COR shall reject the bid as nonresponsive.

1628.6 If a bid indicates deletion of the economic price adjustment clause, the COR shall reject the bid as nonresponsive.

1628.7 If a bidder decreases the maximum percentage of economic price adjustment stipulated in the IFB, the COR shall evaluate the bid at the base price on an equal basis with bids that do not reduce the stipulated ceiling. However, after evaluation, if the bidder offering the lower ceiling is in a position to receive the award, the award shall reflect the lower ceiling.

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1629. PROCUREMENT BY COMPETITIVE SEALED BIDDING – TWO-STEP SEALED BIDDING

1629.1 Two-Step Sealed Bidding. A two-step sealed bidding method may be used for procurements requiring technical proposals, particularly those involving complex procurements.

1629.2 The two-step sealed bidding method shall be conducted as follows:

- (a) The first step shall involve the solicitation of technical proposals, evaluation of proposals, and if necessary, discussions of the proposals; and
- (b) The second step shall involve the submission of sealed bid prices by those who submitted acceptable technical proposals in step one.

1629.3 The COR shall not request, and a bidder shall not submit, price or price information in step one.

1629.4 The COR shall determine the acceptability of the goods or services offered through clarification and discussion, if necessary, relating to technical proposals.

1629.5 Bids submitted shall be evaluated and awards made in accordance with the provisions of this section.

1629.6 Conditions for Use of Two-Step Sealed Bidding. The two-step sealed bidding method may be used when all of the following conditions are present:

- (a) Available specifications or purchase descriptions are not definite or complete, or may be too restrictive without technical evaluation, and discussion of the technical aspects of the requirement is needed to ensure mutual understanding between each prospective bidder and the Board;
- (b) Definite criteria exist for evaluating technical proposals;
- (c) More than one (1) technically qualified source is expected to be available;
- (d) Sufficient time will be available for use of the two-step method; and
- (e) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

1629.7 None of the following issues shall preclude the use of two-step sealed bidding:

- (a) Multiyear contracting;

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- (b) Board-owned facilities to be made available to the successful bidder; or
- (c) A set-aside procurement.

1629.8 Two-Step Bidding Solicitation. Each request for technical proposals shall be publicized and distributed in accordance with these Rules, and shall include, at least, the following:

- (a) A description of the goods or services required;
- (b) A statement of intent to use the two-step bidding method;
- (c) The requirements of the technical proposal;
- (d) The evaluation criteria;
- (e) A statement that the technical proposals shall not include prices or pricing information;
- (f) The date and time by which the proposal must be received;
- (g) A statement that, in the second step, only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, shall be considered for awards;
- (h) A statement that each bid in the second step must be based on the bidder's own technical proposal;
- (i) A statement that bidders must submit proposals that are acceptable without additional explanation or information;
- (j) A statement that the Board may make a final determination regarding the acceptability of the proposal solely on the basis of the proposal as submitted;
- (k) A statement that the Board may proceed with the second step without requesting further information from any bidder; however, the Board may request additional information from one (1) or more bidders that it considers reasonably susceptible of being made acceptable, and may discuss the proposals with the bidders;
- (l) A statement that a notice of unacceptability will be forwarded to the bidder upon completion of the proposal evaluation and final determination of unacceptability;
- (m) A statement that advises the bidders whether they may submit only one (1) technical proposal, or whether a bidder may submit multiple technical proposals; and

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- (n) A statement that information provided on delivery or performance requirements is not binding on the Board or the District, and that the actual delivery or performance requirements shall be contained in the IFB issued under step two.

1629.9 When specifications permit different technical approaches, multiple proposals may be authorized if it would be in the best interest of the Board.

1629.10 **Receipt and Evaluation of Step One Proposals.** Upon receipt of proposals, the CA shall:

- (a) Safeguard the proposals against disclosure to unauthorized persons;
- (b) Accept and handle data with restrictive disclosure procedures in accordance with these Rules; and
- (c) Remove any reference to price or cost.

1629.11 The COR shall establish a time period for evaluating technical proposals. The time period may vary with the complexity and the number of proposals received.

1629.12 Proposal evaluations shall be based on the criteria specified in the request for technical proposals without consideration of responsibility.

1629.13 Proposals shall be categorized as one (1) of the following:

- (a) Acceptable;
- (b) Reasonably susceptible of being made acceptable; or
- (c) Unacceptable.

1629.14 Any proposal which modifies or fails to conform to the essential requirements or specifications of the request for technical proposals shall be considered nonresponsive and categorized as unacceptable.

1629.15 The COR may proceed directly with step two if:

- (a) There are a sufficient number of acceptable proposals to ensure adequate price competition under step two; and
- (b) Further time, effort and delay to make additional proposals acceptable, and thereby increase competition, would not be in the best interest of the Board.

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1629.16 If it is not in the best interest of the Board to proceed directly with step two, the COR shall request bidders whose proposals may be made acceptable to submit additional clarifying or supplemental information.

1629.17 If discussions are held, the COR must identify the nature of the deficiencies in the proposal or the nature of the additional information required.

1629.18 No proposal shall be discussed with any bidder other than the submitting bidder.

1629.19 When initiating a request for additional information, the COR shall fix an appropriate time for bidders to conclude discussions, if any, submit all additional information, and incorporate that additional information as part of their proposals.

1629.20 The time for completing the actions under § 1629.19 may be extended at the COR's discretion.

1629.21 If the additional information incorporated as part of a proposal within the final time fixed by the COR establishes that the proposal is acceptable, it shall be so categorized. Otherwise, it shall be categorized as unacceptable.

1629.22 If a technical proposal is found unacceptable, either initially or after clarification, the CA shall promptly notify the bidder of the basis of the determination and notify the bidder that a revision of its proposal will not be considered.

1629.23 Upon written request, and as soon as possible after award, the COR may debrief unsuccessful bidders in accordance with §1636 of these Rules.

1629.24 If it is necessary to discontinue the two-step sealed bidding method, the CA shall include a statement of the facts and circumstances in the contract file.

1629.25 Each bidder shall be notified, in writing, of a discontinuance of the two-step sealed bidding process.

1629.26 **Two-Step Procedures.** Competitive sealed bidding procedures shall be followed except as follows:

- (a) An IFB shall be issued only to those bidders which submitted acceptable technical proposals in step one;
- (b) The IFB shall prominently state that a bidder shall comply with the specifications and the bidder's technical proposal; and
- (c) The IFB shall not be publicly advertised.

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7 DCMR § 1630

1630. PROCUREMENT BY COMPETITIVE SEALED BIDDING – REVERSE AUCTIONS

1630.1 The COR may procure goods or services through reverse auctioning when it is determined that the reverse auction bidding method is the most effective and advantageous method for the Board.

1630.2 The COR may place any requirement for goods or non-professional services on an established Internet reverse auction exchange that would allow bidders to competitively bid down the price of that good or service over a set period of time established by the COR.

1630.3 The COR may require bidders to register before the opening date and time and, as part of that registration, to agree to any terms, conditions or other requirements of the solicitation.

1630.4 An IFB conducted through reverse auctioning must otherwise comply with the requirements of these Rules.

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7 DCMR § 1631

1631. PROCUREMENT BY COMPETITIVE SEALED PROPOSALS – USE OF COMPETITIVE SEALED PROPOSALS; REQUESTS FOR INFORMATION; PRE-SOLICITATION NOTICES AND CONFERENCES

1631.1 If the COR determines competitive sealed bidding is not practicable or advantageous to the Board, a procurement may be conducted using the competitive sealed proposal (CSP) method.

1631.2 Proposals shall be solicited from the maximum number of qualified sources, and in a manner consistent with the nature of, and the need for, the goods or services being acquired.

1631.3 **Requests for Information.** When information necessary for planning purposes cannot be obtained from potential sources by more economical and less formal means, the COR may use a solicitation for information or planning.

1631.4 A request for information (RFI) shall include the following:

- (a) A description of the information to be furnished in the response;
- (b) An indication of whether the notice will be followed by a conference and a formal solicitation; and
- (c) A request that parties interested in the contemplated procurement respond by a specified date.

1631.5 The CA shall safeguard all information received in response to an RFI from unauthorized disclosure.

1631.6 **Pre-Solicitation Notices and Conferences.** The COR may use pre-solicitation notices and conferences as preliminary steps in procurements by CSP in order to accomplish any of the following:

- (a) Develop or identify interested sources;
- (b) Request preliminary information based on a general description of the goods or services involved;
- (c) Obtain comments on a draft request for proposals (RFP);
- (d) Explain complicated specifications and requirements to interested sources; or
- (e) Aid prospective offerors in later submitting proposals without undue expenditure of effort, time, and money.

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1631.7 If pre-solicitation notices are used, the COR shall publicize the notice on the Board's website and, if the CCO deems appropriate, in newspapers of general circulation and trade publications.

1631.8 At a minimum, the notice shall contain sufficient information to permit a potential offeror to make an informed decision about whether to participate in the acquisition.

1631.9 In complex procurements, the pre-solicitation notice may request information pertaining to management, engineering, or production capabilities.

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7 DCMR § 1632

1632. PROCUREMENT BY COMPETITIVE SEALED PROPOSALS – REQUEST FOR PROPOSALS; UNSOLICITED PROPOSALS

1632.1 Request for Proposals. A request for proposals (RFP) shall be the solicitation used to communicate the Board's requirements to prospective contractors when the CSP method is used.

1632.2 The COR shall issue solicitations which contain all information necessary to enable prospective contractors to prepare proposals properly.

1632.3 The CA shall furnish identical information concerning a proposed procurement to all prospective contractors.

1632.4 Board personnel shall not provide advance knowledge or information about a future solicitation to any prospective contractor.

1632.5 Except for solicitations for information or planning purposes, the COR shall not solicit proposals unless there is a definite intention to award a contract.

1632.6 Each RFP shall be publicized in accordance with the provisions of §1611 of these Rules.

1632.7 An RFP shall not be used as a solicitation for information or planning purposes.

1632.8 Unsolicited Proposals. Unsolicited proposals may be considered by the Board in order to obtain innovative or unique methods or approaches to accomplishing its mission.

1632.9 A valid unsolicited proposal shall meet all of the following criteria:

- (a) Be innovative or unique;
- (b) Be independently originated and developed by the offeror;
- (c) Be prepared without Board supervision;
- (d) Include sufficient detail to permit a determination that Board support would be worthwhile; and
- (e) Show that the proposed work could benefit the mission of the Board.

1632.10 Unsolicited proposals shall contain the following information to permit consideration in an objective and timely manner:

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- (a) Offeror's name, address, and type of organization, such as profit, non-profit, educational or certified business enterprise;
- (b) Names of and contact information for technical and business personnel to be contacted for evaluation or negotiation purposes;
- (c) Identification of proprietary data to be used only for evaluation purposes;
- (d) Signature of a person authorized to represent and contractually obligate the offeror;
- (e) Proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;
- (f) The period of time for which the proposal is valid;
- (g) The type of contract preferred; and
- (h) The proposed duration of effort.

1632.11 Evaluation of Unsolicited Proposals. The Board shall consider the following factors when evaluating a valid unsolicited proposal:

- (a) Unique or innovative methods, approaches, or concepts demonstrated by the proposal;
- (b) Overall scientific, technical, or socio-economic merits of the proposal;
- (c) Potential contribution of the effort to the Board's specific mission;
- (d) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives; and
- (e) Qualifications, capabilities, and experience of the proposed team leader or key personnel who are critical to achieving the proposal objective.

1632.12 The Board shall return an unsolicited proposal to an offeror, citing reasons, when its substance meets any of the following criteria:

- (a) It is available to the Board or the District without restriction from another source;
- (b) It closely resembles a pending competitive requirement; or
- (c) It does not demonstrate an innovative or unique method, approach, or concept.

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1632.13 A favorable evaluation of an unsolicited proposal shall not, by itself, justify awarding a contract without full and open competition.

1632.14 The COR may commence negotiations only when all of the following conditions are met:

- (a) The unsolicited proposal has received a favorable comprehensive evaluation;
- (b) The unsolicited proposal is not disqualified under the provisions of § 1632.12;
- (c) The Board supports its recommendations with facts and circumstances that preclude competition, and has the necessary funds;
- (d) The COR has obtained written approval from the Executive Director; and
- (e) The COR has publicized the requirement in accordance with § 1611 of these Rules.

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7 DCMR § 1633

1633. PROCUREMENT BY COMPETITIVE SEALED PROPOSALS – REQUEST FOR QUALIFICATIONS BEFORE ISSUING A REQUEST FOR PROPOSALS; PRE-PROPOSAL CONFERENCES; CHANGES IN BOARD REQUIREMENTS

1633.1 Request for Qualifications before Issuing a Request for Proposals. The COR may issue a request for qualifications (RFQ) before an RFP when the COR determines that the RFQ process will be the most advantageous to the Board. This selection process will determine which prospective contractors are qualified to receive RFPs and submit responses to the RFPs, based on financial and professional responsibility criteria established by the COR for pre-qualification of a prospective contractor.

1633.2 The Board shall issue an RFQ to firms to determine whether they have the expertise, ability, and entrepreneurship to:

- (a) Assemble the labor and capital necessary for the completion of the procurement;
- (b) Manage all components of the procurement; and
- (c) Complete the procurement in a timely manner while serving the Board's stated policy objectives.

1633.3 The CA shall give public notice of the RFQ in accordance with § 1611 of these Rules.

1633.4 The RFQ shall invite interested prospective contractors to respond in writing with a statement of their qualifications to perform the required services, including financial and professional responsibility information. The RFQ shall provide, at a minimum:

- (a) A detailed description of the statement of work;
- (b) The Board's intent of the project;
- (c) The selection process, schedule, and criteria to be used by the Board in determining which prospective contractors are qualified;
- (d) Submission requirements and evaluation criteria that will be used to determine whether each prospective contractor is qualified;
- (e) The deadline for submission of information; and
- (f) A statement of the number of the highest ranked offerors determined to be most qualified that will be selected to submit proposals in the subsequent RFP.

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1633.5 The COR may conduct oral or written discussions with prospective contractors who submitted responses to the RFQ. If the COR conducts discussions, he or she shall conduct discussions with all prospective contractors who submitted responses to the RFQ.

1633.6 The COR may provide the information submitted by all prospective contractors in response to the RFQ to an evaluation panel who may recommend to the COR, based upon the panel's analysis of the information according to the criteria set forth in the RFQ, whether or not a prospective contractor should be among the highest ranked offerors to proceed to the second step.

1633.7 The COR shall determine the financial and professional responsibility of each prospective contractor and rank them in writing from the most qualified to the least qualified on the basis of the information provided. Notwithstanding the provisions of §1631.5, prior to the issuance of the RFP the COR may make available the identities of the highest-ranked offerors who will be issued an RFP.

1633.8 The COR shall then issue an RFP in accordance with the provisions of §1632 to at least three (3) of the highest-ranked offerors who have been determined most qualified. The RFP shall not be advertised in newspapers or publicly posted.

1633.9 If there are fewer than three (3) offerors, the COR may issue the RFP to the highest-ranked offeror(s).

1633.10 The CCO's decision regarding how many proposals to solicit shall not be subject to review.

1633.11 **Pre-Proposal Conferences.** The COR may conduct a pre-proposal conference to brief prospective offerors after a solicitation has been issued but before offers are submitted.

1633.12 The COR or designated representative shall:

- (a) Conduct the pre-proposal conference;
- (b) Furnish all prospective offerors identical information concerning the proposed procurement;
- (c) Make a complete record of the conference; and
- (d) Promptly publish a copy of that record to all prospective offerors.

1633.13 The COR shall inform all pre-proposal conference attendees that:

- (a) Remarks and explanations at the conference do not qualify or amend the terms of the solicitation; and
- (b) Nothing stated at the pre-proposal conference shall change an RFP unless a change is made by the COR by written amendment.

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1633.14 Changes in Board Requirements. When, either before or after receipt of proposals, the Board increases, decreases or otherwise changes its requirements, the COR shall issue a written amendment to the solicitation. The COR may make changes in the solicitation to reflect any of the following:

- (a) Significant changes in quantity, specifications, or delivery schedules;
- (b) The correction of defects or ambiguities;
- (c) A change in the closing date and time for receipt of proposals; or
- (d) Any other appropriate purpose affecting the procurement.

1633.15 In deciding which firms to notify of a change, the COR shall consider the state in the procurement cycle at which the change occurs and the magnitude of the change, as follows:

- (a) If proposals are not yet due, the amendment shall be published in the same manner as the solicitation;
- (b) If the time for receipt of proposals has passed but proposals have not yet been evaluated, the amendment shall be sent only to the responding offerors; and
- (c) If a competitive range has been established, the amendment shall be sent only to those offerors within the competitive range.

1633.16 If a change is so substantial that it warrants complete revision of a solicitation, the COR shall cancel the original solicitation and issue a new one, regardless of the state of the procurement. The new solicitation shall be advertised in accordance with the requirements §1611 of these Rules.

1633.17 If the proposal considered to be most advantageous to the Board (as determined by using the established evaluation criteria and selection procedure) involves a departure from the stated requirements, the COR shall provide all offerors an opportunity to submit new or amended proposals on the basis of the revised requirements, if this can be done without revealing to the other offerors the solution proposed in the original departure or any other information that is entitled to protection.

1633.18 The COR shall determine if the closing date and time needs to be changed when amending a solicitation, and shall notify all prospective offerors of any change in the closing date necessitated by an amendment.

1633.19 The COR shall not award a contract unless all amendments made to the RFP have been issued in sufficient time to be considered by prospective offerors.

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7 DCMR § 1634

1634. PROCUREMENT BY COMPETITIVE SEALED PROPOSALS – SOURCE SELECTION

1634.1 Selection of a contractor through the use of CSPs shall be based on the following:

- (a) Cost or price competition among proposals that meet the Board's minimum requirements stated in the solicitation; or
- (b) Competition involving an evaluation and comparison of cost or price and other factors.

1634.2 The COR shall be responsible for source selection and selecting the contractor for contract award.

1634.3 The CA, in conjunction with the COR, shall be responsible for contractual actions related to the CSP process, including, but not limited to, the following:

- (a) Issuing solicitations in accordance with the provisions of these Rules; and
- (b) Overseeing all negotiations concerning cost or price, technical requirements, and other terms and conditions.

1634.4 **Evaluation Factors for Proposals.** The evaluation factors that will be considered in evaluating proposals shall be tailored to each procurement and shall include only those factors that will have an impact on the source selection decision.

1634.5 The COR shall include in the solicitation the evaluation factors, including price or cost, and any significant subfactors. The solicitation shall include the minimum requirements that apply to particular evaluation factors or significant subfactors.

1634.6 The COR shall include in the solicitation the numerical weights that will be used in the evaluation of the proposals.

1634.7 Evaluation factors shall be stated in descending order of importance.

1634.8 While the lowest price or lowest total cost to the Board may be an important or even a deciding factor in most source selections, the Board may select the source whose proposal is more advantageous to the Board in terms of technical merit and other factors.

1634.9 **Proposal Submission, Receipt and Safeguarding Requirements.** The procedures for submitting proposals, their receipt and safeguarding, shall be in accordance with the RFP and requirements of §1619 of these Rules.

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1634.10 Late Proposals; Late Modifications; Late Withdrawals. Any proposal or modification to proposal received at the location designated in the RFP after the time and date set for receipt of proposals shall be considered “late” unless it was received prior to the contract award and any of the following applies:

- (a) It was sent by registered or certified mail not later than five (5) calendar days before the date and time specified for receipt of offers;
- (b) It was sent by mail and the COR determines that the late receipt was due solely to mishandling by the Board after receipt at the location specified in the RFP;
- (c) It was sent electronically by the offeror prior to the time and date specified and there is objective evidence in electronic form confirming that the offer was received prior to the date and time specified for receipt; or
- (d) It was the only proposal received.

1634.11 Any request for withdrawal or request for modification of an offer received after the time and date set for receipt of proposals is late.

1634.12 A late proposal, late request for modification, or late request for withdrawal shall not be considered, except as provided in this section.

1634.13 A late modification of a successful proposal which makes its terms more favorable to the Board shall be considered at any time it is received and may be accepted.

1634.14 A late proposal, late modification of offer, or late withdrawal of offer that is not considered shall be held unopened, unless opened for identification, until after award and then retained with unsuccessful offers.

1634.15 If any information received electronically is unreadable, the COR immediately shall notify the offeror and permit the offeror to resubmit the unreadable portion of the information. The method and time for resubmission shall be prescribed by the COR after consultation with the offeror, and documented in the contract file. The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the COR.

1634.16 Disclosure and Use of Information before Award. After receipt of proposals, the information contained in them and the number or identity of offerors shall not be made available to the public or to an employee of the Board or District not required to have access to the information in the performance of his or her duties.

1634.17 During the pre-award period of a CSP procurement, only the COR and others specifically authorized may transmit technical or other information and conduct discussions with prospective contractors.

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1634.18 No Board or District employee or agent shall furnish information to a prospective contractor if, alone or together with other information, it might give the prospective contractor an advantage over others. However, general information that is not prejudicial to others may be furnished upon request.

1634.19 The COR may release proposals outside the Board for evaluation, consistent with the following requirements:

- (a) The outside evaluator shall provide a written agreement stating that the information contained in the qualifications or proposal will be used only for evaluation purposes and will not be further disclosed; and
- (b) Any authorized restrictive legends placed on the proposal by the prospective contractor or subcontractor, or by the Board, shall be affixed to any reproduction or abstracted information made by the evaluator.

1634.20 **Disclosure of Mistakes before Award.** The CA shall examine all proposals before award for minor informalities or irregularities and apparent clerical mistakes.

1634.21 Limited exchanges to clarify or resolve ambiguities, apparent minor mistakes or irregularities shall be only for clarification, not discussion. If the resulting communication prejudices the interest of other offerors, the COR shall not make award without discussions with all offerors within the competitive range.

1634.22 **Proposal Evaluation.** The contacting officer shall evaluate each proposal using only the evaluation criteria stated in the RFP and in accordance with the weightings provided in the RFP.

1634.23 The COR shall evaluate the cost or price to determine reasonableness.

1634.24 If any technical evaluation is necessary beyond ensuring that the proposal meets the minimum requirements in the solicitation, the COR shall forward the proposals to the appropriate COTR for technical evaluation.

1634.25 If a technical evaluation is done, a technical evaluation report shall be prepared by the COTR and shall contain the following:

- (a) The basis for evaluation;
- (b) An analysis of the technically acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the technical requirements;
- (c) A summary, matrix, or quantitative ranking of each technical proposal in relation to the best rating possible; and
- (d) A summary of findings.

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1634.26 When evaluating a cost-reimbursement contract, the cost proposal shall not be controlling. The COR shall consider which offeror can perform the contract in a manner most advantageous to the Board as determined by evaluation of proposals according to the established evaluation criteria.

1634.27 The COR may reject all proposals received in response to a solicitation by a written determination that to do so would be in the best interest of the Board. The COR's determination shall be approved by the CCO.

1634.28 The reasons given for rejection may include, but are not limited to, the following:

- (a) All otherwise acceptable proposals received are at unreasonable prices; or
- (b) The proposals were not independently arrived at in open competition, were collusive or were submitted in bad faith.

1634.29 When all proposals are rejected and no award will be made as a result of the RFP, the COR shall cancel the RFP.

1634.30 The COR, in conjunction with the CA, shall prepare supporting documentation for the selection decision that shows the relative differences among the proposals and their strengths, weaknesses, and risks in terms of the evaluation factors. The supporting documentation shall include the basis for the selection.

1634.31 **Cancellation of Requests for Proposals.** An RFP shall not be canceled unless the CCO determines in writing that cancellation is in the best interest of the Board.

1634.32 If an RFP is canceled before the date and time set for receipt of proposals, the COR shall:

- (a) Return to the offerors unopened proposals that have been received via mail or hand-delivery; or
- (b) Purge all bids that have been received electronically from primary and backup data storage systems.

1634.33 If an RFP is canceled after opening of proposals, the proposals shall be retained in the procurement file.

1634.34 The CA shall post on the Board's website a notice of cancellation which shall briefly explain the reason the RFP is being canceled.

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7 DCMR § 1635

**1635. PROCUREMENT BY COMPETITIVE SEALED PROPOSALS – SELECTION OF
NEGOTIATION PROCESS; PRICE NEGOTIATIONS**

1635.1 After evaluation of the proposals using only the criteria stated in the RFP and in accordance with weightings provided in the RFP, the COR may elect to proceed, as outlined in this section, with:

- (a) Award of the contract to the highest ranked offeror without negotiations or discussions;
- (b) Negotiations with the highest ranked offeror;
- (c) Discussions with all offerors in the competitive range; or
- (d) Negotiations with the highest ranked offeror after discussions with offerors in the competitive range or after receipt of best and final offers.

1635.2 **Award Without Discussion.** Discussions are not necessary:

- (a) If prices are fixed by law or regulation; or
- (b) It can be clearly demonstrated from the existence of full and open competition or prior cost experience with the goods or services that acceptance of the most advantageous initial proposal without discussion would result in a fair and reasonable price.

1635.3 If discussions are not held pursuant to §1635.2, the COR may elect to award the contract to the highest ranked offeror, provided that:

- (a) All offerors have been notified of the possibility that an award might be made without discussions; and
- (b) The terms of the contract are within the scope of the RFP; and
- (c) The award must be made without any written or oral discussions with any offeror.

1635.4 **Negotiations with the Highest Ranked Offeror.** Pursuant to §1635.1(b) or §1635.1(d), the COR may elect to proceed with negotiations with the highest ranked offeror on price or technical matters within the scope of the RFP.

1635.5 During negotiations the COR, in conjunction with the CA, shall do the following:

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- (a) Control all negotiations;
- (b) Advise the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the Board's requirements;
- (c) Attempt to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal;
- (d) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible; and
- (e) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal that may result from the negotiations.

1635.6 If a satisfactory contract cannot be negotiated with the highest-ranked offeror, the COR may enter negotiations on price or technical matters within the scope of the RFP, as provided under §§1635.4 and 1635.5, with the lower-ranked offerors in order of ranking until a satisfactory contract can be awarded.

1635.7 If a contract cannot be negotiated, the COR and CA may reopen negotiations with any offeror with whom negotiations were terminated.

1635.8 If the COR makes changes to the general scope of the RFP after negotiations, the COR shall issue a request for best and final offers to all of the offerors which submitted proposals to the RFP.

1635.9 After evaluation of the best and final offers under §1635.8, the COR shall award to the highest ranked offeror whose best and final offer is most advantageous to the Board, considering only price and other factors included in the solicitation. The COR and CA may negotiate further with the highest ranked offeror prior to award, provided that the terms of the contract are within the scope of the RFP.

1635.10 **Discussion with Offerors within the Competitive Range.** If the COR elects not to award without discussions under §1635.2, or not to negotiate with the highest ranked offeror before determining a competitive range under §1635.4, the COR, in conjunction with the CA, may choose to conduct written or oral discussions with all offerors in the competitive range pursuant to §1635.1(c).

1635.11 If this process is chosen, the COR shall determine which proposals are in the competitive range, and shall conduct written or oral discussions with the offerors which submitted those proposals.

1635.12 **Determination of the Competitive Range.** The competitive range shall be determined on the basis of price and other factors, in accordance with the evaluation criteria that were stated in the RFP, and shall include all of the most highly rated proposals.

1635.13 If all offerors have been notified in the solicitation of the possibility that the competitive range can be limited for purposes of efficiency, the COR may determine to limit the number of proposals in the

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competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

1635.14 If the COR decides that an offeror's proposal should no longer be included in the competitive range, the proposal shall be eliminated from consideration for award.

1635.15 The CA shall notify, in writing, an unsuccessful offeror at the earliest practicable time that its proposal is no longer being considered for award.

1635.16 Conduct of Discussion with Offerors within the Competitive Range. The COR and CA shall ensure that, if discussions are held with any offeror within the competitive range pursuant to §1635.10, discussions are held with all offerors in the competitive range.

1635.17 During discussions with offerors, the COR, in conjunction with the CA, shall do the following:

- (a) Control all discussions;
- (b) Advise each offeror of weaknesses and deficiencies in its proposal so that the offeror is given an opportunity to revise its proposal to satisfy the Board's requirements;
- (c) Attempt to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal;
- (d) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process; and
- (e) Provide each offeror a reasonable opportunity to submit any price, technical, or other revisions to its proposal that may result from the discussions.

1635.18 Neither the COR or CA shall assist an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal.

1635.19 Neither the COR or CA shall not disclose technical information pertaining to a proposal that results in improvement of a competing proposal.

1635.20 Neither the COR or CA shall indicate to an offeror a price it must meet to obtain further consideration, advise an offeror of its standing relative to another offeror, or otherwise furnish information about any other offeror's prices.

1635.21 If, after discussions have begun, an offeror originally in the competitive range is no longer considered to be among the most highly rated offerors being considered for award, that offeror may be

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eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or whether or not the offeror has been afforded an opportunity to submit a proposal revision.

1635.22 Best and Final Offers of Offerors within the Competitive Range. Upon completion of discussions, the CA shall issue to all offerors within the competitive range a request for best and final offers.

1635.23 The request for best and final offers shall include the following:

- (a) Notice that discussions are concluded;
- (b) Notice that this is the opportunity to submit a best and final offer;
- (c) A common cut-off date and time that allows a reasonable opportunity for submission of written best and final offers; and
- (d) Notice that if any modification is submitted, it must be received by the date and time specified and is subject to the provisions of this section covering late proposals.

1635.24 After evaluation of the best and final offers, the COR may award the contract to the highest-ranked offeror, considering only price and other factors included in the solicitation. The COR, in conjunction with the CA, may negotiate further with the highest-ranked offeror prior to award in accordance with §1635.4.

1635.25 Price Negotiations. Among other areas of negotiations and discussions under §1635, the COR, in conjunction with the CA, may enter into price negotiations with the offeror with the intent of agreeing on a fair and reasonable price.

1635.26 The COR shall not be required to reach agreement on every element of cost, and may make reasonable compromises if necessary.

1635.27 Substantiating Offered Prices. The COR, in conjunction with the CA, shall select whatever price or cost analysis techniques will ensure a fair and reasonable price.

1635.28 The COR may request factual information reasonably available to the offeror to substantiate that the price or cost offered, or some portion of it, is reasonable, if:

- (a) The price is not:
 - i. Based on adequate price competition;
 - ii. Based on an established catalogue or market prices; or
 - iii. Set by law or regulation; or

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(b) The price or cost exceeds an amount established by law or regulation.

1635.29 The offeror shall submit the requested factual information at the time and in the manner specified by the COR.

1635.30 If an offeror refuses to supply the requested information, the COR may disqualify the offeror, or delay the award pending further analysis.

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7 DCMR § 1636

1636. PROCUREMENT BY COMPETITIVE SEALED PROPOSALS – NOTIFICATION OF CONTRACT AWARD; PRE- AND POST-AWARD DEBRIEFINGS

1636.1 The CA shall notify each offeror whose proposal is determined to be unacceptable before award unless disclosure might prejudice the best interest of the Board.

1636.2 The CA shall transmit written notice of the award with reasonable promptness to the responsible offeror whose proposal will be the most advantageous to the Board.

1636.3 Promptly after the award of each contract, the CA shall notify unsuccessful offerors in writing, unless notice was given before award.

1636.4 **Pre-Award Debriefing.** Offerors excluded from the competitive range or otherwise excluded from the competition before award may submit a written request for a pre-award debriefing to the COR.

1636.5 The COR shall make reasonable efforts to debrief the unsuccessful offeror as soon as practicable, unless the CCO determines that to do so is not in the best interest of the Board.

1636.6 A pre-award debriefing shall include, at a minimum:

- (a) The Board's evaluation of significant elements in the offeror's proposal;
- (b) A summary of the rationale for eliminating the offeror from the competition; and
- (c) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

1636.7 A pre-award debriefing shall not disclose:

- (a) The number of offerors;
- (b) The identity of another offeror;
- (c) The content of another offeror's proposal;
- (d) The ranking of other offerors;
- (e) The evaluation of other offerors; or

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- (f) Any information prohibited by §1636.10(b) of this section.

1636.8 Post-Award Debriefing. If a contract is awarded on a basis other than price alone, the COR may provide a post-award debriefing for any unsuccessful offeror that submits a written request for a debriefing, unless the CCO determines that to do so is not in the best interest of the Board.

1636.9 If a post-award debriefing is held, the information provided shall include, at a minimum:

- (a) The Board's evaluation of the significant weak or deficient factors in the unsuccessful offeror's proposal;
- (b) The overall evaluated cost or price (including unit prices), the numeric technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;
- (c) The overall numeric ranking of all offerors, if any ranking was developed during the evaluation;
- (d) A summary of the rationale for award; and
- (e) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations and other applicable authorities were followed.

1636.10 The post-award debriefing shall not:

- (a) Include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors; or
- (b) Reveal any information prohibited from disclosure or exempt from release under the District of Columbia Freedom of Information Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code §§2-531 et seq. (2012 Repl.)), including:
 - i. Information which has been designated as confidential and proprietary by an offeror;
 - ii. Trade secrets and commercial or financial information where disclosure would impair the competitive position of an offeror, including cost breakdowns, profit, indirect cost rates, and similar information;
 - iii. Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency, including the names and written comments of the members of the evaluation panel;
 - iv. Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy, including offerors' employees' names,

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résumés, contact information, the names of offerors' partners and the names of individuals providing reference information about an offeror's past performance; and

- v. Federal tax identification numbers or other information specifically exempted from disclosure by statute.

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7 DCMR § 1637

1637. SOLE SOURCE AND EMERGENCY PROCUREMENTS; SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1637.1 Sole Source Procurements. The COR may award a contract through a sole source procurement when there is only one (1) source for the required goods or services.

1637.2 The COR shall prepare a justification for the use of a sole source procurement which shall include:

- (a) Specific identification of the document as a sole source justification;
- (b) A statement that the requirement is a sole source;
- (c) A description of the requirement, including the estimated cost or value;
- (d) A description of the factors that establish the proposed vendor is the only source of the required goods or services;
- (e) A statement that the anticipated costs to the Board will be fair and reasonable;
- (f) A specific citation to the applicable provisions of this section that provide legal authority for the sole source procurement;
- (g) A description of the market survey conducted and the results, including a list of the potential sources contacted by the COR or which expressed, in writing, an interest in the procurement. If no market survey was done, a statement of the reasons why a market survey was not conducted; and
- (h) Any other relevant facts to support the use of a sole source procurement.

1637.3 A sole source contract shall not be justified on the basis of:

- (a) The lack of adequate advance planning for the procurement of the required goods or services;
- (b) Delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
- (c) Pending expiration of budget authority.

1637.4 The CCO shall approve all sole source justifications in excess of the ten thousand dollars (\$10,000).

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1637.5 Justification for a sole source procurement shall cover all of the goods or services being procured under a single contract. The justification for the sole source procurement of goods or services shall not be used to avoid competitive procedures for obtaining other goods or services which do not qualify as a sole source procurement under the same contract.

1637.6 The CA shall publicize all sole source contracts in accordance with the provisions with the provisions of §1611 of these Rules.

1637.7 **Emergency Procurements.** The CCO may award a contract on an emergency basis when there is an imminent threat to the public health, welfare, property, or safety, or to prevent or minimize serious disruption in Board's services or when an emergency condition exists.

1637.8 The COR shall prepare a justification for the emergency procurement. The justification shall include:

- (a) Specific identification of the document as an emergency justification;
- (b) A statement that emergency procurement procedures will be used for the procurement;
- (c) A description of the requirement;
- (d) A description of the emergency;
- (e) A description of the efforts made to ensure that proposals or bids are received from as many potential sources as possible;
- (f) The estimated value or cost;
- (g) A determination that the anticipated costs to the Board will be fair and reasonable in light of the emergency;
- (h) A specific citation to the applicable provisions of this section that provide legal authority for the emergency procurement; and
- (i) Any other pertinent facts that support the emergency justification.

1637.9 An emergency contract shall not be justified on the basis of:

- (a) The lack of adequate advance planning for the procurement of the required goods or services;
- (b) Delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or

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- (c) Pending expiration of budget authority.

1637.10 Emergency procurements shall be limited to those goods or services necessary to meet the emergency.

1637.11 Emergency procurements shall be made with as much competition as is practicable under the circumstances, based on the judgment and determination of the COR.

1637.12 The CCO 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.

1637.13 Emergency procurement procedures shall not be used for contracts exceeding ninety (90) days; provided that if the development time for the goods or services exceeds ninety (90) days, the contract shall not exceed one hundred twenty (120) days.

1637.14 A contract procured on an emergency basis shall not be modified to expand the scope or extend the time of the procurement unless a limited number of additional goods or services are needed to fill an on-going emergency requirement until regular procurement action procedures can be completed.

1637.15 Notice of an emergency procurement, including justification, may be publicized on the Board's website. Notice of an award of an emergency procurement shall be publicized in accordance with the provisions of §1611.10 of these Rules.

1637.16 **Procurement Exempt from Competition.** The following subjects of procurements are exempt from competition under these Rules and are not subject to the requirements of §1637:

- (a) When procuring 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;
- (b) When procuring investment or investment-related services;
- (c) When procuring job-related seminars and training that are offered to the general public for Board employees;
- (d) When procuring goods or services provided by another governmental entity, public entity, agency, or authority, or an organization consisting of such entities, agencies, or authorities.

1637.17 **Use of Small Purchase Procedures.** The CCO may use small purchase procedures for goods or services being procured if the total amount of the procurement does not exceed one hundred thousand dollars (\$50,000).

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1637.18 Good and services procured using small purchase procedures shall not be parceled, split, divided, or purchased over a period of time in order not to exceed the small purchase limit or to avoid any requirement for Board approval.

1637.19 The COR may make a procurement for an amount of ten thousand dollars (\$10,000) or less without obtaining Board approval and soliciting competitive quotations.

1637.20 For each procurement in an amount over ten thousand dollars (\$10,000) but less than or equal to one hundred thousand dollars (\$50,000), a COR shall obtain at least three (3) written quotations.

1637.21 For each procurement in an amount equal to or greater than fifty thousand dollars (\$50,000), a COR shall obtain CCO approval and at least three (3) written quotations.

1637.22 In determining whether or not to obtain quotations from more or fewer vendors than required in §§1637.20 and 1637.21, the COR shall consider the following factors:

- (a) The nature of the item or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or if it is relatively non-competitive;
- (b) Information obtained in making recent purchases of the same or similar item;
- (c) The urgency of the proposed purchase;
- (d) The dollar value of the proposed purchase; and
- (e) Past experience concerning specific contractor prices.

1637.23 For procurements in excess of the amounts specified in §1637.22, a COR may award a small purchase solicitation on a sole source basis, with CCO approval, when the COR determines that the requirements of these Rules for sole source procurements are satisfied.

1637.24 The COR shall determine that the price to be paid for small purchases is fair and reasonable.

1637.25 **Blanket Purchase Agreements.** A blanket purchase agreement (BPA) is not a contract and may be established without a purchase requisition or the obligation of funds.

1637.26 The COR may use a BPA as a small purchase procedure 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

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- (b) The administrative cost of writing numerous purchase orders can be avoided through the use of this procedure.

1637.27 The COR shall not use a BPA to:

- (a) Procure goods or services for which a requirements type contract has been issued by the Board; or
- (b) Avoid the small purchase authority limitation.

1637.28 The COR 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 COR during a specified period and within a stipulated total amount;
- (b) A statement that the Board is obligated only to the extent that authorized purchases are actually made under the BPA;
- (c) A statement that the prices 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 the small purchase limit); 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:
 - i. The name of the supplier;
 - ii. The BPA number;
 - iii. The date of purchase;
 - iv. The purchase order number;
 - v. An itemized list of goods or services furnished;
 - vi. The quantity, unit price, and extension of each item, less applicable discounts; and
 - vii. The date of delivery or shipment.

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1637.29 To the extent practicable, BPAs for items of the same type shall be placed concurrently with more than one (1) supplier. All competitive sources shall be given an equal opportunity to furnish goods, services, or other items under a BPA.

1637.30 When there are an insufficient number of vendors with BPAs to ensure maximum practicable competition for a particular purchase, the COR shall:

- (a) Solicit quotations from other sources and make the purchase as appropriate; and
- (b) Establish additional BPA's to facilitate future purchases when recurring requirements for the same or similar items or services seem likely, when qualified sources are willing to accept a BPA, or when it is otherwise practical to do so.

1637.31 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.

1637.32 **Unpriced Purchase Orders.** The COR shall use an unpriced purchase order only under the following circumstances:

- (a) When the transaction will not exceed the small purchase limit;
- (b) When it is impractical to obtain pricing in advance of issuance of the purchase order; and
- (c) When the purchase is for repairs to equipment requiring disassembly to determine the nature and extent of repairs, material is available from only one (1) source, and for which cost cannot be readily established, or goods or services for which prices are known to be competitive but exact prices are not known.

1637.33 The COR shall issue each unpriced purchase order by using a purchase order form and shall set a realistic dollar ceiling, either for each line item or for the total order. The dollar limitation shall be an obligation subject to adjustment when the firm price is established.

1637.34 **Modification, Termination, and Cancellation of Purchase Orders.** Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.

1637.35 The COR shall obtain a contractor's written acceptance of a purchase order modification if the COR determines the written acceptance necessary to ensure the contractor's compliance with the revised purchase order.

1637.36 If a purchase order that has been accepted in writing by the contractor is to be terminated, the COR shall process the termination action in accordance with the provisions of §1650 of these Rules.

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1637.37 If a purchase order that has not been accepted in writing by the contractor is to be canceled, the CA shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written acceptance of the cancellation, and proceed in accordance with the provisions of §§1637.38 and 1637.39.

1637.38 If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action shall be required and the purchase order shall be considered canceled.

1637.39 If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the COR shall treat the action as a termination in accordance with the provisions of §1650 of these Rules.

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7 DCMR § 1638

1638. CONTRACTING FOR SERVICES

1638.1 The provisions of this section apply to contracts for the provision of services.

1638.2 The provisions of these Rules requiring competition and setting forth the requirements and procedures for competitive procurement shall apply to the procurement of services.

1638.3 A contract for services may provide for services to be performed by professional or non-professional personnel on an individual or organizational basis.

1638.4 A contract may be used to provide services including, but not limited to, the following:

- (a) Maintenance, overhaul, and repair;
- (b) Expert and consulting services;
- (c) Engineering and technical services;
- (d) Operation of Board-owned equipment, facilities, and systems;
- (e) Communications services;
- (f) Transportation and related services;
- (g) Janitorial services; and
- (h) Stenographic reporting services.

1638.5 The CA shall ensure that the applicable provisions of the Service Contract Act of 1965 (41 U.S.C. §§ 6702 to 6707), the Davis-Bacon Act of 1931 (40 U.S.C. §§ 3141 to 3148), the Way to Work Amendment Act of 2006, effective June 9, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 et seq.), and any applicable wage determination, are incorporated in accordance with federal regulations into all solicitations and awards.

1638.6 **Expert and Consulting Services.** A COR may contract for expert and consulting services when essential to the Board's mission, when necessary to comply with a court order, or when those services would improve the Board's effectiveness or economy of operations. Expert and consulting services may include, but are not limited to, the following:

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- (a) Specialized opinions or professional or technical advice not available within the Board or from another District agency;
- (b) Outside points of view, to avoid too limited a judgment on critical issues;
- (c) The opinions, special knowledge, or skills of noted experts;
- (d) Assistance with the understanding of, and development of alternative solutions to, complex issues;

Advice on making the operation of managerial or systems more efficient or effective.

1638.7 Except as provided in §1638.9, a COR shall not contract for expert or consulting services for any of the following purposes:

- (a) To perform work of a policy-making, decision-making, or managerial nature that is the direct responsibility of Board officials;
- (b) To bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures; or
- (c) To specifically aid in influencing or enacting legislation in the Council of the District of Columbia.

1638.8 The COR shall ensure that a contract for expert or consulting services does not establish or allow any of the following:

- (a) An employer-employee relationship between the Board and the contractor;
- (b) Detailed control or supervision by Board personnel of the contractor or its employees with respect to the day-to-day operations of the contractor or the methods of accomplishment of the services;
- (c) A regularly established tour of duty for the contractor; or
- (d) Supervision of Board employees by the contractor.

1638.9 The COR shall not award a contract for consulting or expert services in a manner that gives preferential treatment to former Board employees.

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7 DCMR § 1639

1639. SPECIAL CONTRACT METHODS – MULTIYEAR CONTRACTS; OPTION CONTRACTS; PURCHASE CARD OPTIONS

1639.1 Multiyear Contracts. Unless prohibited by an appropriations act, a COR may enter into a multiyear contract 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 and the contract is consistent with the requirement of §1639.2 of these Rules. Payment and performance obligations for succeeding fiscal periods shall be subject to availability and appropriations of funds.

1639.2 A multiyear contract is authorized where the COR determines that:

- (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 Board procurement, or otherwise be in the best interest of the Board.

1639.3 Multiyear contracting may be used in a procurement by competitive sealed bids or competitive sealed proposals or in a sole source procurement.

1639.4 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 date 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.

1639.5 Cancellation of Multiyear Contracts. 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.

1639.6 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 or services performed under the contract.

1639.7 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.

1639.8 The costs of cancellation under §§1639.6 or 1639.7 may be paid from appropriations available for such purposes.

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1639.9 Multiyear Contract Solicitations. A solicitation for a multiyear contract shall include:

- (a) The amount of supplies or services required or the proposed contract period;
- (b) Where applicable and appropriate, a unit price for each supply or service, which unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation or resulting contract).
- (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 Board's rights or the contractor's rights under any termination clause in the contract; and
- (d) Whether bidders or offerors may submit prices for:
 - i. The first fiscal period only;
 - ii. The entire time of performance only; or
 - iii. Both the first fiscal period and the entire time of performance.

1639.10 Use of Option Contracts. The period within which an option may be exercised may extend beyond the date specified for completion of the services in a contract for services, but in no event, shall the option be exercised after the contract term has expired.

1639.11 The base period in a contract for services or goods shall not exceed one (1) year, unless the contract is funded from an appropriation that is available for more than one (1) year or is a multiyear contract. The total of the base and option periods in a contract for services or goods shall not exceed five (5) years unless:

- (a) Prior to solicitation, the CCO determines in writing that it is in the best interest of the Board, and the solicitation for the contract specifies the total of the base and option periods of the contract; or
- (b) Prior to the expiration of a contract, the CCO determines in writing that it is in the best interest of the Board to extend the term beyond the total term specified in the contract and the COR provides justification for using a sole source modification in accordance with these Rules.

1639.12 The price of each option shall be readily discernible from the contract provisions.

1639.13 Exercise of Options. When exercising an option, the COR shall provide written notice to the contractor within the time period specified in the contract.

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1639.14 **Purchase Card Procurements.** The CCO may establish and administer a purchase card program to be used by Board employees to perform the Board's programmatic functions. The purchase card program shall be approved by the Executive Director.

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7 DCMR § 1640

1640. TYPES OF CONTRACTS

1640.1 The COR shall use the types of contracts described in this section for all types of procurement, except as otherwise provided for certain small purchases under these Rules.

1640.2 The cost-plus-a-percentage-of-cost type of contract shall not be used.

1640.3 The COR, in conjunction with the CA, shall select the type of contract that is most appropriate to the circumstances of each procurement, in accordance with the provisions of this section.

1640.4 In procurements by other than competitive sealed bids, the COR may negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

1640.5 **Selecting Contract Types.** When procurement is by competitive sealed bids, the COR shall use either a firm-fixed-price contract or a fixed-price contract with economic price adjustment. The type of contract to be used shall be determined prior to solicitation, and the solicitation shall inform bidders of the type of contract that will be used.

1640.6 Except when procurement is by competitive sealed bids, the COR may use any type of contract approved for use under this section, or combination of types, that will promote the best interests of the Board.

1640.7 The COR shall use a firm-fixed-price contract when the risk involved is minimal (or can be predicted with an acceptable degree of certainty) and when fair and reasonable prices can be established. However, if a reasonable basis for firm-fixed pricing does not exist, the COR may consider other contract types, or combination of types, that will appropriately link profit to contractor performance, except as limited by §1640.5.

1640.8 Except as limited in §1640.5, when deciding which contract type (or combination of types) to use, the COR shall give preference to contract types in the following order:

- (a) Fixed-price;
- (b) Fixed-price incentive;
- (c) Cost-plus-incentive-fee;
- (d) Cost-plus-fixed-fee;
- (e) Cost-reimbursement; and

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- (f) Other types.

1640.9 The COR shall avoid continued use of a cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.

1640.10 The COR shall include documentation in each contract file to show why the particular contract type was selected, except for the following procurements:

- (a) Small purchases other than cost-reimbursement contracts; and
- (b) Repetitive purchases on a firm-fixed-price basis.

1640.11 **Fixed Price Contracts.** Fixed-price contracts may provide for a firm price or, in appropriate cases, an adjustable price.

1640.12 Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price shall be subject to adjustment only by operation of contract clauses, approved by the CCO, providing for equitable adjustment or other revision of the contract price under stated circumstances.

1640.13 A firm-fixed-price contract shall provide for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.

1640.14 A firm-fixed-price contract shall be used for acquiring commercial products or commercial-type products, or for acquiring other goods or services, on the basis of reasonably definite functional or detailed specifications if the COR can establish fair and reasonable prices at the outset, including the following circumstances:

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

1640.15 **Fixed Price Contracts with Economic Price Adjustments.** The COR shall not use a fixed-price contract with economic price adjustment unless the COR determines that it is necessary to protect the contractor and the Board against significant fluctuations in labor or material costs, or to provide for contract price adjustment in the event of changes in the contractor's established prices.

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1640.16 A fixed-price contract with economic price adjustment shall provide for upward and downward revision of the stated contract price upon the occurrence of certain contingencies that are specifically defined in the contract.

1640.17 An economic price adjustment may be one (1) of the following general types:

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

1640.18 For use of economic price adjustments in procurements by competitive sealed bids, the COR shall follow the procedures set forth in §1628 of these Rules.

1640.19 The COR may use a fixed-price contract with economic price adjustment when the following factors are applicable:

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

1640.20 Price adjustments based on established catalog prices shall be restricted to industry-wide contingencies. Industry-wide contingencies shall be those affecting a particular industry as a whole, and shall not depend upon circumstances within the contractor's control.

1640.21 Price adjustments based on labor and material costs shall be limited to contingencies beyond the contractor's control.

1640.22 When establishing the base level from which adjustment will be made, the COR shall ensure that contingency allowances are not duplicated by inclusion in both the base price and the adjustment requested by the contractor under the economic price adjustment clause approved by the CCO.

1640.23 In contracts that do not require submission of cost or pricing data, the COR shall obtain adequate information to establish the base level from which adjustment will be made and may require verification of data submitted.

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1640.24 Fixed Price Contracts with Prospective Price Re-Determination. The COR may use a fixed-price contract with prospective price redetermination in procurements of quantity production or services for which it is possible to negotiate a fair and reasonable firm-fixed-price for an initial period, but not for subsequent periods of contract performance as provided in §1640.27.

1640.25 The COR shall not use a fixed-price contract with prospective price redetermination unless all of the following apply:

- (a) The COR has determined that the conditions for use of a firm-fixed-price contract are not present and a fixed-price incentive contract would not be more appropriate;
- (b) The contractor's accounting system is adequate for price redetermination;
- (c) The prospective pricing periods can be made to conform with the operation of the contractor's accounting system; and
- (d) There is reasonable assurance that price redetermination actions will take place promptly at the specified times.

1640.26 When the COR uses a fixed-price contract with prospective price redetermination, the initial period shall be the longest period for which it is possible to negotiate a fair and reasonable firm-fixed-price. Each subsequent pricing period shall be at least twelve (12) months.

1640.27 A fixed-price contract with prospective price redetermination may provide for a ceiling price based on evaluation of the uncertainties involved in performance and their possible cost impact. The ceiling price shall provide for assumption of a reasonable proportion of the risk by the contractor and, once established, may be adjusted only by operation of provisions for an equitable adjustment or other revision of the contract price under stated circumstances.

1640.28 When a fixed-price contract with prospective price redetermination is used, the COR shall include an appropriate clause approved by the CCO.

1640.29 Cost Reimbursement Contracts. The COR shall use a cost-reimbursement contract only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

1640.30 The COR may use a cost-reimbursement contract only when the following circumstances apply:

- (a) The contractor's accounting system is adequate for determining costs applicable to the contract;
- (b) Appropriate Board surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used; and

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- (c) The COR determines, in writing, that the use of a cost-reimbursement type contract is likely to be less costly than any other type, or it is impractical to obtain goods or services of the kind or quality required without the use of this contract type.

1640.31 Each cost-reimbursement contract shall contain the following:

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

1640.32 The COR may use a cost contract for facilities contracts.

1640.33 The COR may use a cost-sharing contract when the contractor agrees to absorb a portion of the costs, in the expectation of substantial compensating benefits.

1640.34 The COR may use a cost-plus-incentive-fee contract or cost-plus-award fee contract in accordance with this section.

1640.35 The COR may use a cost-plus-fixed-fee contract when contracting for efforts that might otherwise present too great a risk to the contractor, such as when the contract is for a study and the level of effort is unknown. The contract shall include a clause, approved by the CCO, setting a maximum allowable fee.

1640.36 A cost-plus-fixed-fee contract may be in either a completion form or term form. When using the completion form, the COR shall describe the scope of work by stating a definite goal or target and specifying an end product. When using the term form, the COR shall describe the scope of work in general terms and obligate the contractor to devote a specified level of effort for a stated time period.

1640.37 When using a cost-plus-fixed-fee contract, the completion form shall be preferred over the term form whenever the work, or specific milestones for the work, can be defined well enough to permit development of estimates within which the contractor can be expected to complete the work. The term form shall not be used unless the contractor is obligated by the contract to provide a specific level of effort within a definite time period.

1640.38 **Incentive Contracts.** The COR may use an incentive contract when a firm-fixed-price contract is not appropriate and the required goods or services can be procured at lower costs and, in certain instances, with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance.

1640.39 The COR may use an incentive contract when it is necessary to establish reasonable and attainable targets that are clearly understandable by the contractor, and to provide appropriate incentive arrangements designed to motivate contractor efforts and discourage contractor inefficiency and waste.

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1640.40 When predetermined formula-type incentives on technical performance or delivery are included, increases in profit or fee shall be provided only for achievement that surpasses the targets, and decreases shall be provided for to the extent that targets are not met.

1640.41 The COR shall apply incentive increases or decreases to performance targets rather than minimum performance requirements.

1640.42 Incentive contracts may be fixed-price incentive contracts or cost-reimbursement incentive contracts.

1640.43 Cost-reimbursement incentive contracts shall be subject to the provisions of §§1640.29, 1640.30, and 1640.31.

1640.44 **Types of Incentives.** Incentive contracts shall include cost incentives which take the form of a profit or fee adjustment formula. No incentive contract shall provide for other incentives without also providing for a cost incentive.

1640.45 Except for cost-plus-award-fee contracts, incentive contracts shall include a target cost, a target profit or fee, and a profit or fee adjustment formula that (within the constraints of a price ceiling or minimum and maximum fee) provides for the following:

- (a) Actual cost that meets the target will result in the target profit or fee;
- (b) Actual cost that exceeds the target will result in downward adjustment of the target profit or fee;
and
- (c) Actual cost that is below the target will result in upward adjustment of the target profit or fee.

1640.46 Technical performance incentives may be considered in connection with specific product characteristics or other specific elements of the contractor's performance.

1640.47 Technical performance incentives shall be designed to tailor profit or fee to results achieved by the contractor, compared with specified target goals. The contract shall be specific in establishing performance test criteria (such as testing conditions, instrumentation precision, and data interpretation) in order to determine the degree of attainment of performance targets.

1640.48 The COR may consider delivery incentives when meeting a required delivery schedule is a significant Board objective.

1640.49 The COR shall specify in incentive arrangements the application of the reward-penalty structure in the event of Board-caused delays or other delays beyond the control and without the fault or negligence of the contractor or a subcontractor.

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1640.50 Fixed Price Incentive Contracts. A fixed-price incentive contract may be used when the following factors apply:

- (a) A firm-fixed-price contract is not suitable;
- (b) The nature of the goods or services being procured and other circumstances of the procurement are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance;
- (c) If the contract also includes incentives on technical performance or delivery, the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work;
- (d) The contractor's accounting system is adequate for providing data for negotiating firm targets and a realistic profit adjustment formula, as well as later negotiation of final costs; and
- (e) Adequate cost or pricing information for establishing a reasonable firm target is reasonably expected to be available at the time of initial contract negotiations.

1640.51 A fixed-price incentive contract shall be used only when the COR determines that this type of contract would be less costly than any other type or that it is impractical to obtain goods or services of the kind or quality required without the use of this contract type.

1640.52 A fixed-price incentive contract with a firm target shall specify a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a profit adjustment formula. These elements shall be negotiated at the outset. The formula shall have the following results:

- (a) When the final cost is less than the target cost, application of the formula will result in a final profit greater than the target profit;
- (b) When the final cost is more than the target cost, application of the formula will result in a final profit less than the target profit, or a net loss; or
- (c) If the final negotiated cost exceeds the price ceiling, the contractor will absorb the difference as a loss.

1640.53 In a fixed-price incentive contract with a firm target, the price ceiling shall be the maximum that may be paid to the contractor, except for any adjustment under other contract clauses.

1640.54 When the contractor completes performance, the COR and the contractor shall negotiate the final cost, and establish the final price by applying the formula.

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1640.55 Cost Plus Award Fee Contracts. A cost-plus-award-fee contract may be used when the following factors apply:

- (a) The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance, or schedule;
- (b) The likelihood of meeting the procurement objective will be enhanced by using a contract that effectively motivates the contractor toward exceptional performance and provides the Board with the flexibility to evaluate both actual performance and the conditions under which it was achieved; and
- (c) Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits.

1640.56 A cost-plus-award-fee contract shall provide for a fee consisting of a base amount fixed at inception of the contract and an award amount that the contractor may earn in whole or in part during performance. Each contract shall state a maximum award amount that may be paid under the contract.

1640.57 The amount of the award fee to be paid shall be determined by the COR's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract.

1640.58 The award fee determination shall be made unilaterally by the COR and shall not be subject to appeal or the contractor's rights under the disputes clause in the contract.

1640.59 A cost-plus-award-fee contract shall provide for evaluation at stated intervals during performance, so that the contractor will periodically be informed of the quality of its performance and the area in which improvement is expected.

1640.60 Definite Quantity Contracts. The COR may use a definite-quantity contract when it can be determined in advance that a specific quantity of goods or services will be required during the contract period and the goods or services are regularly available or will be available after a short lead time.

1640.61 Term Contracts. The COR may use a term contract (either a requirements contract or an indefinite-quantity contract) when the exact quantities of goods or services are not known at the time of contract award.

1640.62 A term contract may also specify maximum or minimum quantities that the Board may order under each individual order and the maximum that the Board may order during a specified period of time.

1640.63 Requirements Contracts. The COR may use a requirements contract when the COR anticipates recurring requirements but cannot predetermine the precise quantities of goods or services that the Board will need during a definite period.

1640.64 The COR shall include the following in each contract and solicitation for a requirements contract:

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

1640.65 If feasible, a requirements contract shall state the maximum limit of the contractor's obligation to deliver and the Board's obligation to order.

1640.66 For requirements contracts, the COR shall execute the contract without the obligation of funds. Funds shall be obligated by the Board at the time orders are issued under the contract.

1640.67 The COR executing orders under a requirements contract shall obligate funds when each individual order is issued. The COR may order from a requirements contract within the limits of the Board's budget authority for the items or services covered by the contract.

1640.68 **Indefinite Quantity Contracts.** The COR may use an indefinite-quantity contract when the COR cannot predetermine, above a specified minimum, the precise quantity of goods or services that will be required during the contract period, and the COR determines that it is inadvisable to commit the Board for more than a minimum quantity.

1640.69 An indefinite-quantity contract shall require the Board to order and the contractor to furnish at least the stated minimum quantity of goods or services. The contractor shall also be required to furnish, if and as ordered, any additional quantities, not to exceed a stated maximum.

1640.70 For indefinite-quantity contracts, the COR shall ensure that the Board obligates the amount of budget authority needed to cover the Board's minimum required order under the contract.

1640.71 **Ordering Under Term Contracts.** When determined appropriate by the COR, authorization for placing oral or telegraphic orders may be included in a term contract provided that the CCO shall establish procedures for obligating funds and confirming all telegraphic and oral orders.

1640.72 Each order placed under a term contract shall contain the following information:

- (a) Date of the order;
- (b) Contract number and an order number;
- (c) Item number, description, quantity, and unit price;
- (d) Delivery or performance date;

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- (e) Place of delivery or performance;
- (f) Packaging, packing, and shipping instructions, if any;
- (g) Accounting and appropriations data; and
- (h) Any other pertinent information.

1640.73 Time and Materials Contracts. A time-and-materials contract may be used only after the COR determines in writing that no other type of contract is suitable, and only if the contract includes a ceiling price that the contractor exceeds at its own risk.

1640.74 The COR shall document the contract file to justify the reasons for and the amount of any subsequent change in the ceiling price.

1640.75 A time-and-materials contract may be used only when it is not possible at the time of executing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

1640.76 A time-and-materials contract shall include direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, profit, and materials required at cost.

1640.77 The CA shall provide surveillance of contractor performance when a time-and-materials type contract is used.

1640.78 When the nature of the work to be performed requires the contractor to furnish material that it regularly sells to the general public in the normal course of its business, the contract may provide for charging material on a basis other than cost if the following factors apply:

- (a) The total estimated contract price does not exceed fifty thousand dollars (\$50,000), or the estimated price of material charged does not exceed twenty percent (20%) of the estimated contract price;
- (b) The material to be charged is identified in the contract;
- (c) No element of profit on material charged is included as profit in the fixed hourly labor rates; and
- (d) The contract provides that the price to be paid for the material shall be based on an established catalog or list price in effect when material is furnished, less all applicable discounts to the Board, and that in no event shall the price exceed the contractor's sales price to its most-favored customer for the same item in like quantity, or the current market price, whichever is lower.

1640.79 Labor Hour Contracts. When materials are not required, the COR may use a labor-hour contract, a variation of the time-and-materials contract.

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1640.80 The use of a labor-hour contract shall be in accordance with the provisions governing time and materials contracts.

1640.81 **Letter Contracts.** A letter contract may be used only after the COR determines, in writing, that no other type of contract is suitable.

1640.82 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.

1640.83 A letter contract shall not be entered into without competition.

1640.84 A letter contract shall not be amended to satisfy a new requirement unless the new requirement is inseparable from the existing contract. Any amendment shall be subject to the same requirements as a new letter contract.

1640.85 The COR 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. Each letter contract shall be as complete and definite as possible under the circumstances and shall include clauses approved and required by the CCO.

1640.86 When a letter contract is executed, the COR shall include a price ceiling for the anticipated definitive contract. The price ceiling shall not be exceeded. Each letter contract shall also include a clause, approved by the CCO, indicating the maximum liability of the Board under the letter contract.

1640.87 The maximum liability to the Board shall be the estimated amount necessary to cover the contractor's requirement for funds before execution of the definitive contract. However, the Board's maximum liability shall not exceed fifty percent (50%) of the overall price ceiling for the term of the definitive contract.

1640.88 In procurements by other than competitive sealed bids, a letter contract shall contain a negotiated schedule for execution of the definitive contract, including dates for submission of the contractor's price proposal, cost or pricing data (if required), a date for start of negotiations, and a target date for execution of the definitive contract.

1640.89 The COR shall execute a definitive contract within one hundred and twenty (120) days after the date of execution of the letter contract or before completion of fifty percent (50%) of the work to be performed, whichever occurs first. The COR may authorize an additional period if the additional period is approved in writing by the CCO.

1640.90 In procurements by other than competitive sealed bids, if the COR and the contractor cannot negotiate a definitive contract because of failure to reach agreement regarding price or fee, the contractor shall be required to continue the work and the COR may, with the approval of CCO, determine a reasonable price or fee.

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1640.91 Prior to execution of a letter contract, the COR shall ensure that funds are encumbered for obligation in the amount of the maximum Board liability for the term of the letter contract.

1640.92 For purposes of review and approval of letter contracts, and for purposes of contracting authority, the COR shall use the estimated cost of the definitive contract for determining the type and level of review and approval required.

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7 DCMR § 1641

1641. REQUIRED SOURCES OF GOODS AND SERVICES

1641.1 Except as otherwise authorized by these Rules or law, the Board shall satisfy requirements for goods and services from or through the sources listed below in descending order of priority:

- (a) Existing Board inventories;
- (b) Existing excess Board property;
- (c) Existing Board indefinite quantity contracts, to the extent of the minimums stated in those contracts, or other existing Board contracts which make available the goods or services required;
- (d) Other sources, including District and Federal schedules and cooperative purchasing agreements.

1641.2 **Excess Board Property.** When requirements cannot be met from existing Board inventories, the Board shall use excess Board property as its first source of supply in fulfilling its requirements.

1641.3 The Board shall ensure that all personnel make positive efforts to satisfy Board requirements by obtaining and using excess Board property or other existing Board contracts which make available the goods or services required before initiating contract action.

1641.6 **District and Federal Supply Schedules.** The COR may utilize District and Federal schedules that offer programs to the District following the applicable schedule procedures.

1641.7 Except as otherwise provided in a District or Federal schedule, all schedule contract terms and conditions apply to contracts between the schedule contractor and the Board, provided the terms and conditions are in the best interest of the Board.

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7 DCMR § 1642

1642. CONTRACTORS

1642.1 Responsible Prospective Contractors. The COR shall make purchases from and award contracts only to responsible contractors.

1642.2 The COR shall not make a purchase or award unless the COR has determined in writing that the prospective contractor is responsible in accordance with the provisions of this section.

1642.3 In the absence of information clearly indicating that the prospective contractor is responsible, the COR shall make a determination of non-responsibility.

1642.4 To be determined responsible, a prospective contractor shall meet all of the following requirements:

- (a) Financial resources adequate to perform the contract or the ability to obtain them;
- (b) Ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- (c) A satisfactory performance record;
- (d) A satisfactory record of integrity and business ethics;
- (e) The necessary organization, experience, accounting and operational controls, and technical skills or the ability to obtain them;
- (f) Compliance with the applicable District licensing and tax laws and regulations;
- (g) The necessary production, and technical equipment and facilities or the ability to obtain them; and
- (h) Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

1642.5 If the COR determines that the price bid or offered by a prospective contractor is so low as to appear unreasonable or unrealistic, the COR may determine the prospective contractor to be non-responsible.

1642.6 Special Standards of Responsibility. When necessary for a particular procurement or class of procurements, the COR shall develop, with the assistance of the CA, special standards of responsibility.

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1642.7 Special standards shall be developed when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance.

1642.8 The COR shall set forth the special standards in the solicitation.

1642.9 The special standards set forth in the solicitation shall apply to all bidders or offerors.

1642.10 **Application of General Standards.** The COR shall investigate and determine whether the contractor is eligible to receive an award under the Walsh-Healey Act, 41 U.S.C. §§ 35-45, and shall not rely on the contractor's representation, if either of the following apply:

(a) A protest of eligibility has been lodged in accordance with federal law and regulations; or

(b) The COR has reason to doubt the validity of the representation.

1642.11 Except to the extent that a prospective contractor has sufficient resources, the COR shall require, and the prospective contractor shall promptly provide, acceptable evidence of the prospective contractor's ability to obtain resources.

1642.12 Acceptable evidence of the prospective contractor's ability to obtain resources shall consist of a commitment or explicit arrangement that will be in existence prior to the time of contract award to rent, purchase, or otherwise acquire the needed facilities, equipment, personnel, or other resources.

1642.13 A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be non-responsible. The COR may determine the contractor to be responsible if the circumstances of the prior deficiency were properly beyond the contractor's control or if the contractor has taken appropriate corrective action.

1642.14 An affiliated business shall be considered a separate entity in determining whether the business that is to perform the contract meets the applicable standards of responsibility. However, the COR shall consider an affiliate's past performance and integrity when they may adversely affect the prospective contractor's responsibility.

1642.15 **Subcontractor Responsibility.** A prospective prime contractor shall be accountable for determining the responsibility of prospective subcontractors. The prime contractor shall use the requirements and standards for responsibility set forth in this section.

1642.16 Because the determination of a prospective subcontractor's responsibility may affect the Board's determination of the prospective prime contractor's responsibility, a prospective contractor shall be required to provide written evidence of a proposed subcontractor's responsibility.

1642.17 When it is in the best interests of the Board, the COR may independently determine a prospective subcontractor's responsibility using the standards and requirements for responsibility set forth in this section.

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1642.18 Obtaining Information for Determination of Responsibility. Before making a determination of responsibility, the COR shall possess or obtain information sufficient to satisfy the COR that a prospective contractor currently meets the applicable standards and requirements for responsibility set forth in this section.

1642.19 The COR shall obtain information regarding the responsibility of a prospective contractor who is the apparent low bidder or whose offer is in the competitive range. This information shall be obtained promptly after bid opening or receipt of offers.

1642.20 The prospective contractor shall promptly supply information requested by the COR regarding the responsibility of the prospective contractor.

1642.21 If the prospective contractor fails to supply the information requested under § 1642.20, the COR shall make the determination of responsibility or non-responsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the COR shall determine the prospective contractor to be non-responsible.

1642.22 The COR shall use the following sources of information, as appropriate, to support determinations of responsibility or non-responsibility:

- (a) A consolidated list of debarred, suspended, and ineligible contractors maintained by the District;
- (b) Records and experience data, including verifiable knowledge of Board or District personnel;
- (c) Information supplied by the prospective contractor, including bid or proposal information, questionnaire replies, financial data, information on production equipment, and personnel information;
- (d) Pre-award survey reports; and
- (e) Other sources, such as publications, suppliers, subcontractors, and customers of the prospective contractor, financial institutions, government agencies, and business and trade associations.

1642.23 Any prospective contractor who submits a bid or proposal for any contract shall submit an affidavit indicating whether the prospective contractor has complied with the filing requirements of District of Columbia tax laws, and whether the prospective contractor has paid taxes due to the District of Columbia or is in compliance with any payment agreement with the Office of Tax and Revenue. The affidavit shall acknowledge the penalty provided by law for making false statements.

1642.24 Before making an affirmative determination of responsibility for any contract exceeding one hundred thousand dollars (\$100,000), the COR shall obtain certification from the Department of Tax and Revenue that the prospective contractor has complied with the filing requirements of District of Columbia tax laws, and that the prospective contractor has paid taxes due to the District of Columbia or is in compliance with any payment agreement with the Office of Tax and Revenue.

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1642.25 CORs and CAs who become aware of circumstances casting doubt on a contractor's ability to perform a contract successfully shall promptly inform the COR and furnish the relevant information in writing.

1642.26 **Determination and Documentation.** The Executive Director's execution of a contract shall constitute a determination that the prospective contractor is responsible with respect to that contract.

1642.27 When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, the CA shall make, sign, and place in the contract file a determination of non-responsibility, which shall state the basis for the determination.

1642.28 The CA shall prepare and sign a narrative justification that documents a determination of responsibility or non-responsibility. Documents and reports supporting a determination of responsibility or non-responsibility, including any pre-award survey reports, shall be included in the contract file.

1642.29 Except as exempted under the District's Freedom of Information Act, information, including the pre-award survey report, accumulated for purposes of determining the responsibility of a prospective contractor shall not be released or disclosed outside the Board or District government.

1642.30 The COR may discuss pre-award survey information with the prospective contractor before determining responsibility. At any time after award, the COR may discuss the findings of the pre-award survey with the company surveyed.

1642.31 **Pre-Award Surveys.** The COR may require a pre-award survey to assist in determining a prospective contractor's capability to perform a proposed contract.

1642.32 If the contemplated contract will be ten thousand dollars (\$10,000) or less, or will have a fixed price of less than one hundred thousand dollars (\$100,000) and will involve only commercial products, the COR shall not request a pre-award survey unless circumstances justify the cost of the survey.

1642.33 Before beginning a pre-award survey, the CA shall ascertain whether the prospective contractor is debarred, suspended, or ineligible. If the prospective contractor is debarred, suspended, or ineligible, the CA shall not proceed with the pre-award survey.

1642.34 When the prospective contractor surveyed is a SBE or CBE, the CA may request information and advice concerning the contractor's capability and past performance from the District of Columbia Local Business Opportunity Commission before making a determination regarding the contractor's responsibility or non-responsibility.

1642.35 When a pre-award survey discloses unsatisfactory performance, the CA shall determine the extent to which the prospective contractor plans, or has taken, corrective action.

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1642.36 The pre-award survey report shall indicate any persistent pattern of need under prior contracts for costly and burdensome Board or District assistance to the contractor (such as engineering, inspection, or testing) that were provided to protect the Board's or District's interests but not contractually required.

1642.37 The CA shall prepare a narrative pre-award survey report that documents the results of the pre-award survey and provides support for both the evaluation ratings and the determination of responsibility or non-responsibility.

1642.38 The pre-award survey report shall, as necessary, include information concerning the contractor's technical capabilities, financial capability, quality assurance procedures, and the quality of the contractor's accounting system.

1642.39 The pre-award survey report shall be prepared in the form prescribed by the CCO.

1642.40 **Conflicts of Interests.** The provisions of this section shall apply to all procurements. CORs shall seek to avoid organizational conflicts of interest, especially when procuring the following:

- (a) Management support services;
- (b) Consultant or other professional services;
- (c) Contractor performance of or assistance in technical evaluations; and
- (d) Systems engineering and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production.

1642.41 The CA shall analyze each planned procurement in order to identify and evaluate potential organizational conflicts of interest as early in the procurement process as possible and avoid, neutralize, or mitigate significant potential conflicts before contract award.

1642.42 The COR shall seek to prevent the existence of conflicting roles that might bias a contractor's judgment and shall seek to prevent unfair competitive advantage.

1642.43 The COR may obtain the advice of the Board's General Counsel and the assistance of appropriate COTRs in evaluating potential conflicts and in developing any necessary solicitation and contract clauses approved by the CCO.

1642.44 **Conflicting Contractor Involvement.** A contractor that provides systems engineering and technical direction for a system, but does not have overall contractual responsibility for its development, integration, assembly and checkout, or production, shall not be awarded any of the following:

- (a) A contract to supply the system or any of its major components;

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- (b) A subcontract to supply the system or any of its major components; or
- (c) A consulting contract with a supplier of the system or any of its major components.

1642.45 If a contractor prepares and furnishes complete specifications covering non-developmental items to be used in a competitive procurement, that contractor shall not be allowed to furnish those items, either as a prime contractor or as a subcontractor, for a reasonable period of time to include at least the duration of the initial production contract. This subsection shall not apply to the following;

- (a) Contractors that furnish, at the Board's request, specifications or data regarding a product they provide, even though the specifications or data may have been paid for separately or in the price of the product; and
- (b) Contractors acting as industry representatives that assist the Board to prepare, refine, or coordinate specifications, regardless of source, when the assistance is supervised and controlled by Board representatives.

1642.46 If a single contractor drafts complete specifications for non-developmental equipment, the contractor shall be eliminated for a reasonable time from competition for production based on those specifications.

1642.47 If a contractor prepares, or assists in preparing, a work statement to be used in competitively procuring a system or services, or provides material leading directly, predictably, and without delay to this type of work statement, that contractor shall not supply the system or services unless one (1) or more of the following apply:

- (a) The contractor is the sole source;
- (b) The contractor has participated in the developmental and design work; or
- (c) More than one (1) contractor has been involved in preparing the work statement.

1642.48 A contract involving technical evaluation of other contractors' offers, products, or consulting services shall not be awarded to a contractor that would evaluate or advise the Board concerning its own products or activities, or those of a competitor, without proper safeguards to ensure objectivity and protect the Board's interests.

1642.49 **Procedures for Avoiding Conflicts.** When information concerning prospective contractors is necessary to identify and evaluate potential organizational conflicts of interest or to develop recommended actions, the COR shall seek the information from within the District or from other readily available sources.

1642.50 Before issuing a solicitation for a contract that may involve a significant potential conflict, the COR shall seek guidance from the Ethics Officer on a course of action for resolving the conflict.

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1642.51 If the COR initially decides that a particular procurement involves a significant potential organizational conflict of interest, before issuing the solicitation the COR shall submit the following to the Ethics Officer for approval:

- (a) A written analysis, including a recommended course of action for avoiding, neutralizing, or mitigating the conflict;
- (b) A draft solicitation provision; and
- (c) When appropriate, a proposed contract clause.

1642.52 The Ethics Officer shall do the following:

- (a) Review the COR's analysis and recommended course of action, including the draft provision and any proposed clause;
- (b) Consider the benefits and detriments to the Board and prospective contractors; and
- (c) Approve, modify, or reject the recommendation in writing.

1642.53 After receiving a response from the Ethics Officer, the COR shall do the following:

- (a) Include an approved provision and any approved clause in the solicitation;
- (b) Consider additional information provided by prospective contractors in response to the solicitation or during negotiations; and
- (c) Before awarding the contract, resolve the potential conflict in a manner consistent with the approval or other direction by the Ethics Officer.

1642.54 Any solicitation that may involve a significant potential organizational conflict of interest shall contain a provision which describes the following:

- (a) The nature of the potential conflict as seen by the COR;
- (b) The nature of the proposed restraint upon future contractor activities; and
- (c) Depending on the nature of the procurement, whether the terms of any proposed conflicts clause are subject to negotiation.

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1642.55 If, as a condition of award, a contractor's eligibility for future prime contract or subcontract awards would be restricted or a contractor would have to agree to some other restraint, the solicitation shall contain a conflicts clause, approved by the CCO, that specifies both the nature and duration of the proposed restraint. The COR shall include the conflicts clause in the contract.

1642.56 Any restraint imposed by a conflicts clause shall be limited to a fixed term of reasonable duration which is sufficient to avoid the circumstance of unfair competitive advantage or potential bias. In each case, the restriction shall specify termination by a specific date or upon the occurrence of an identifiable event.

1642.57 The Executive Director may waive any requirement of §§1642.40 through 1642.56, if the Executive Director determines in writing that the application of the rule of procedure in a particular situation would not be in the best interests of the Board. Each request for a waiver shall be in writing, and shall describe the nature of the conflict and the justification for the waiver.

1642.58 **Contractor Team Arrangements.** The Board may recognize the integrity and validity of contractor team arrangements when those arrangements are identified and company relationships are fully disclosed in an offer or, for an arrangement entered into after submission of an offer, before the arrangement becomes effective. The Board shall not require or suggest the dissolution of contractor team arrangements unless those arrangements are in violation of any law or regulation, or are not in the best interests of the Board.

1642.59 Nothing in this section shall authorize any contractor team arrangement in violation of antitrust statutes or limit the Board's rights to do any of the following;

- (a) Require consent to subcontract;
- (b) Determine, on the basis of the stated contractor team arrangement, the responsibility of the prime contractor;
- (c) Provide to the prime contractor data rights owned or controlled by the Board;
- (d) Pursue policies on competitive contracting, subcontracting, and component breakout after initial production, or at any other time; or
- (e) Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

1642.60 **Subcontracting.** The COR shall require consent to subcontract in those instances where approval of subcontractors is required by these Rules. The COR may require consent to subcontract in any instance where the COR determines that it would be in the best interest of the Board.

1642.61 The COR shall ensure that any requirements for consent to subcontract are included in the solicitation for the prime contract.

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1642.62 The COR's consent to subcontract shall not constitute a determination of the acceptability of the subcontract terms, price, or allowability of costs, unless the consent to subcontract specifies otherwise.

1642.63 The COR shall not consent to subcontract in any of the following instances:

- (a) When the fee in a cost-reimbursement subcontract exceeds any applicable fee limitations;
- (b) When a payment under the subcontract is on a cost-plus-a-percentage-of-cost basis;
- (c) When the COR is obligated to deal directly with the subcontractor;
- (d) When the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor are made binding on the Board; or
- (e) When there is a repetitive or unduly protracted use of cost-reimbursement, time-and-materials, or labor-hour subcontracts.

1642.64 The COR shall not refuse consent to subcontract merely because the subcontract contains a clause giving the subcontractor the right of indirect appeal to the Contract Appeals Board if the subcontractor is affected by a dispute between the Board and the prime contractor.

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7 DCMR § 1643

**1643. DELIVERY AND PERFORMANCE; LIQUIDATED DAMAGES; SUPPLY CONTRACT
QUANTITY VARIANCES; STOP WORK ORDERS; BOARD DELAYS; QUALITY
ASSURANCE**

1643.1 The time of delivery or performance is an essential contract element and shall be clearly stated in each solicitation.

1643.2 A COR shall ensure that a delivery or performance schedule is realistic and meets the requirements of the procurement.

1643.3 Except when clearly unnecessary, a solicitation shall inform bidders or offerors of the basis on which their bids or proposals will be evaluated with respect to time of delivery or performance.

1643.4 **Delivery and Performance Schedules.** When establishing a contract delivery or performance schedule for goods or services, the COR shall consider applicable factors, including the following:

- (a) Urgency of need;
- (b) Production time;
- (c) Market conditions;
- (d) Transportation time;
- (e) Industry practices;
- (f) Capabilities of certified minority businesses;
- (g) Time for obtaining and evaluating bids or offers and awarding contracts;
- (h) Time for contractors to comply with any condition precedent to contract performance; and
- (i) Time for the Board to perform its obligations under contract, such as furnishing government property to the contractor.

1643.5 In any contract, different completion dates may be established for separable items of work.

1643.6 When multiple completion dates are used, the COR shall evaluate requests for extension of time with respect to each item, and shall modify the affected completion dates when appropriate.

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1643.7 The COR may establish contract delivery or performance schedules on the basis of any of the following:

- (a) A specific calendar date or dates;
- (b) A specific period or periods from the date of the contract;
- (c) A specific period or periods from the date agreed upon by the parties and set forth in the contract for actual commencement of performance on the contract; or
- (d) In contracts containing indefinite delivery provisions (such as term contracts or federal supply schedules), a specific time for delivery after receipt by the contractor of each individual order issued under the contract.

1643.8 When establishing dates for performance or delivery, the COR shall take into account factors pertaining to the ability of the contractor to actually begin performance, such as time for receipt of notice by the contractor of the contract award or acceptance by the Board, or the time for receipt by the contractor of an executed contract.

1643.9 The time specified for contract performance shall not be curtailed to the prejudice of the contractor because of delay by the Board in giving notice of award or acceptance.

1643.10 **Implementation of Delivery and Performance Schedules.** The COR shall mail or otherwise furnish to the contractor the executed contract, notice of award, or notice of acceptance of proposal not later than the date of the contract, or as soon thereafter as possible.

1643.11 If the delivery or performance schedule is based on the date of the contract, the COR shall mail or otherwise furnish the executed contract or actual notice of contract execution not later than one (1) working day following the date of the contract.

1643.12 If procurement is by competitive sealed bids and a bid offers delivery or performance based on the date the contractor receives the contract or notice of award, the COR shall evaluate the bid by adding five (5) days to account for time for delivery of the notice or executed contract.

1643.13 If the offered delivery or performance date computed with mailing time is later than the delivery or performance date required by the invitation for bids, the bid shall be considered nonresponsive and shall be rejected.

1643.14 **Liquidated Damages.** A liquidated damages clause approved by the CCO may be used in a contract when the following factors apply:

- (a) The time of delivery or performance is such an important factor in the award of the contract that the Board may reasonably expect to suffer damages if the delivery or performance is delinquent; or

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(b) The extent or amount of damages would be difficult or impossible to ascertain or prove.

1643.15 When deciding whether to include a liquidated damages clause in a contract, the COR shall consider the probable effect on pricing, competition, the costs and difficulties of contract administration, and similar matters.

1643.16 In order to avoid setting an unenforceable penalty, liquidated damages shall not be fixed without reference to probable actual damages. The COR shall determine a reasonable rate of liquidated damages on a case by case basis.

1643.17 The COR shall set the rate of liquidated damages based on the recommendations and justifications provided when initiating the procurement request and the COR's assessment of all applicable factors.

1643.18 The CA shall document the justification of the rate of liquidated damages in the contract file.

1643.19 A contract may include an overall maximum dollar amount or period of time during which liquidated damages may be assessed, or both, to prevent an unreasonable assessment of liquidated damages.

1643.20 The COR shall take all reasonable steps to mitigate liquidated damages.

1643.21 If a liquidated damages clause is included in a contract and a basis for termination for default exists, the COR shall take appropriate action expeditiously to obtain performance by the contractor or to terminate the contract.

1643.22 If delivery or performance is desired after termination for default, efforts shall be made to obtain the delivery or performance from another source within a reasonable time.

1643.23 If a contract provides for liquidated damages for delay, the Executive Director, on the recommendation of the COR, shall be authorized to remit all or part of the damages if, in the discretion of the Executive Director, remission would be just and equitable.

1643.24 **Supply Contracts Quantity Variance.** A fixed-price supply contract may authorize Board acceptance of a variation in the quantity of items if the variation is caused by conditions of loading, shipping, packing, or by allowances in manufacturing processes.

1643.25 Except for items for or related to maintenance and upkeep, any permissible variation shall be stated as a percentage. The variation may be an increase, a decrease, or a combination of both.

1643.26 There shall be no standard or usual variation percentage.

1643.27 The overrun or underrun permitted in each contract shall be based upon the normal commercial practices of a particular industry for a particular item, and the permitted percentage shall be no larger than is necessary to afford a contractor reasonable protection.

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1643.28 The permissible variation shall not exceed plus or minus ten percent (10%), unless a different limitation is established by the COR.

1643.29 In establishing the permissible variations, the COR shall consider the quantity of items to which the percentage variation applies.

1643.30 Contractors shall be responsible for delivery of the specified quantity of items in a fixed-price contract, within allowable variations, if any.

1643.31 **Stop Work Orders.** A COR may issue a stop-work order, when appropriate, if work stoppage is required to protect the best interests of the Board in circumstances such as advancement in the state-of-the-art production, engineering breakthroughs, or realignment of programs.

1643.32 A COR may issue a stop-work order only if it is advisable to suspend work pending the COR's decision regarding continuation of the work and a contract modification providing for the suspension is not feasible.

1643.33 A COR shall not use a stop-work order in place of a termination notice after a decision to terminate has been made.

1643.34 Each stop-work order shall include the following:

- (a) A description of the work to be stopped;
- (b) Instructions concerning the contractor's issuance of further orders for materials or services;
- (c) Guidance to the contractor on action to be taken on any subcontracts; and
- (d) Any applicable suggestions to the contractor for minimizing costs.

1643.35 Promptly after issuing the stop-work order, the COR shall discuss the stop-work order with the contractor and may, if necessary, modify the order based on the discussion.

1643.36 As soon as feasible after a stop-work order is issued, but before its expiration, the COR shall take appropriate action to do one (1) of the following:

- (a) Terminate the contract;
- (b) Cancel the stop-work order; or
- (c) If necessary, extend the period of the stop-work order.

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1643.37 **Board Delay of Work.** If the Board unreasonably delays the work on a contract, the contractor may submit a written claim for equitable adjustment of the contract price based on increases in the cost of performance due to the work delay, in accordance with the procedures set forth in §1649.6 of these Rules.

1643.38 The CA shall retain in the contract file a record of all negotiations leading to any equitable adjustment, along with related cost or pricing data.

1643.39 **Quality Assurance.** The Board shall specify procurement needs in a manner designed to promote competition to the maximum extent possible.

1643.40 The Board shall develop specifications and purchase descriptions using market research in a manner designed to promote competition to the maximum extent possible, with due regard to the nature of the goods or services to be procured.

1643.41 Solicitations shall contain specifications and purchase descriptions that include restrictive provisions or conditions only to the extent necessary to satisfy the minimum needs of the Board, or as authorized or required by law.

1643.42 Plans, drawings, specifications, standards, or purchase descriptions for procurements shall state only the Board's actual minimum needs and describe the goods or services in a manner designed to promote competition to the maximum extent possible.

1643.43 Specifications and purchase descriptions shall reflect the minimum needs of the Board and the market available to meet those needs. Specifications and purchase descriptions may be stated in terms of the following:

- (a) Function, so that a variety of products or services may qualify;
- (b) Performance, including specifications of the range of acceptance characteristics or the minimum acceptable standards; or
- (c) Design requirements.

1643.44 **Quality Assurance – COR Responsibilities.** The COR shall ensure that the goods or services procured under each Board contract conform to the quality and quantity requirements of the contract, including inspection, acceptance, warranty, and any other measures associated with quality assurance.

1643.45 The COR shall be responsible for the following;

- (a) Ensuring that each contract includes inspection and other quality requirements, including warranty clauses when appropriate, which are necessary to protect the Board's interest;

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- (b) Ensuring that contract quality assurance is conducted by the Board before acceptance, except as otherwise provided in this section, by or under the direction of Board personnel;
- (c) Ensuring that no contract precludes the Board from performing inspection;
- (d) Ensuring that nonconforming goods or services are rejected, except as otherwise provided in this section;
- (e) Ensuring that the quality assurance and acceptance services of the Board are used when it will be effective, economical, or otherwise in the best interests of the Board;
- (f) Obtaining any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the goods or services from the Board personnel responsible for the technical requirements; and
- (g) Including in solicitations and contracts the necessary requirements for the contractor's control of quality for the goods or services to be procured.

1643.46 **Quality Assurance – CA Responsibilities.** The CA shall do the following:

- (a) Develop and apply efficient procedures for performing Board contract quality assurance actions under the contract in accordance with the written directions of the COR;
- (b) Perform all actions necessary to verify whether the goods or services conform to contract quality requirements;
- (c) Implement any specific written instructions from the COR;
- (d) Report to the COR any defects observed in design or technical requirements, including contract quality requirements; and
- (e) Recommend any changes necessary to the contract, specifications, instructions, or other requirements that will provide more effective operations or eliminate unnecessary costs.

1643.47 The CA shall maintain, as part of the performance records of the contract, suitable records reflecting the following:

- (a) Contract quality assurance actions, including, when appropriate, the number of observations made and the number and type of defects; and
- (b) Decisions regarding the acceptability of the products as well as actions to correct defects.

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1643.48 **Quality Assurance – Contractor Responsibilities.** The contractor shall be responsible for carrying out its obligations under the contract by doing the following:

- (a) Controlling the quality of goods or services;
- (b) Ensuring that vendors or suppliers of raw materials, parts, components, and subassemblies have an acceptance quality control system;
- (c) Tendering to the Board for acceptance only those goods or services that conform to contract requirements; and
- (d) Maintaining substantiating evidence, when required by the contract, that the goods or services conform to contract quality requirements, and furnishing that information to the Board, upon request.

1643.49 The COR may require the contractor to provide and maintain an inspection system or program for the control of quality that is acceptable to the Board.

1643.50 The control of quality by the contractor may relate to, but is not limited to, the following:

- (a) Manufacturing processes, to ensure that the product produced to and meets the contract's technical requirements;
- (b) Drawings, specifications, and engineering changes, to ensure that manufacturing methods and operations meet the contract's technical requirements;
- (c) Testing and examination, to ensure that practices and equipment provide the means for optimum evaluation of the characteristics subject to inspection;
- (d) Reliability and maintainability assessment, including life, endurance, and continued readiness;
- (e) Fabrication and delivery of products, to ensure that only conforming products are tendered to the Board;
- (f) Technical documentation, including drawings, specifications, handbooks, manuals, and other technical publications;
- (g) Preservation, packaging, packing, and marking; and
- (h) Procedures and processes for services to ensure that services meet contract performance requirements.

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1643.51 The contractor shall be responsible for performing all inspections and tests required by the contract except those specifically reserved for performance by the Board.

1643.52 **Quality Assurance – Specifications and Standards/Purchase Descriptions.** The Board shall be responsible for the preparation and issuance of its own standard specifications.

1643.53 Where specifications and standards are issued by the Board, they shall be used when procuring goods and services covered by those specifications and standards except as follows:

- (a) When the service or work to be performed or the item to be furnished is procured under emergency circumstances, as defined in these Rules and the use of standard specifications would cause unacceptable delay in obtaining the requirement;
- (b) When items are procured using small purchase methods;
- (c) When nationally recognized industry or technical source specifications and standards are used to procure new installations of equipment; and
- (d) When the Board can state its needs in a purchase description for a commercial product.

1643.54 The Board may procure commercial products whenever those products adequately satisfy the Board's needs and a description of the Board's need is stated in functional terms of sufficient detail.

1643.55 Items to be procured shall be described by citing the applicable specifications and standards or by a description containing the necessary requirements.

1643.56 When no applicable specification exists, the COR may use a purchase description.

1643.57 Each purchase description shall set forth the essential physical and functional characteristics of the materials or services required.

1643.58 Each purchase description shall include the following characteristics, when applicable:

- (a) Common nomenclature;
- (b) Kind of material, such as type, grade, or alternatives;
- (c) Electrical data, if any;
- (d) Dimensions, size, or capacity;

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- (e) Principles of operation;
- (f) Restrictive environmental conditions;
- (g) Intended use, such as location within an assembly and essential operating condition;
- (h) Equipment with which the item is to be used; and
- (i) Other pertinent information that further describes the item, materials, or service required.

1643.59 A purchase description shall not be written to specify a product, or a particular feature of a product, that is peculiar to a single manufacturer (thereby precluding consideration of a product manufactured by another company) unless it is determined that the particular feature is essential to the Board's requirements, and that other sources' similar products lacking that particular feature would not meet the minimum requirements for the items.

1643.60 Purchase descriptions of services shall outline the specific services the contractor is expected to perform to the greatest degree practicable.

1643.61 When applicable, the Board shall include in the purchase description requirements for adequate packaging and marking of goods to prevent deterioration and damage during shipping, handling, and storage.

1643.62 **Quality Assurance – Deviations from Specifications and Standards/Performance Descriptions.** When the exceptions set forth in §1643.53 are not applicable, and an existing specification does not meet the Board's minimum needs, the CCO may authorize deviations in accordance with this section.

1643.63 Each COR shall be responsible for ensuring the following:

- (a) That Board specifications are normally used, and requirements for exceptions and deviations are complied with;
- (b) That written justifications for each exception and deviation are subject to prior review and approval by the CCO, and that each justification can be fully substantiated if post audit is required;
- (c) That major or repeated deviations are not taken except as prescribed in this section; and
- (d) That notification of each deviation or recommendation for change in specification is sent promptly in duplicate to the CCO.

1643.64 Deviations reported by the COR shall not be continued except as authorized by the CCO.

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1643.65 Quality Assurance – Brand Name or Equal. The minimum acceptable purchase description shall be the identification of a requirement by use of a brand name followed by the words “or equal.” This purchase description shall be used only when adequate specifications or a more detailed purchase description cannot be made available.

1643.66 When using a brand name or equal purchase description, the Board shall also provide a list of salient characteristics, or the minimum acceptable features.

1643.67 Quality Assurance – Contract Quality Requirements. The type and extent of contract quality requirements needed in each solicitation or contract shall depend on the particular procurement and may range from inspection at time of acceptance to a requirement for the contractor’s implementation of a comprehensive program for controlling quality.

1643.68 A solicitation or contract may provide for alternative, but substantially equivalent, inspection methods to obtain broader competition and reduce costs.

1643.69 The COR may authorize alternative quality control or inspection methods recommended by the contractor when in the best interests of the Board and approved by the Board personnel responsible for the technical requirements.

1643.70 Except as otherwise specified by the contract, required contractor testing may be performed in the contractor’s, or a subcontractor’s, testing facility or in any other testing facility acceptable to the COR.

1643.71 When goods or services are procured by small purchase procedures, the Board shall rely on the contractor to accomplish all inspection and testing needed to ensure compliance with contract quality requirements before the goods or services are tendered to the Board.

1643.72 The Board shall not rely on inspection by the contractor if the COR determines that the Board has a need to test the goods or services in advance of their tender for acceptance, or determines that there is a need to review the adequacy of the contractor’s internal work processes. In making the determination, the COR shall consider the following:

- (a) The nature of the goods or services being procured and their intended use;
- (b) The potential losses in the event of defects;
- (c) The likelihood of uncontested replacements or correction of defective work; and
- (d) The cost of a detailed inspection by the Board.

1643.73 With respect to goods or services other than small purchase procurements, the COR shall include in each solicitation and contract a standard clause, approved by the CCO, setting forth inspection guidelines requiring the contractor to do the following:

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- (a) Provide and maintain an inspection system that is acceptable to the Board;
- (b) Give the Board the right to make inspections and tests while work is in progress; and
- (c) Keep complete records of its inspection work which are available to the Board upon request.

1643.74 The COR shall determine the extent of contract quality requirements, including contractor inspection, required under each contract.

1643.75 **Quality Assurance – Contract Quality Inspection/Testing.** Board contract quality assurance shall be performed at times and at places necessary to determine that the goods or services conform to contract requirements.

1643.76 Each contract shall designate the place or places where the Board reserves the right to perform quality assurance. Board inspection shall be performed by or under the direction or supervision of Board personnel.

1643.77 If the contract provides for performance of Board quality assurance at the source, the place or places of performance shall not be changed without the authorization of the COR.

1643.78 If a contract provides for delivery and acceptance at destination, and the Board inspects the goods at a place other than the destination, the goods shall not be re-inspected at the destination but shall be examined for quantity, damage in transit, and possible substitution or fraud.

1643.79 The individual responsible for the Board inspection shall document the inspection on an inspection or receiving report form, or on a commercial shipping document or packing list.

1643.80 **Quality Assurance – Contract Quality Inspection/Testing at Source.** The Board may perform contract quality assurance, including inspection, at the source in the following circumstances:

- (a) Performance at any other place would require uneconomical disassembly or destructive testing;
- (b) Considerable loss would result from the manufacture and shipment of unacceptable goods, or from the delay in making necessary corrections;
- (c) Specially required instruments, gauges, or facilities are available only at the source;
- (d) Performance at any other place would destroy or require the replacement of costly special packing and packaging;

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- (e) Board inspection during contract performance is essential; or
- (f) The COR determines that source inspection is in the best interests of the Board.

1643.81 Quality Assurance – Contract Quality Inspection/Testing at Source. Board contract quality assurance that can be performed at destination shall be limited to inspection of the goods or services.

1643.82 Inspection shall be performed at destination under the following circumstances:

- (a) Goods are purchased off-the-shelf and require no technical inspection;
- (b) Necessary testing equipment is located only at destination;
- (c) The goods are perishable;
- (d) The contract is for services performed at the destination; or
- (e) The COR determines that inspection at destination is in the best interests of the Board.

1643.83 Quality Assurance – Contract Quality Inspection/Testing for Small Purchases. In determining the type and extent of Board contract quality assurance to be required for small purchases, the COR shall consider the criticality of application of the goods or services, the amount of possible losses, and the likelihood of uncontested replacement of defective work.

1643.84 The Board shall inspect small purchases at destination only for type and kind, quantity, damage, operability, and may inspect for preservation, packaging, packing, and marking, if applicable.

1643.85 Detailed Board inspection may be limited to those characteristics that are special or likely to cause harm to personnel or property.

1643.86 When repetitive purchases of the same item are made from the same manufacturer with a history of defect-free work, Board inspection may be reduced to a periodic check of purchases.

1643.87 When it is in the best interest of the Board, the COR may require more detailed quality assurance.

1643.88 Quality Assurance – Contract Quality Inspection/Testing of Subcontractors. Board contract quality assurance on subcontracted goods or services shall be performed only when required in the best interests of the Board.

1643.89 Board contract quality assurance on subcontracted goods or services shall not relieve the prime contractor of any responsibilities under the contract.

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1643.90 The COR shall perform quality assurance at the subcontract level in the following circumstances:

- (a) The item is to be shipped from the subcontractor's facilities directly to the Board, and inspection at source is required;
- (b) The conditions for quality assurance at the source are applicable;
- (c) The contract specifies that certain quality assurance functions, which can be performed only at the subcontractor's plant, are to be performed by the Board; or
- (d) It is otherwise required by the contract or determined by the COR to be in the best interests of the Board.

1643.91 All written statements and contract terms and conditions relating to Board quality assurance actions at the subcontract level shall be worded so as not to do any of the following:

- (a) Affect the contractual relationship between the prime contractor and the Board, or between the prime contractor and the subcontractor;
- (b) Establish a contractual relationship between the Board and the subcontractor; or
- (c) Constitute a waiver of the Board's right to accept or reject the goods or services.

1643.92 **Quality Assurance – Non-Conforming Goods or Services.** The COR may reject goods or services which do not conform in all respects to contract requirements if the COR determines that acceptance is in the best interests of the Board. The COR shall reject the goods or services when the nonconformance adversely affects safety, health, reliability, durability, performance, or any other basic objective of the specification.

1643.93 The contractor shall be given an opportunity to correct or replace nonconforming goods or services when the correction or replacement can be accomplished within the required delivery or performance schedule. The COR shall discourage the repeated tender of nonconforming items by appropriate action, including rejection of nonconforming items, when appropriate, and documentation of the contractor's performance record.

1643.94 Unless the contract specifies otherwise, correction or replacement shall be done without additional cost to the Board.

1643.95 Except when the nonconformity is minor, each contract under which nonconforming items are accepted shall be modified by the COR to provide for an equitable price reduction or other consideration.

1643.96 The COR shall consider the following when making a determination whether nonconforming items will be accepted:

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- (a) Advice of the using Board COTR that the material is safe to use and will perform its intended purpose;
- (b) Information regarding the nature and extent of the nonconformance;
- (c) A request from the contractor for acceptance of the goods or services, if feasible;
- (d) A recommendation by the CA for acceptance or rejection, with supporting rationale; and
- (e) The contract adjustment considered appropriate, including any adjustment offered by the contractor.

1643.97 The CA shall furnish the data required in § 1643.96 to the COR in writing. When it is in the best interests of the Board, the data may be furnished verbally and later confirmed in writing.

1643.98 Before making a decision to accept nonconforming items, the COR shall obtain the written approval of the CCO.

1643.99 When the COR rejects nonconforming goods or services, the COR shall issue a notice of rejection in writing and include the reasons for rejection. The notice of rejection shall be issued to the contractor within five (5) working days of the rejection.

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7 DCMR § 1644

1644. ACCEPTANCE; WARRANTIES; BONDS, OTHER SECURITY AND INSURANCE

1644.1 **Acceptance.** Acceptance shall constitute acknowledgement that the goods or services conform to the applicable contract quality and quantity requirements, except as provided in this section and subject to other terms and conditions of the contract.

1644.2 Acceptance may take place before delivery, at the time of delivery, or after delivery, depending on the terms and conditions of the contract.

1644.3 Goods or services shall not be accepted before completion of Board contract quality assurance actions.

1644.4 Acceptance shall be evidenced by execution of an acceptance certificate on an inspection or receiving report form or on a commercial shipping document or packing list.

1644.5 **Responsibility for Acceptance.** Acceptance of goods or services shall be the responsibility of the COR.

1644.6 When the COR assigns the responsibility for acceptance to another Board employee, acceptance by that employee shall be binding on the Board.

1644.7 **Place of Acceptance.** Each contract shall specify the place of acceptance.

1644.8 Contracts that provide for Board contract quality assurance at the source shall provide for acceptance at the source.

1644.9 Contracts that provide for Board contract quality assurance at destination shall provide for acceptance at destination.

1644.10 Goods accepted at a place other than destination shall not be re-inspected at destination for acceptance purposes, but shall be examined at destination for quantity, damage in transit, and possible substitution or fraud.

1644.11 **Certificate of Conformance.** A certificate of conformance may be used instead of source inspection, whether the contract calls for acceptance at the source or at destination, at the discretion of the COR, if the following conditions apply:

- (a) Acceptance on the basis of a contractor's certificate of conformance is in the best interests of the Board; and

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- (b) Either small losses would be incurred in the event of a defect; or, based on the contractor's reputation or past performance, it is likely that the goods or services furnished will be acceptable and any defective work would be replaced, corrected, or repaid without contest.

1644.12 Even if a certificate of conformance is used, the Board's right to inspect goods or services under the inspection provisions of the contract shall not be prejudiced.

1644.13 **Transfer of Title and Risk of Loss.** Title to goods shall pass to the Board upon formal acceptance, regardless of when or where the Board takes physical possession, unless the contract specifically provides for earlier passage of title.

1644.14 Unless the contract specifically provides otherwise, risk of loss of or damage to goods shall remain with the contractor until, and shall pass to the Board upon either of the following:

- (a) Delivery of the goods to a carrier if transportation is f.o.b. origin; or
- (b) Acceptance by the Board or delivery of the goods to the Board at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

1644.15 The provisions of §1644.2 shall not apply to goods that so fail to conform to contract requirements as to give the Board a right of rejection.

1644.16 The risk of loss of or damage to nonconforming goods shall remain with the contractor until cure or acceptance. After cure or acceptance, the provisions of §1644.14 shall apply.

1644.17 The contractor shall not be liable for loss of or damage to goods caused by the negligence of officers, agents, or employees of the Board acting within the scope of their employment.

1644.18 The risk of loss or damage to an installment shall remain with the contractor until formal acceptance of the installment by the Board.

1644.19 If any of an installment project is excepted from normal acceptance by the Board due to defects or failure to conform to the requirements and specifications of the contract, or is subject to contingent acceptance pending cure of defects, the risk of loss or damage to the installment shall remain with the contractor until the defects are cured and the contingency is removed or the installment is formally accepted by the Board.

1644.20 **Warranties.** The COR shall ensure that each warranty in a Board contract clearly delineates the rights and obligations of the contractor and the Board for defective items and services and fosters quality performance.

1644.21 A warranty shall provide the following:

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- (a) A contractual right for the correction of defects, notwithstanding any other requirement of the contract pertaining to acceptance of the goods or service by the Board; and
- (b) A stated period of time or use, or the occurrence of a specified event, after acceptance by the Board within which the Board may assert a contractual right for the correction of defects.

1644.22 The COR shall ensure that the benefits to be derived from a warranty are commensurate with the cost of the warranty to the Board.

1644.23 **Criteria for Use of Warranties.** The COR shall determine whether a warranty is appropriate for each specific procurement. If a warranty is appropriate, the COR shall use a warranty clause, approved by the CCO, consistent with the contractor's performance obligations under the contract.

1644.24 In determining whether a warranty is appropriate for a specific procurement, the COR shall consider the following factors:

- (a) The nature and use of the goods or services such as complexity and function, degree of development, state of the art, end use, difficulty in detecting defects before acceptance, and potential harm to the Board if the item is defective;
- (b) Costs arising from the contractor's charge for accepting the deferred liability created by the warranty and the Board's administration and enforcement of the warranty;
- (c) The Board's ability to enforce the warranty, and the assurance that an adequate administrative system for reporting defects exists or will be established;
- (d) Whether there is the practice in the trade of customarily warranting the supply, service, or installation, and whether the cost of the supply, service, or installation will therefore be the same whether a warranty is included;
- (e) The possible reduction of the Board's quality assurance requirements where the warranty provides adequate assurance of a satisfactory product; and
- (f) Any other factors that the COR deems appropriate for the specific procurement.

1644.25 **Use of Warranties.** The COR shall not include a warranty in a cost-reimbursement contract unless approved by the CCO.

1644.26 A warranty clause shall not limit the Board's rights under an inspection clause in relation to latent defects, fraud, or gross mistakes that amount to fraud.

1644.27 A warranty clause shall provide that the warranty applies notwithstanding inspection and acceptance, or other clauses or terms of the contract.

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1644.28 The CCO may prescribe procedures for the use of warranties in contracts.

1644.29 **Warranty Terms and Conditions.** To facilitate the pricing and enforcement of warranties, the CA shall ensure that each warranty clearly states the following:

- (a) The exact nature of the item and its components and the characteristics that the contractor warrants;
- (b) The extent of the contractor's warranty, including all of the contractor's obligations to the Board for breach of warranty;
- (c) The specific remedies available to the Board; and
- (d) The scope and duration of the warranty.

1644.30 The contractor's obligations under a warranty shall extend to all defects discovered during the warranty period, but shall not include any damage caused solely by the Board.

1644.31 When the COR determines that a warranty for the entire item is not in the best interests of the Board, the COR may require a warranty for a particular aspect of the item that may require special protection, such as installation, components, accessories, subassemblies, preservation, packaging, or packing.

1644.32 At a minimum, a warranty shall provide that the Board may obtain an equitable adjustment of the contract or direct the contractor to repair or replace the defective item at the contractor's expense.

1644.33 If it is not practical to require the contractor to make a repair or provide a replacement, or, because of the nature of the item, the repair or replacement does not afford an appropriate remedy to the Board, the warranty may provide an alternative, such as allowing the Board to do either of the following:

- (a) Retain the defective item and reduce the contract price by an amount equitable under the circumstances; or
- (b) Arrange for the repair or replacement of the defective item by the Board, or by another source, at the contractor's expense.

1644.34 The CA shall clearly specify the duration of the warranty after consideration of the following factors:

- (a) The estimated useful life of the item;
- (b) The nature of the item including storage or shelf-like; and

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- (c) Trade practice.

1644.35 The duration of the warranty shall not extend the contractor's liability for patent defects beyond a reasonable time after acceptance by the Board.

1644.36 If the Board specifies the design of the end item and its measurements, tolerances, materials, tests, or inspection requirements, the contractor's obligations for correction of defects shall be limited to defects in material and workmanship or failure to conform to specifications. If the Board does not specify the design, the warranty shall extend to the usefulness of the design.

1644.37 Each warranty shall specify a reasonable time for furnishing notice to the contractor regarding the discovery of defects. The COR shall consider the following factors when establishing the notice period:

- (a) The time necessary for the Board to discover the defects;
- (b) The time reasonably required for the Board to take necessary administrative steps and make a timely report of discovery of the defects to the contractor; and
- (c) The time required to discover and report defective replacements.

1644.38 The packaging and preservation requirements of a contract shall require the contractor to stamp or mark the goods delivered or otherwise furnish notice with the goods of the existence of the warranty.

1644.39 **Fixed Price Incentive Contract Warranties.** If a fixed-price incentive contract contains a warranty, the COR shall consider the estimated cost of the warranty to the contractor in establishing the incentive target price and the ceiling price of the contract.

1644.40 The COR shall consider all costs incurred, or estimated to be incurred, by the contractor in complying with the warranty when establishing the total final price.

1644.41 Contractor compliance with the warranty after the establishment of the total final price shall be at no additional cost to the Board.

1644.42 **Contractor Liability for Loss of or Damage to Board Property.** The provisions of this section shall apply to contractor liability for loss of or damage to Board property that occurs after acceptance as a result of defects or deficiencies in the goods delivered or services performed.

1644.43 The Board shall act as a self-insurer by relieving contractors, as specified in this section, of liability for loss of or damage to property of the Board that occurs after acceptance of goods delivered or services performed under a contract as a result of defects or deficiencies in the goods or services. However, the Board shall not relieve the contractor of liability for loss of or damage to the contract end item itself, except for high-value items.

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1644.44 In contracts requiring delivery of high-value items, the Board may relieve contractors of contractual liability for loss of or damage to those items. However, the relief shall not limit the Board's rights arising under the contract to do the following:

- (a) Have any defective item or its components corrected, repaired, or replaced when the defect or deficiency is discovered before the loss of or damage to high-value items occurs; or
- (b) Obtain equitable relief when the defect or deficiency is discovered after such loss or damage occurs.

1644.45 The Board shall not provide the contractual relief when contractor liability can be preserved without increasing the contract price.

1644.46 Subject to the specific terms of the limitation of liability clause included in the contract, the relief shall not apply, as follows:

- (a) To the extent that contractor liability is expressly provided for under a contract clause approved by the CCO;
- (b) When a defect or deficiency in, or the Board's acceptance of, the goods or services results from willful misconduct or lack of good faith on the part of the contractor or its agent; or
- (c) To the extent that any contractor insurance, or self-insurance reserve, covers liability for loss or damage suffered by the Board through purchase or use of the goods delivered or services performed under the contract.

1644.47 For items being priced at or based on catalog or market prices, the COR shall not provide relief to contractors unless they can obtain a reduction from the catalog or market price which reflects the reduced contractor liability. The COR shall include a clause, approved by the CCO, to inform bidders and offerors of the provisions of this subsection.

1644.48 **Bonds, Other Security and Insurance.** In addition to the requirements for bonds and other security under these Rules, the CCO or any COR may require any of the following types of security for any solicitation or contract subject to the provisions of this section, other than a small purchase, regardless of the estimated amount of the contract:

- (a) Bid bonds;
- (b) Other bid or proposal security; and
- (c) Performance or payment bonds or other security on non-construction contracts.

1644.49 The COR shall determine whether security of any type would be in the best interests of the Board in all contracts other than small purchases. The COR shall consider the following factors:

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- (a) Whether Board property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (such as in retention of salvaged material);
- (b) When a contractor sells assets to or merges with another business entity, whether the Board (after recognizing the other entity as the successor in interest) needs assurance that it is financially capable;
- (c) Whether substantial progress payments are to be made before delivery of end item starts;
- (d) Whether the contract is for dismantling, demolition, or removal of improvements; or
- (e) Any other factors which might favor the use of security to protect the best interests of the Board.

1644.50 A payment security shall be required only when a performance security is required and the use of the payment security is in the best interests of the Board, unless the COR determines in writing that either type of security would, by itself, protect the best interests of the Board.

1644.51 When a security is requested by the COR under this section, the COR may accept any of the following types of security:

- (a) A bond provided by a surety;
- (b) A certified check or irrevocable letter of credit issued by an insured financial institution in the equivalent amount of the security; or
- (c) United States government securities that are assigned to the Board which pledge the full faith and credit of the United States.

1644.52 The COR shall determine a contractor's responsibility even though security has been or can be obtained.

1644.53 A solicitation shall not bar bidders or offerors from using any of the types of surety or security permitted by this section, unless otherwise prohibited by law or regulation.

1644.54 When required by federal law or regulation or as a condition of federal assistance, the COR shall require security, and the solicitation shall state the requirement.

1644.55 **Bid Bonds and Other Security.** The COR may require bid security in connection with any solicitation, regardless whether any payment or performance security will be required under the contract.

1644.56 When a bid security is required the solicitation shall contain the following:

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- (a) A statement that bid security is required;
- (b) Notice that the bid security will remain in effect for as long as the bid or proposal is required to remain effective; and
- (c) Sufficient information to allow bidders or offerors to determine the amount of the required bid security.

1644.57 No action shall be taken against the bid security of a bidder or offeror that is permitted to withdraw a bid or proposal prior to award due to a mistake in the bid or proposal.

1644.58 **Noncompliance with Bid Security Requirements.** If a bid fails to comply with the bid security requirements set forth in the solicitation, the COR shall reject the bid. However, the COR may accept the bid if the COR determines in writing that both of the following apply:

- (a) The bid or proposal meets the criteria set forth in this section; and
- (b) Acceptance of the bid or proposal would be in the best interests of the Board.

1644.59 If only one bid is received, the bid may be accepted and the COR shall require the furnishing of the bid security before the contract is signed.

1644.60 If the amount of the bid security is less than required, but is equal to or greater than the difference between the bid price and the next higher acceptable bid, the bid may be accepted.

1644.61 If the amount of the bid security submitted, although less than that required by the solicitation for the maximum quantity bid upon, is sufficient for a quantity for which the bidder is otherwise eligible for award, the bid may be accepted. Any award to the bidder or offeror shall not exceed the quantity covered by the bid security.

1644.62 If the bid security becomes inadequate as a result of the correction of a mistake, the bid may be accepted if the bidder agrees to increase the bid security to the level required for the corrected bid.

1644.63 If the bid security is received late, and late receipt is waived in accordance with these Rules, the bid may be accepted.

1644.64 **Performance and Payment Security.** The COR may require a contractor to furnish a payment or performance bond or other security for any contract, regardless of amount, when the COR determines that the security is necessary or advisable to protect the interests of the Board. The security shall be furnished in accordance with the provisions of this section.

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1644.65 The amount of the performance security shall be one hundred percent (100%) of the original contract price, unless the COR determines that a lesser amount or percentage would be adequate for the protection of the Board. The COR shall state the amount or percentage in the solicitation.

1644.66 The COR shall require additional performance security when a contract price is increased. The increase in performance security shall equal one hundred percent (100%) of the increase in the contract price, unless the COR determines that a lesser amount or percentage is adequate for the protection of the Board.

1644.67 The COR may require additional performance security by directing a contractor to increase the original sum of the existing security or to obtain an additional security.

1644.68 The payment security shall be in an amount of not less than fifty percent (50%) of the total amount of the contract price.

1644.69 When a contract price is increased, the Board may require additional payment security in an amount adequate to protect suppliers of labor and material. However, in no event shall the amount of payment security fall below fifty percent (50%) of the increased contract price.

1644.70 When performance or payment security is required, the solicitation shall contain the following:

- (a) A statement that security is required;
- (b) The amount of the security expressed as a fixed sum or percentage of the contract price; and
- (c) The deadline for submitting acceptable security.

1644.71 No performance security or payment security shall be required after the contract has been executed if it was not specifically required in the contract, except when determined necessary by the COR for a contract modification.

1644.72 If the COR uses a letter contract to allow the contractor to proceed with work before execution of the definitive contract, the letter contract shall contain a clause, approved by the CCO, that no payments shall be made under the letter contract until the required payment and performance securities have been received.

1644.73 **Insurance.** The Board shall require each contractor to obtain insurance, by purchase, for the risks to which the contractor is exposed, except when the contract specifically relieves the contractor of liability for loss of or damage to Board property.

1644.74 The COR shall have the right to disapprove the purchase of any insurance coverage not in the best interests of the Board.

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1644.75 Insurance shall be mandatory when commingling of property, the type of operation, circumstances of ownership, or conditions of the contract make it necessary for the protection of the Board.

1644.76 When the Board requires a contractor to provide insurance coverage, the policies shall contain an endorsement that any cancellation or material change in the coverage or terms and conditions of the coverage shall not be effective unless the insurer or the contractor gives prior written notice of the cancellation or change to the Board in the manner required by the contract or the COR.

1644.77 When the Board requires or approves insurance to cover loss of or damage to Board property, it may be provided by specific insurance policies or by inclusion of the risks in the contractor's existing policies. The policies shall disclose the Board's interests in the property.

1644.78 The COR may specify insurance requirements under fixed-price contracts, as follows:

- (a) When the contractor is engaged principally in Board work;
- (b) When the contractor has a separate operation engaged principally in Board work;
- (c) When the Board elects to assume risks for which the contractor ordinarily would obtain commercial insurance; or
- (d) In other circumstances when insurance coverage is in the best interests of the Board.

1644.79 Employee group insurance plans shall not be reimbursable under cost-reimbursement type contracts unless the plans have first been approved by the COR and are otherwise deemed reimbursable under the terms of the contract. Whenever an approved plan is materially changed during the course of the contract, the plan shall be resubmitted for approval, and no costs shall be reimbursable unless approval of the revised plan has first been obtained.

1644.80 Group insurance plans under §1644.79 shall provide for the Board to share in any premium refunds or credits paid or otherwise allowed to the contractor. In determining the extent of the Board's share in any premium refunds or credits, any special reserves and other refunds to which the contractor may be entitled in the future shall be taken into account.

1644.81 **Reinsurance.** If reinsurance is contemplated, the COR may require reinsurance agreements to be executed and submitted with the securities before making a final determination on the securities.

1644.82 The contractor shall execute and submit necessary reinsurance agreements to the COR within the time specified in the solicitation, which shall not exceed forty-five (45) calendar days after the execution of the security.

1644.83 **Insurance Liability.** The COR shall require contractors to comply with applicable federal and District workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the

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insurance policy, except when contract operations are so commingled with a contractor's commercial operations that it would not be practical to require the coverage.

1644.84 Each contractor shall be required to carry employer's liability coverage of at least one hundred thousand dollars (\$100,000).

1644.85 The COR shall require each contractor to have bodily injury liability insurance coverage written on the comprehensive form of policy of at least five hundred thousand dollars (\$500,000) per occurrence.

1644.86 Property damage liability insurance shall be required only in special circumstances, as determined by the COR.

1644.87 The COR shall require automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract.

1644.88 Policies covering automobiles shall provide coverage of at least two hundred thousand dollars (\$200,000) per person and five hundred thousand dollars (\$500,000) per occurrence for bodily injury and twenty thousand dollars (\$20,000) per occurrence for property damage.

1644.89 When an aircraft is used in connection with performing a contract, the COR shall require aircraft public and passenger liability insurance. Coverage shall be at least two hundred thousand dollars (\$200,000) per person and five hundred thousand dollars (\$500,000) per occurrence for bodily injury, other than passenger liability, and two hundred thousand dollars (\$200,000) per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least two hundred thousand dollars (\$200,000) multiplied by the number of seats or passengers, whichever is greater.

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7 DCMR § 1645

1645. ADVANCE PAYMENTS; PROGRESS PAYMENTS; CONTRACT FUNDING

1645.1 Advance Payments. The COR shall not authorize the use of advance payments unless the following criteria are met:

- (a) There is a need for contract financing;
- (b) Private financing is unavailable or insufficient;
- (c) Use of progress payments would be insufficient to meet the contractor's financing needs;
- (d) The contractor can give adequate security;
- (e) The contractor is otherwise qualified as a responsible, certified minority business enterprise; and
- (f) The use of advance payments would be in the best interests of the Board.
- (g) Notwithstanding subparagraphs (a) through (f) above, the COR may authorize advance payments to a responsible contractor who provides court transcripts, depositions, expert witness testimony, or other litigation or transactional related legal services to the Board upon the Board General Counsel's determination that such advance payments are necessary and appropriate;
- (h) Notwithstanding subparagraphs (a) through (f) above, the COR may authorize advance payments to a responsible contractor who is a provider of training seminars or programs directly related to the duties of the Board or Board employees. The contractor may be paid in advance of a training seminar or program for each employee enrolled in a training seminar or program whose tuition or fee has been approved in writing by the Executive Director; and
- (i) Notwithstanding subparagraphs (a) through (f) above, the COR may authorize advance payments to a responsible contractor who is a provider of food and/or beverages for the Board or Board employees attending a meeting, training seminar or program authorized by the Board or Executive Director, or his or her designee, and upon a determination in writing by the CCO that provision of food and beverages is necessary and appropriate in order for the employees to obtain the full benefit of the training that is directly related to the employees' duties.

1645.2 Before authorizing advance payments, the COR shall obtain the approval of the CCO. The request for approval shall be in the form of a written determination and findings which sets forth the COR's findings on each of the criteria set forth in §1645.1.

1645.3 If the request for advance payments is approved, the COR shall ensure that the advance payments do not exceed the unpaid contract price. The COR may require the contractor to provide adequate security.

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1645.4 A COR shall not authorize advance payments to a contractor that is also receiving a bond reduction under the same contract without the prior written approval of the CCO based on a determination that the financial risk to the Board would not be unreasonable and that the use of both bond reductions and advance payments would be in the best interests of the Board.

1645.5 If a contractor requesting advance payments is also receiving advance payments under another Board contract, the COR shall include this information in the justification, and shall consider the additional financial risk to the Board when making his or her recommendation.

1645.6 When advance payments are made under a contract, the COR shall closely monitor the performance of the contractor and the contractor's financial condition. A contractor receiving advance payments shall be subject to audit at any time, as determined by the COR.

1645.7 The COR may suspend or terminate advance payments if the contractor fails to account adequately for the use of advance funds or fails to use the funds to meet obligations related to the contract, including the following:

- (a) Failure to pay wages due to contract personnel;
- (b) Failure to escrow withholding and payroll taxes and make required periodic tax deposits; or
- (c) Any other failure to meet any other financial obligation under the contract for which advance payments are intended.

1645.8 **Interest on Advance Payments.** The COR shall charge interest on the daily unliquidated balance of all advance payments at the higher of the following rates:

- (a) The published prime rate of the Board banking institution in which the advance payments are deposited; or
- (b) The rate of interest in the District allowed in judgments and decrees as set forth in the D.C. Code § 28-1646-A(c) (1981).

1645.9 The interest rate for advance payments shall be adjusted for changes in the prime rate or any change in rate established under D.C. Code § 28-1646-A(c) (1981).

1645.10 Interest shall be computed at the end of each month on the daily unliquidated balance of advance payments at the applicable daily interest rate.

1645.11 The COR shall not allow interest charges for advance payments as reimbursable costs under cost-reimbursement contracts, whether the interest charge was incurred by the prime contractor or a subcontractor.

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1645.12 Application for Advance Payments. An eligible contractor may apply for advance payments before or after the award of a contract.

1645.13 The contractor or prospective contractor shall submit an advance payment request to the COR in writing which provides the following information:

- (a) A reference to the contract if the request concerns an existing contract, or a reference to the solicitation if the request concerns a proposed contract;
- (b) A cash flow forecast showing estimated disbursements and receipts for the period of contract performance;
- (c) The proposed total amount of advance payments;
- (d) The name and address of the bank at which the contractor expects to establish a special depository account for the advance payments;
- (e) A description of the contractor's efforts to obtain private financing;
- (f) Whether the contractor is receiving or has applied to receive advance payments under any other current Board contracts or solicitations; and
- (g) Other information appropriate to an understanding of the following:
 - (1) The contractor's financial condition and need;
 - (2) The contractor's ability to perform the contract without loss to the Board; and
 - (3) Financial safeguards that will be used to protect the Board's interests.

1645.14 Supervision of Advance Payments. The COR shall ensure that the amounts of advance payments do not exceed the contractor's financial needs.

1645.15 Progress Payments Based on Costs. For the purpose of making progress payments and determining the limitations on progress payments, the contract price shall be as follows:

- (a) Under firm-fixed-price contracts, the contract price shall be the current contract price plus any unpriced modifications for which funds have been obligated;
- (b) If the contract is re-determinable or subject to economic price adjustment, the contract price shall be the initial price until modified;

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- (c) Under a fixed-price incentive contract, the contract price shall be the target price plus any unpriced modifications for which funds have been obligated. However, if the contractor's properly incurred costs exceed the target price, the COR may provisionally increase the price up to the ceiling or maximum price; and
- (d) Under a letter contract, the contract price shall be fifty percent (50%) of the maximum amount of the definitive contract.

1645.16 For the purpose of making progress payments and determining the limitation on progress payments, any portion of the contract specifically providing for reimbursement of costs only shall be excluded from the contract price.

1645.17 The COR shall not make progress payments or increase the contract price beyond the funds obligated under the contract, as amended.

1645.18 Bids conditioned on progress payments when the solicitation does not provide for progress payments shall be rejected as nonresponsive.

1645.19 A COR may provide for customary progress payments if the contractor will not be able to bill for delivery of products (or other performance milestones) for a substantial time (not less than four (4) months) after work must begin and, during the predelivery period, will make expenditures for contract performance that have a significant impact on the contractor's working capital.

1645.20 The COR shall not provide for progress payments on contracts of less than one hundred thousand dollars (\$100,000), except in cases where a certified minority contractor is performing multiple contracts which total more than one hundred thousand dollars (\$100,000).

1645.21 A COR shall not provide for progress payments if the contract items are quick turnover types for which progress payments are not a customary commercial practice, such as the following:

- (a) Subsistence;
- (b) Clothing;
- (c) Medical and dental supplies; or
- (d) Standard commercial items not requiring a substantial accumulation of predelivery expenditures by the contractor.

1645.22 **Consideration for Progress Payments.** There shall be no requirement for a separate consideration for providing progress payments or for changing progress payment or liquidation rates, if coverage is included in the terms of the contract when awarded.

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1645.23 Adequate new consideration shall be required when the contract, during contract performance, is amended to provide progress payments.

1645.24 When adequate new consideration is required pursuant to §1645.23, the contractor may provide new consideration by monetary means (such as reduction in contract price) or nonmonetary means (such as incorporating terms in the contract amendment conferring a new benefit on the Board).

1645.25 Fair and reasonable consideration shall approximate the amount by which the price would have been smaller if the provision for progress payments had been included in the initial contract.

1645.26 **Supervision of Progress Payments.** The extent of progress payments supervision, by prepayment review or periodic review, may vary, according to the contractor's experience, performance record, reliability, quality of management, and financial strength, and with the adequacy of the contractor's accounting systems and controls.

1645.27 Supervision shall be of a kind and degree sufficient to provide timely knowledge of the need for, and timely opportunity for, any actions necessary to protect the interests of the Board.

1645.28 So far as is practicable, all problems relating to costs that are likely to create disagreements in future administration of the contract shall be identified and resolved at the inception of the contract, in accordance with the provisions of these Rules.

1645.29 The COR shall, before approving progress payments, determine the following:

- (a) That the contractor will be capable of liquidating any progress payments, or that the Board is otherwise protected against loss by additional protective provisions in the contract; and
- (b) The contractor's accounting system and controls are adequate for proper administration of progress payments.

1645.30 When the reliability of the contractor and the adequacy of the contractor's accounting system has been established pursuant to §1645.29, the COR may approve progress payment requests.

1645.31 The COR may request an audit review of the contractor's request for progress payment when there is reason to question the reliability or accuracy of the contractor's certification, or if the COR believes that the contract will involve a loss.

1645.32 Progress payments made under a requirements contract or an indefinite quantity contract shall be administered under each individual order as if the order constituted a separate contract. The COR may treat a group of orders as a single unit for administration of progress payments if each order is subject to the same liquidation rate.

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1645.33 The COR shall ensure that any excess of unliquidated progress payments over the amount permitted by the liquidated rate specified in the contract is promptly corrected through one (1) or more of the following:

- (a) Increasing the liquidation rate;
- (b) Reducing the progress payment rate; or
- (c) Suspending progress payments.

1645.34 **Review or Audit of Progress Payments.** In each contract providing for progress payments, the COR shall include provisions, approved by the CCO, giving the Board the right to conduct post-payment reviews or audits at the discretion of the COR, including reviews or audits to determine the following:

- (a) Whether the unliquidated progress payments are fairly supported by the value of work accomplished on the undelivered portion of the contract;
- (b) Whether the limitation on progress payments has been exceeded;
- (c) Whether the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion, or the contractor has adequate resources to complete the contract; and
- (d) Whether there is any reason to doubt the adequacy or reliability of the contractor's accounting system, controls, or payment certification.

1645.35 The COR shall conduct progress payment reviews periodically, at intervals of six (6) months or less, and may conduct reviews or audits at any time or upon receipt of any request for a progress payment.

1645.36 **Suspension or Reduction of Progress Payments.** In each contract that provides for progress payments, the COR shall include provisions, approved by the CCO, which assert the Board's right to reduce or suspend progress payments, or increase the liquidation rate, as appropriate, in the following circumstances:

- (a) If the contractor fails to maintain an efficient and reliable accounting system and controls that are adequate for the proper administration of progress payments;
- (b) If the COR determines that contract performance, including full liquidation of progress payments, is endangered by the contractor's financial condition or by a failure to make progress on the performance of the contract;
- (c) If the inventory allocated to the contract exceeds reasonable requirements;

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- (d) If the contractor is delinquent in paying the costs of contract performance in the ordinary course of business;
- (e) If the unliquidated progress payments exceed the fair value of undelivered work under the contract; and
- (f) If the sum of the total costs incurred under a contract, plus the estimated costs to complete performance, are likely to exceed the contract price.

1645.37 Actions under §1645.36 shall only be taken in accordance with the contract terms and only after the following:

- (a) The COR gives notice to the contractor of the intended action and provides an opportunity for discussion; and
- (b) The COR evaluates the effect of the action on the contractor's operations, based on the contractor's financial condition, projected cash requirements, and the existing or available credit arrangements.

1645.38 The COR shall take immediate unilateral action only if warranted by circumstances such as overpayments or unsatisfactory contract performance.

1645.39 In all cases, the COR shall document the contract file with evidence supporting the COR's decisions.

1645.40 **Liquidation Rates.** Progress payments shall be recouped by the Board through the deduction of liquidations from payments that would otherwise be due the contractor for completed contract items.

1645.41 To determine the amount of the liquidation, the COR shall apply a liquidation rate to the contract price of contract items delivered and accepted.

1645.42 Except as provided in §1645.44, the liquidation rate shall be the same as the progress payment rate established pursuant to §1645.15. This rate shall always be used at the beginning of a contract.

1645.43 The liquidation rate determined in accordance with §1645.42 shall apply throughout the period of contract performance unless the COR adjusts the liquidation rate under the alternate method set forth in §1645.44.

1645.44 In order to permit the contractor to retain the earned profit element of the contract price for completed items in the liquidation process, the COR may reduce the liquidation rate when all of the following circumstances apply:

- (a) The contractor has requested a reduction in the rate;

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- (b) The rate has not been reduced in the preceding twelve (12) months;
- (c) The contract delivery schedule extends at least eighteen (18) months from the contract award date;
- (d) Data on actual costs are available for the products delivered, or, if no deliveries have been made, for a performance period of at least twelve (12) months;
- (e) The reduced liquidation rate would result in the Board recouping under each invoice the full extent of the progress payments applicable to the costs allocable to that invoice;
- (f) The contractor would not be paid for more than the costs of items delivered and accepted (less allocable progress payments) and the earned profit on those items;
- (g) The unliquidated progress payments would not exceed the limit prescribed in the contract;
- (h) The parties agree on an appropriate rate; and
- (i) The contractor agrees to certify annually (or more often if requested by the COR) that the alternate rate continues to meet the conditions of §§1645.44(e) through 1645.44(g). The certificate shall be accompanied by adequate supporting information.

1645.45 The COR may increase the liquidation rate in the following circumstances:

- (a) If the contractor experiences a lower profit rate than the rate anticipated at the time the original liquidation rate was established;
- (b) If the target profit is changed under a fixed-price incentive contract with successive targets; or
- (c) If a re-determined price involves a change in the profit element under a contract with prospective price redetermination at stated intervals.

1645.46 Whenever the liquidation rate is changed, the COR shall issue a contract modification to specify the new rate.

1645.47 If the liquidation rate is increased under §1645.45, the COR shall ensure that the alternate liquidation rate is high enough to result in the recoupment by the Board of the applicable progress payments on each billing.

1645.48 Any change in the liquidation rate shall be supported by documentation included in the contract file.

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1645.49 Adjustments for Price Reduction. If a retroactive downward price adjustment occurs under a re-determinable contract that provides for progress payments, the COR shall do the following:

- (a) Determine the refund due and obtain repayment from the contractor for the excess of payments made for delivered items over amounts due as recomputed at the reduced prices; and
- (b) Increase the unliquidated progress payments amount for over-deduction made from the contractor's billings for items delivered.

1645.50 The COR shall increase the unliquidated progress payments amount if the contractor makes an interim or voluntary price reduction under a re-determinable or incentive contract.

1645.51 Protection of the Board Title. The COR shall include a provision, approved by the CCO, with the progress payment provisions in the contract which provides that the Board shall receive title to all of the materials, work-in-progress, finished goods, and other items of property under the contract.

1645.52 The COR shall ensure that Board title is not compromised by other encumbrances, liens, or hypothecations.

1645.53 The COR shall require additional protective provisions, if deemed necessary, to establish and protect the Board's title.

1645.54 Risk of Loss. The COR shall include a provision, approved by the CCO, with the progress payment provisions of the contract which provides that, except for normal spoilage, the contractor shall bear the risk of loss, theft, destruction, or damage to property affected by the provision, unless the Board has expressly assumed that risk.

1645.55 The contractor shall be obligated to repay the Board the amount of unliquidated progress payments based on costs allocable to the property if the loss occurred after the contractor assumed the risk of loss.

1645.56 The contractor shall not be obligated to pay for the loss of property for which the Board has assumed the risk of loss.

1645.57 Progress Payments to Subcontractors. The COR shall encourage each contractor to provide progress payments to subcontractors on terms that meet the standards in §1645 for customary progress payments.

1645.58 In each contract providing for progress payments, the COR shall include a provision, approved by the CCO, which requires the contractor to include in the terms of each subcontract the substance of the progress payment provisions in the prime contract, modified to indicate that the contractor (not the Board) awards the subcontract and administers the progress payments.

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1645.59 If the contractor makes progress payments to a subcontractor under a cost-reimbursement prime contract, the COR shall accept the progress payments as reimbursable costs of the prime contract only under the following conditions:

- (a) When the payments are made under the standards in §1645 for customary progress payments;
- (b) When the payments do not exceed the progress payment rate set forth in §1645.15;
- (c) When the subcontractor complies with the liquidation principles set forth in §1645; and
- (d) When the subcontract contains progress payments terms as required under §1645.57.

1645.60 **Contract Debt Determination and Collection.** In determining the amount of any contract debt, the COR and the CCO shall fairly consider both the Board's claim and any contract claims by the contractor against the Board pursuant to § 1601 of these Rules.

1645.61 The CA designated to administer the collection of contract debts and applicable interest, shall use all proper means available for collecting debts as rapidly as possible.

1645.62 Except in cases in which an agreement has been entered into for deferment of collections, or when bankruptcy proceedings against the contractor have been initiated, the contractor shall liquidate the debt by either of the following methods:

- (a) Cash payment in a lump sum on demand; or
- (b) Credit against existing payments due to the contractor.

1645.63 **Demand for Payment of Contract Debt.** The CA shall make a demand for payment as soon as the amount of contract debt due has been computed.

1645.64 If the debt arises from excess costs for a default determination under §1650.67 of these Rules, the COR shall make the demand without delay.

1645.65 The demand shall include the following:

- (a) A description of the debt, including the debt amount;
- (b) If applicable, notification that any amount not paid within thirty (30) days from the date of the demand, or from any earlier date specified in the contract, shall bear interest at the rate set forth in §1645.8;

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- (c) A notification that the contractor may submit a proposal for deferment of collection if immediate payment is not practical or if the amount is disputed; and
- (d) Identification of the CA designated for determining the amount of the debt and for its collection.

1645.66 Negotiation of Refund to Resolve Contract Debt. The COR shall attempt to resolve expeditiously the amount of contract debt and refund through negotiations with the contractor.

1645.67 If the COR and contractor agree upon a refund to the Board, the CA shall promptly write a memorandum to document the agreement and the contract debt.

1645.68 The memorandum shall be signed by the COR for the Board and the contractor.

1645.69 The COR shall execute a contract modification to adjust the contract in accordance with the memorandum of agreement.

1645.70 Setoff and Withholding of Payments. If a CA is notified of a debt and has contractor invoices on hand for payment, the CA shall make an appropriate setoff.

1645.71 The CA shall give the contractor written notice of the setoff, including a statement of the reasons for the setoff. The notice shall be delivered to the contractor or mailed by certified mail, return receipt requested.

1645.72 To the extent that the setoff reduces the debt, the explanation of the setoff shall indicate the extent to which the demand amount described in §1645.63 is reduced.

1645.73 During the thirty (30) days following the issuance of a demand pursuant to §1645.63, the COR shall consider the advisability of withholding payments otherwise due to the contractor, based on the circumstances of each individual case.

1645.74 If, within thirty (30) days of the issuance of the demand, made pursuant to §1645.63, the contractor has neither completed payment nor requested deferment, the COR may immediately withhold any contract payment due up to the amount of the debt plus interest.

1645.75 Deferment of Collection. If the COR receives a written request from the contractor for a deferment of the debt collection or installment payments, the COR shall promptly review the request to see if the information included in accordance with §1645.2 is adequate for action on the request.

1645.76 The COR may authorize a deferment of debt collection pending the resolution of appeals filed by the contractor under §1601 of these Rules. Until the appeal is decided, deferments may only be granted if, within thirty (30) days after the filing, the contractor presents to the COR a good and sufficient bond, or other collateral acceptable to the COR, in the amount of the claim.

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1645.77 The arrangement for deferred payment shall be in the form of a written agreement providing for deferred payment of the debt. The agreement shall include appropriate covenants and securities, in a form approved by the CCO, shall be limited to the shortest practicable maturity, and shall be signed by the COR and the contractor. At a minimum, the COR shall include the following in the deferred payment agreement:

- (a) A description of the debt;
- (b) The date of the first demand for payment;
- (c) Notice of interest charges pursuant to §1645.79;
- (d) The method for making payments and the office to which the payments shall be made;
- (e) A requirement for the contractor to submit financial information requested by the Board, and for reasonable access to the contractor's records and property by Board representatives; and
- (f) Provisions for termination of the deferred payment arrangement and acceleration of the maturity of the debt if the contractor defaults on the deferred payment agreement or the underlying contract, or if bankruptcy or insolvency proceedings are instituted by or against the contractor.
- (g) If the contractor's appeal of the debt is pending, the deferred payment agreement shall include a provision, approved by the CCO, requiring the contractor to diligently prosecute the appeal and to pay the debt in full either when the appeal is decided or when the contractor and the Board agree on the debt amount.

1645.78 The deferred payment agreement shall include a provision, approved by the CCO, allowing the contractor to make prepayments without prejudice for refund of overpayments and for crediting of interest.

1645.79 **Contract Debt Interest Charges and Credits.** The COR shall apply interest charges to any contract debt unpaid after thirty (30) days from the issuance of a demand, unless either of the following applies:

- (a) The contract specifies another due date or procedure for charging or collecting interest; or
- (b) The contract is excluded under §1645.83.

1645.80 Interest on contract debt shall be made an element of each deferred payment agreement. The interest charge shall be at the rate set forth in the §1645.8.

1645.81 The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on whichever of the following dates applies:

- (a) The date on which the designated office received payment from the contractor;

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- (b) The date of issuance of a Board check to the contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
- (c) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the contractor.

1645.82 An equitable interest credit shall be applied under the following circumstances:

- (a) When the amount of debt initially determined is subsequently reduced;
- (b) When the collection procedures used result in an over-collection of the debt due; or
- (c) When the COR or other official designated to collect the debt determines that the Board has unduly delayed payments to the contractor on the same contract at some time during the period to which the interest charge applied, unless an interest penalty was paid for the late payment.

1645.83 The following categories of contracts may be excluded from interest charges:

- (a) Small purchases;
- (b) Contracts with a state or local government or instrumentality; and
- (c) Contracts without any provision for profit or fee with a nonprofit organization.

1645.84 **Compromise of Contract Debt Collections.** For debts under ten thousand dollars (\$10,000), excluding interest, if further collection is not practical or would cost more than the amount of recovery, the Executive Director may compromise the debt or terminate or suspend further collection action, except any debt involving fraud.

1645.85 **Contract Funding.** In accordance with the Antideficiency Act (31 U.S.C. § 665), no COR or other Board employee shall make or authorize an encumbrance or expenditure in advance of appropriations or which exceeds the budget authority available under a current appropriation.

1645.86 Before execution of a contract, the COR shall ensure that the appropriate amount of allocated budget authority is encumbered to cover the cost of the contract. Budget authority shall be encumbered as follows:

- (a) In an amount sufficient to cover the price or target price of a fixed-price contract, or the price of that portion of the contract to be performed in the current fiscal year; or
- (b) In an amount sufficient to cover the estimated cost and any fee of a cost-reimbursement contract, or that portion of the estimated cost and fee applicable to the current fiscal year.

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1645.87 Before executing any contract, the COR shall obtain certification from the Board's Chief Financial Officer, or his or her designee, that the amount of the contract does not exceed the amount of unencumbered budget authority as of the date on which the contract is executed. For purposes of this section, "unencumbered budget authority" shall mean that portion of an appropriation which has been allocated to the object of the procurement and which has not been reallocated to another purpose, committed to any other procurement, or expended.

1645.88 If the contract provides for expenditures in excess of the amount of unencumbered budget authority, the COR shall not sign the contract unless the contract contains a provision, approved by the CCO, which expressly provides that the portion of the contract requiring payment of any amount in excess of available budget authority is conditioned upon the appropriation or allocation of additional budget authority.

1645.89 If the contract provides for expenditures in a future fiscal year, the COR shall not sign the contract unless the contract contains a provision, approved by the CCO, which expressly provides that the portion of the contract requiring expenditures in a future fiscal year is conditioned upon the appropriation of budget authority for that fiscal year. For contracts which extend to a fiscal year for which appropriations have not been made or allocated at the time of contract execution, the COR shall ensure that the appropriate amount of allocated budget authority is encumbered when the appropriation is made.

1645.90 Each encumbrance shall expire at the end of the fiscal year to which it applies. The portion of any contract not performed or delivered during the fiscal year shall be handled as follows:

- (a) If the contract does not extend beyond the end of the fiscal year, that portion of the contract shall be cancelled; or
- (b) If the contract extends to the following fiscal year, that portion of the contract shall be encumbered against appropriated budget authority in the following fiscal year or cancelled if budget authority is not available.

1645.91 A contractor shall not perform services or deliver goods under a contract conditioned upon the availability of funds until the COR has given written notice to the contractor that funds are available. The COR shall not give notice to the contractor until the appropriate amount of budget authority has been encumbered. The District shall not accept goods or services under a contract conditioned upon the availability of funds until the COR has given written notice to the contractor that funds are available.

1645.92 **Limitation of Cost of Funds.** Upon learning that a partially funded contract will receive no further funds, the COR shall promptly give the contractor notice of the decision not to provide funds.

1645.93 Under a cost-reimbursement contract, the COR, upon learning that the contractor is approaching the estimated cost of the contract or the limit of the budget authority allocated and encumbered, shall promptly obtain information about funding and programming pertinent to the continuation of the contract and notify the contractor in writing of one (1) of the following:

- (a) That additional funding is available or the estimated cost has been increased in a specified amount;

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- (b) That the contract will not be further funded, and that the contractor shall submit a proposal for an adjustment of fee, if any, based on the percentage of work completed in relation to the total work called for under the contract;
- (c) That the contract will be terminated; or
- (d) That the Board is considering whether to allot additional funds or increase the estimated cost, that the contractor is entitled by the contract terms to stop work when the funding or cost limit is reached, and that any work beyond the funding or cost limit will be at the contractor's risk.

1645.94 Under a cost-reimbursement contract, the COR may issue a change order, a direction to replace or repair defective items or work, or a termination notice without immediately increasing the funds available.

1645.96 Under a cost-reimbursement contract, because a contractor is not obligated to incur costs in excess of the estimated cost in the contract, the COR shall ensure availability of funds for directed actions.

1645.97 Under a cost-reimbursement contract, the COR may direct that any increase in the estimated cost or amount allotted to a contract be used for the sole purpose of funding termination or other specified expenses.

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7 DCMR § 1646-A

1646-A. CONTRACT COST PRINCIPLES

1646-A.1 The cost principles and procedures set forth in this section shall be used when cost analysis is performed in connection with any contract or solicitation in accordance with these Rules.

1646-A.2 The cost principles and procedures set forth in this section shall be used by the COR to negotiate or to determine reimbursable costs or the allowability of claims for reimbursement of costs in accordance with the clause, approved by the CCO, contained in all cost-reimbursement contracts in accordance with these Rules.

1646-A.3 The cost principles and procedures set forth in this section shall be used in the following situations:

- (a) The pricing or estimation of costs in contracts based on other than competitive sealed bidding;
- (b) The pricing or estimation of costs in change orders or contract modifications;
- (c) Settlement of contract costs for contracts which have been terminated; and
- (d) Allowability of costs under contract provisions which provide for reimbursement of costs.

1646-A.4 In addition to those contracts where the application of cost principles is required under this section, the COR may include a clause, approved by the CCO, requiring the use of cost principles and procedures set forth in this section to determine the allowability of estimated or incurred costs in any contract where the COR determines that the negotiation, allowance, determination, or estimation of costs may be required or necessary.

1646-A.5 The application of cost principles to fixed-price contracts and subcontracts shall not be construed as a requirement to negotiate agreements on individual elements of cost in arriving at agreement on the total price. The final price accepted by the parties may reflect agreement only on the total price.

1646-A.6 The cost principles and procedures set forth in this section shall not apply to the following:

- (a) The establishment of prices under contracts awarded on the basis of competitive sealed bidding;
- (b) Prices fixed by law or regulation; or
- (c) Prices based on established catalog prices or established market prices.

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1646-A.7 Advance Cost Agreements. Advance cost agreements may be negotiated either before or after contract award. However, advance costs agreements shall be negotiated before a significant portion of the costs covered by the agreement have been incurred.

1646-A.8 Advance cost agreements shall be in writing, signed by the COR and the contractor, and shall be incorporated by reference in the contract.

1646-A.9 The COR shall not agree to a treatment of costs that is inconsistent with the cost principles set forth in this section, except as provided in §1646-A.10.

1646-A.10 Advance cost agreements may be negotiated with a contractor for a single contract, a group of contracts, or all the contracts between that contractor and the Board.

1646-A.11 Deviation from Cost Principles. The COR may recommend to the CCO a deviation from the cost principles set forth in this section if the COR determines in writing that the deviation would be in the best interests of the Board.

1646-A.12 The COR's recommendation for a deviation shall be in writing and shall set forth the reasons and justifications for the proposed deviation.

1646-A.13 A deviation shall be effective only upon written approval by the CCO and incorporation in the contract.

1646-A.14 The CCO shall not approve a deviation under this section unless the costs agreed to under the deviation are reasonable, lawful, allocable, and accounted for in accordance with generally accepted accounting principles.

1646-A.15 Total Costs. The total cost of a contract shall be the sum of the allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits.

1646-A.16 In ascertaining what constitutes a cost, the COR may consider any generally accepted method of determining or estimating costs that is equitable and is consistently applied, including standard costs properly adjusted for applicable variances.

1646-A.17 Whenever a contractor is required by the Board to submit a price proposal, the contractor shall estimate costs in a manner consistent with generally accepted cost accounting practices which are consistently applied, and which are consistent with the provisions of this section.

1646-A.18 Determining Allowability. When determining whether a cost is allowable, the COR shall consider the following factors:

- (a) Reasonableness;

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- (b) Allocability;
- (c) Consistency with generally accepted accounting principles and practices appropriate to the particular circumstances;
- (d) The terms of the contract;
- (e) Consistency with the limitations set forth in this section; and
- (f) Consistency with any applicable law.

1646-A.19 If a contractor's accounting practices are inconsistent with this section, the COR shall not allow costs resulting from those practices in excess of the amount that would have resulted from using practices consistent with this section.

1646-A.20 **Determining Reasonableness.** The COR shall determine a cost to be reasonable if it does not differ from or exceed in amount that which would be incurred by a prudent person in the conduct of a competitive business, in accordance with the provisions of this section.

1646-A.21 In determining the reasonableness of a given cost, the COR shall consider the following factors:

- (a) Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;
- (b) The restraints or requirements imposed by generally accepted sound business practices, arm's length bargaining, federal and District laws and regulations, and contract terms and specifications;
- (c) The action that a prudent business person would take, considering responsibilities to the owner of the business, employees, customers, the Board, and the public at large;
- (d) Any significant deviations from the established practices of the contractor that may unjustifiably increase the contract costs; and
- (e) Any other relevant factors.

1646-A.22 Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints.

1646-A.23 No presumption of reasonableness shall be attached to the incurrence of costs by a contractor.

1646-A.24 If an initial review of the facts results in a challenge of a specific cost by the COR or the COR's representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable.

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1646-A.25 Determining Allocability. The COR shall determine that a cost is allocable if the cost is assignable or chargeable to one (1) or more cost objectives on the basis of relative benefits received or other equitable relationship, which are:

- (a) The cost is incurred specifically for the contract;
- (b) The cost benefits both the contract and other work, and can be distributed to both in reasonable proportion to the benefits received; or
- (c) The cost is necessary to the overall operation of the business, although a direct relationship to any particular cost objective may not be evident.

1646-A.26 Credits. The COR shall credit to the Board as a cost reduction, or by cash refund, the applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost which is received by or accrued to the contractor.

1646-A.27 Accounting for Unallowable Costs. The COR shall identify and exclude from each billing, claim, and proposal costs that are expressly unallowable under this section or mutually agreed to be unallowable under an advance cost agreement.

1646-A.28 When costs are identified as unallowable or mutually agreed to be unallowable, all directly associated costs shall also be unallowable.

1646-A.29 Costs and directly associated costs specifically designated as unallowable as a result of a written decision by a COR shall be identified when included in or used in computing any billing, claim, or proposal applicable to a Board contract.

1646-A.30 The COR shall require records as support for claims, billings, and proposals that are adequate to establish and maintain visibility of those costs and directly associated costs which have been identified as unallowable.

1646-A.31 The COR shall identify unallowable costs involved in determining rates used for standard costs, indirect cost proposals, or billings at the time rates are proposed, established, revised, or adjusted.

1646-A.32 Direct costs. Direct costs associated with Board contracts shall be segregated from other costs and recorded in accounts identifying them with the particular contract or cost objective to the maximum extent possible.

1646-A.33 Costs specifically identified with final cost objectives that are unrelated to Board contracts, including other contracts or general business objectives of the contractor, shall not be charged to a Board contract directly or indirectly.

1646-A.34 Any direct cost of a minor dollar amount may be treated as an indirect cost if the accounting treatment used is consistently applied and produces substantially the same result as treating the cost as a

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direct cost. A minor dollar amount shall be an amount not in excess of one half percent (1/2%) of the contract price.

1646-A.35 Any cost that has been allocated to any indirect cost pool or objective shall not be allowed as a direct cost.

1646-A.36 **Indirect Costs.** An indirect cost shall not be allocated to a Board contract if other costs incurred for the same purpose in like circumstances have been included as a direct cost of that contract or any final cost objective not related to the Board contract.

1646-A.37 The contractor's method of allocating indirect costs shall be in accordance with generally accepted accounting principles which are consistently applied, in accordance with the provisions of this section.

1646-A.38 The COR shall examine the contractor's method of allocating indirect costs when any of the following apply:

- (a) A substantial difference exists between the cost patterns of work performed under the contract and the contractor's other work;
- (b) A significant change occurs in the nature of the contractor's business, extent of subcontracting, fixed asset improvement programs, inventories, volume of sales and production, manufacturing process, products, or other relevant circumstances; or
- (c) Indirect cost groups developed for a contractor's primary location are applied to off-site locations, in which case separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objective.

1646-A.39 The COR shall consider the base period for indirect cost allocation as the one in which the costs are incurred and accumulated for distribution to work performed in that period.

1646-A.40 **Pre-Contract Costs.** Pre-contract costs shall include costs incurred in anticipation of, and prior to, the effective date of the contract.

1646-A.41 Pre-contract costs necessary to comply with the proposed contract delivery schedule shall be allowable to the extent that they would have been allowable if incurred after the date of the contract, provided that the contract shall set forth the period of time and maximum amount that will be covered as allowable pre-contract costs.

1646-A.42 **Bid and Proposal Costs.** Bid and proposal costs shall include costs incurred in preparing, submitting, and supporting bids and proposals.

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1646-A.43 Bid and proposal costs shall not be allowable as direct or indirect costs unless they are specifically permitted by a provision of the contract or solicitation.

1646-A.44 **Termination for Convenience Costs.** The costs of items reasonably usable on the contractor's other work shall not be allowable upon termination of a contract for the convenience of the Board, unless the contractor submits evidence that the items could not be retained at cost without sustaining a loss.

1646-A.45 Costs which cannot be discontinued immediately after the effective date of the termination may be allowed. However, any costs continuing after the effective date of the termination due to the negligent or willful failure of the contractor to discontinue the costs shall not be allowable.

1646-A.46 Initial costs, such as starting load and preparatory costs, shall be allowable in the following circumstances:

- (a) When starting load costs not fully absorbed because of termination are nonrecurring labor, material, and related overhead costs incurred in the early part of production and result from factors such as the following:
 - (1) Excessive spoilage due to inexperienced labor;
 - (2) Idle time and subnormal production due to testing and changing production methods;
 - (3) Training; and
 - (4) Lack of familiarity or experience with the product, materials, or manufacturing processes.
- (b) When costs incurred in preparing to perform the terminated contract include costs such as those incurred for initial plant rearrangement and alterations, management and personnel organization, and production planning, but not special machinery and equipment and starting load costs.

1646-A.47 When initial costs are included in the settlement proposal as direct costs, those costs also shall not be included in overhead. Initial costs attributable only to a single contract shall not be allocated to other contracts.

1646-A.48 The loss of useful value of special tooling, or special machinery and equipment, shall be allowed if the following factors apply:

- (a) The special tooling, or special machinery and equipment, is not reasonably capable of use in the other work of the contractor;
- (b) The Board's interest is protected by transfer of title to the Board or by other means deemed appropriate by the COR; and

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- (c) The loss of useful value for a single terminated contract is limited to that portion of the procurement cost which bears the same ratio to the total procurement cost as the terminated portion of the contract bears to the entire terminated contract and other Board contracts for which the special tooling or special machinery and equipment was procured.

1646-A.49 Rental costs under an unexpired lease, less the residual value of the lease, shall be allowable when the COR determines that the lease was reasonably necessary for the performance of the terminated contract. The following limitations shall apply:

- (a) The amount of rental claimed shall not exceed the reasonable use value of the property leased for the period of the contract and any further period that may be reasonable; and
- (b) The contractor shall make all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of the lease.

1646-A.50 The contract may provide that the costs of alterations and reasonable restorations required by a lease are allowable.

1646-A.51 The costs of settlement of the termination (such as accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation of settlement claims to the COR) shall be allowable. Indirect costs related to salary and wages incurred as a result of the preparation and presentation of settlement claims shall be allowable.

1646-A.52 Costs of termination and settlement of subcontracts, as well as subcontractor claims as a result of a termination, shall be allowable except as provided in these Rules.

1646-A.53 **Maintenance, Repair, Service, and Warranty Costs.** Costs necessary for the upkeep of real or personal property, including Board property, unless otherwise provided for, that do not add to the permanent value of the property or appreciably prolong its intended life, but keep it in an efficient operating condition, shall be allowable as follows:

- (a) Normal maintenance and repair costs shall be allowable; and
- (b) Extraordinary maintenance and repair costs shall be allowable and allocated to the applicable periods for purposes of determining contract costs.

1646-A.54 Service and warranty costs that include costs arising from the fulfillment of any contractual obligation to provide services (such as installation, training, correcting defects in the products, replacing defective parts, and making refunds in the case of inadequate performance) shall be allowable when consistent with the terms of the contract and when the allowance of the costs would not result in a double payment by the Board for correction of defects.

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1646-A.55 Manufacturing and Production Engineering Costs. Costs incident to the following activities related to manufacturing and production engineering shall be allowable if required or approved under the contract:

- (a) Developing and deploying new or improved materials, systems, processes, methods, equipment, tools, and techniques that are or are expected to be used in producing products or services;
- (b) Developing and deploying pilot production lines;
- (c) Improving current production functions such as plant layout, production scheduling and control, methods and job analysis, equipment capabilities and capacities, inspection techniques, and tooling analysis, including tooling design and application improvements; and
- (d) Material and manufacturing producibility analysis for production suitability and the optimization of manufacturing processes, methods, and techniques.

1646-A.56 Material Costs. Costs of material shall be allowable. In determining the cost of materials, consideration shall be given to reasonable overruns, spoilage, or defective work.

- (a) Material costs shall include adjustments for all available discounts, refunds, rebates, and allowances.
- (b) Material costs shall include adjustments for credits for proceeds the contractor received or reasonably should receive from salvage and material returned to suppliers.

1646-A.57 Allowance for all materials, goods, and services that are sold or transferred between any divisions, subsidiaries, or affiliates of the contractor under a common control shall be made on the basis of costs incurred in accordance with this section. The COR may allow the transfer at a price agreed to by the COR if the following apply:

- (a) The price of the materials is determined to be reasonable by the COR;
- (b) The price is not higher than the transferor's current sales price to its most favored customer for a similar quantity under similar payment and delivery conditions; and
- (c) The price is established either by established catalog price or the lowest price offer obtained through competitive sealed bidding or competitive sealed proposals with similar businesses.

1646-A.58 When materials are purchased specifically for and are identifiable solely with performance under a contract, the actual purchase cost of those materials may be charged to the contract. If material is issued from stores, any generally recognized method for pricing the material shall be acceptable if that method is consistently applied and the results are equitable.

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1646-A.59 Patent and Royalty Costs. The following patent costs shall be allowable to the extent that they are incurred as a requirement of a Board contract and where a title or a royalty-free perpetual license is to be conveyed to the Board:

- (a) Costs of preparing invention disclosures, reports, and other documents;
- (b) Costs for searching the art to the extent necessary to make the invention disclosures; and
- (c) Other costs in connection with the filing and prosecution of the United States patent application.

1646-A.60 General counseling services relating to patent matters, such as advice on patent laws, regulations, clauses, and employee agreements, shall be allowable.

1646-A.61 Royalties on a patent or amortization of the cost of purchasing a patent or patent rights necessary for the proper performance of the contract and applicable to contract products or processes shall be allowable unless one (1) or more of the following apply:

- (a) The Board or District has a license or the right to a free use of the patent;
- (b) The patent has been adjudicated to be invalid or has been administratively determined to be invalid;
- (c) The patent is unenforceable; or
- (d) The patent has expired.

1646-A.62 In any case involving a patent formerly owned by the contractor, the COR shall not allow a royalty amount in excess of the cost which would have been allowed if the contractor had retained title.

1646-A.63 Special Tooling and Special Test Equipment Costs. The cost of special tooling and special test equipment used in performing one (1) or more Board contracts shall be allowable and shall be allocated to the specific Board contract or contracts for which it was procured.

1646-A.64 The cost of items procured by the contractor before the effective date of the contract, or the replacement of those items, whether altered or adapted for use in performing the contract, and items which the contract schedule specifically excludes shall be allowable only as depreciation or amortization.

1646-A.65 If items are disqualified as special tooling or special test equipment because they can be made suitable for general purpose use at relatively minor cost and have a general use value commensurate with their value as special tooling or special test equipment, the cost of adapting the items for use under the contract and the cost of returning them to their prior configuration shall be allowable.

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1646-A.66 **Bad Debts.** Bad debts shall not be allowable, including losses arising from uncollectable accounts receivable due from customers and other claims and any directly associated costs such as collection and legal costs.

1646-A.67 **Bonding Costs.** Bonding costs shall be allowable when required under the terms of the contract.

1646-A.68 Bonding costs attributable to the performance of Board contracts shall be allowable when required by the contractor in the general conduct of its business to the extent that the bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

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7 DCMR § 1646-B

1646-B. OTHER CONTRACT COST PRINCIPLES

1646-B.1 Insurance and Indemnification Costs. The cost of required or approved insurance that is maintained by the contractor pursuant to the contract shall be allowable.

1646-B.2 The cost of insurance maintained by the contractor in connection with the general conduct of its business shall be allowable, in accordance with the provisions of this section.

1646-B.3 The COR shall determine that the types and extent of coverage follow sound business practice and that the rates and premiums are reasonable.

1646-B.4 Costs allowed for business interruption or other similar insurance shall exclude the cost of coverage for loss of profit.

1646-B.5 The cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets shall be allowable only when the contractor has a formal written policy assuring that, in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset, plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have a formal written policy with this assurance, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset shall not be allowable.

1646-B.6 Costs of insurance for the risk of loss of or damage to Board property shall be allowable only to the extent that the contractor is liable for loss or damage to Board property, and to the extent that insurance does not cover loss or damage that results from willful misconduct or lack of good faith on the part of the contractor, its directors, officers, or agents.

1646-B.7 Actual losses shall not be allowable unless expressly provided for in the contract except as follows:

- (a) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practices, shall be allowable when the contractor did not establish a self-insurance program; and
- (b) Minor losses, such as spoilage, breakage, and disappearance of small hand tools, that occur in the ordinary course of doing business and that are not covered by insurance shall be allowable.

1646-B.8 The cost of insurance to protect the contractor against the costs of correcting its own defects in materials or workmanship shall not be allowable. However, insurance costs to cover fortuitous or casualty losses resulting from defects in materials or workmanship shall be allowable as a normal business expense.

1646-B.9 Interest and Other Financial Costs. Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and

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professional fees paid in connection with preparing prospectuses, costs of preparing and issuing stock rights, and directly associated costs shall not be allowable, except for interest assessed by state or local taxing authorities in accordance with these Rules.

1646-B.10 Organization Costs and Other Business Costs. Expenditures in connection with planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions, or raising capital (net worth plus long-term liabilities) shall not be allowable.

1646-B.11 The cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, or changes that result in alterations in the rights and interests of security holders, whether or not additional capital is raised, shall not be allowable.

1646-B.12 The following recurring costs shall be allowable when allocated on an equitable basis:

- (a) Registry and transfer charges resulting from changes in ownership of securities issued by the contractor;
- (b) The cost of shareholders' meetings;
- (c) The cost of normal proxy solicitations;
- (d) The cost of preparing and publishing reports to shareholders;
- (e) The cost of preparing and submitting required reports and forms to taxing and other regulatory bodies;
- (f) Incidental costs of directors and committee meetings; and
- (g) Other similar costs.

1646-B.13 Taxes. District, federal, state, and local taxes that are required to be and are paid or accrued in accordance with generally accepted accounting principles shall be allowable.

1646-B.14 The following costs shall not be allowable:

- (a) District, federal, state, and local income taxes and federal excess profit taxes;
- (b) All taxes from which the contractor could have obtained an exemption but failed to do so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;

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- (c) Any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the COR;
- (d) Income tax accruals designed to account for the tax effects of differences between taxable income and pre-tax income as reflected by the contractor's books of accounts and financial statements;
- (e) Taxes in connection with financing, refinancing, refunding operations, or reorganization;
- (f) Special assessments on land that represent capital improvements;
- (g) Taxes (including excise taxes) on real or personal property (or on the value, use, possession, or sale of personal property) which is used solely in connection with work other than on District contracts; and
- (h) Taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to the Internal Revenue Code.

1646-B.15 Any taxes, interest, or penalties that were allowed as contract costs and are refunded to the contractor shall be credited or paid to the Board in the manner the Board directs. However, any interest actually paid or credited to a contractor incident to a refund of tax, interest, or penalty shall be paid or credited to the Board only to the extent that the interest accrued over the period during which the contractor had been reimbursed by the Board for the taxes, interest, or penalties.

1646-B.16 Direct government charges for services, such as water or capital improvements, are not considered taxes and shall not be allowable.

1646-B.17 **Losses on Other Contracts.** An excess of costs over income under any other contract, including the contractor's contributed portion under cost-sharing contracts, shall not be allowable.

1646-B.18 **Compensation for Employee Services.** Compensation for employee services shall include all remuneration paid or accrued, in any form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance.

1646-B.19 Compensation for employee services shall be allowable when the work is performed by the employee in the current year and does not represent a retroactive adjustment of a prior year's salaries or wages.

1646-B.20 The total compensation for employee services shall be reasonable for the work performed. Specific restrictions on individual compensation elements shall be observed where they are prescribed in the contract or advance cost agreement.

1646-B.21 Increases in costs for compensation for employee services shall not be allowable when the contractor introduces new or major revisions to existing compensation plans, unless the contractor does the following before the changes are implemented:

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- (a) Notifies the COR of the changes; and
- (b) Allows the COR an opportunity to review the allowability of the changes.

1646-B.22 Costs that are not allowable under other sections of these Rules shall not be allowable solely on the basis that they constitute compensation for employee services.

1646-B.23 Compensation for employee services shall be considered reasonable to the extent that the total amount paid or accrued is commensurate with compensation paid under the contractor's established policy, and the amount conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area for similar services.

1646-B.24 The COR shall determine whether compensation of the following persons, and their spouses or children, is reasonable for the services performed or is a distribution of profits;

- (a) Owners of closely held corporations;
- (b) Partners; and
- (c) Sole proprietors.

1646-B.25 Bonuses and incentive compensation shall be allowable to the extent that the overall compensation is determined to be reasonable, and the costs are paid or accrued pursuant to an agreement entered into in good faith between the contractor and the employee before the services are rendered or pursuant to an established, consistently applied plan followed by the contractor.

1646-B.26 The COR shall consider severance pay allowable where it is required by law, an employer-employee agreement, established policy that constitutes an obligation of the contractor, or circumstances of the particular employment.

1646-B.27 The COR shall allow pension costs to the extent that the costs are reasonable and meet the following criteria:

- (a) The costs are funded by the time set for filing the federal income tax return or any extension to be considered in the current year; and
- (b) The costs are paid pursuant to an agreement between the contractor and employees before the services are rendered and pursuant to an established plan that is consistently applied.

1646-B.28 The COR shall allow the costs of fringe benefits to the extent that they are reasonable and required by law, by an employer-employee agreement, or as an established, consistently applied policy of the contractor.

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1646-B.29 Legitimate costs incurred on activities designed to improve working conditions, employee morale, and employee performance shall be allowable. If a net profit is generated by these services, it shall be treated as a credit as provided in §1646-A of these Rules.

1646-B.30 **Costs of Back Pay.** The cost of back pay resulting from violations of applicable District law, federal labor laws, or the Civil Rights Act of 1964 where the employee was underpaid shall be allowable.

1646-B.31 All other back pay resulting from violations of applicable District law, federal labor laws, or the Civil Rights Act of 1964 (such as when the employee was improperly discharged, discriminated against, or other circumstances for which the back pay was not additional compensation for work performed) shall not be allowable.

1646-B.32 The cost of back pay resulting from payments to union employees for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiations shall be allowable.

1646-B.33 The cost of back pay to non-union employees based on results of labor-management negotiations shall be allowable only if a formal agreement or understanding exists between management and the employees concerning the payment or an established policy or practice exists and is consistently followed by the contractor.

1646-B.34 **Expert and Consultant Services Costs.** Costs of expert and consultant services shall be allowable when reasonable in relation to the services rendered and when not contingent upon recovery of costs from the Board.

1646-B.35 In determining the allowability of expert and consultant services costs, the COR shall consider the following:

- (a) The nature and scope of the services rendered in relation to the services required under the contract;
- (b) The necessity of contracting for the service considering the contractor's capability in the particular area;
- (c) The past pattern of the contractor's incurring this type of costs, particularly in the years prior to the award of Board contracts;
- (d) The impact of Board contracts in the contractor's business;
- (e) Whether the proportion of Board work to the contractor's total business justifies incurring the cost, particularly when the services rendered are not of a continuing nature and have little relationship to work under Board contracts;
- (f) Whether the service can be performed more economically by employment rather than by contracting;

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- (g) The qualifications of the individual or firm rendering the service and the customary fee charged, especially on non-government contracts; and
- (h) The adequacy of the contractual agreement for the services, including the description of the service, the estimate the time required, rate of compensation, and termination provisions.

1646-B.36 Fees for services rendered shall be allowable only when supported by evidence of the nature and scope of the service furnished.

1646-B.37 **Recruitment Costs.** If the size of the staff recruited and maintained is in keeping with Board contract workload requirements, the following costs shall be allowable:

- (a) Costs of help-wanted advertising;
- (b) Costs of operating an employment office needed to secure and maintain an adequate labor force;
- (c) Costs of operating an aptitude and educational testing program;
- (d) Travel costs of employees engaged in recruiting personnel;
- (e) Travel costs of applicants for interviews; and
- (f) Costs of employment agencies not in excess of standard commercial rates.

1646-B.38 Recruitment and advertising costs shall not be allowable when any of the following apply:

- (a) The advertising or recruitment is for personnel other than those required to perform obligations under a Board contract;
- (b) The advertising does not describe specific positions or classes of positions;
- (c) The advertising or recruitment is excessive relative to the number and importance of the positions or to the industry practices;
- (d) The advertising includes material that is not relevant for recruitment purposes, such as extensive illustrations, the use of color, or descriptions of the company's products or capabilities; or
- (e) The advertising or recruitment is designed to hire personnel from another Board contractor.

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1646-B.39 **Relocation Costs.** Relocation costs incident to the permanent change of duty assignment, for an indefinite period or for a stated period of not less than twelve (12) months, of an existing employee or upon recruitment of a new employee shall not be allowable unless specifically provided for in the contract.

1646-B.40 **Advertising Costs.** Advertising costs that arise from requirements of a Board contract shall be allowable for the following purposes only:

- (a) Recruiting personnel required for performing contractual obligations when considered in conjunction with all other recruitment costs under §1646-B;
- (b) Procuring scarce items for contract performance;
- (c) Disposing of scrap or surplus materials procured for contract performance; or
- (d) Notices or advertisements required by law or regulations.

1646-B.41 **Contingencies.** The COR shall not allow contingency costs except in the case of a termination.

1646-B.42 A contingency factor may be allowed in connection with a termination when it is applicable to a past period to give recognition to minor unsettled factors in the interest of expediting settlement.

1646-B.43 **Contributions and Donations.** Contributions and donations shall not be allowable.

1646-B.44 **Entertainment Costs.** Costs of amusement, diversion, social activities, and any directly associated costs, such as tickets to shows or sport events, meals, lodging, rentals, transportation, and gratuities, shall not be allowable.

1646-B.45 Reasonable costs incurred for meetings or conferences, including, but not limited to, the cost of food, rental of facilities, and transportation, where the primary purpose of incurring those costs is the dissemination of technical information or the stimulation of production related to the Board contract may be allowed by the COR.

1646-B.46 **Fines and Penalties.** Fines and penalties resulting from violations of, or failure of the contractor to comply with District, federal, state, or local laws, or regulations shall not be allowable costs, except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the COR.

1646-B.47 **Lobbying Costs.** Costs associated with activities that involve attempts to influence the outcome of any District, federal, state, or local election, referendum, initiative, or similar procedure, including in-kind or cash contributions, endorsements, publicity, or similar activities, shall not be allowable.

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1646-B.48 Costs associated with establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections shall not be allowable.

1646-B.49 Costs associated with any attempt to influence the introduction of District, federal, state, or local legislation, or the enactment or modification of any pending District, federal, state, or local legislation through communication with any member or employee of the Council, the Congress, or any state or local legislature, or any government official or employee in connection with a decision to sign or veto enrolled legislation shall not allowable.

1646-B.50 Costs associated with any attempt to influence the introduction of District, federal, state or local legislation, or the enactment or modification of any pending District, federal, state, or local legislation by preparing, distributing, or using publicity or propaganda, or by urging any member of the public to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign, or letter writing or telephone campaign shall not be allowable.

1646-B.51 Costs associated with legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when those activities are carried on in support of or in preparation for an effort to engage in other activities for which costs are not allowed under this section, shall not be allowable.

1646-B.52 The costs of providing a technical and factual presentation of information on a topic directly related to the performance of a contract through hearing testimony, statements or letters to the Council or the Congress, including any committee, subdivision, member, or staff member, in response to a documented request made by or on behalf of the recipient member or legislative body shall be allowable if the information is readily obtainable and can be readily put in deliverable form.

1646-B.53 Costs for transportation, lodging, or meals in connection with the activities authorized under §1646-B.52 shall not be allowable unless incurred for the purpose of offering testimony at a regularly scheduled Council or congressional hearing pursuant to a written request for the presentation from the committee or subcommittee conducting the hearing.

1646-B.54 The costs of an activity specifically authorized by statute to be undertaken with funds from the contract shall be allowable.

1646-B.55 When a contractor seeks reimbursement for indirect costs, total costs for the activities set forth in this section shall be separately identified in the indirect cost rate proposal, and shall be treated as unallowable activity costs.

1646-B.56 **Transportation and Travel Costs.** Transportation costs, such as freight, express, cartage, and postage charges relating to goods purchased, in process, or delivered, shall be allowable.

1646-B.57 When identification with the materials received cannot be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the contractor follows a consistent and equitable

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procedure. Outbound freight, if reimbursable under the terms of the contract, shall be treated as a direct cost.

1646-B.58 Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel in official company business related to the Board contract shall be allowable. Allowable costs may be based on actual cost incurred, per diem or mileage, or a combination if the method used-does not result in an unreasonable charge.

1646-B.59 Travel costs directly attributable to specific contract performance shall be allowable and may be charged to the contract as a direct cost.

1646-B.60 Travel costs incurred in the normal course of overall administration of the business shall be allowable and shall be treated as an indirect cost.

1646-B.61 The difference in cost between first-class air accommodations and less than first-class accommodations shall not be allowable.

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7 DCMR § 1647

1647. PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION; FREEDOM OF INFORMATION AND PRIVACY

1647.1 Patents, Copyrights and Proprietary Information. The Board shall honor rights in patents, copyrights, and proprietary information. CORs shall comply with the requirements of federal laws and regulations, in addition to the requirements of this section, in acquiring or using these rights.

1647.2 A contractor shall obtain permission from the lawful owner(s) of copyrighted materials before including all or part of any copyrighted work in any item to be delivered under a contract, unless permission is not required under the fair use or other applicable provisions of federal copyright statutes or regulations.

1647.3 The Board shall not unreasonably restrict the commercial use, outside of the performance of the contract with the Board, of inventions made while performing Board contracts.

1647.4 The COR shall not refuse to award a contract solely on the basis of a suspicion that the contractor may infringe a patent, unless the COR determines that refusal is in the best interests of the Board.

1647.5 Except as provided in these Rules, the COR shall include in all solicitations and contracts a clause, approved by the CCO, which requires the contractor to indemnify the Board against infringement of rights in patents, copyrights, or proprietary information.

1647.6 The Board shall limit its demands for rights in proprietary information resulting from private developments to those reasonable for present and future use by the Board.

1647.7 Notice and Assistance. The contractor shall notify the COR of all claims of patent or copyright infringement or misappropriation of proprietary information that come to the contractor's attention in connection with performing a Board contract.

1647.8 A contractor shall, upon request, assist the Board with any evidence and information in its possession in connection with any claim or lawsuit against the Board due to any alleged patent or copyright infringement or misappropriation of proprietary information arising out of or resulting from the performance of a contract.

1647.9 The COR shall include a clause, approved by the CCO, in each solicitation and contract requiring the contractor to report to the COR each suit or claim of patent or copyright infringement or misappropriation of proprietary information. The clause shall also require the contractor, upon request, to furnish to the Board all evidence and information in possession of the contractor pertaining to such suit or claim and that the contractor shall furnish evidence and information at its own expense.

1647.10 Indemnification. The COR shall not include in any solicitation or contract any provision by which the Board expressly agrees to indemnify the contractor against liability for patent or copyright infringement or misappropriation of proprietary information.

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1647.11 The COR shall ensure that each contract requiring indemnification includes an indemnity clause, approved by the CCO, providing for reimbursement of the Board for any liability incurred as the result of an infringement of rights in patents, copyrights, or proprietary information.

1647.12 The COR shall not require the inclusion of an indemnity clause when the contract is awarded using the small purchase procedures under these Rules. 1647.13 If it is in the best interests of the Board to exempt one (1) or more specific United States patents from a patent indemnity clause, the COR may grant the exemption upon written approval of the Executive Director. The COR shall include the Executive Director's written approval in the contract file, and shall include a clause in the contract that allows for waiver of indemnity of one (1) or more specific patents.

1647.14 **Licensing and Royalty Information.** Upon the request of the COR, a contractor or a prospective contractor shall furnish to the COR licensing and royalty information and reports sufficient to determine whether royalties anticipated or actually paid under Board contracts are excessive, improper, or inconsistent with any Board rights in particular inventions, patents, patent applications, copyrights, or proprietary information. The COR shall take appropriate action to reduce or eliminate excessive or improper royalties.

1647.15 The COR shall not require bidders to provide royalty and licensing information in sealed bids unless the COR determines that the information is necessary for the proper protection of the Board's interests.

1647.16 The COR shall include a clause, approved by the CCO, in each request for proposals requesting information relating to any proposed charge for royalties or need to obtain a license for use of any rights in patents, copyrights, or proprietary information.

1647.17 The COR, when considering the approval of a subcontract in accordance with the provisions of these Rules, shall require and obtain the same royalty and licensing information and reports, and take the same action with respect to subcontracts in relation to royalties and licenses, as required for prime contracts. Consent to subcontract does not have to be withheld pending receipt of the required information and reports.

1647.18 When the Board is obligated to pay a royalty on a patent, copyright, or proprietary information because of a license agreement between the Board and the licensor, and the COR knows or has reason to believe that the licensed patent will be applicable to a prospective contract, the COR shall furnish information relating to the royalty to prospective offerors. The COR shall include in the solicitation a notice of the license, the number or description of the patent, copyright, or proprietary information, the royalty rate stated in the license, and any other pertinent information.

1647.19 When the Board is obligated to pay a royalty because of a license agreement between the Board and a licensor, the solicitation shall require each offeror to furnish information indicating whether it is a licensee. The solicitation clause shall be approved by the CCO. Based on this information, the COR may do either of the following:

- (a) Evaluate an offeror's price by adding an amount equal to the royalty; or

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- (b) Negotiate a price reduction with an offeror-licensee when the offeror is licensed under the same patent at a lower royalty rate.

1647.20 If, at any time, the COR has reason to believe that any royalties paid, or to be paid, under an existing or prospective contract or subcontract are inconsistent with the Board's rights, or are excessive or otherwise improper, COR shall promptly report these matters to the Executive Director.

1647.21 After consultation with the Executive Director, the COR shall act to protect the Board against payment of royalties on goods or services in the following instances:

- (a) When the Board has a royalty free license with respect to the goods or services;
- (b) When the rate is in excess of the rate at which the Board is licensed; or
- (c) When the royalties, in whole or in part, otherwise constitute an improper charge.

1647.22 If the COR, after consultation with the Executive Director, determines that the Board has paid or will pay royalties under an existing or prospective contract that are inconsistent with the Board's rights or are excessive or otherwise improper, and if it is in the best interests of the Board, the COR shall obtain a refund (pursuant to a clause, approved by the CCO, providing for a refund) or shall negotiate for a reduction of royalties.

1647.23 **Patent Rights Under Board Contracts.** The CCO shall prescribe standard contract provisions governing patent rights under Board contracts for inclusion in solicitations and contracts, in accordance with the provisions of this section.

1647.24 If the contract permits the contractor to retain title, and the contractor elects to retain title to an invention, the Board shall have at least a nonexclusive, non-transferable, irrevocable, paid-up license to use or have used, for or on behalf of the Board, any invention made in the performance of work under a Board contract. The Board may have additional rights to sublicense the invention if provided in the contract.

1647.25 The Board shall have the right to receive title to any invention made in the performance of a contract unless the contract provides otherwise. If the contract extends a limited right to the contractor to acquire patent rights, the Board shall have the right nevertheless to receive title to an invention in the following circumstances:

- (a) If the contractor does not disclose the invention within the time specified in the contract;
- (b) In any instance where the contractor does not elect to retain rights or fails to elect to retain rights to the invention within the time specified in the contract;
- (c) In any instance where the contractor has not filed a patent application within the time specified in the contract;

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- (d) In any instance where the contractor decides not to continue prosecution of a patent application, pay maintenance fees, or defend in a re-examination or opposition proceeding on the patent; and
- (e) In any instance where the contractor no longer desires to retain title.

1647.26 If the contract gives a limited right to the contractor to acquire patent rights, the contractor may request greater rights to an invention within the period specified in the contract. The COR may grant a request for greater rights if the COR determines that the grant of greater rights is in the best interests of the Board. In making the determination, the COR shall consider the following objectives:

- (a) Ensuring that inventions are used in a manner that will promote full and open competition and free enterprise; and
- (b) Ensuring that the Board obtains sufficient rights in Board-supported inventions to meet the needs of the Board and protect the public against nonuse or unreasonable use of inventions.

1647.27 If the contract permits the contractor to retain title to an invention and the contractor elects not to retain title, the Board may, after consultation with the contractor, grant a request for retention of rights by the inventor.

1647.28 If a Board employee is a co-inventor of an invention made under a contract and the Board acquires all or part of the rights to the invention, the Executive Director may take any of the following actions that are consistent with the best interests of the Board:

- (a) Assign all or part of the Board's rights to its employee while retaining for the Board any rights set forth in these Rules;
- (b) Assign all or part of the Board's rights to the contractor for reasonable consideration, after negotiation by the COR of a reasonable consideration;
- (c) If the contractor is a nonprofit organization or is a certified minority business, assign all or part of the Board's rights without consideration; or
- (d) Retain the Board's rights.

1647.29 For purposes of this section, an invention is made in the performance of work under a Board contract if it is conceived or first actually reduced to practice in the performance of work under a Board contract.

1647.30 **Patent Rights Procedures.** The COR may include clauses, in a contract, approved by the CCO, which require the contractor to do any or all of the following:

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- (a) Provide periodic reports (but not more frequently than annually) listing all inventions required to be disclosed during the period covered by each report;
- (b) Provide a report prior to the closeout of the contract listing all inventions or stating that there were none;
- (c) Provide, upon request, the patent application filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents; and
- (d) Furnish the Board an irrevocable power to inspect and make copies of the patent application file.

1647.31 The contractor shall submit to the COR a document confirming all rights to which the Board is entitled, and shall furnish to the COR an irrevocable power to inspect and make copies of the patent application file six (6) months after filing each patent application or within six (6) months after submitting the invention disclosure if the application has been previously filed.

1647.32 If the COR determines in writing that it is in the best interests of the Board, the COR may modify, waive, or omit any of the rights set forth in §1647.24. The modification, waiver, or omission shall be in writing and shall be accompanied by a written statement of facts justifying the determination. The statement of facts shall include the following:

- (a) A description of the extent to which the Board's rights are to be modified, waived, or omitted;
- (b) The facts and justification for the modification, waiver, or omission; and
- (c) A statement explaining how the interests of the Board will be better served by the modification, waiver, or omission.

1647.33 The contractor shall establish and maintain effective procedures to ensure that its patent rights obligations are met, that subject inventions are timely identified and disclosed, and that patent applications are filed when required.

1647.34 Contractors shall submit all reports required by the COR in accordance with the contract.

1647.35 The COR shall establish follow-up procedures to protect the Board's interests and to ensure that subject inventions are identified and disclosed; that, when required, patent applications are filed; and that the Board's rights are established and protected.

1647.36 **Rights to Copyrighted Material and Proprietary Information.** The CCO shall prescribe standard contract provisions governing rights to copyrighted material and proprietary information under Board contracts for inclusion in solicitations and contracts, in accordance with the provisions of this section.

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1647.37 A COR may acquire title to, or obtain or limit access to, copyrighted materials, materials subject to copyright protection, and proprietary information developed under or used in the performance of Board contracts.

1647.38 When necessary for the evaluation of bids or proposals, a COR may include a request for proprietary information and data in a solicitation, in accordance with the provisions of this section.

1647.39 In order to protect the property rights and economic interests of contractors and prospective contractors, the CCO shall develop written procedures for safeguarding and limiting access to all types of proprietary information.

1647.40 The procedures issued by the CCO shall provide limited access to proprietary information developed or used under a Board contract. Unless otherwise provided by the CCO, access shall be limited to Board employees who are directly involved with the performance of the contract or who otherwise need access in order to properly perform their duties in connection with the contract or the items or services provided under the contract.

1647.41 The physical security of proprietary information shall be ensured by the use of procedures designed to limit physical access, restrict copying or other forms of duplication, and limit transfer of proprietary information to unauthorized persons.

1647.42 **Proprietary or Confidential Information in Bids and Proposals.** A bidder or offeror shall designate information contained in a response to the invitation for bids or request for proposals as proprietary or confidential by specifically identifying that information in writing in the bid or proposal.

1647.43 A bidder or offeror including proprietary or confidential information in its bid or offer shall conspicuously display the following information on the first page of the bid or offer if the bidder or offeror does not want the proprietary or confidential information disclosed to the public for any purpose or used by the Board except for evaluation purposes:

- (a) That the bid or offer includes proprietary or confidential information that shall not be disclosed outside the Board and shall not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate the bid or proposal;
- (b) That if a contract is awarded to the bidder or offeror, the Board shall have the right to duplicate, use, or disclose the proprietary or confidential information to the extent provided in the contract;
- (c) That this restriction does not limit the Board's right to use the proprietary or confidential information if it is obtained from another source without restriction; and
- (d) That the bidder or offeror has specifically identified, by page number or otherwise, the proprietary or confidential information subject to the restriction.

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1647.44 In addition to the requirements of §1647.43, the bidder or offeror shall conspicuously mark each separate sheet containing proprietary or confidential information with a notation to the effect that use or disclosure of proprietary or confidential information contained on the sheet is subject to the restriction set forth on the first page of the bid or offer.

1647.45 The bidder or offeror shall not designate as confidential or proprietary the name of the bidder or offeror, the bid or proposal price, or any information that is not actually proprietary or confidential.

1647.46 If, after inspection of a bid or proposal, the COR or other Board official determines that all or any part of the information designated as confidential or proprietary may be subject to disclosure under the D.C. Freedom of Information Act, D.C. Code § 1-1521 et seq. (1981), the COR shall notify the bidder or offeror of that determination and allow the contractor ten (10) days to respond.

1647.47 If the COR does not agree that evidence presented by the bidder or offeror supports the confidential or proprietary designation of the information identified by the COR, the COR shall do one (1) of the following:

- (a) Declare the bid non-responsive or the proposal unacceptable and eliminate the bid or proposal from consideration; or
- (b) If the COR determines that it would be in the best interests of the Board to consider the bid or proposal, the COR may remove the confidential or proprietary designation and consider the bid or proposal.

1647.48 The bidder or offeror shall be notified in writing of the COR's decision under §1647.47. If the bid or proposal will be considered, the notice to the contractor shall include a warning that the bidder's or offeror's designation has been removed, and the information may be subject to disclosure under the D.C. Freedom of Information Act.

1647.49 If the bid or proposal is eliminated under §1647.47(a), the designated information shall not be disclosed. If the bid is modified by the COR to remove any designation of information as confidential or proprietary under §1647.47(b), the bidder or offeror may appeal the COR's determination to the CCO after award. The CCO shall consider the evidence submitted by the bidder or offeror and the findings and determination of the COR, and shall render a decision upholding or overruling the COR's determination, in whole or in part. The CCO may conduct an informal hearing or obtain a review and recommendation by a Board Procurement Review Committee before making a final decision.

1647.50 Each solicitation shall contain a provision, approved by the CCO, which indicates the right of the contractor to designate confidential or proprietary information in response to the solicitation, as well as the right of the COR to challenge the designation and either eliminate the bid or proposal or remove the designation under §1647.47.

1647.51 **Freedom of Information and Requests for Records.** A request for a record of the Board shall be made to Board's designated Freedom of Information Officer.

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1647.52 The Board's response to a request for a record shall be made in accordance with the provisions of the D.C. 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.)) ("FOIA Act"), and Title I, Chapter 4 of the D.C. Municipal Regulations.

1647.53 **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 from disclosure under the FOIA Act, the contractor shall not disclose the document, record, or other information to any person other than an authorized Board employee or agent.

1647.54 If a contractor collects, retains, or has in its possession any document, record, or other information obtained in the performance of a Board contract the disclosure of which is prohibited by any District or federal law or regulation, the contractor shall not disclose the document, record, or other information to any person other than an authorized Board employee or agent.

1647.55 If a contractor is not sure whether a document, record, or other information may be disclosed, the contractor shall refer the matter to the COR.

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7 DCMR § 1648

1648. USE OF BOARD PROPERTY AND SOURCES BY CONTRACTORS

1648.1 Contractor Use of Board or District Supply Sources. When it is in the best interest of the Board, and if goods or services required in the performance of a Board contract are available from Board or District supply sources, the COR may authorize contractors to use these sources in performing the following types of contracts:

- (a) Cost-reimbursement; or
- (b) Other types of contracts when the COR determines that a substantial dollar portion of the contract is of a cost-reimbursement nature, or that the contract cost can be reduced by authorizing the use of Board or District supply sources by the contractor.

1648.2 The authorization to the contractor to use Board or District supply sources shall include, but not be limited to, consideration of the following factors:

- (a) The administrative cost of placing orders with Board or District supply sources and the program impact of delay factors, if any;
- (b) The lower cost of items available through Board or District supply sources;
- (c) The suitability of items available through Board or District supply sources;
- (d) Delivery factors, such as cost and time; and
- (e) The recommendations of the contractor.

1648.3 The COR shall issue authorizations to subcontractors to use Board or District supply sources through, and with the approval of, the contractor.

1648.4 The COR may include in the authorization to use Board or District supply sources any limitations or conditions deemed necessary, such as the following:

- (a) A limitation on the authority to purchase from Board or District supply sources to any overhead supplies, but not production supplies;
- (b) A limitation on the authority for use of Board or District sources to a specific dollar amount;
- (c) A restriction on the authorization to use certain facilities or to specific contracts; or

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- (d) A specific provision setting forth whether vesting of title will differ from other property acquired or otherwise furnished by the contractor for use under the contract.

1648.5 When ordering from Board or District supply sources, contractors shall follow all applicable rules, regulations, procedures, and contract terms.

1648.6 When ordering from Board or District supply sources, contractors shall comply with the requirements of the COR's authorization and order only those items required for performance of the contract.

1648.7 Title to property acquired by the contractor under the COR's authorization may vest in either the Board or the contractor, as provided in the contract. If the contract is silent on the vesting of title, title shall vest in the Board.

1648.8 Supplies or services provided to a contractor from Board or District supply sources do not contain any representation or warranty as to quality or suitability unless otherwise provided in a contract.

1648.9 **Use of Board Property and Facilities.** Except as provided otherwise in this section or the contract, each contractor and subcontractor shall furnish all property and facilities necessary to perform Board contracts.

1647.10 **Provision of Material for Performing Contracts.** Except as provided otherwise in this section, each contractor and subcontractor shall furnish all material for performing Board contracts.

1648.11 The COR may provide material to the contractor or subcontractor when necessary to achieve significant economy, standardization, expedited production, or when it is otherwise determined to be in the best interest of the Board.

1648.12 The solicitation shall specify material that the Board will furnish in sufficient detail to enable offerors to accurately evaluate and respond to the solicitation.

1648.13 **Contractor Responsibility for Board or District Property.** Except as provided in the contract, the contractor shall be directly responsible and accountable for all Board or District property, including all Board or District property in the possession or control of a subcontractor.

1648.14 The contractor shall maintain and make available all property control records required under this section and account for all Board or District property until relieved of the responsibility by the COR under the terms of the contract or this section.

1648.15 The contractor shall assume responsibility for the control of Board or District property upon:

- (a) Delivery of Board- or District-furnished property into the contractor's custody or control; or

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- (b) Delivery to the contractor, when property is purchased by the contractor and the contract calls for reimbursement by the Board. This requirement shall not alter or modify contractual requirements relating to passage of title.

1648.16 Property to which the Board has acquired a lien or title solely as a result of advance, progress, or partial payments shall not be subject to the requirements of these Rules.

1648.17 The contractor shall require subcontractors provided with Board or District property under the prime contract to comply with the requirements of this section. Procedures for ensuring subcontractor compliance shall be included in the contractor's property control system.

1648.18 Unless the contract or COR provides otherwise, the contractor shall be relieved of property control responsibility for Board property by the occurrence of any of the following:

- (a) Reasonable and proper consumption of property in the performance of the contract as determined by the COR;
- (b) Retention by the contractor, with the approval of the COR, of property for which the Board has received adequate consideration;
- (c) The authorized sale of property, provided the proceeds are received by the Board;
- (d) Shipment from the contractor's plant, under Board instructions, except when shipment is to a subcontractor or other location of the contractor; or
- (e) A written determination by the COR of the contractor's liability for any property that is lost, damaged, destroyed, or consumed in excess of that normally anticipated in a manufacturing or processing operation, which is followed by reimbursement of the Board of any amount required in the determination. If the property is rendered unserviceable by damage, the property shall be properly disposed of, and the determination shall refer to the documents evidencing disposal.

1648.19 **Property Control Systems.** The contractor shall establish and maintain a system to record, control, protect, preserve, and maintain all Board or District property. The system shall be reviewed and approved by the COR before Board or District property is provided or made available to the contractor. If the COR finds any portion of the contractor's property control system to be inadequate, the contractor shall be required to take any necessary corrective action before the system can be approved.

1648.20 The property control system, and implementation of the property control system, may be reviewed at any time during the period of the contract by the COR.

1648.21 If the COR finds any portion of the contractor's property control system, or implementation of its property control system, to be inadequate, the contractor shall be required to take any necessary corrective action ordered by the COR and the COR may suspend the contractor's authority to use Board or District property until the corrective action is taken.

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1648.22 If Board or District property is found to be in the possession or control of the contractor, although not provided under any contract, the contractor shall promptly record the property and furnish to the COR all known circumstances and data pertaining to its receipt and a statement about whether it is needed for the performance of the contract.

1648.23 If unrecorded Board or District property is found in the possession or control of the contractor, both the cause of the discrepancy and actions taken or needed to prevent recurrence shall be determined and reported to the COR.

1648.24 The contractor shall promptly report to the COR all Board or District property it receives in excess of the amounts needed to complete full performance under the contracts providing it or authorizing its use.

1648.25 The contractor shall furnish written receipts for all or specified classes of Board or District property only when the COR deems it essential for maintaining acceptable property controls.

1648.26 If overages, shortages, or damages are discovered upon receipt of Board or District property, the contractor shall provide a statement of the condition and apparent causes to the COR. Only the quantity of property actually received shall be recorded on the official records.

1648.27 **Contract Liability for Board or District Property.** Contractors shall be responsible and liable for Board or District property in their possession, unless otherwise specified in the contract.

1648.28 When the Board provides Board or District property directly to a subcontractor, the provisions of this section shall apply to the subcontractor.

1648.29 Subcontractors shall be liable for loss of or damage to Board or District property furnished through the prime contractor.

1648.30 A prime contractor that provides Board or District property to a subcontractor shall not be relieved of any responsibility to the Board that the prime contractor may have under the terms of the prime contract.

1648.31 Subject to the terms of the contract and the circumstances surrounding the particular case, the contractor shall be liable for shortages, loss, damages, or destruction of Board or District property. The contractor shall also be liable when the use or consumption of Board or District property unreasonably exceeds the allowances provided for by the contract.

1648.32 The contractor shall investigate and report to the COR all cases of loss, damage, or destruction of Board or District property in its possession or control as soon as the facts become known, or when requested by the COR. A report shall also be furnished when completed and accepted products or end items are lost, damaged, or destroyed while in the contractor's possession or control.

1648.33 The contractor shall require any of its subcontractors possessing or controlling Board or District property accountable under the contract to investigate and report to the contractor all instances of loss, damage, or destruction of Board or District property.

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1648.34 **Board Records.** The contractor's property control records shall constitute the Board's official property records unless an exception has been authorized by the COR.

1648.35 The contractor shall establish and maintain adequate control records for all Board or District property, including property provided to, and in the possession or control of, a subcontractor.

1648.36 The property control records of this section shall be the minimum required by the Board. The COR may impose additional requirements as appropriate.

1648.37 Unless the COR directs otherwise, if a subcontractor has an approved property control system for Board or District property provided under its own prime contracts, the contractor shall use the records created and maintained under that system as the property control records for Board or District property controlled by the subcontractor.

1648.38 The contractor's property control system shall provide financial accounts for Board or District property in the contractor's possession or control.

1648.39 The property control system shall be subject to internal control standards and shall be supported by property records for all property.

1648.40 The records shall be safeguarded from tampering or destruction.

1648.41 The contractor shall make the property control records available to the COR and to other authorized Board personnel promptly after a request from the COR or other authorized Board personnel.

1648.42 The contractor shall maintain separate property records for each contract. However, the contractor may maintain a consolidated property record if it provides the required information and is specifically authorized by the COR.

1648.43 The contractor's property control system shall contain a system or technique to locate any item of Board or District property within a reasonable period of time.

1648.44 **Contents of Property Control Records.** Official Board or District property records shall identify all Board or District property and provide a complete, current, auditable record of all transactions.

1648.45 The contractor's property control records shall provide the following basic information for every item of Board or District property in the contractor's possession regardless of value:

- (a) The name, description, and commodity code;
- (b) Quantity received, issued, and on hand;
- (c) Unit price;

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- (d) Contract number;
- (e) Location;
- (f) Disposition; and
- (g) Posting reference and date of transaction.

1648.46 **Inventories.** Immediately upon termination or completion of a contract providing for use of Board or District property by the contractor shall perform, and cause each subcontractor to perform, a physical inventory that is adequate for disposal purposes of all Board or District property applicable to the contract.

1648.47 The requirement for physical inventory at the completion of a contract may be waived by the COR when the property is authorized for use under a follow-on contract and the following factors apply:

- (a) Experience has established the adequacy of property controls and an acceptable degree of inventory discrepancies;
- (b) The contractor provides a written statement indicating that record balances have been transferred instead of preparing a formal inventory list; and
- (c) The contractor provides a written statement accepting responsibility and accountability for any balances under the terms of the follow-on contract.

1648.48 The contractor shall, as a minimum, submit the following to the COR promptly after completing the physical inventory:

- (a) A listing that identifies all discrepancies disclosed by a physical inventory; and
- (b) A signed statement that physical inventory of all or certain classes of Board or District property was completed on a given date, and that the official property records were found to be in agreement except for the discrepancies reported.

1648.49 When requested by the COR, the contractor's reports of the results of physical inventory shall be prepared on a quantitative and monetary basis and segregated by categories of property.

1648.50 **Care, Maintenance and Use of Board or District Property.** The contractor shall be responsible for the proper care, maintenance, and use of Board or District property in its possession or control from the time of receipt until properly relieved of responsibility, in accordance with sound industrial practice and the terms of the contract and this section.

1648.51 The removal of Board or District property to storage, or its contemplated transfer, shall not relieve the contractor of the responsibilities set forth in this section.

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1648.52 The contractor shall be responsible for a preventive maintenance program which includes the following:

- (a) Inspection of buildings at periodic intervals to ensure detection of deterioration and the need for repairs;
- (b) Inspection of equipment at periodic intervals to ensure detection of maladjustment, wear, or impending breakdown;
- (c) Regular lubrication of bearings and moving parts in accordance with a lubrication plan;
- (d) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration;
- (e) Removal of sludge, chips, and cutting oils from equipment that will not be used for a period of time; and
- (f) Taking necessary precautions to prevent deterioration caused by contamination, corrosion, and other substances.

1648.53 The contractor's maintenance program shall provide for disclosing and reporting to the COR the need for major repair, replacement, and other capital rehabilitation work for Board or District property in its possession or control.

1648.54 The contractor shall keep records of maintenance actions performed and any deficiencies in Board or District property discovered as a result of inspections.

1648.55 **Property Use Procedures.** The contractor shall establish written procedures to ensure that Board or District property will be used only for those purposes authorized in the contract and that required approvals are obtained. The contractor's written procedures shall include:

- (a) Establishment of a minimum level of use below which an analysis of need shall be made and retention justified;
- (b) Provision for recording authorized and actual use consistent with the established use levels;
- (c) A requirement for periodic analyses of needs for Board or District property utilization based upon known requirements; and
- (d) Provision for prompt reporting to the COR of all property for which retention is not justified.

1648.56 The contractor's property control records shall provide a basis for determining and allocating rental charges.

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1648.57 The contractor's or subcontractor's authority to purchase, retain, or dispose of contractor inventory of Board or District property shall be subject to the contract provisions and to any Board or District restrictions on the disposition of property that is hazardous to public health, safety, or welfare.

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7 DCMR § 1649

1649. CONTRACT MODIFICATIONS

1649.1 **Contract Modifications.** Only a COR acting within the scope of the COR's delegated contract authority is authorized to execute a contract modification on behalf of the Board. Other Board personnel shall not:

- (a) Execute contract modifications;
- (b) Act in a manner that causes a contractor to believe that they have authority to bind the Board; or
- (c) Direct or encourage a contractor to perform work that should be the subject of a contract modification.

1649.2 A contract modification, including a change issued unilaterally by the Board, shall be priced and a government estimate shall be prepared before signature by the parties, unless the interest of the Board would be adversely affected. If a significant cost increase could result from a contract modification and time does not permit negotiation of a price, the COR shall negotiate a maximum contract price increase and include that price in the modification.

1649.3 The COR shall not execute a contract modification, including a change order, which causes or will cause an increase in the funding level of the contract without having first obtained a certification of the availability of funds. The certification shall be based on the negotiated price or the negotiated maximum price.

1649.4 A modification to a contract may be executed without having first obtained the certification of the availability of funds if the modification includes a clause, approved by the CCO, which conditions payment upon the availability of funds.

1649.5 **Types of Contract Modifications.** A contract modification may either be bilateral or unilateral.

1649.6 The COR shall use a bilateral contract modification (also known as a "supplemental agreement") to:

- (a) Make negotiated equitable adjustments resulting from the issuance of a change order;
- (b) Formalize a letter contract; or
- (c) Reflect other agreements of the parties to modify the terms of the contract.

1649.7 The COR shall use a unilateral contract modification to:

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- (a) Make administrative changes, such as correction of typographical errors or appropriations information;
- (b) Issue change orders;
- (c) Make changes authorized by a provision of the contract other than a changes clause, such as an option; or
- (d) Issue a termination notice.

1649.7 When a contractor considers that the Board has effected or may effect a change in the contract that has not been identified as such in writing and signed by the COR, the contractor shall notify the Board in writing as soon as possible. The Board shall evaluate the alleged change and:

- (a) Confirm that it is a change, direct the mode of further performance, and plan for its funding;
- (b) Countermand the alleged change; or
- (c) Notify the contractor that the Board considers no change to have occurred.

1649.8 **Unauthorized Contract Modifications.** Employees and agents of the Board other than duly appointed CORs shall not execute contract modifications or:

- (a) Act in a manner that causes or could reasonably cause a contractor to believe that they have authority to bind the Board; or
- (b) Direct or encourage a contractor to perform work or modify the manner in which work is being performed, which should be the subject of a contract modification.

1649.9 A contractor shall be bound by the terms of the written contract and written contract modifications signed by the COR. A contractor shall not rely upon any written or oral statements or directions of employees or agents of the Board, other than the COR, for authority to perform work, alter schedules or specifications, or any other action that would normally require a written contract modification.

1649.10 The Board shall not be responsible for any costs incurred by a contractor for any additional work or other actions by a contractor outside the scope of the written contract and written contract modifications signed by the COR.

1649.11 **Change Orders.** The COR shall include a changes clause, approved by the CCO, in each solicitation and contract.

1649.12 Each changes clause shall specify the kinds of contract changes that the COR may make within the scope of the contract by written change order at any time and without notice to sureties, if any.

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1649.13 Each changes clause shall include provisions for adjustments in contract price, delivery schedules, or other contract terms which are appropriate to the type of contract.

1649.14 The COR may issue a written change order when a change can be accomplished within the provisions of the changes clause.

1649.15 After the COR issues a change order, the contractor shall continue performance of the contract as changed. In cost-reimbursement contracts, the contractor shall not be obligated to continue performance or incur costs beyond the limits established in the contract.

1649.16 **Equitable Adjustments.** If the COR and the contractor agree in advance to an equitable adjustment in the contract price, delivery terms, or other contract terms, the COR shall issue a bilateral contract modification and shall not be required to issue a change order.

1649.17 The COR shall negotiate an equitable adjustment resulting from a change order in the shortest practicable time.

1649.18 Failure to agree to any adjustment shall be a dispute under the disputes clause in the contract and shall be resolved in accordance with §1601 of these Rules. However, nothing in this section shall excuse the contractor from proceeding with the contract as changed.

1649.19 **Effective Dates of Modifications.** For a solicitation amendment, change order, or administrative change, the effective date shall be the date on which the COR issues the amendment, change order, or administrative change.

1649.20 For a bilateral modification (supplemental agreement), the effective date shall be the date agreed upon by the COR and the contractor.

1649.21 For a modification converting a termination for default to a termination for the convenience of the Board, the effective date shall be the same as the effective date of the termination for default.

1649.22 For a modification issued as a confirming notice of termination for the convenience of the Board, the effective date of the confirming notice shall be the same as the effective date of the initial notice.

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7 DCMR § 1650

1650. TERMINATION OF CONTRACTS

1650.1 The COR may terminate a contract for the convenience of the Board, in whole or in part, if the COR determines that the termination is in the best interests of the Board.

1650.2 The COR may terminate a contract for default, in whole or in part, if the termination is in the best interests of the Board, and the contractor does any of the following:

- (a) Fails to deliver the goods or complete the work or services within the time specified in the contract or any modification;
- (b) Fails to make sufficient progress on contract performance so as to endanger performance of the contract within the time specified or in the manner specified in the contract;
- (c) Fails or refuses to go forward with the work in accordance with the directions of the COR;
- (d) Expresses through word or conduct an intention not to complete the work in a timely manner; or
- (e) Fails to perform any of the other provisions of the contract.

1650.3 The COR may effect a no-cost settlement instead of issuing a termination notice when the following circumstances apply:

- (a) The COR knows that the contractor will accept a no-cost settlement;
- (b) Board property was not furnished to the contractor; and
- (c) There are no outstanding payments, debts due to the Board, or other contractor obligations.

1650.4 Upon written consent of the contractor, the COR may reinstate the terminated portion of a contract, in whole or in part, by amending the notice of termination if the COR determines that the following circumstances apply:

- (a) There is a definite requirement for the terminated items; and
- (b) Reinstatement is in the best interests of the Board.

1650.5 When the price of the undelivered balance of a contract is less than two thousand dollars (\$2,000), the COR shall not terminate the contract for convenience, but shall permit it to run to completion.

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1650.6 When an installation contract is terminated, the COR shall take action to ensure site cleanup, protection of serviceable materials, removal of hazards, and other steps necessary to leave a safe and healthful site.

1650.7 In each solicitation and contract, the COR shall include a clause, approved by the CCO, giving notice of the Board's right to terminate the contract for convenience or default. The COR shall also insert a clause, approved by the CCO, which gives notice of exceptions to the Board's right to terminate for default when the delay or failure to perform is excusable due to causes beyond the control and without the fault or negligence of the contractor.

1650.8 **Notice of Termination.** The COR shall terminate a contract for convenience or default by giving written notice to the contractor. The notice shall be hand-delivered, sent by email or facsimile, or sent by certified mail, return receipt requested.

1650.9 When the termination notice is delivered by hand, the COR shall obtain a written acknowledgement of receipt from the contractor.

1650.10 If the termination notice is sent by email or facsimile, the COR shall deliver or send a confirming letter to the contractor by email or certified mail, return receipt requested.

1650.11 In addition to the requirements set forth in this section for termination for convenience and termination for default, the termination notice shall state the following:

- (a) The contract number and date;
- (b) That the contract is being terminated, either for the convenience of the Board or for default under the contract clause authorizing the termination;
- (c) The effective date of termination;
- (d) If the termination is only partial, the extent of termination;
- (e) Any special instructions; and
- (f) The steps the contractor should take to minimize the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force.

1650.12 The COR may amend a termination notice to accomplish any of the following:

- (a) Correct non-substantive mistakes in the notice;
- (b) Add supplemental data or instructions; or

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- (c) Rescind or modify the notice if it is determined that items terminated had been shipped or completed before the contractor's receipt of the notice.

1650.13 An amendment to a termination notice shall be in writing and shall be delivered or sent to the contractor in the manner set forth in this section.

1650.14 **Notice of Termination for Convenience.** After receipt of notice of termination for convenience, the contractor shall immediately comply with the notice, except as otherwise directed in writing by the COR.

1650.15 In addition to the requirements of §1650.14, the notice of termination for convenience shall require the contractor to do the following:

- (a) Stop work immediately on the terminated portion of the contract and make no further shipments and place no further orders relating to the terminated portion of the contract;
- (b) Perform any continued portion of the contract;
- (c) Stop issuing subcontracts pertaining to the terminated portion of the contract;
- (d) Terminate all subcontracts related to the terminated portion of the contract;
- (e) Promptly notify the COR in writing of any legal proceedings growing out of any subcontract or other commitment related to the terminated portion of the contract or in which a lien has been or may be placed against termination inventory to be reported to the Board;
- (f) Settle any outstanding liabilities and proposals arising out of the termination of subcontracts and obtain any necessary approvals from the COR;
- (g) Immediately advise the COR of any special circumstances precluding the stoppage of work;
- (h) If applicable, promptly submit a request for an equitable adjustment of price for the continued portion of the contract supported by evidence of any increase in cost;
- (i) Take necessary or directed action to protect and preserve property in the contractor's possession in which the Board has or may acquire an interest and, as directed by the COR, deliver the property to the Board;
- (j) Dispose of termination inventory as directed or authorized by the COR; and
- (k) Promptly submit the contractor's own settlement proposal supported by appropriate schedules in accordance with this section.

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1650.16 Settlement after Termination for Convenience. After issuing a notice of termination for convenience, the COR shall be responsible for negotiating any settlement with the contractor. The COR shall attempt to settle in one agreement all rights and liabilities of parties involved in the terminated contract except those arising from any portion of the contract still in effect.

1650.17 Consistent with the notice of termination for convenience, the COR shall do the following:

- (a) Direct the action required of the prime contractor;
- (b) Examine the settlement proposal of the prime contractor and, when appropriate, the settlement proposals of subcontractors; and
- (c) Promptly negotiate settlement with the contractor and enter into a settlement agreement.

1650.18 If all of the elements of the settlement cannot be agreed upon between the contractor and the COR, the COR shall follow the procedures set forth in this section for settlement by determination for those elements that cannot be settled by agreement.

1650.19 After a settlement agreement is completed, the COR shall promptly hold a conference with the contractor to develop a definite plan for effecting the settlement.

1650.20 After consulting with the contractor, the COR may request any of the principal subcontractors to attend the settlement conference, if appropriate.

1650.21 The termination settlement shall cover the following:

- (a) Any setoffs that the Board has against the contractor that may be applied against the terminated contract; and
- (b) All settlement proposals of subcontractors, except proposals that are specifically excepted from the agreement and reserved for separate settlement.

1650.22 If any items are excepted from the settlement agreement, the COR shall do the following:

- (a) Reserve in the settlement agreement any rights or demands of the parties that are excepted from the settlement;
- (b) Ensure that the wording of the reservation does not create any rights for the parties beyond those in existence before execution of the settlement agreement;
- (c) Mark each applicable settlement agreement with a legend indicating that the settlement agreement contains a reservation and retain the contract file until the reservation is removed;

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- (d) Ensure that sufficient funds are retained to cover complete settlement of the reserved items; and
- (e) At the appropriate time, prepare a separate settlement of reserved items and include it in a separate settlement agreement.

1650.23 Before execution of a settlement agreement, the COR shall determine the accuracy of the Board property account for the terminated contract. If a review discloses property for which the contractor cannot account, the COR shall reserve in the settlement agreement the rights of the Board regarding that property or make an appropriate deduction from the amount otherwise due the contractor.

1650.24 When the COR cannot promptly complete settlement under a terminated contract, the COR may enter into a partial settlement in the following situations:

- (a) When the issues on which the agreement has been reached are clearly severable from other issues; and
- (b) When the partial settlement will not prejudice the Board's or contractor's interest in disposing of the unsettled portion of the settlement proposal.

1650.25 The COR responsible for negotiating the final settlement shall establish a separate case file for each termination. This file shall include memoranda and records of all actions relative to the settlement.

1650.26 **Settlement Memorandum.** At the conclusion of settlement negotiations, the COR shall prepare a settlement memorandum containing the principal elements of the settlement for inclusion in the contract file.

1650.27 If the settlement was negotiated on the basis of individual items, the COR shall specify the factors considered for each item. If the settlement was negotiated on an overall lump-sum basis, the COR shall not have to evaluate each item or group of items individually, but shall support the total amount of the recommended settlement in reasonable detail.

1650.28 The settlement memorandum shall include explanations of matters involving differences and doubtful questions settled by agreement and the factors considered.

1650.29 **Settlement by Determination.** If the contractor and the COR cannot agree on a termination settlement, or if the contractor fails to submit a settlement proposal within the period required by the termination clause, the COR shall issue a determination of the amount due consistent with the termination clause.

1650.30 If the contractor submits a settlement proposal, the COR shall give the contractor notice, either by email, hand delivery or certified mail, return receipt requested, that the contractor may submit evidence substantiating the settlement amount in its proposal. The notice shall state a date certain by which the evidence must be received by the COR.

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1650.31 After reviewing any evidence submitted by the contractor and other available information, the COR shall determine the amount due and shall transmit a copy of the determination to the contractor by email, certified mail, return receipt requested, or by any other method that provides evidence of receipt.

1650.32 The determination letter shall advise the contractor that the determination is a final decision from which the contractor may appeal under the procedures set forth in §1601 of these Rules, and the disputes clause in the contract. The determination shall specify the amount due to the contractor and shall explain each major item that was not allowed.

1650.33 The COR shall retain all written evidence and other data relied upon in making a determination.

1650.34 The contractor may appeal any settlement by determination under the provisions of §1601 of these Rules, and the disputes clause in the contract, except when the contractor has failed to submit a settlement proposal within the time provided in the contract and has failed to request an extension of time. The filing of an appeal shall not affect the authority of the COR to enter into a settlement agreement, in whole or in part, by negotiation with the contractor at any time before the appeal is decided.

1650.35 **Payment after Settlement.** After execution of a settlement agreement, the contractor shall submit a voucher or invoice showing the amount agreed upon less any portion previously paid. The COR shall attach a copy of the settlement agreement to the voucher or invoice and forward the document to the appropriate office for payment.

1650.36 If the settlement is by determination, payment shall be effected in the following manner:

- (a) If there is no appeal within the allowed time, the contractor shall submit a voucher or invoice showing the amount determined due, less any portion previously paid; or
- (b) If there is an appeal, the contractor shall submit a voucher or invoice showing the amount finally determined due on the appeal, less any portion previously paid.

1650.37 In the case of installation or service contracts, before forwarding the final payment voucher, the COR shall ascertain whether there are any outstanding labor violations. If any violations are outstanding, the COR shall determine the amount to be withheld from the final payment.

1650.38 The Board shall not pay interest on the amount due under a settlement agreement or a settlement by determination. However, the Board shall pay interest on amounts found due to a contractor on claims from the date the CCO receives the claim.

1650.39 The total amount payable to the contractor under a settlement, before deducting disposal or other credits, exclusive of settlement costs, shall not exceed the contract price less payments otherwise made or to be made under the contract.

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1650.40 Termination of Subcontracts. Upon termination of a prime contract, the prime contractor and each subcontractor shall be responsible for the prompt settlement with their immediate subcontractors. A subcontractor shall have no contractual rights against the Board upon termination of the prime contract.

1650.41 Prime contractors shall settle with subcontractors in general conformity with the policies relating to settlement of prime contracts as specified in these Rules.

1650.42 The failure of a prime contractor to include an appropriate termination clause in any subcontract or the failure of the contractor to exercise the rights of the termination clause shall not affect the Board's right to require the termination of the subcontract, and shall not increase the obligation of the Board in any way whatsoever.

1650.43 In no event shall the Board be required to pay the prime contractor any amount for loss of anticipatory profits or consequential damages resulting from the termination of any subcontract.

1650.44 Settlement Proposals and Settlement Agreements. The contractor shall submit to the COR a settlement proposal for the amount claimed because of the termination for convenience.

1650.45 The contractor shall submit the settlement proposal within one (1) year from the effective date of the termination, unless the period is extended by the COR.

1650.46 The settlement proposal shall cover all cost elements, including settlements with subcontractors and any proposed profit, and shall include reasonable detail supported by accounting data satisfactory to the COR.

1650.47 For cost-reimbursement contracts, the termination clauses approved by the CCO shall provide for settlement of costs and fees, if any. The contract clauses governing costs shall determine what costs are allowable.

1650.48 The settlement agreement may include all demands of the Board and proposals of the contractor under the terminated contract. However, no amount shall be allowed for any item of cost disallowed by the COR.

1650.49 If the COR and contractor agree on an overall settlement of costs, agreement on each element of cost shall not be required. When appropriate, the COR may compromise differences and settle doubtful costs by agreement. However, an overall settlement shall not include costs that are clearly not allowable under the terms of the contract.

1650.50 Termination for Default. Under a termination for default, the Board shall not be liable for the contractor's costs on undelivered work, and shall be entitled to the repayment of advance or progress payments, if any, applicable to that work.

1650.51 The default clause approved by the CCO shall include a statement that the COR may require the contractor to transfer title and deliver to the Board completed goods. However, the COR shall not use the

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default clause as authority to acquire any completed goods unless it has been ascertained that the Board does not already have title under some other provision of the contract.

1650.52 Subject to the provisions of §§1650.53, 1650.54, and 1650.55, the Board shall pay to the contractor the contract price for any completed goods and the amount agreed upon by the COR and contractor for any manufacturing materials acquired by the Board under the default clause approved by the CCO.

1650.53 Before payment is made for completed or delivered goods, services, or materials, the COR shall take one (1) or more of the following measures to protect the Board from potential liability to laborers and material suppliers:

- (a) Ascertain whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all lienors' claims or whether it is feasible to obtain similar bonds to cover outstanding liens;
- (b) Require the contractor to furnish appropriate statements from laborers and material suppliers disclaiming any lien rights they may have to the goods and materials;
- (c) Obtain appropriate agreement among the Board, the contractor, and lienors ensuring release of the Board from any potential liability to the contractor or lienors;
- (d) Withhold from the amount due for services, goods, or materials any amount the COR determines necessary to protect the Board's interests, but only if the measures set forth in §§1650.53(a)-(c) cannot be accomplished or are inadequate; and
- (e) Take other appropriate action considering the circumstances and the degree of the contractor's solvency.

1650.54 The contractor shall be liable to the Board for any excess costs incurred in re-procuring goods or materials similar to those to be obtained under the contract terminated for default and for any other damages, whether or not repurchase is effected.

1650.55 If a contract is terminated for default or if a course of action instead of termination for default is followed, the COR shall promptly ascertain and make demand for any liquidated damages to which the Board is entitled under the contract. The contract clause for liquidated damages shall be approved by the CCO and shall specify that these damages are in addition to any excess repurchase costs.

1650.56 **Termination for Default Procedures.** When a termination for default is being considered, the COR shall decide which type of termination action to take after consultation with CA, COTR, and legal counsel.

1650.57 Except for termination of a cost-reimbursement type contract, when a contractor has defaulted by failure to make delivery of goods or failure to perform the services within the specified time, no notice to the contractor of the failure or the possibility of termination shall be required before the actual notice of termination. However, if the Board has taken any action that might be construed as a waiver of the contract

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delivery and performance date, the COR shall send a notice to the contractor setting a new date for the contractor to make delivery or complete performance. The notice shall reserve the Board's rights under the default clause of the contract.

1650.58 When the contractor fails to perform provisions of the contract other than those specified in §1650.57, or fails to make sufficient progress on contract performance so as to endanger performance of the contract, the COR shall give the contractor written notice specifying the failure and providing a period of not less than ten (10) days in which to cure the failure. Upon expiration of the period specified in the cure notice, the COR may issue a notice of termination for default unless it is determined that the failure to perform has been cured.

1650.59 When a termination for default appears imminent, the COR may provide a written notification of that fact to the surety. This notification shall not be a notice of default.

1650.60 The COR shall consider the following factors in determining whether to terminate a contract for default:

- (a) The terms of the contract and applicable laws and regulations;
- (b) The specific failure of the contractor and the excuses for the failure, if any;
- (c) The availability of the goods or services from other sources;
- (d) The urgency of the need for the goods or services and the period of time required to obtain them from other sources, as compared with the time for delivery that could be obtained from the delinquent contractor;
- (e) The degree to which the contractor is essential to the Board procurement program and the effect of a termination for default upon the contractor's capability as a supplier under other contracts;
- (f) The effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments; and
- (g) Any other pertinent facts and circumstances.

1650.61 In addition to the requirements set forth in §1650.60, in the case of an installation or service contract, promptly after issuance of the termination notice, the COR shall determine the manner in which the work is to be completed and whether the materials and appliances that are on the site will be needed.

1650.62 When a contract is terminated for default, or an alternative procedure is authorized instead of default, the COR shall prepare a memorandum for the contract file explaining the reasons for the action taken.

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1650.63 Notice to Show Cause When termination for default appears appropriate, the COR may, if it is in the best interests of the Board, notify the contractor in writing of the possibility of the termination. The show cause notice shall call the contractor's attention to the contractual liabilities if the contract is terminated for default, and request the contractor to show cause why the contract should not be terminated for default.

1650.64 The show cause notice shall give the contractor ten (10) days after receipt of the notice to present in writing any facts bearing on the case. The notice shall be email, hand delivered or sent by certified mail, return receipt requested.

1650.65 The notice may further state that failure of the contractor to present an explanation may be taken as an admission that no valid explanation exists. When appropriate, the notice may invite the contractor to discuss the matter at a conference.

1650.66 A notice to show cause may be combined with a notice to cure.

1650.67 Notice of Termination for Default. If, after consideration of all facts and circumstances, and after compliance with the provisions of this section, the COR determines that a termination for default is proper, the COR shall issue a notice of termination.

1650.68 In addition to the general notice of termination requirements of this section, a notice of termination for default shall include the following:

- (a) The acts or omissions constituting the default;
- (b) A statement that the contractor's right to proceed further under the contract, or a specified portion of the contract, is terminated;
- (c) A statement that the goods or services terminated may be purchased against the contractor's account, and that the contractor will be held liable for any excess costs;
- (d) If the COR has determined that the failure to perform is not excusable, a statement that the notice of termination constitutes a decision to that effect, and that the contractor has the right to appeal the decision under the disputes clause in the contract;
- (e) That the Board reserves all rights and remedies provided by law or under the contract, in addition to charging excess costs; and
- (f) That the notice constitutes a decision that the contractor is in default as specified, and that the contractor has the right to appeal the termination under the disputes clause in the contract.

1650.69 The COR shall make the same distribution of the termination notice as was made of the contract.

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1650.70 The COR shall furnish a copy to the contractor's surety, if any, when the notice is furnished to the contractor. The COR shall request the surety to advise the COR if it desires to arrange for completion of the work.

1650.71 The COR shall immediately notify the payment office to withhold further payments under the terminated contract pending further notice.

1650.72 **Excusable Failure to Perform and Other Non-Termination Actions.** If the COR determines before issuing the termination notice that the failure to perform is excusable in accordance with the contract clause, the contract shall not be terminated for default. If termination is in the best interests of the Board, the COR may terminate the contract for the convenience of the Board.

1650.73 If the COR has not been able to determine before issuance of the notice of termination whether the contractor's failure to perform is excusable, the COR shall make a written decision on that point as soon as practicable after issuance of the notice of termination.

1650.74 When the COR determines that some action other than a termination for default is in the best interests of the Board, the COR may take any one of the following actions:

- (a) The COR may permit the contractor, the surety, or the guarantor, to continue performance of the contract under a revised delivery schedule;
- (b) The COR may permit the contractor to continue performance of the contract by means of a subcontract or other business arrangement with an acceptable third party, provided that the rights of the Board shall be adequately preserved; or
- (c) If the requirement for the goods and services in the contract no longer exists, and the contractor is not liable to the Board for damages, the COR may execute a no-cost settlement.

1650.75 The COR may, with the written consent of the contractor, reinstate the terminated contract by amending the notice of termination, after the COR makes a written determination that the goods or services are still required and reinstatement is in the best interests of the Board.

1650.76 **Termination of Cost Reimbursement Contracts for Default.** The termination clause of a cost-reimbursement type contract shall require the COR to provide the contractor with at least ten (10) days' notice before issuance of a notice of termination for default.

1650.77 Settlement of a cost-reimbursement contract terminated for default shall be in accordance with this section, except as follows:

- (a) The costs of preparing the contractor's settlement proposal shall not be allowable; and
- (b) The contractor shall be reimbursed for all allowable costs and an appropriate reduction shall be made in the total fee, if any.

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1650.78 Repurchase Against Contractor's Account. When the goods or services under a terminated contract are still required after termination for default, the COR shall repurchase the same or similar goods or services at as reasonable a price as practicable considering quality and delivery requirements, against the contractor's account as soon as practicable.

1650.79 The COR may repurchase a quantity in excess of the quantity terminated for default when the excess quantity is needed. However, the costs of any items in excess of the undelivered quantity terminated for default shall not be charged against the defaulting contractor.

1650.80 If the goods or services are required immediately, the COR may re-procure the required goods or the services on an emergency basis in accordance with these Rules.

1650.81 If repurchase is made at a price greater than the price of the goods or services terminated, the COR shall, after completion and final payment of the repurchase contract, make a written demand on the contractor for the total amount of the excess, giving consideration to any increases or decreases in other costs, such as transportation or discounts.

1650.82 Surety Takeover Agreements. The COR shall carefully consider proposals by the surety concerning completion of the work. The COR shall take action on the basis of the Board's interests, including the possible effect of the action upon the Board's rights against the surety.

1650.83 If the surety offers to complete the contract work, the COR shall accept the offer unless the COR has reason to believe that the persons or firms proposed by the surety to complete the work are not competent or qualified and the interests of the Board would be substantially prejudiced.

1650.84 If the surety conditions its offer of completion upon the execution by the Board of a "takeover" agreement fixing the surety's rights to payment from unpaid prior earnings (retained percentage and unpaid progress estimates), the COR may, at any time after the effective date of the termination, enter into a written agreement with the surety.

1650.85 The takeover agreement shall provide for the surety to complete the work according to all the terms and conditions of the contract and for the Board to pay the surety the balance of the contract price, less any setoffs or assessed damages, but not in excess of the surety's costs and expenses, in the manner provided by the contract.

1650.86 Under a takeover agreement, any unpaid earnings of the defaulting contractor, including retained percentages and progress estimates for work accomplished before termination, shall be subject to debts and assessed damages due the Board by the contractor.

1650.87 The takeover agreement shall not waive or release the Board's right to liquidated damages for delays in completion of the work, except to the extent that they are excusable under the contract.

1650.88 If the contract proceeds have been assigned to a financing institution, the surety may not be paid from unpaid earnings under a takeover agreement, unless the assignee consents to the payment in writing.

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1650.89 Under a takeover agreement, the surety shall not be paid any amount in excess of its total expenditures necessarily made in completing the work and discharging its liabilities under the payment bond of the defaulting contractor.

1650.90 The COR shall make payments to the surety to reimburse it for discharging its liabilities under the payment bond of the defaulting contractor only on the basis of one (1) of the following:

- (a) Mutual agreement between the Board, the defaulting contractor, and the surety; or
- (b) Order of a court of competent jurisdiction.

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7 DCMR § 1699

1699. DEFINITIONS

1699.1 When used in these Rules, the following terms have the meanings ascribed:

Acceptance - the act of an authorized representative of the Board by which the Board, for itself or as agent of another, assumes ownership of existing identified goods tendered or approves specific services rendered or installation completed as partial or complete performance of the contract.

Actual costs - amounts determined on the basis of costs incurred, as distinguished from forecasted costs. Actual costs include standard costs properly adjusted for applicable variances.

Adequate evidence -- information sufficient to support the reasonable belief that a particular act or omission has occurred.

Advance cost agreement - an agreement between the District and a contractor concerning the treatment of special or unusual costs which are expected to be incurred.

Advance payments - payments made prior to performance of services or delivery of goods.

Advertising costs - costs of advertising and directly associated costs regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media includes conventions, exhibits, free goods, samples, magazines, newspapers, trade papers, direct mail, dealer cards, window displays, outdoor advertising, and radio and television programs.

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

Allocate - to assign an item of cost or a group of items of cost to one (1) or more cost objectives.

Allowable costs - costs determined to be permissible based on reasonableness, allocability, and generally accepted accounting principles and practices appropriate to the particular circumstances.

Amendment -- any change to a solicitation issued by the COR.

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

Assignment of contract payments - the transfer by a contractor to a financial institution of the contractor's right to receive payments under the contract.

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Attorney-in-fact - an agent, independent agent, underwriter, or any other company or individual holding a power of attorney granted by a surety.

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

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

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

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

Blanket purchase agreement -- a pre-contractual agreement with a vendor which allows the Board to make small purchases by issuing a purchase order for each individual purchase.

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 property account - an accounting of property owned by the Board.

Bona fide employee - an employee who is employed in a specific position for a specific purpose relating to promoting or securing business for the contractor.

Bond - a written instrument executed by a bidder or contractor (the “principal”), and a second party (the “surety” or “sureties”), to assure fulfillment of the principal’s obligations to a third party (the “obligee” or “Board”), identified in the bond. If the principal’s obligations are not met, the bond assures payment, to the extent stipulated, for any loss sustained by the obligee.

Brand name description - a purchase description that identifies a product by its brand name and model, part number, or other appropriate nomenclature by which the product is offered for sale.

Business unit - any segment of an organization or an entire business organization that is not divided into segments.

Certificate of conformance - a document used by a contractor to certify that goods conform to the specifications of the contract. The certificate may be used instead of source inspection.

Change-of-Name Agreement -- a legal instrument executed by the contractor and the Board that recognizes the legal change of name of the contractor without disturbing the original contractual rights and

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obligations of the parties.

Change order -- a written order signed by the COR directing the contractor to make a change that the COR is authorized to order without the contractor's consent pursuant to the contract.

Chief Contracting Officer -- the Executive Director of the District of Columbia Retirement Board, or his or her designee, designated in writing and signed by the Executive Director.

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.

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

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

Completed goods - goods that are completely manufactured and ready for delivery.

Complex items - includes those items having quality characteristics, not wholly visible in the end item, for which contractual performance must be established progressively through precise measurements, tests, and controls applied during purchasing, manufacturing, performance, assembly, and functional operation either as an individual item or in conjunction with other items.

Confidential information - proprietary information.

Consent to subcontract -- the COR's written consent for the prime contractor to enter into a particular subcontract.

Consultant - a firm or individual with knowledge and special abilities not generally available to an agency 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

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unless otherwise authorized by the Act, including agreements in which a party other than the Board is obligated to pay the contractor.

CA -- the individual responsible for overseeing the conduct of contract work.

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

Contractor team arrangement -- an arrangement under which two (2) or more individuals or businesses form a partnership or joint venture to act as a potential prime contractor, or an arrangement under which a potential prime contractor agrees with one (1) or more other individuals or businesses to have them act as its subcontractors under a specified District contract or procurement program.

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.

Conviction -- a judgment of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a judgment entered upon a plea of nolo contendere.

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 objective - a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, and capitalized projects.

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 COR, 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.

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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.

Criticality - a critical application of an item is one in which the failure of the item could injure persons or jeopardize a vital agency mission.

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

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 or District to exclude a contractor from Board or District contracting and Board- or District-approved subcontracting for a reasonable, specified period. A contractor so excluded is "debarred."

Deferred compensation - an award made by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one (1) or more cost accounting periods before the date of the receipt of compensation by the employee. This term does not include the amount of year end accruals for salaries, wages, or bonuses that are to be paid within a reasonable period of time after the end of a cost accounting period.

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.

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

Depreciation - a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner.

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Useful life refers to the prospective period of economic usefulness in a particular contractor's operations as distinguished from physical life, as evidenced by the actual or estimated retirement and replacement practice of the contractor.

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

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

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

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

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 subsequent to 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.

Established commercial or selling agency - a firm whose primary products are activities designed to secure business for the contractor such as technical, consulting, or demonstration services.

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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 particular 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.

Final cost objective - a cost objective that has allocated to it both direct and indirect costs and, in the contractor’s accumulation system, is one of the final accumulation points.

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

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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.

F.O.B. - freight on board.

Fringe benefits - allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries.

High-value item - a contract end item that has a high unit cost, exceeding one hundred thousand dollars (\$100,000) per unit, such as a communications system or computer system that is designated by the COR as a high-value item.

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.

Indictment -- an accusation in writing found and presented by a grand jury to the court charging that a named person has committed a criminal offense, including any information or other filing by a competent prosecuting authority charging a criminal offense.

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.

Indirect cost pools - groupings of incurred costs identified with two (2) or more cost objectives but not identified specifically with any final cost objective.

Ineligible -- excluded from 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.

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

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

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

Legal proceedings -- any civil judicial proceeding to which the Board 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.

List of debarred, suspended, and ineligible contractors -- a list compiled, maintained, and distributed by the Department of Administrative Services which contains the names of contractors debarred or suspended under the provisions of this section, as well as contractors declared ineligible under other statutory or regulatory authority.

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.

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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.

Nonprofit organization - a domestic university or an organization of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under 26 U.S.C. 501(a), or any domestic nonprofit scientific or educational institution.

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 subsequent to a particular 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.

Operating lease - the acquisition of real or personal property which is considered normal property to the operations of the contractor by lease or rental.

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.

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Other work - any current or scheduled work of the contractor, whether governmental or commercial, other than work related to the terminated contract.

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.

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

Penal sum or penal amount - the amount of money specified in a security (or a percentage of the bid price in a bid security) as the maximum payment for which the surety is obligated.

Pension plan - a deferred compensation plan established and maintained by one (1) or more employers to provide systematically for the payment of benefits to plan participants after their retirements. The benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability, death payments, and survivorship payments to beneficiaries of deceased employees may be an integral part of a pension plan.

Pension plan participant - any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit from a pension plan that covers employees of such employer or members of such organization and who have satisfied the plan's participation requirements. Beneficiaries receiving benefits or who may be eligible to receive benefits are included in this term.

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.

Power of attorney - the authority given to a person or corporation to act for and obligate another as specified in the instrument creating the power. In corporate suretyship, an instrument under seal which appoints an attorney-in-fact to act on behalf of a surety company in signing bonds.

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.

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Preparatory costs - an initial cost, such as those costs incurred for initial plant rearrangement and alterations, management and personnel organization, and production planning.

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 COR 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.

Profit center - the smallest organizationally independent segment of a company charged by management with profit and loss responsibilities.

Progress payment - a payment made on the basis of 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.

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

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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 in response to a COR's request on procurements of one hundred thousand dollars (\$100,000) or less.

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, except automatic data processing equipment.

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.

Reverse auction -- an on-line procurement method wherein bidders bid on specified goods or non-professional services through electronic competitive bidding. During the bidding process, bidders' prices are public and are revealed electronically, and bidders have the opportunity to modify their bid prices for the duration of the time period established for the auction.

Royalties - payments for the use of a patented invention, copyrighted material, or other proprietary information or data under a license granted by the owner.

Selling costs - costs that arise in the marketing of the contractor's products and includes costs of sales promotions, negotiation, liaison between District representatives and the contractor's personnel, and related activities.

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.

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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 COR 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.

Special test equipment - single or multi-purpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities, and plant equipment items used for general plant testing purposes.

Special tooling - jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular goods or parts thereof or to the performance of particular services. It does not include material, special test equipment, facilities, general or special machine tools, or similar capital items.

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 COR advising a contractor to cease work.

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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 or District to disqualify a contractor temporarily from Board 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 COR 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.

Technical direction -- a combination of activities including developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies.

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 District's contractual right to terminate, completely or partially, a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.

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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 District contract to which it is allocable.

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

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 District regarding the nature, usefulness, or condition of the goods or services furnished under a contract.

900 7th Street, NW, 2nd Floor
Washington, DC 20001
www.dcrb.dc.gov



Telephone (202) 343-3200
Facsimile (202) 566-5000
E-mail: dcrb@dc.gov

DISTRICT OF COLUMBIA RETIREMENT BOARD

BACKGROUND:

CLIFTON LARSON ALLEN (CLA) HAS PROVIDED INDEPENDENT AUDITING SERVICES TO THE BOARD SINCE JULY 1, 2008. AFTER A COMPETITIVE PROCUREMENT PROCESS, DCRB AWARDED A SUBSEQUENT CONTRACT TO CLA ON AUGUST 1, 2013, WHICH WILL EXPIRE IN JULY 31, 2018. OVER THE PAST 5-YEARS, THE TOTAL CONTRACT AMOUNT IS \$342,000. CONSISTENT WITH DCRB'S PROCUREMENT REGULATIONS, AN RFP MUST BE ISSUED TO BEGIN THE COMPETITIVE PROCESS TO ENGAGE AN INDEPENDENT AUDITOR

MOTION:

TO AUTHORIZE THE INTERIM EXECUTIVE DIRECTOR TO RELEASE AN RFP FOR INDEPENDENT AUDITING SERVICES.

PRESENTED TO THE BOARD ON SEPTEMBER 28, 2017

900 7th Street, NW, 2nd Floor
Washington, DC 20001
www.dcrb.dc.gov



Telephone (202) 343-3200
Facsimile (202) 566-5000
E-mail: dcrb@dc.gov

DISTRICT OF COLUMBIA RETIREMENT BOARD

BACKGROUND:

CAVANAUGH MACDONALD, LLC (CM) HAS PROVIDED ACTUARIAL SERVICES TO THE BOARD SINCE JULY 1, 2010. ON MARCH 17, 2016, THE BOARD APPROVED A TWO-YEAR EXTENSION FOR CM TO CONTINUE PROVIDING ACTUARIAL SERVICES; COMPLETE THE FOLLOWING ACTUARIAL PROJECTS: (A) EXPERIENCE STUDY AND (B) PURCHASE OF SERVICE CALCULATOR; AND TO INITIATE OTHER ACTUARIAL PROJECTS (A) TERMINATED VESTED PROJECT; (B) BENEFITS STATEMENT PROJECT; (C) UPDATE THE BOARD FUNDING POLICY; (D) PROVIDE ASSISTANCE WITH THE FINANCIAL AUDIT TO INCORPORATE RECENT GASB CHANGES. CM'S ACTUARIAL WORK ON THESE PROJECTS WILL BE COMPLETED BY JUNE 30, 2018, THE SCHEDULED TERMINATION DATE. ALL WORK PERFORMED TO DATE IS WITHIN THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$500,000. CONSISTENT WITH DCRB'S PROCUREMENT REGULATIONS, AN RFP MUST BE ISSUED TO BEGIN THE COMPETITIVE PROCESS TO ENGAGE AN ACTUARIAL FIRM.

MOTION:

TO AUTHORIZE THE INTERIM EXECUTIVE DIRECTOR TO RELEASE AN RFP FOR ACTUARIAL SERVICES

PRESENTED TO THE BOARD ON SEPTEMBER 28, 2017

900 7th Street, NW, 2nd Floor
Washington, DC 20001
www.dcrb.dc.gov



Telephone (202) 343-3200
Facsimile (202) 566-5000
E-mail: dcrb@dc.gov

DISTRICT OF COLUMBIA RETIREMENT BOARD

BACKGROUND:

ON MARCH 17, 2016, THE BOARD AUTHORIZED THE EXECUTIVE DIRECTOR TO ISSUE AN RFP FOR AN INVESTMENT COMPLIANCE CONSULTANT AND EXECUTE A ONE-YEAR CONTRACT WITH A ONE-YEAR OPTION, SUBJECT TO CONTRACT NEGOTIATIONS. THE CONTRACT WAS AWARDED IN JUNE 2016 WITH A TERM OF ONE-YEAR WITH A ONE-YEAR OPTION AT A NOT-TO-EXCEED VALUE OF \$200,000 PER ANNUM. THE BOARD AUTHORIZED A CONTRACT INCREASE OF \$10,000 PER ANNUM FOR TRAVEL EXPENSES ON NOVEMBER 11, 2016. DCRB EXERCISED THE ONE-YEAR OPTION WHICH EXTENDS THE CONTRACT TERM THROUGH JUNE 13, 2018. DUE TO THE INITIAL RAMP-UP OF CONSULTING SERVICES, INSIGHTFUL PENSION CONSULTING LLC UTILIZED MORE HOURS THAN INITIALLY ANTICIPATED AND THE TOTAL NUMBER OF CONTRACT HOURS REMAINING FOR THE OPTION YEAR IS 1,221 HOURS. TO ALLOW FULL UTILIZATION OF CONTRACT HOURS IN THE SECOND CONTRACT YEAR, AUTHORIZATION IS NEEDED FOR ADDITIONAL FUNDING.

MOTION:

TO PROVIDE A \$110,000 INCREASE IN FUNDING TO THE CONTRACT FOR INVESTMENT COMPLIANCE CONSULTING SERVICES THROUGH JUNE 13, 2018.

PRESENTED TO THE BOARD ON SEPTEMBER 28, 2017

900 7th Street, NW, 2nd Floor
Washington, DC 20001
www.dcrb.dc.gov



Telephone (202) 343-3200
Facsimile (202) 566-5001
E-mail: dcrb.@dc.gov

TO: BOARD OF TRUSTEES

FROM: MARY COLLINS, CHAIRMAN

DATE: SEPTEMBER 28, 2017

SUBJECT: BENEFITS COMMITTEE REPORT

The Benefits Committee did not meet in July, August or September 2017. The following report reflects Benefits Department activities and projects that occurred since the June Board meeting.

Retiree Self-Service Module

The Benefits and IT staff have partnered over the summer to develop a website Self-Service Module for retirees of the Police Officers and Firefighters Retirement Plan and the Teachers' Retirement Plan. A preliminary demo was presented to the Benefits Committee in June 2017 to seek input prior to completion. We are currently testing the module and are targeting a completion date of November 2017, when we will begin working with our Communications Department to develop an outreach plan to members, which will include user guides and online instructions. Our initial self-service deployment will be limited to retirees and survivors, who will have the ability to view annuity payments, demographic information, benefits and tax deductions, and DCRB messages. Future releases will include additional functionality to allow members to update their personal and banking information, e.g., address changes, direct deposit information, withholding allowances, and open season health coverage.

Benefits Community of Interest

On July 12, 2017, Benefits staff held a Community of Interest meeting with representatives of OCFO, DCHR, DCPS, MPD, and FEMS. Topics included discussions on the 2017 Benefit Statement Project, upcoming communications (Teacher's Newsletter and Summary Plan Descriptions), and DCRB operational improvement issues requiring assistance from our stakeholders. There was an emphasis on the need for additional communications to members during the on/off boarding process and additional workshops for members. Discussions also included the need for appropriate data regarding suspension time, plan entry dates, and military service. Benefits staff members are following-up on the items discussed with each agency.

Disability Annuitant Earned Income Review for Calendar Year 2016

The 2016 Annual Earned Income Verification Project for the Police Officers and Firefighters Retirement Plan has been completed. The following is a breakdown of the population subject to the earnings test up to age 50.

Initial Population Subject to Review	131
Reinstated This Year	2
Filed Tax Return Extension	4
Over Income Limit 80% over	1
Still Over 80% Limit	3
Continued to be Suspended	4
Confirmed Continuation of Disability Annuity Based on Income Review	117

This year, only one new annuitant was recommended to be suspended (effective November 1, 2017) due to outside income beyond the allowable threshold amount. Based on the AON report, the complete suspension of an annuity is not considered to be best practice, and DCRB is working to identify a new annuity reduction policy, which will be recommended to the Benefits Committee later this year.

Purchase of Service Project (POS)

DCRB Benefits staff worked with Cavanaugh Macdonald Consulting, DCRB's actuaries, to consolidate all the purchase of service spreadsheets used by our Benefits Quality Unit to calculate the payment amounts required by members to purchase service. The final product covers purchases of service for military credit, outside service credit, interest on redeposit of contributions, and Tier changes. The testing and validation of the tool occurred in July and August, and we are happy to announce that it is ready for use.

Here are a few benefits of this new Purchase of Service Program:

- (1) **Easy updating of the most current actuarial assumptions.** This new program provides the Quality Unit with the ability to update the POS spreadsheet with the same assumptions used each year in our actuarial valuation, as well as the most current mortality tables and interest rates.
- (2) **Consistency in all POS calculations and communication to members.** With one program, we can assure that the proper assumptions, data, and methodology are used by each analyst, producing consistent and accurate results. This tool also ensures the consistency of communications provided to each member.
- (3) **Elimination of the cost to members requesting Tier Changes.** Previously, all requests for Tier change estimates were calculated by Cavanaugh Macdonald at a cost to members of \$300. This program will allow Tier change estimates to be calculated in house without any cost to the members, although we are limiting estimate requests to one per year.

Washington Teachers Union (WTU) – Collective Bargaining Agreement (CBA)

The WTU CBA was approved by its membership on 9/8/17. The agreement provides the DCPS teachers with a 4% retroactive pay increase for FY 2017 (to be paid to all DCPS employees who are members of the WTU bargaining unit, all WTU bargaining unit members who retired during FY 2017, and to estates of all WTU bargaining unit members who died during FY 2017), a 3% wage increase effective Oct. 1, 2018, and a 2% wage increase effective Oct. 1, 2019.

Benefits Department Monthly Statistics

Activity	June	July	August
Retirement Claims Received	134	129	158
Processed Retirements	126	131	116
Average Processing Days	56	56	52
Telephone Calls	3,231	2,849	2,811
Walk-in Customers	109	112	95
Scanned Documents	10,796	4,738	7,074
QDROs Approved	1 final, 1 rejected	2 final	0 final
Purchase of Service	4, (\$38,019.27)	6 (\$90,137.94)	4 (\$21,644)



RETIREMENT CASE PROCESSING – JULY 1, 2017 REPORT

CASES AVAILABLE FOR PROCESSING	CASES RECEIVED (but may not have been ready for payment)	CASES PROCESSED	CASE TYPE	PLAN		
				Fire	Police	Teacher
57	32	25	Beneficiary (One-Time Payments)	0	11	14
12	7	5	Deferred Annuity	1	0	4
0	0	0	Disability	0	0	0
4	0	4	Garnishment/Levy	2	2	0
4	0	4	Health/Life Benefit Adjustments	1	0	3
28	15	13	Optional/Voluntary & Involuntary Annuity	2	9	2
2	0	2	QDRO/QMSCO	1	1	0
14	2	12	Survivor Annuity	0	8	4
2	0	2	Student Certifications	1	0	1
10	6	4	Annuity Adjustments	1	2	1
2	1	1	Auto Debt Collections	1	0	0
60	34	26	Octo Review Monetary & Non Monetary Adjustments	3	14	9
1	0	1	Post 56 Adjustments	0	1	0
2	2	0	CAPS*	0	0	0
62	30	32	Refund of Contributions**	0	6	26
260	129	131		13	54	64
			Gross Dollar Value of Refunds**	\$0.00	\$470,493.91	\$1,892,662.71

* Corrective Action Project



RETIREMENT CASE PROCESSING – AUGUST 1, 2017 REPORT

CASES AVAILABLE FOR PROCESSING	CASES RECEIVED (but may not have been ready for payment)	CASES PROCESSED	CASE TYPE	PLAN		
				Fire	Police	Teacher
85	71	14	Beneficiary (One-Time Payments)	1	2	11
13	10	3	Deferred Annuity	0	0	3
2	2	0	Disability	0	0	0
4	2	2	Garnishment/Levy	1	0	1
3	0	3	Health/Life Benefit Adjustments	0	2	1
59	24	35	Optional/Voluntary & Involuntary Annuity	4	28	3
1	1	0	QDRO/QMSCO	0	0	0
10	2	8	Survivor Annuity	1	4	3
0	0	0	Student Certifications	0	0	0
6	2	4	Annuity Adjustments	0	3	1
1	0	1	Auto Debt Collections	0	1	0
38	22	16	Octo Review Monetary & Non Monetary Adjustments	0	9	7
0	0	0	Post 56 Adjustments	0	0	0
2	2	0	CAPS*	0	0	0
50	20	30	Refund of Contributions**	0	26	4
274	158	116		7	75	34
			Gross Dollar Value of Refunds**	\$0.00	\$27,433.03	\$409,191.03

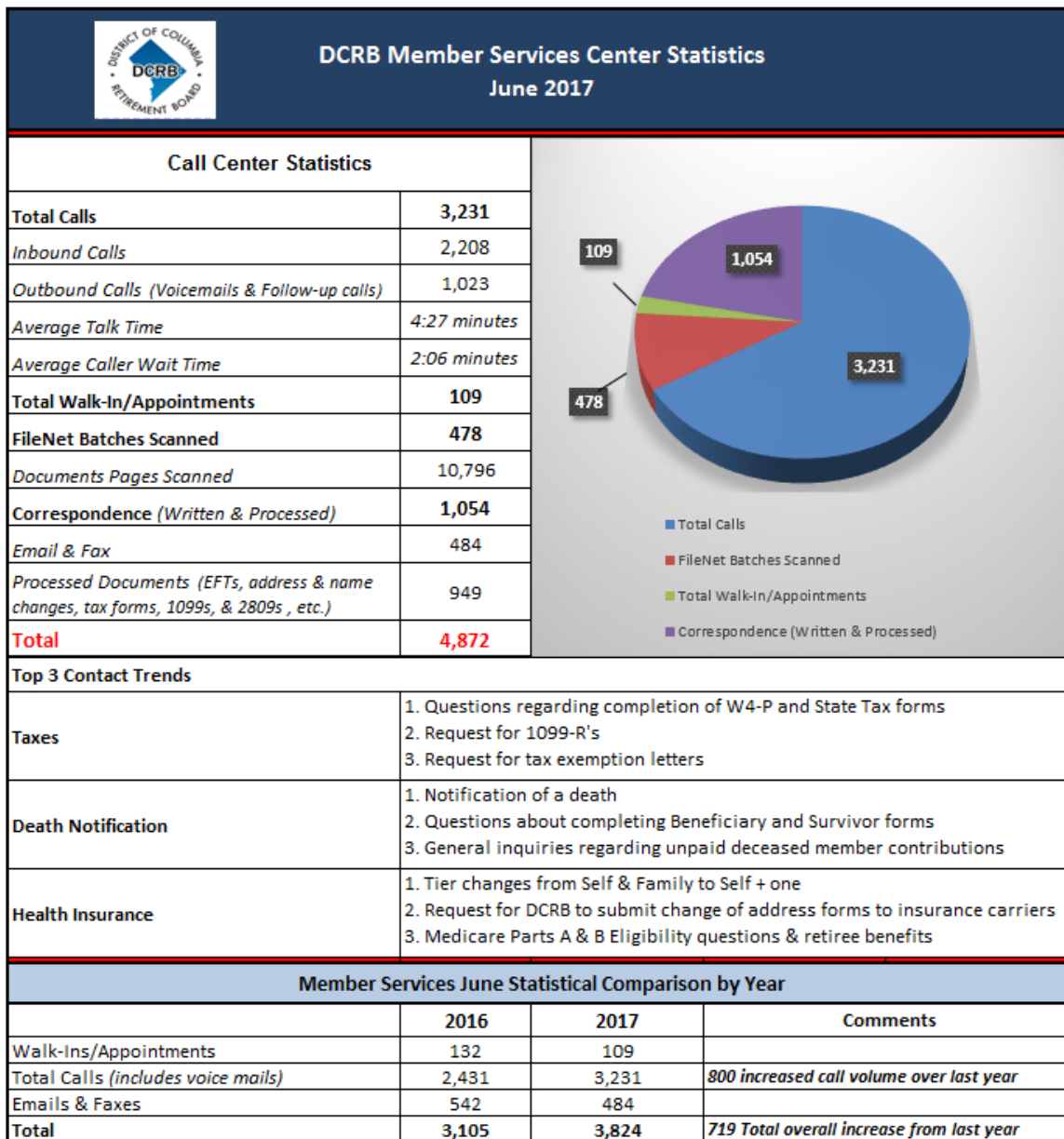
* Corrective Action Project



RETIREMENT CASE PROCESSING – SEPTEMBER 1, 2017 REPORT

CASES AVAILABLE FOR PROCESSING	CASES RECEIVED (but may not have been ready for payment)	CASES PROCESSED	CASE TYPE	PLAN		
				Fire	Police	Teacher
106	74	32	Beneficiary (One-Time Payments)	5	17	10
11	8	3	Deferred Annuity	0	1	2
2	0	2	Disability	1	1	0
4	0	4	Garnishment/Levy	2	1	1
1	0	1	Health/Life Benefit Adjustments	0	1	0
34	16	18	Optional/Voluntary & Involuntary Annuity	2	16	0
6	2	4	QDRO/QMSCO	1	2	1
12	5	7	Survivor Annuity	1	6	0
10	0	10	EVS Project Adjustments	1	2	7
16	7	9	Annuity Adjustments	3	3	3
0	13	0	Auto Debt Collections	0	0	0
24	0	11	Octo Review Monetary & Non Monetary Adjustments	3	6	2
2	2	2	Post 56 Adjustments	0	2	0
2	0	0	CAPS*	0	0	0
55	26	29	Refund of Contributions**	0	6	23
285	153	132		19	64	49
			Gross Dollar Value of Refunds**	\$0.00	\$179,358.84	\$320,616.20

* Corrective Action Project





DCRB Member Services Center Statistics July 2017

Call Center Statistics	
Total Calls	2,849
Inbound Calls	1,938
Outbound Calls (Voicemails & Follow-up calls)	911
Average Talk Time	4:17 minutes
Average Caller Wait Time	1:18 minutes
Total Walk-In/Appointments	109
FileNet Batches Scanned	160
Documents Pages Scanned	4,738
Correspondence (Written & Processed Documents)	1,498
Email & Fax	477
Processed Documents (EFTs, address & name changes, tax forms, 1099s, & 2809s, etc.)	1,021
Total	4,616

■ Total Calls
■ FileNet Batches Scanned
■ Total Walk-In/Appointments
■ Correspondence (Written & Processed Documents)

Top 3 Contact Trends for the Month	
Life Insurance	1. Update Beneficiary's (FEGLI & DCEGLI) 2. Value of Life Insurance & premium costs 3. Basic Life Insurance questions (reduction at age 65)
Death Benefits/Notification	1. One-Time Benefits questions (Unpaid Annuity) 2. Questions about the Death Notification process (required documents) 3. Survivor annuities (Surviving children enquires)
Refund/Rollover	1. Refund/Rollover questions regarding taxes 2. Determination to request a refund/rollover based on contributions. 3. Evidence of withdrawn contributions

Member Services July Statistical Comparison by Year			
	2016	2017	Comments
Walk-Ins/Appointments	154	112	
Total Calls (includes voice mails)	2,434	2,849	14.5% increase
Emails & Faxes	426	477	10.5% increase
Total	3,014	3,438	12% Total overall increase from last year



DCRB Member Services Center Statistics August 2017

Call Center Statistics	
Total Calls	2,811
Inbound Calls	1,942
Outbound Calls (Voicemails & Follow-up calls)	869
Average Talk Time	4:23 minutes
Average Caller Wait Time	1:11 minutes
Total Walk-In/Appointments	95
FileNet Batches Scanned	1,523
Documents Pages Scanned	7,074
Correspondence (Written & Processed Documents)	1,571
Email & Fax	550
Processed Documents (EFTs, address & name changes, tax forms, 1099s, & 2809s, etc.)	1,021
Total	6,000

Total Calls
FileNet Batches Scanned
Total Walk-In/Appointments
Correspondence (Written & Processed Documents)

Top 3 Contact Trends for the Month	
Health Insurance	1. Reduced Tier structure (Self +1 to Self Only) due to death and students aging out 2. Medicare Questions regarding coordination of their Medicare with Fed & District health insurance.
Active Employees Inquiries	1. Purchase of Military time or Prior Teaching Service 2. Inquires regarding Chartered Schools 3. Basic retirement questions surrounding age, years of service, health & life Insurance
Refund/Rollover	1. Refund/Rollover options 2. Assistance with completing tax forms with respect to withholdings 3. Evidence of withdrawn contributions

Member Services August Statistical Comparison by Year			
	2016	2017	Comments
Walk-Ins/Appointments	131	95	
Total Calls (includes voice mails)	2,898	2,811	
Emails & Faxes	309	550	44% increase of emails and faxes
Total	3,338	3,456	3% Total overall increase from last year



MEMBER SERVICES CUSTOMER SATISFACTION SURVEY June 2017

Background

The reported survey outcomes are the results of the June 2017 Member Services Customer Satisfaction Survey. The data collected are from active and retired members of the District of Columbia Police Officers and Firefighters' and Teachers' Retirement Plans, their survivors and beneficiaries. The purpose of the survey is to gather and measure the customer experience, gaging their satisfaction in an effort to improve our service to them, as necessary.

Survey Objective

The resulting feedback will be used to:

- Increase member satisfaction and confidence
- Deliver actionable data to decision-makers
- Reduce caller and in-person wait times for service
- Set reasonable service expectations

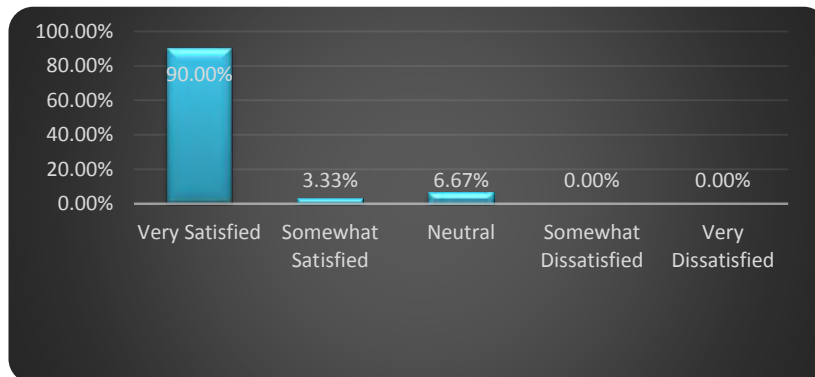
Methodology

- This month, survey participants were Plan members who made onsite visits to the DCRB member Service Center and members who contacted the center by email to the dcrb.benefits@dc.gov address. Some members arrived after having scheduled an appointment; others came in for assistance with updating their member information. The survey participants were randomly selected.

Participants

- 239 survey requests were provided to members and annuitants
- 30 responses were received.

Overall DCRB Member Satisfaction



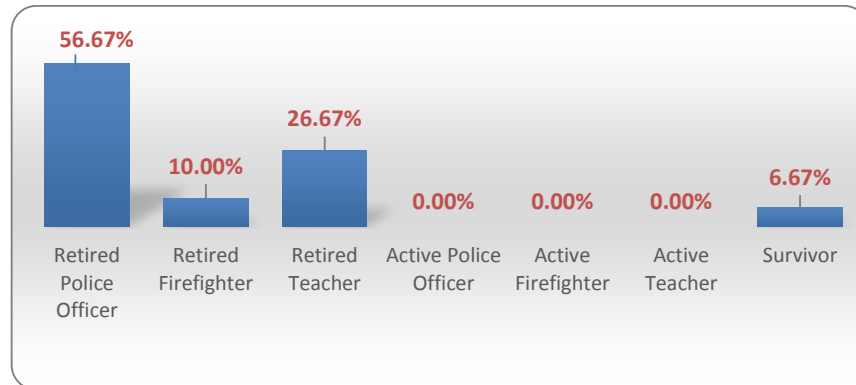


MEMBER SERVICES CUSTOMER SATISFACTION SURVEY June 2017

Overall, how satisfied are you with the member service provided by DCRB?

Very Satisfied	90.00%	27
Somewhat Satisfied	3.33%	1
Neutral	6.67%	2
Somewhat Dissatisfied	0.00%	0
Very Dissatisfied	0.00%	0
N/A	0.00%	0
Answered		30
Skipped		0

Membership/Survivor Type



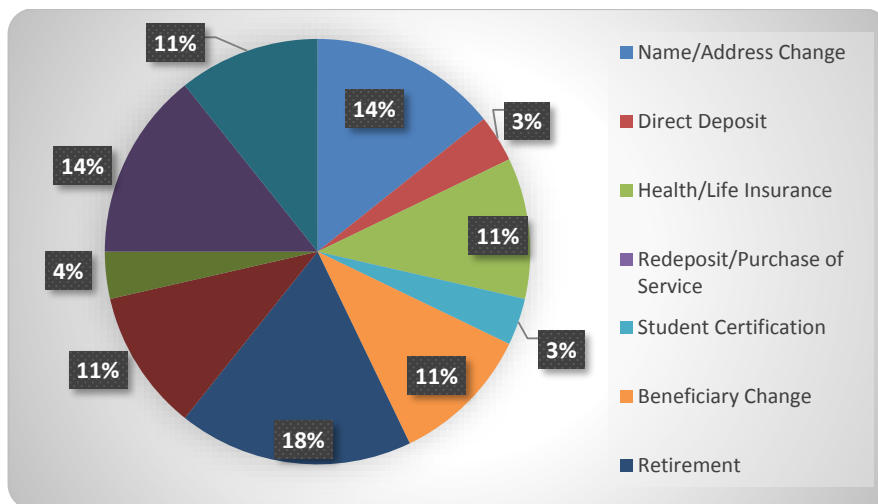
Knowledge and Skills

	Strongly Agree		Agree		Disagree		Strongly Disagree		Total
Had the right information.	86.21%	25	6.90%	2	0.00%	0	6.90%	2	29
Understood your questions.	88.89%	24	3.70%	1	0.00%	0	7.41%	2	27
Provided clear answers.	85.19%	23	7.41%	2	0.00%	0	7.41%	2	27
Answered your questions.	88.89%	24	3.70%	1	0.00%	0	7.41%	2	27
Appeared well organized.	92.31%	24	0.00%	0	0.00%	0	7.69%	2	26
	Answered								29
	Skipped								1

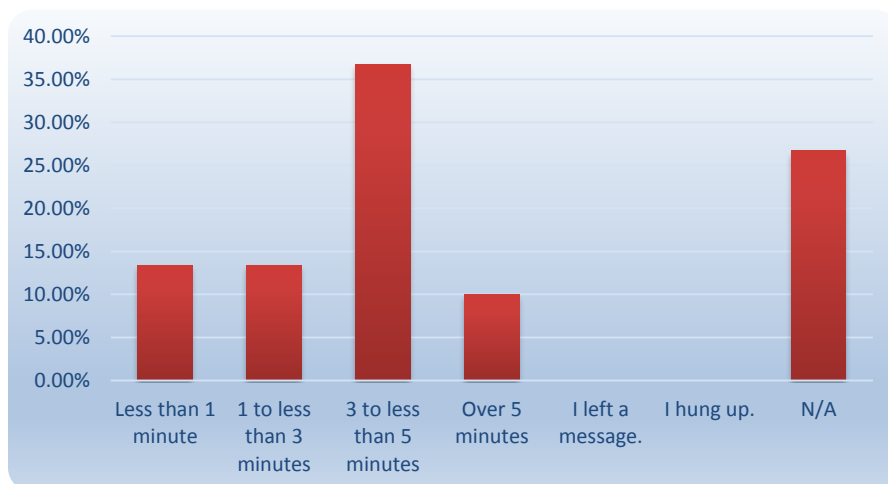


MEMBER SERVICES CUSTOMER SATISFACTION SURVEY June 2017

Reason for Contact



Contact Wait Time





MEMBER SERVICES CUSTOMER SATISFACTION SURVEY July 2017

Background

The reported survey outcomes are the results of the July 2017 Member Services Customer Satisfaction Survey. The data collected are from active and retired members of the District of Columbia Police Officers and Firefighters' and Teachers' Retirement Plans, their survivors and beneficiaries. The purpose of the survey is to gather and measure the customer experience, gaging their satisfaction in an effort to improve our service to them, as necessary.

Survey Objective

The resulting feedback will be used to:

- Increase member satisfaction and confidence
- Deliver actionable data to decision-makers
- Reduce caller and in-person wait times for service
- Set reasonable service expectations

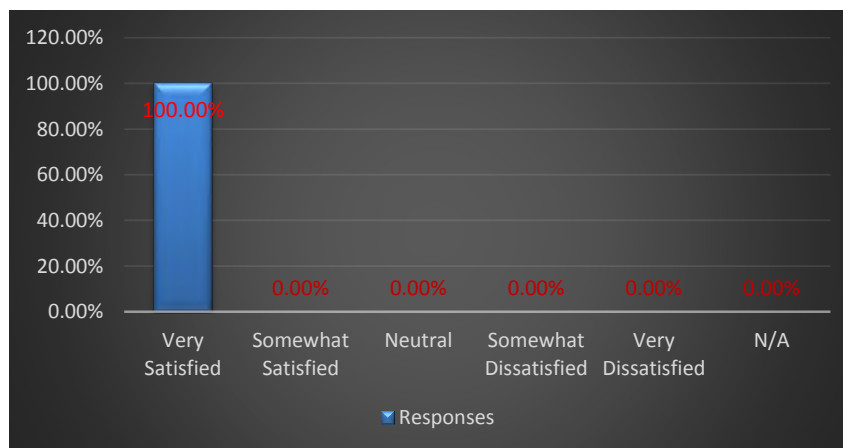
Methodology

- This month, survey participants were Plan members who made onsite visits to the DCRB member Service Center and members who contacted the center by email to the dcrb.benefits@dc.gov address. Some members arrived after having scheduled an appointment; others came in for assistance with updating their member information. The survey participants were randomly selected.

Participants

- 373 survey requests were provided to members and annuitants
- 59 responses were received.

Overall DCRB Member Satisfaction



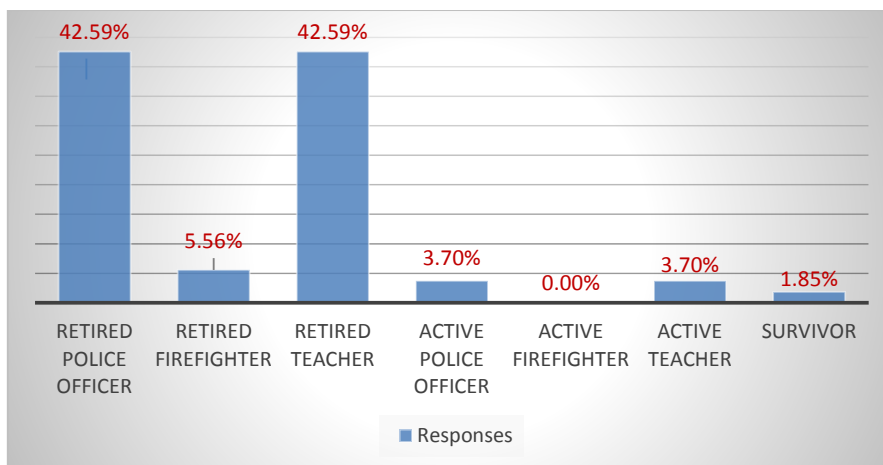


MEMBER SERVICES CUSTOMER SATISFACTION SURVEY July 2017

Overall, how satisfied are you with the member service provided by DCRB?

Answer Choices	Responses	
Very Satisfied	100.00%	57
Somewhat Satisfied	0.00%	0
Neutral	0.00%	0
Somewhat Dissatisfied	0.00%	0
Very Dissatisfied	0.00%	0
N/A	0.00%	0
Answered		57
Skipped		2

Membership/Survivor Type



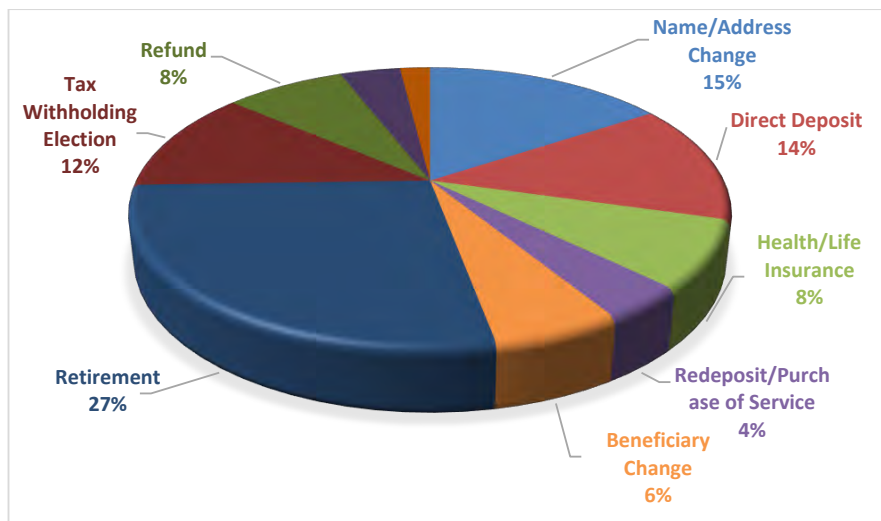
Knowledge and Skills

	Strongly Agree	Agree	Disagree	Strongly Disagr	N/A	Total
Had the right information.	85.45% 47	12.73% 7	0.00% 0	0.00% 0	1.82% 1	55
Understood your questions.	90.91% 50	9.09% 5	0.00% 0	0.00% 0	0.00% 0	55
Provided clear answers.	90.91% 50	7.27% 4	0.00% 0	0.00% 0	1.82% 1	55
Answered your questions.	89.09% 49	7.27% 4	0.00% 0	0.00% 0	3.64% 2	55
Appeared well organized.	90.74% 49	9.26% 5	0.00% 0	0.00% 0	0.00% 0	54
Answered						55
Skipped						4

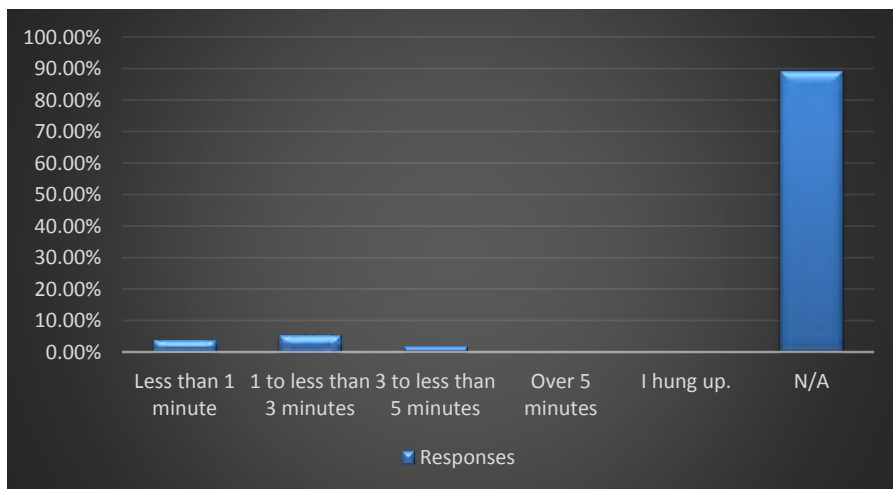


MEMBER SERVICES CUSTOMER SATISFACTION SURVEY July 2017

Reason for Contact



Contact Wait Time





MEMBER SERVICES CUSTOMER SATISFACTION SURVEY August 2017

Background

The reported survey outcomes are the results of the August 2017 Member Services Customer Satisfaction Survey. The data collected are from active and retired members of the District of Columbia Police Officers and Firefighters' and Teachers' Retirement Plans, their survivors and beneficiaries. The purpose of the survey is to gather and measure the customer experience, gaging their satisfaction in an effort to improve our service to them, as necessary.

Survey Objective

The resulting feedback will be used to:

- Increase member satisfaction and confidence
- Deliver actionable data to decision-makers
- Reduce caller and in-person wait times for service
- Set reasonable service expectations

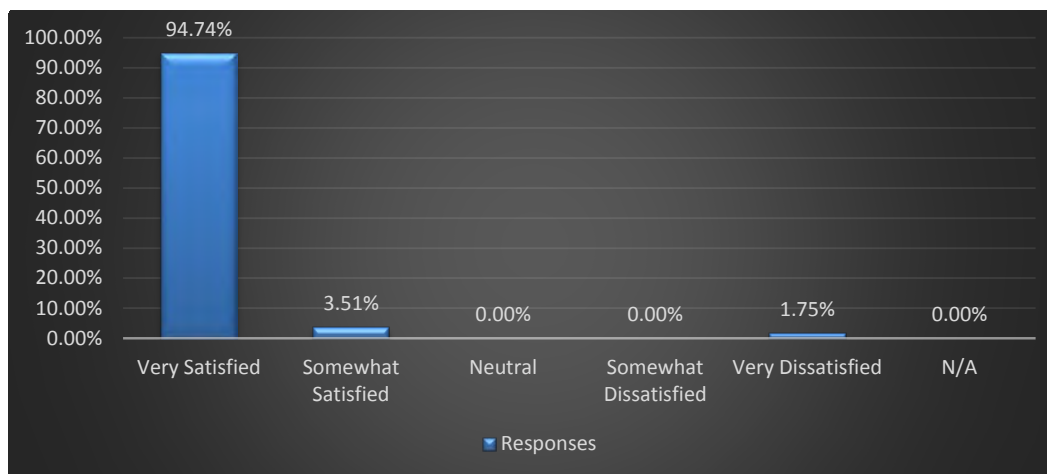
Methodology

- This month, survey participants were Plan members who made onsite visits to the DCRB member Service Center and members who contacted the center by email to the dcrb.benefits@dc.gov address. Some members arrived after having scheduled an appointment; others came in for assistance with updating their member information. The survey participants were randomly selected.

Participants

- 312 survey requests were provided to members and annuitants
- 60 responses were received.

Overall DCRB Member Satisfaction



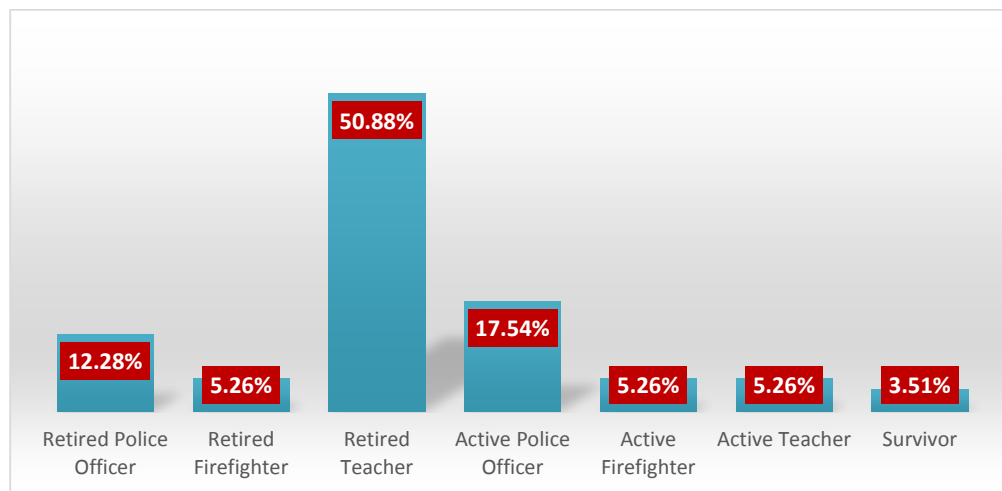
MSC Satisfaction Survey_August.2017



MEMBER SERVICES CUSTOMER SATISFACTION SURVEY August 2017

Overall, how satisfied are you with the member service provided by DCRB?		
Answer Choices	Responses	
Very Satisfied	94.74%	54
Somewhat Satisfied	3.51%	2
Neutral	0.00%	0
Somewhat Dissatisfied	0.00%	0
Very Dissatisfied	1.75%	1
N/A	0.00%	0
Answered		57
Skipped		3

Membership/Survivor Type



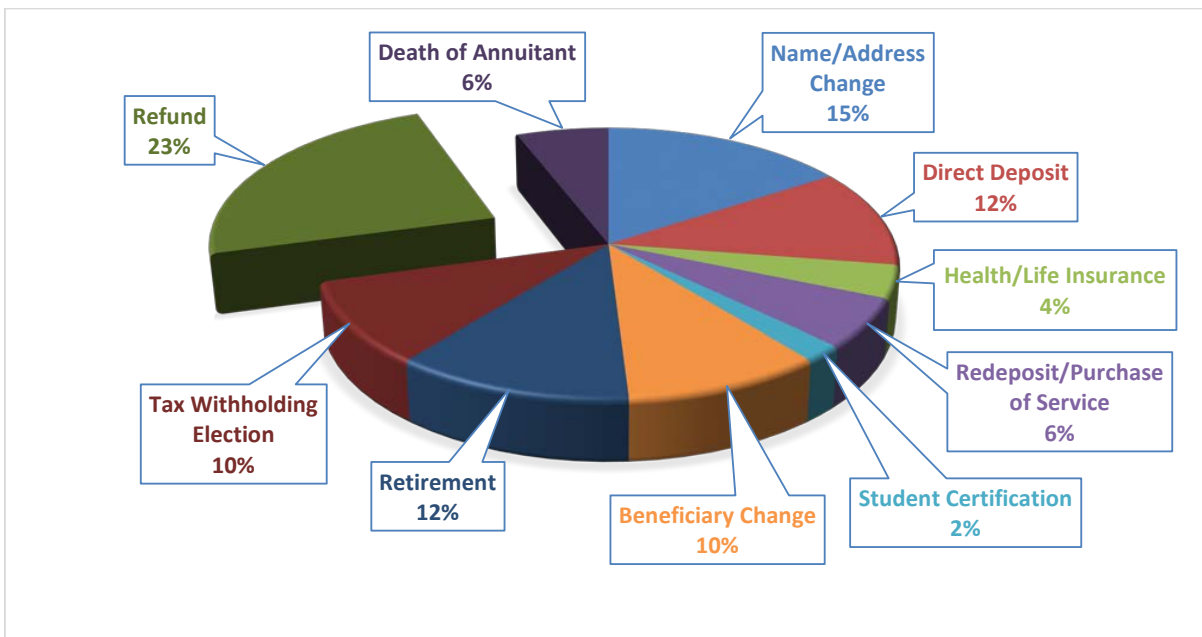
Knowledge and Skills

How satisfied were you with how the representative addressed your problem/inquiry?													
	Strongly Agree		Agree		Neither Agree/Disagree		Disagree		Strongly Disagree		N/A		Total
Had the right information.	94.83%	55	5.17%	3	0.00%	0	0.00%	0	0.00%	0	0.00%	0	58
Understood your question	94.83%	55	5.17%	3	0.00%	0	0.00%	0	0.00%	0	0.00%	0	58
Provided clear answers.	94.83%	55	3.45%	2	1.72%	1	0.00%	0	0.00%	0	0.00%	0	58
Answered your questions.	94.83%	55	5.17%	3	0.00%	0	0.00%	0	0.00%	0	0.00%	0	58
Appeared well organized.	94.74%	54	3.51%	2	0.00%	0	1.75%	1	0.00%	0	0.00%	0	57
												Answered	58
												Skipped	2

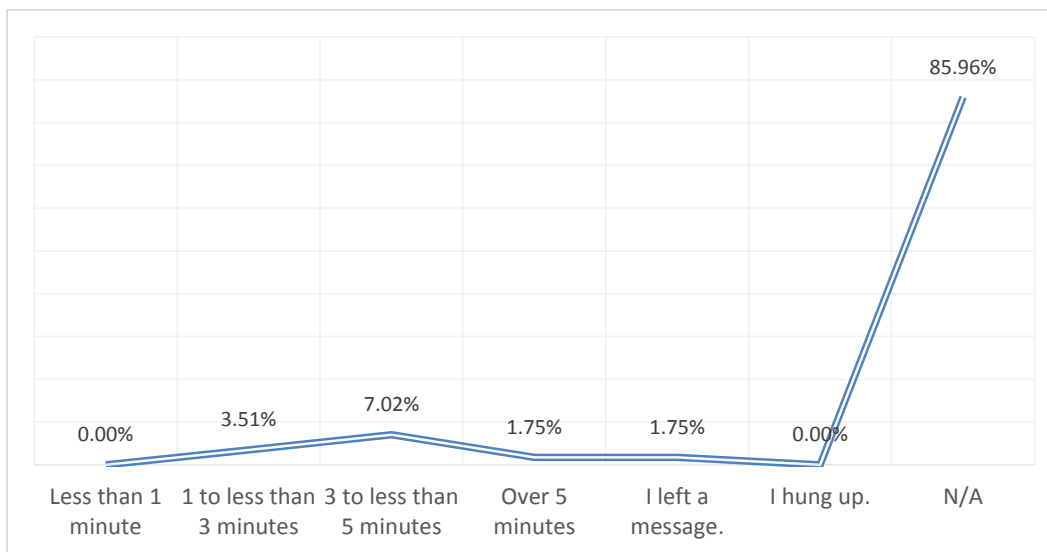


MEMBER SERVICES CUSTOMER SATISFACTION SURVEY August 2017

Reason for Contact



Contact Wait Time



900 7th Street, NW, 2nd Floor
Washington, DC 20001
www.dcrb.dc.gov



Telephone (202) 343-3200
Facsimile (202) 566-5001
E-mail: dcrb@dc.gov

TO: BOARD OF TRUSTEES
FROM: LYLE BLANCHARD, CHAIRMAN
DATE: SEPTEMBER 28, 2017

SUBJECT: LEGISLATIVE COMMITTEE REPORT

The following report reflects activities of interest since the June Board Meeting:

COUNCIL OF THE DISTRICT OF COLUMBIA

L22-0016, “Fiscal Year 2018 Local Budget Act of 2017”

The law appropriates \$105,596,000 from local funds for the Police Officers and Firefighters’ Retirement System; \$59,046,000 from local funds for the Teachers’ Retirement System; and \$41,644,000 from the Teachers’ and Police Officers and Firefighters’ Retirement Funds for the District of Columbia Retirement Board.

Status: The bill, B22-0242, was introduced on April 4, 2017, and was enacted with Act number A22-0099 on July 10, 2017. The Act was transmitted to Congress on July 18, 2017, and became law on August 29, 2017.

A22-0130, “Fiscal Year 2018 Budget Support Act of 2017”

Title II, Subtitle Z - DCRB Fair Credit in Employment Amendment Act of 2017

This provision of the Act amends DC Code §2-1402.11(d) to exempt DCRB from the provisions of the Fair Credit in Employment Act of 2016 which prohibit an employer from inquiring about or requiring an applicant to provide information about their credit history during some portions of the hiring process.

Title III, Subtitle J - Leave and Retirement Modifications for the Chief of Police Peter Newsham Amendment Act of 2017

This provision of the Act amends the Police and Firemen's Retirement and Disability Act to provide that Peter Newsham, as Chief of Police of the Metropolitan Police Department, shall be entitled to an annuity computed at 80% of his highest average base pay for 24 consecutive months upon voluntary retirement or separation from the Metropolitan Police Department.

Status: The bill, B22-0244, introduced on April 4, 2017, and was enacted with Act number A22-0130 on July 31, 2017.

B22-0241, “Police Officer Retention Amendment Act of 2017”

The proposed bill will amend the Retired Police Officer Redeployment Amendment Act of 1992 (“Redeployment Amendment Act”) to allow the Chief of the Metropolitan Police Department to rehire certain retired police officers at an increased rate of pay for a period not to exceed five (5) years. This proposed subsection of the Redeployment Amendment Act will expire seven (7) years after the enactment date of the proposed bill.

Status: The bill, B22-0421, was introduced by Chairman Mendelson on September 18, 2017, and was referred to the Committee on Judiciary and Public Safety.

PR22-0434, “Collective Bargaining Agreement between the Washington Teachers' Union, Local #6 of the American Federal of Teachers and the District of Columbia Public Schools Emergency Declaration Resolution of 2017”

The proposed emergency resolution seeks approval of the negotiated Collective Bargaining Agreement between WTU and DCPS (the “CBA”) governing the working conditions, benefits and compensation for DCPS teachers. The CBA provides for a 4% salary increase for FY 2017, which will be paid retroactively to all DCPS employees who are members of the WTU bargaining unit, all WTU bargaining unit members who retired during FY 2017, and to the estates of all WTU bargaining unit members who died during FY 2017. The CBA further provides for a 3% wage increase effective October 1, 2017; and a 2% wage increase effective October 1, 2018.

Status: The proposed emergency resolution was introduced on September 18, 2017, by Councilmember Mendelson at the request of the Mayor and was retained by the Council with comments from the Committee on Labor and Workforce Development.

900 7th Street, NW, 2nd Floor
Washington, DC 20001
www.dcrb.dc.gov



Telephone (202) 343-3200
Facsimile (202) 566-5001
E-mail: dcrb.@dc.gov

TO: BOARD OF TRUSTEES
FROM: GARY HANKINS, CHAIRMAN
DATE: SEPTEMBER 28, 2017
SUBJECT: AUDIT COMMITTEE REPORT

Audit

- Σ The request for proposal (RFP) for the contracts performance audit will be released by the end of October.
- Σ CliftonLarsonAllen concluded the field work for the interim financial audit in August. They will begin the year-end audit on Monday, November 13. The company will present the audit plan at the next Audit Committee meeting, which will take place on October 19.

Financials

- Σ The current year's financials, through August 31, 2017, is provided in the Mobile Dashboard.
- Σ A preliminary year-end report of the financials through September 30, 2017, will be provided at the October Board meeting.
- Σ Work continues by the Finance Team on DCRB's first Popular Annual Financial Report, which will be issued by end of year.

Three-Year Trustee Compensation and Travel Summary

	FY 2015			FY 2016			FY 2017 (as of 09/18/17)		
	Compensation ²	Travel Reimbursed	Total Travel Paid ¹	Compensation ²	Travel Reimbursed	Total Travel Paid ¹	Compensation ²	Travel Reimbursed	Total Travel Paid ¹
Jan Adams	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Lyle Blanchard	\$8,158.79	\$2,202.57	\$2,202.57	\$6,161.27	\$0.00	\$0.00	\$9,988.86	\$18.00	\$18.00
Barbara Blum	\$7,963.73	\$0.00	\$0.00	\$8,153.62	\$102.67	\$1,117.68	\$3,030.39	\$19.00	\$19.00
Joseph Bress	\$5,850.92	\$0.00	\$0.00	\$1,305.92	\$0.00	\$0.00	\$4,989.28	\$0.00	\$0.00
Joseph Clark	\$9,979.04	\$0.00	\$0.00	\$7,433.67	\$0.00	\$0.00	\$0.00	\$220.00	\$220.00
Mary Collins	\$9,979.06	\$543.77	\$6,967.75	\$9,945.05	\$0.00	\$0.00	\$8,773.07	\$287.23	\$3,258.91
Gary Hankins	\$7,541.19	\$503.20	\$503.20	\$7,232.76	\$0.00	\$0.00	\$9,677.17	\$18.00	\$18.00
Darrick Ross	\$9,992.04	\$0.00	\$0.00	\$9,978.53	\$829.48	\$2,723.92	\$8,505.19	\$0.00	\$0.00
Nathan Saunders	\$9,588.98	\$0.00	\$0.00	\$9,978.53	\$0.00	\$0.00	\$9,966.17	\$0.00	\$0.00
Edward Smith	\$6,045.94	\$0.00	\$0.00	\$1,908.65	\$0.00	\$0.00	\$9,241.86	\$1,061.03	\$5,205.91
Thomas Tippet	\$8,971.38	\$0.00	\$0.00	\$7,500.64	\$0.00	\$0.00	\$5,759.42	\$0.00	\$0.00
Michael Warren	\$0.00	\$0.00	\$0.00	\$1,004.55	\$0.00	\$0.00	\$2,812.74	\$0.00	\$0.00
Lenda Washington	\$3,087.98	\$0.00	\$0.00	\$1,138.49	\$0.00	\$0.00	\$9,643.68	\$58.77	\$58.77

¹ Total Travel Paid by DCRB for the Trustee, including Travel reimbursement to Trustee.

² The Compensation column represents the total amounts paid, as submitted on the Board Member Timesheet and Disclosure of Sponsored Activities form.

FY 2017 Trustee Compensation, Travel and Parking Summary

FY 2017 (as of 09/18/2017)

	Compensation²	Travel Reimbursed	Total Travel Paid¹	Parking Reimbursement
Jan Adams	\$0.00	\$0.00	\$0.00	\$0.00
Lyle Blanchard	\$9,988.86	\$18.00	\$0.00	\$18.00
Barbara Blum	\$3,030.39	\$19.00	\$0.00	\$19.00
Joseph Bress	\$4,989.28	\$0.00	\$0.00	\$0.00
Joseph Clark	\$0.00	\$220.00	\$0.00	\$220.00
Mary Collins	\$8,773.07	\$287.23	\$3,258.91	\$185.00
Gary Hankins	\$9,677.17	\$18.00	\$0.00	\$18.00
Darrick Ross	\$8,505.19	\$0.00	\$0.00	\$0.00
Nathan Saunders	\$9,966.17	\$0.00	\$0.00	\$0.00
Edward Smith	\$9,241.86	\$1,061.03	\$5,205.91	\$0.00
Thomas Tippet	\$5,759.42	\$0.00	\$0.00	\$0.00
Michael Warren	\$2,812.74	\$0.00	\$0.00	\$0.00
Lenda Washington	\$9,643.68	\$58.77	\$0.00	\$58.77

¹ Total Travel Paid by DCRB for the Trustee, including Travel reimbursement to Trustee

² The Compensation column represents the total amounts paid, as submitted on the Board Member Timesheet and Disclosure of Sponsored Activities form.



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July 18, 2017

The Board of Trustees
District of Columbia Retirement Board
900 7th Street, NW, 2nd Floor
Washington, DC 20001

Dear Trustees:

Enclosed are 20 copies of the "District of Columbia Retirement Board Experience Investigation for the Five-Year Period Ending September 30, 2015". The investigation includes the economic and demographic experience for the District of Columbia Retirement Board. This report includes the financial impact of the proposed assumption measured as of the October 1, 2016 actuarial valuation.

Please let us know if there are any questions concerning this report.

Sincerely,

Edward J. Koebel, EA, FCA, MAAA
Principal and Consulting Actuary

Jonathan T. Craven, ASA, EA, FCA, MAAA
Consulting Actuary

EJK/JTC:dmw



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District of Columbia Retirement Board

Teachers' Retirement Plan and Police Officers' & Firefighters' Retirement Plan

Experience Investigation for the Five-Year Period Ending September 30, 2015



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The experience and dedication you deserve

July 18, 2017

The Board of Trustees
District of Columbia Retirement Board
900 7th Street, NW, 2nd Floor
Washington, DC 20001

Dear Trustees:

We are pleased to submit the results of an investigation of the economic and demographic experience for the District of Columbia Retirement Board. The purpose of the investigation was to assess the reasonability of the actuarial assumptions for the System. This investigation covers the five-year period from October 1, 2010 to September 30, 2015. As a result of the investigation, it is recommended that revised tables be adopted by the Board for future use.

The investigation of the experience of members of the System includes all active and retired members as well as beneficiaries of deceased members.

The results of the investigation indicate that the assumed rates of separation from active service due to withdrawal, disability, death and retirement, and rates of salary increase and post-retirement mortality do not accurately reflect the actual and anticipated experience of the Retirement System. As a result of the investigation, new withdrawal, disability, retirement, salary increase and mortality tables have been developed which reflect more closely the actual experience of the membership.

This report shows a comparison of the actual and expected cases of separation from active service, actual and expected number of deaths, and actual and expected salary increases. These tables are shown based on current assumed expected rates and based on new proposed expected rates. A comparison between the rates of separation and mortality presently in use and the recommended revised rates are also shown in this report.

All rates of separation, mortality and salary increase at each age for each system are shown in the attached tables in Appendix D of this report. In the actuary's judgment, the rates recommended are suitable for use until further experience indicates that modifications are desirable.

3550 Busbee Pkwy, Suite 250, Kennesaw, GA 30144
Phone (678) 388-1700 • Fax (678) 388-1730
www.CavMacConsulting.com
Offices in Englewood, CO • Kennesaw, GA • Bellevue, NE



The Board of Trustees
July 18, 2017

The experience investigation was performed by, and under the supervision of, independent actuaries who are members of the American Academy of Actuaries with experience in performing valuations for public retirement systems. The undersigned meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

Respectfully submitted,

A handwritten signature in blue ink, reading 'Edward J. Koebel'.

Edward J. Koebel, EA, FCA, MAAA
Principal and Consulting Actuary

A handwritten signature in blue ink, reading 'Jonathan T. Craven'.

Jonathan T. Craven, ASA, EA, FCA, MAAA
Consulting Actuary

EJK/JTC:dmw



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SECTION I – EXECUTIVE SUMMARY

The following summarizes the findings and recommendations with regard to the assumptions utilized for the District of Columbia Retirement Board. Detailed explanations for the recommendations are found in the sections that follow.

Economic Assumption Changes

The table below lists the three economic assumptions used in the actuarial valuation and the current and recommended rates.

Item	Current	Recommended
Price Inflation	3.50%	2.75%
Investment Return	6.50%	6.25%
Wage Inflation	4.25%	4.00%

Recommended Demographic Assumption Changes

The table below lists a summary of the demographic assumptions that are recommended to be changed based on the experience of the last five years.

Assumption	Recommendations
Withdrawal	Teachers – Split for males and females and increase rates Police Officers & Firefighters – Increase rates
Disability Retirement	Teachers & Firefighters – Lower rates Police Officers – No Change
Service Retirement	Teachers, Police Officers and Firefighters – Change rates at all ages and/or service levels to match experience
Mortality	Change to RPH 2014 Blue Collar Mortality Table projected with generational mortality for all Plans
Salary Scale	Teachers – No Change Police Officers and Firefighters – Refined merit scale to better match step, retention and longevity increases



SECTION I – EXECUTIVE SUMMARY

Recommended Other Method Changes

The table below lists a summary of the actuarial method assumptions and our recommendations going forward for future valuations.

Method	Recommendations
Actuarial Cost Method	No Change to the Entry Age Normal (EAN) Cost Method
Amortization Method	Recommend a layered Unfunded Accrued Liability (UAL) amortization approach beginning with the 2017 valuation. New UAL layers composed of experience gains and losses will be amortized over a closed 20 year period from valuation date they were initially measured. Changes to assumptions and methods would also be captured in the same UAL layers.
Asset Smoothing	Recommend consideration for the Board to move to 5-year smoothing period to recognize investment gains and losses beginning with the 2016 valuation.

Financial Impact

The following tables highlight the impact of the recommended changes on the Unfunded Accrued Liability, Actuarially Determined Employer Contribution (ADEC) and the Funding Ratio on an Actuarial Value basis for each Plan of DCRB.

Teachers' Retirement Plan **(\$ in Thousands)**

	Valuation Results 2016	Demographic Changes Only	Demographic and Economic Changes
Unfunded Accrued Liability	\$184,164	\$221,034	\$237,508
ADEC Rate	11.51%	12.28%	12.85%
ADEC Amount	\$59,046	\$62,562	\$64,884
Funding Ratio	90.9%	89.3%	88.6%


SECTION I – EXECUTIVE SUMMARY

Police Officers' Retirement Plan
(\$ in Thousands)

	Valuation Results 2016	Demographic Changes Only	Demographic and Economic Changes
Unfunded Accrued Liability	\$(419,961)	\$(321,015)	\$(301,051)
ADEC Rate	20.69%	21.33%	22.62%
ADEC Amount	\$59,952	\$61,943	\$65,620
Funding Ratio	113.5%	110.0%	109.3%

Firefighters' Retirement Plan
(\$ in Thousands)

	Valuation Results 2016	Demographic Changes Only	Demographic and Economic Changes
Unfunded Accrued Liability	\$(66,577)	\$(85,487)	\$(75,774)
ADEC Rate	34.26%	29.30%	30.59%
ADEC Amount	\$45,644	\$38,422	\$40,087
Funding Ratio	104.8%	106.2%	105.5%



SECTION II – ECONOMIC ASSUMPTIONS

There are three economic assumptions used in the actuarial valuations performed for DCRB. They are:

- Price Inflation
- Investment Return
- Wage Inflation

Actuarial Standard of Practice (ASOP) No. 27, “*Selection of Economic Assumptions for Measuring Pension Obligations*”, provides guidance to actuaries in selecting economic assumptions for measuring obligations under defined benefit plans and was revised in September 2013. The revised standard now requires that each economic assumption selected by the actuary should be reasonable which means it has the following characteristics:

- It is appropriate for the purpose of the measurement;
- It reflects the actuary’s professional judgment;
- It takes into account historical and current economic data that is relevant as of the measurement date;
- It reflects the actuary’s estimate of future experience, the actuary’s observation of the estimates inherent in market data, or a combination thereof; and
- It has no significant bias (i.e., it is not significantly optimistic or pessimistic), except when provisions for adverse deviation or plan provisions that are difficult to measure are included and disclosed, or when alternative assumptions are used for the assessment of risk.

Each economic assumption should individually satisfy this standard. Furthermore, with respect to any particular valuation, each economic assumption should be consistent with every other economic assumption over the measurement period.

In our opinion, the economic assumptions recommended in this report have been developed in accordance with ASOP No. 27, as revised in September, 2013. The following table shows our recommendation followed by detailed discussions of each assumption.

Item	Current	Recommended
Price Inflation	3.50%	2.75%
Investment Return	6.50%	6.25%
Wage Inflation	4.25%	4.00%



SECTION II – ECONOMIC ASSUMPTIONS

Price Inflation

Background: As can be seen from the table above, assumed price inflation is used as the basis for both the investment return assumption and the wage inflation assumption. These latter two assumptions will be discussed in detail in the following sections.

It is important that the price inflation assumption be consistently applied throughout the economic assumptions utilized in an actuarial valuation. This is called for in ASOP No. 27 and is also required to meet the parameters for determining pension liabilities and expenses under Governmental Accounting Standards Board (GASB) Statements No. 67 and 68.

The current price inflation assumption is 3.50% per year.

Past Experience: The Consumer Price Index, US City Average, All Urban Consumers, CPI (U), has been used as the basis for reviewing historical levels of price inflation. The level of that index in September of each of the last 50 years is provided in Appendix A.

In analyzing this data, annual rates of inflation have been determined by measuring the compound growth rate of the CPI (U) over various time periods. The results are as follows:

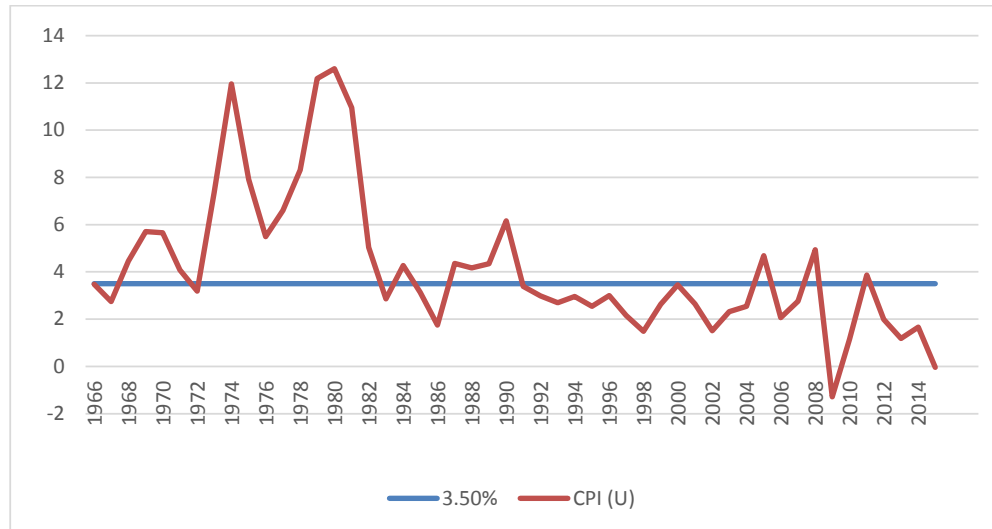
Period (Fiscal Years Ending)	Number of Years	Inflation	Annual Standard Deviation
2006-2015	10	1.81%	1.79%
1996-2005	10	2.64	1.45
1986-1995	10	3.53	1.50
1976-1985	10	7.09	3.39
1966-1975	10	5.62	2.63
1996-2015	20	2.23%	1.79%
1986-2015	30	2.66	1.45
1976-2015	40	3.75	2.94
1966-2015	50	4.12	2.98
1927-2015	88	2.93	3.98

The graph below shows the annual increases in the CPI (U) over the entire 50 year period.



SECTION II – ECONOMIC ASSUMPTIONS

Annual CPI (U) Increases



Recommendation: It is difficult to accurately predict inflation. Inflation's short-term volatility is illustrated by comparing its average rate over the last 10, 30 and 50 years. Although the 10-year average of 1.81% is lower than the System's assumed rate of 3.50%, the longer 40 and 50-year averages of 3.75% and 4.12% respectively, are somewhat higher than the System's rate. The validity of the System's assumption is, therefore, dependent upon the emphasis one assigns to the short and long-terms.

Current economic forecasts suggest lower inflation but are generally looking at a shorter time period than appropriate for our purposes. In the 2016 OASDI Trustees Report, the Chief Actuary for Social Security bases the 75 year cost projections on an intermediate inflation assumption of 2.6% with a range of 2.0% to 3.2%. We consider that range reasonable and recommend that DCRB lower the current price inflation assumption from 3.50 to 2.75%.

Price Inflation Assumption	
Current	3.50%
Reasonable Range	2.00% - 3.50%
Recommended	2.75%

The change in the price inflation assumption has an impact on the COLA assumption. For the first time, the proposed price inflation assumption is below the 3.0% cap for members hired after

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SECTION II – ECONOMIC ASSUMPTIONS

November 1, 1996. We analyzed the variability of the CPI to determine the new proposed COLA assumptions. If the 2.75% price inflation assumption is adopted, we recommend changing the COLA assumptions as shown in the following table.

COLA	Current	Proposed
Hired < 11/1/1996	3.50%	3.35%
Hired >= 11/1/1996	3.00%	2.95%

Investment Return

Background: The assumed investment return is one of the most significant assumptions in the annual actuarial valuation process as it is used to discount the expected benefit payments for all active, inactive and retired members of the divisions. Minor changes in this assumption can have a major impact on valuation results. The investment return assumption should reflect the asset allocation target for the funds set by the Board of Trustees.

The current assumption is 6.50%, consisting of a price inflation assumption of 3.50% and a real rate of return assumption of 3.00%. The return assumption is net of investment expenses.

Past Experience: The assets for DCRB are valued using a widely accepted asset-smoothing methodology that fully recognizes the expected investment income and also recognizes 1/7th of each year's investment gain or loss (the difference between actual and expected investment income). The experience over the last nine years is shown in the table below.

Year Ending 9/30	Actuarial Value	Market Value
2007	11.70%	16.40%
2008	(0.23)	(17.17)
2009	(5.86)	(2.64)
2010	1.60	10.38
2011	1.42	2.96
2012	2.72	14.08
2013	3.87	11.41
2014	4.72	8.10
2015	6.14	(4.05)
Average	2.80%	3.86%



SECTION II – ECONOMIC ASSUMPTIONS

The impact of the asset smoothing method can be observed in the table above. Poor asset returns during 2008 and 2009 are reflected in the actuarial value returns through 2015. While important to review and analyze, historical returns over such a short time period are not credible for the purpose of setting the long-term assumed future rate of return.

We next include in our analysis information concerning future expectations for the investment return assumption. Because of the significant variability in past year-to-year results and the inter-play of inflation on those results in the short term, we prefer to base our investment return assumption on the capital market assumptions utilized by the Board in setting investment policy and the asset allocation established by the Board as a result of that policy. This approach is referred to as the building block method in ASOP No. 27.

Analysis: The current capital market assumptions and asset allocation as provided by the System are shown in Appendix B. We further assumed that investment returns approximately follow a lognormal distribution with no correlation between years. The results below provide an expected range of real rates of return over a 50-year time horizon. Looking at one year results produces an expected mean real return of 6.11% but also has a high standard deviation or measurement of volatility. By expanding the time horizon, the average return changes slightly but the volatility declines significantly. The following table provides a summary of results.

Time Span In Years	Mean Real Return	Standard Deviation	Real Returns by Percentile				
			5 th	25 th	50 th	75 th	95 th
1	6.11%	13.70%	-14.77%	-3.44%	5.31%	14.85%	30.12%
5	5.41	6.07	-4.20	1.30	5.31	9.47	15.76
10	5.33	4.28	-1.50	2.46	5.31	8.24	12.59
20	5.28	3.03	0.44	3.29	5.31	7.37	10.41
30	5.27	2.47	1.32	3.65	5.31	6.99	9.46
40	5.26	2.14	1.85	3.87	5.31	6.76	8.89
50	5.26	1.91	2.21	4.03	5.31	6.61	8.51

Based on this analysis there is a 50% likelihood that the average real rate of return over a 50-year period will be 5.31%. It can also be inferred that for the 10-year time span, 5% of the resulting real rates of return will be below -1.50% and 95% were above that. As the time span increases, the results begin to merge. Over a 50-year time span, the results indicate there is a 25% chance that real returns will be below 4.03% and a 25% chance they will be above 6.61%. In other words, there is a 50% chance the real returns will be between 4.03% and 6.61%.

Nominal Return Ranges: The returns shown above are gross real rates of return. To get nominal rates of return that are net of investment fees, the gross real returns must be adjusted by expected inflation and investment expenses. Using a building block approach that includes our proposed inflation assumption of 2.75% and the real return projection results outlined above, the following



SECTION II – ECONOMIC ASSUMPTIONS

table illustrates a range for the investment return assumption of the 25th to 75th percentile real returns over the 50 year time span plus the recommended inflation assumption less the recommended expense ratio.

Item	25 th Percentile	50 th Percentile	75 th Percentile
Real Rate of Return	4.03%	5.31%	6.61%
Proposed Inflation	2.75	2.75	2.75
Investment Expenses	<u>(0.25)</u>	<u>(0.25)</u>	<u>(0.25)</u>
Net Investment Return	6.53%	7.81%	9.11%

Using the same methodology with the inflation assumption used by the investment consultant yields the following results.

Item	25 th Percentile	50 th Percentile	75 th Percentile
Real Rate of Return	4.03%	5.31%	6.61%
Assumed Inflation	2.40	2.40	2.40
Investment Expenses	<u>(0.25)</u>	<u>(0.25)</u>	<u>(0.25)</u>
Net Investment Return	6.18%	7.46%	8.76%

Using the same methodology with the targeted inflation rate of the Federal Reserve Board yields the following results.

Item	25 th Percentile	50 th Percentile	75 th Percentile
Real Rate of Return	4.03%	5.31%	6.61%
FRB Targeted Inflation	2.00	2.00	2.00
Investment Expenses	<u>(0.25)</u>	<u>(0.25)</u>	<u>(0.25)</u>
Net Investment Return	5.78%	7.06%	8.36%

As can be seen by the tables above, nominal rates using this building block methodology are highly dependent on the inflation assumption. Our proposed inflation assumption is very long term in nature because the resulting nominal net investment return assumption is also used as the discount rate for all projected future benefit payments of the plan. These projected benefit payments can span up to 100 years. Investment consultants customarily rely more on available data in the long term bond markets which have a shorter duration. The Federal Reserve Board is trying to create an inflation rate which it deems desirable. The bottom line is that nobody knows what the inflation rate is going to be in the future.



SECTION II – ECONOMIC ASSUMPTIONS

Using our inflation assumption and the capital market assumptions of the investment consultant, there is 50% chance that the net nominal return will be between 6.53% and 9.11% over a 50-year period. Based on this type of analysis, the most likely nominal rate of return would be 7.81% and we would recommend 7.75% because it is close to the center of the distribution. This rate would indicate that future asset gains and losses should approximately offset each other if the assumption is realized. This is rate that ASOP 27 guides us as actuaries to recommend as the most likely outcome. Using the investment consultant's inflation assumption of the Federal Reserve Board's target rate of inflation, the nominal rate would be less. We do realize in the real world that actuarial gains are more desirable than actuarial losses and as such we recommend a lower investment return assumption to insure against adverse experience.

Investment Return Assumption	
Current	6.50%
Recommended	6.25%



SECTION II – ECONOMIC ASSUMPTIONS

Wage Inflation

Background: The assumed future increases in salaries consist of an inflation component and a component for promotion and longevity, often called merit increases. The latter are generally age and or service related, and will be dealt with in the demographic assumption section of the report. Wage inflation normally is above price inflation as a reflection of the overall return on labor in the economy. The current wage inflation assumption is 4.25%, or 0.75% above current price inflation.

Past Experience: The Social Security Administration publishes data on wage growth in the United States. Appendix C shows the last 50 calendar years' data. As with our analysis of inflation, we provide below wage inflation and a comparison with price inflation over various time periods. Since wage data is only available through 2014 we use that year as the starting point.

Period	Wage Inflation	Price Inflation	Real Wage Growth
2005-2014	2.69%	1.81%	0.88%
1995-2004	4.14	2.64	1.50
1985-1994	3.94	3.53	0.41
1975-1984	7.23	7.09	0.14
1965-1974	5.78	5.62	0.16
1995-2014	3.41	2.23	1.18
1985-2014	3.59	2.66	0.93
1975-2014	4.49	3.75	0.74
1965-2014	4.75	4.12	0.63

Thus over the last 50 years, annual real wage growth as measured by the Social Security Administration has averaged 0.63%.



SECTION II – ECONOMIC ASSUMPTIONS



Recommendation: As with price inflation, we again look at the 2016 OASDI Trustees Report. The Chief Actuary for Social Security bases the 75 year cost projections on a national wage growth assumption 1.20% greater than the price inflation assumption of 2.60%. We concur in general with a range of 0.50% to 1.80%, and recommend use of a 1.25% per year rate at the current time which, when added to the proposed Price Inflation rate, will make the recommended Wage Inflation Assumption rate equal to 4.00%.

Wage Inflation Assumption		
Current	4.25%	
	Reasonable Range	
Real Wage Growth	0.50%	1.80%
Proposed Inflation	<u>2.75</u>	<u>2.75</u>
Total	3.25%	4.55%
Recommended	4.00%	



SECTION III– ACTUARIAL METHODS

There are certain actuarial methods that are part of the Funding Policy and are used in the actuarial valuations performed for the District of Columbia. They are:

- Actuarial Cost Method
- Amortization Method
- Asset Smoothing Method

Actuarial Cost Method: The Actuarial Standard of Practice (ASOP) No. 4, “*Measuring Pension Obligations and Determining Pension Plan Costs or Contributions*”, provides guidance to actuaries in determining periodic costs or actuarially determined contributions. The Standard defines an Actuarial Cost Method as a procedure for allocating the actuarial present value of projected benefits to time periods, usually in the form of a normal cost and an actuarial accrued liability.

The current actuarial cost method is the Entry Age Normal Method under which the actuarial present value of the projected benefits of each individual included in an actuarial valuation is allocated on a level basis over the earnings of the individual between entry age and assumed exit age. The portion of this actuarial present value allocated to a valuation year is called the normal cost. The portion of this actuarial present value not provided for at a valuation date by the actuarial present value of future normal costs is called the Actuarial accrued liability.

The Entry Age Normal Cost Method is by far the most common actuarial cost method used for public sector pension plans. It is also the required actuarial cost method for measuring accounting costs under GASB Statements 67 and 68. **We believe this is the best method for your plans and recommend continued use of it.**

Amortization Method: The Actuarial Standard of Practice (ASOP) No. 4, “*Measuring Pension Obligations and Determining Pension Plan Costs or Contributions*” also defines an amortization method as a method under a contribution allocation procedure or cost allocation procedure for determining the amount, timing, and pattern of recognition of the unfunded actuarial accrued liability.

A funding policy was adopted by the Board in 2012 which included adopting a closed level dollar amortization of the Unfunded Actuarial Accrued Liability (UAAL) over 20 years. The period is to decrease by one year per year until a funded ratio of 100% is attained. The amortization period reached 17 years as of the October 1, 2015 actuarial valuation. The Police Officers’ and Firefighters’ Retirement Plan was over 100% funded as of October 1, 2015 while the Teachers’ Retirement Plan was not.



SECTION III– ACTUARIAL METHODS

Under the current method, all future changes in the UAAL will be amortized by a shrinking period. As amortization periods decrease, payments will become increasingly more volatile with certain experience. To avoid the volatility of short amortization periods, **we recommend new UAAL layers composed of experience gains and losses be amortized over a closed 20-year period from the valuation date they are initially measured.** Also, changes to assumptions and methods would also be captured in any UAAL layers.

Therefore, the UAAL as of October 1, 2017 (“Transitional UAAL”) will be amortized over 15 years and each subsequent additional increase or decrease in UAAL will be amortized over a separate 20-year period from the valuation date it is measured. Under this methodology, after 20 years, there would be a minimum of 20 individual amortization bases.

Asset Smoothing Method: The Actuarial Standard of Practice (ASOP) No. 44, “*Selection and Use of Asset Valuation Methods for Pension Valuations*” provides guidance to actuaries when performing actuarial valuations for defined benefit plans.

Asset smoothing is used to dampen the impact of volatility of market value returns on the required contributions to the plan. The current seven year smoothing method was implemented in the October 1, 2008 actuarial valuation. Although some in the actuarial profession use asset smoothing periods longer than five years, it is somewhat uncommon and various actuarial organizations have expressed their opinions recently:

- The Conference of Consulting Actuaries (CCA) Public Plan Community White Paper endorses smoothing periods of 3 years to 10 years with market value corridors on smoothing periods of 5 to 10 years.
- The Report of the Blue Ribbon Panel of the Society of Actuaries on Public Pension Plan Funding recommends limiting smoothing periods to 5 years.
- The Government Finance Officers Association (GFOA) Best Practice recommends asset smoothing periods of ideally 5 years or less but no longer than 10 years with market value corridors for smoothing periods greater than 5 years.

We recommend the Board consider changing the asset smoothing to a five year smoothing method with a 20% corridor around the market value of assets.



SECTION IV– DEMOGRAPHIC ASSUMPTIONS

There are several demographic assumptions used in the actuarial valuations performed for the District of Columbia Retirement Board. They are:

- Rates of Mortality
- Rates of Withdrawal
- Rates of Disability Retirement
- Rates of Service Retirement
- Rates of Salary Increase

The Actuarial Standards Board has issued Actuarial Standard of Practice (ASOP) No. 35, *“Selection of Demographic and Other Noneconomic Assumptions for Measuring Pension Obligations”*, which provides guidance to actuaries in selecting demographic assumptions for measuring obligations under defined benefit plans. In our opinion, the demographic assumptions recommended in this report have been developed in accordance with ASOP No. 35.

The purpose of a study of demographic experience is to compare what actually happened to the membership during the study period (October 1, 2010 through September 30, 2015) with what was expected to happen based on the assumptions used in the most recent Actuarial Valuations.

Detailed tabulations by age, service and/or gender are performed over the entire study period. These tabulations look at all active and retired members during the period as well as separately annotating those who experience a demographic event, also referred to as a decrement. In addition, the tabulation of all members together with the current assumptions permits the calculation of the number of expected decrements during the study period.

If the actual experience differs significantly from the overall expected results, or if the pattern of actual decrements, or rates of decrement, by age, gender, or service does not follow the expected pattern, new assumptions are recommended. Recommended changes usually do not follow the exact actual experience during the observation period. Judgment is required to extrapolate future experience from past trends and current member behavior. In addition non-recurring events, such as early retirement windows, need to be taken into account in determining the weight to give to recent experience.

The remainder of this section presents the results of the demographic study. We have prepared tables that show a comparison of the actual and expected decrements and the overall ratio of actual to expected results (A/E Ratios) under the current assumptions. If a change is being proposed, the revised A/E Ratios are shown as well. Salary adjustments, other than the economic assumption for wage inflation discussed in the previous section, are treated as demographic assumptions.



SECTION IV—DEMOGRAPHIC ASSUMPTIONS - RATES OF MORTALITY

The mortality assumption is one of the most important demographic assumptions because it predicts the length of time pension benefits will be paid to both current and future retirees and beneficiaries. If retirees and beneficiaries live longer than expected, actuarial losses are realized.

Rates of mortality continue to decline today mostly due to advancements in medicine and public health. The continued increases in life expectancies has prompted the actuarial profession to require actuaries to include assumptions of mortality improvement in the mortality tables used in the valuations and option factors.

In order to develop an appropriate mortality table, we need as much data as possible. Therefore, we have combined the mortality experience of the Teachers, Police and Firefighters to analyze the mortality assumption. We also included mortality experience from the previous 2006-2010 study to increase the credibility of the data.

The health of disabled retirees is generally worse than healthy retirees and therefore we have a different mortality assumption for disabled retirees.

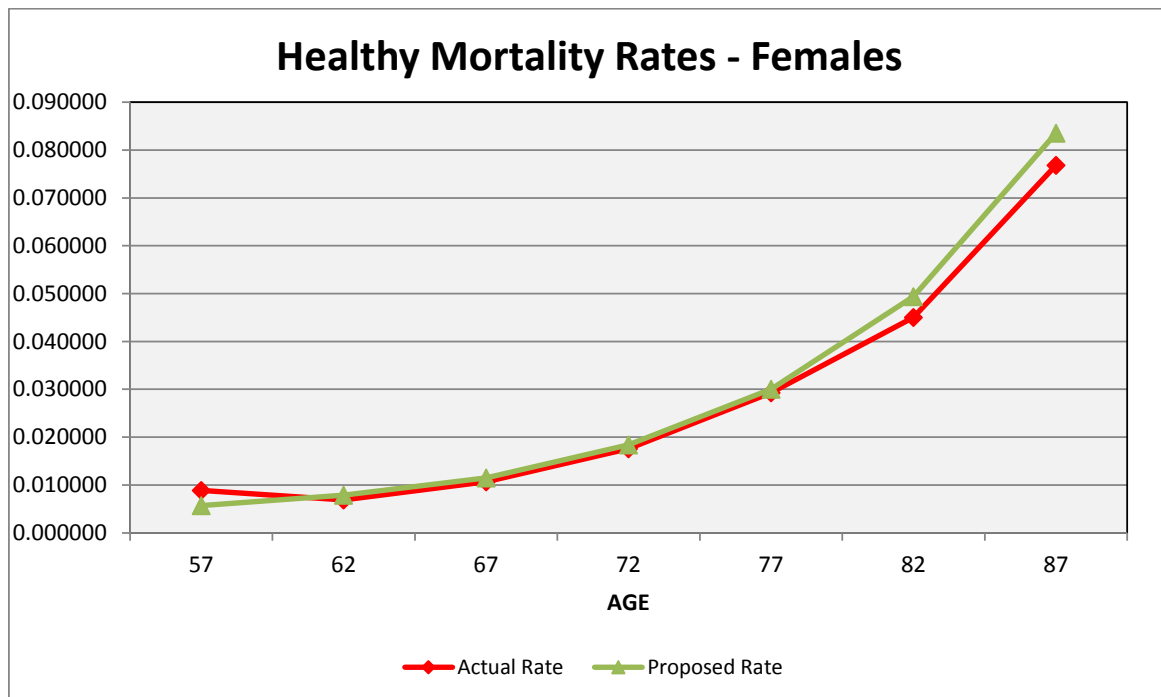
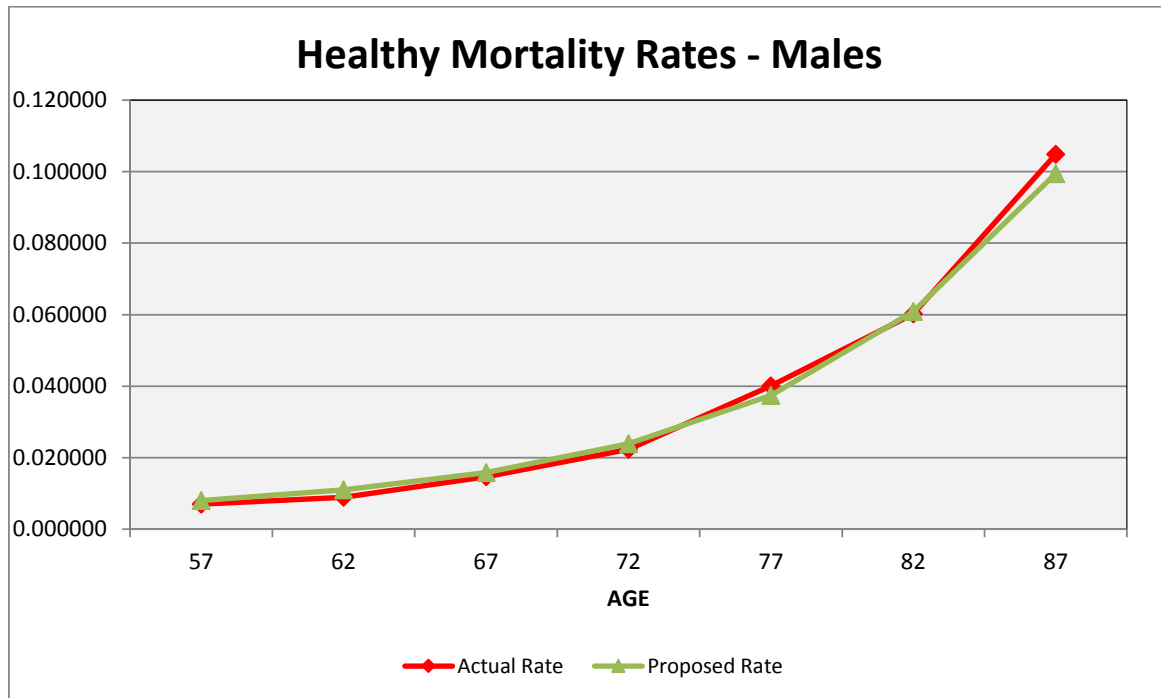
Healthy Lives Mortality

The first step of selecting a mortality table is to compare published mortality tables to the mortality experienced by the members of the plan. This is done by projecting the mortality table rates to the period of the experience. The actual mortality experience is from the July 1, 2006 – June 30, 2015 period so we will project the mortality rates to 2011 for comparison to the actual experience.

After testing many standard mortality tables against the mortality experience of the 2006-2015 study period, we selected the RPH 2014 Blue Collar Mortality Table with ages set back one year for males as the best fit table when projected back to 2011. The following graphs show the actual mortality rates during the study period and the mortality rates of the RPH 2014 Blue Collar Mortality Table with ages set back one year for males projected to 2011.



SECTION IV– DEMOGRAPHIC ASSUMPTIONS - RATES OF MORTALITY



A comparison of actual deaths and expected deaths using the proposed mortality table with ratios of actual deaths to expected deaths is shown below:



SECTION IV—DEMOGRAPHIC ASSUMPTIONS - RATES OF MORTALITY

CENTRAL AGE OF GROUP	NUMBER OF DEATHS AMONG SERVICE RETIREMENTS AND BENEFICIARIES					
	MALE			FEMALE		
	Actual	Expected	Ratio of Actual to Expected	Actual	Expected	Ratio of Actual to Expected
Under 60	59	58	1.017	48	22	2.182
62	95	118	0.805	55	63	0.873
67	164	177	0.927	115	124	0.927
72	169	181	0.934	167	175	0.954
77	173	162	1.068	243	249	0.976
82	139	140	0.993	300	329	0.912
87	115	109	1.055	364	396	0.919
92	80	60	1.333	356	369	0.965
95 & Over	35	33	1.061	287	270	1.063
TOTAL	1,029	1,038	0.991	1,935	1,997	0.969

The next step is to project the mortality rates into the future in order to allow for future expected mortality improvement.

The Society of Actuaries strongly recommends projecting mortality improvement generationally. Generational projection creates a unique mortality table for each year of birth. For example, the mortality rate at age 65 for someone who is now 40 will be the current age 65 rate with 25 years of projection applied. For the same person, the mortality rate at age 70 will be the current age 70 rate with 30 years of projection applied.

The other form of projection is called a static projection where the base rates of mortality are projected to a future date or for a specific number of years. The projection is independent from the member's year of birth. Generational projection is theoretically more accurate where a static projection will overstate liabilities for some and understate liabilities for others.

We recommend projecting the RPH Blue Collar Mortality Table with ages set back 1 year for males generationally using Scale BB for both active and retired members.

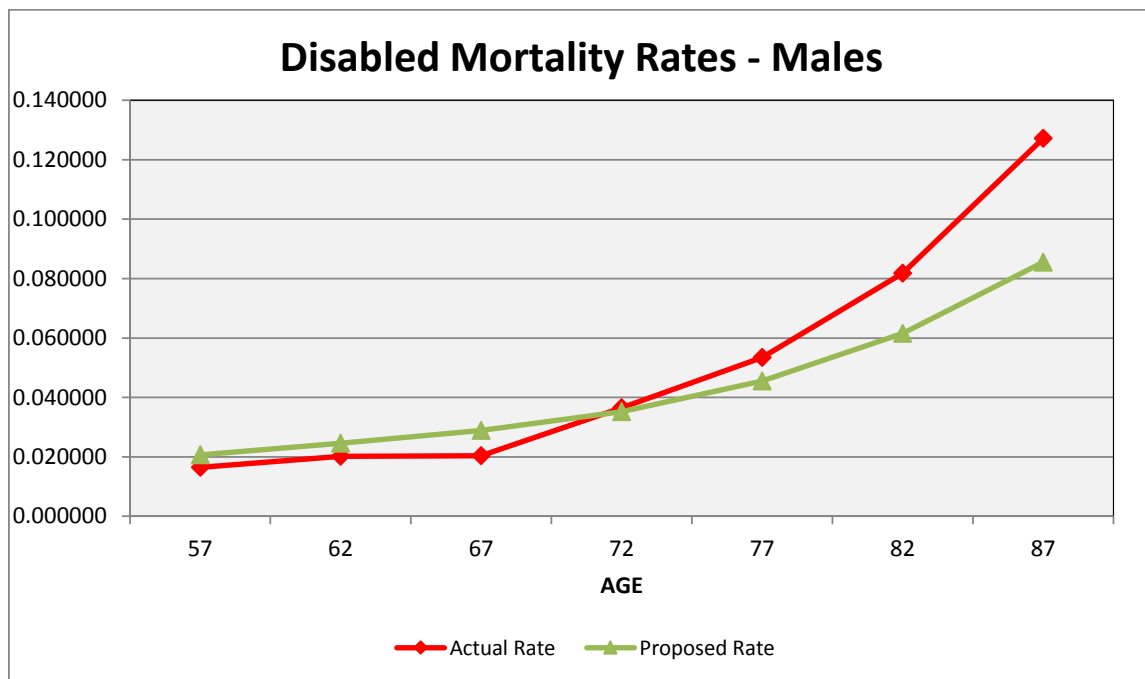


SECTION IV—DEMOGRAPHIC ASSUMPTIONS - RATES OF MORTALITY

Disabled Lives Mortality

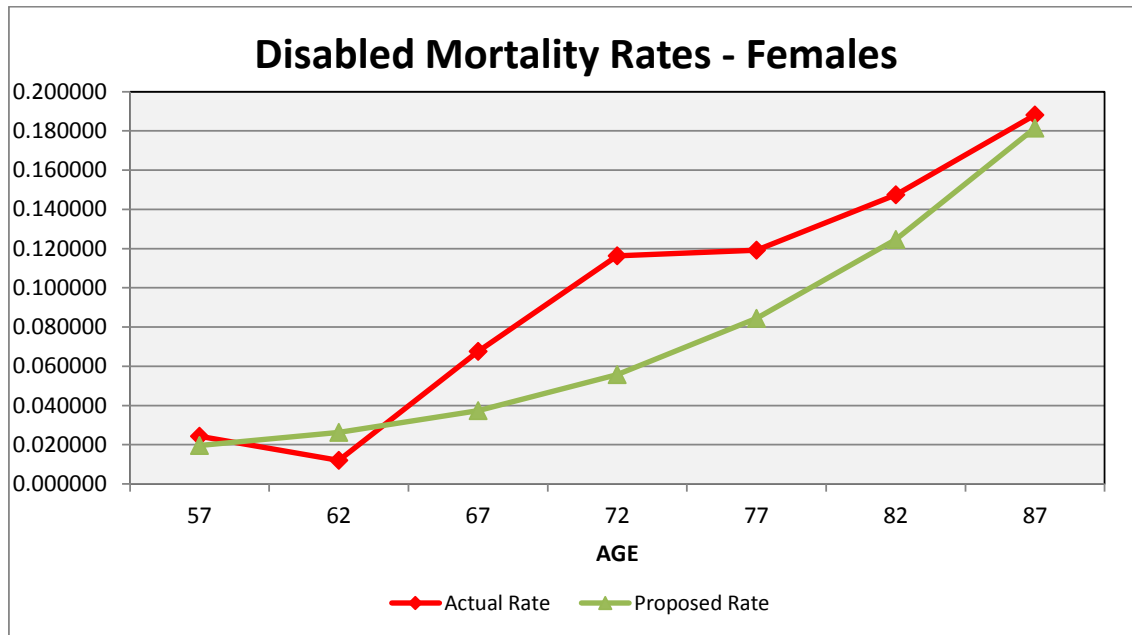
Disabled lives mortality is much harder to predict than healthy lives mortality since the many reasons for disability are numerous in nature with differing impacts on mortality. Another reason is the much smaller number of disabled retirees which make their data less credible.

We have selected the RPH 2014 Disabled Retiree Mortality Table with female rates set forward 7 years and male rates set back 6 years for the mortality table for disabled lives. Because of the smaller sample size, we picked the assumption so there is a margin for adverse selection instead of projecting the mortality table for future improvement. The following graphs show the mortality experience of the study period compared with what the proposed assumption would have predicted:





SECTION IV – DEMOGRAPHIC ASSUMPTIONS - RATES OF MORTALITY



The following table show the actual disabled retiree deaths compared with what would have been predicted by our proposed assumption. Please note the margin for males is 17.4% and the margin for females is 18.6%. This margin allows for adverse deviation.

CENTRAL AGE OF GROUP	NUMBER OF DEATHS AMONG DISABILITY RETIREMENTS					
	MALE			FEMALE		
	Actual	Expected	Ratio of Actual to Expected	Actual	Expected	Ratio of Actual to Expected
Under 50	20	10	2.000	7	9	0.778
52	5	11	0.455	10	7	1.429
57	20	25	0.800	14	11	1.273
62	39	47	0.830	8	18	0.444
67	44	62	0.710	39	22	1.773
72	72	69	1.043	48	23	2.087
77	84	72	1.167	44	31	1.419
82	118	89	1.326	55	46	1.196
87	114	77	1.481	60	58	1.034
92	81	47	1.723	37	44	0.841
95 & Over	25	20	1.250	23	22	1.045
TOTAL	622	529	1.176	345	291	1.186



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - TEACHERS' RETIREMENT PLAN

RATES OF WITHDRAWAL

COMPARISON OF ACTUAL AND EXPECTED WITHDRAWALS FROM ACTIVE SERVICE

SERVICE	NUMBER OF WITHDRAWALS		
	Actual	Expected	Ratio of Actual to Expected
	Withdrawals with less than 5 years of service		
Under 1	54	42	1.286
1	743	729	1.019
2	750	609	1.232
3	506	399	1.268
4	236	200	1.180
TOTAL	2,289	1,979	1.157

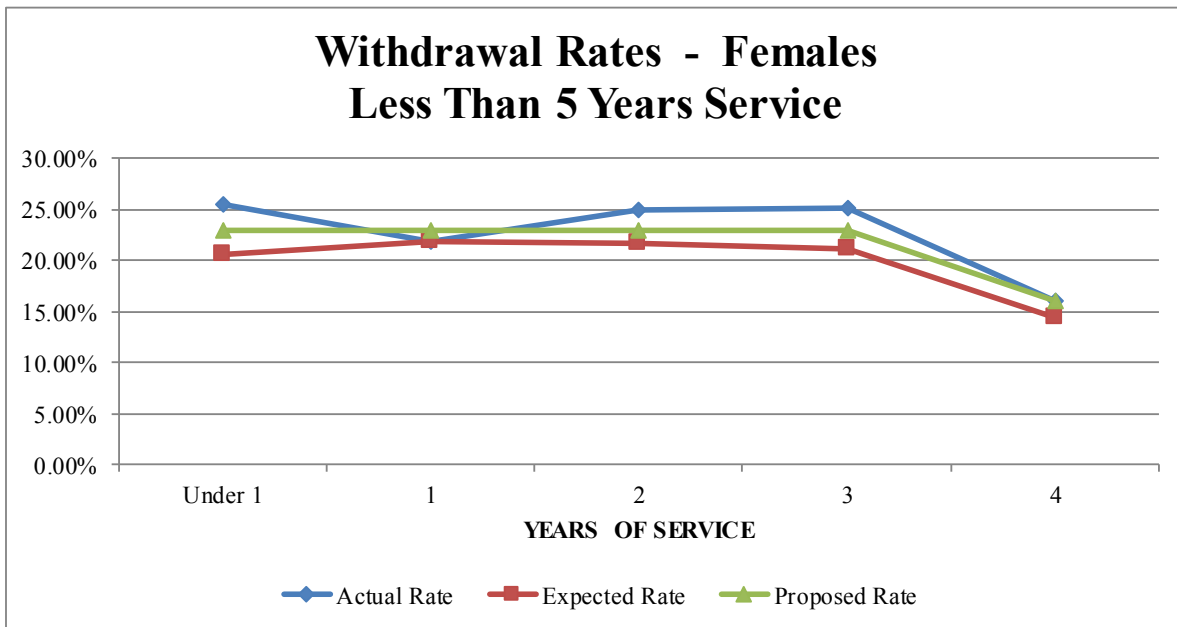
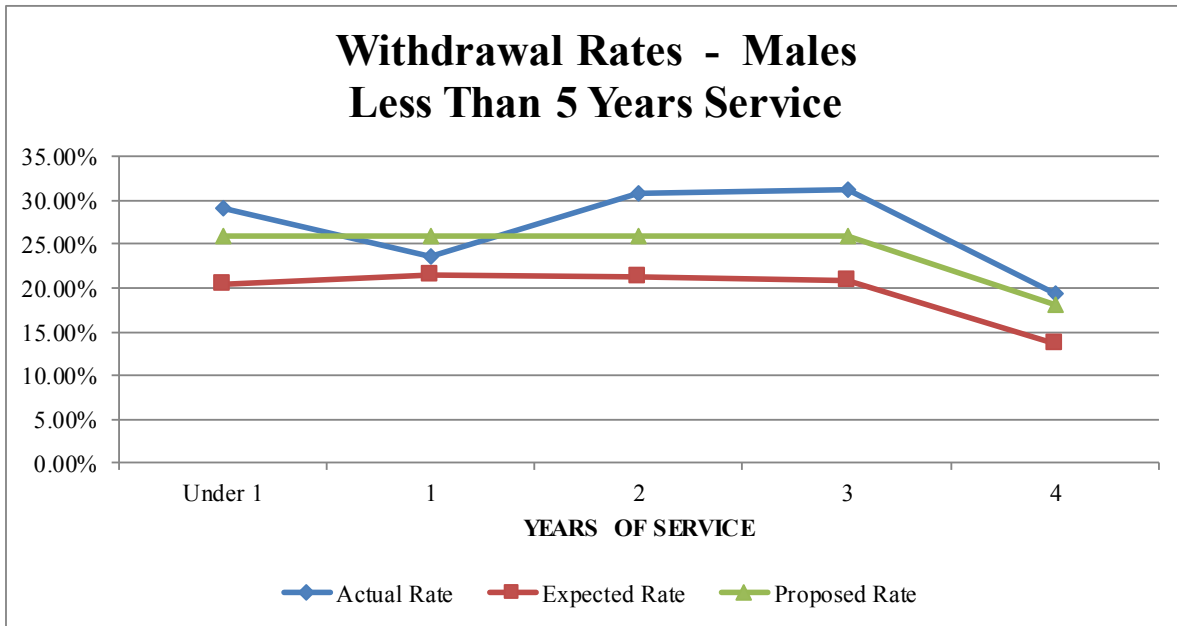
CENTRAL AGE OF GROUP	NUMBER OF WITHDRAWALS		
	Actual	Expected	Ratio of Actual to Expected
	Withdrawals with 5 or more years of service		
25	41	32	1.281
30	163	153	1.065
35	155	139	1.115
40	178	123	1.447
45	109	83	1.313
50	93	63	1.476
55	78	53	1.472
60	90	39	2.308
TOTAL	907	685	1.324

The following graph shows a comparison of the present, actual and proposed rates of withdrawal.



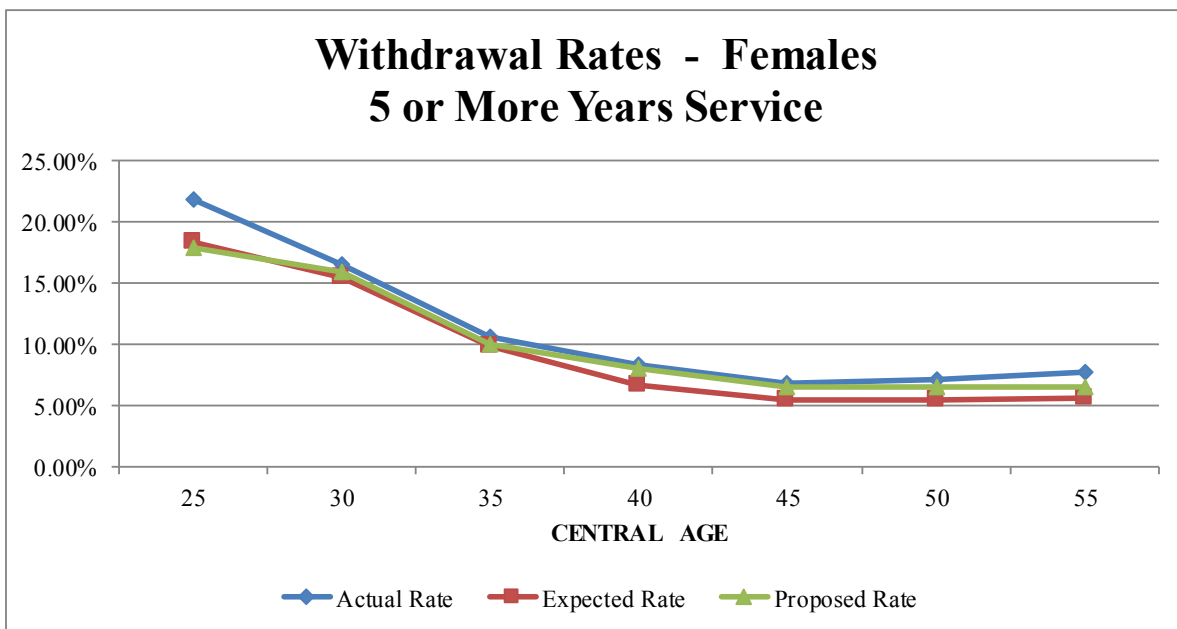
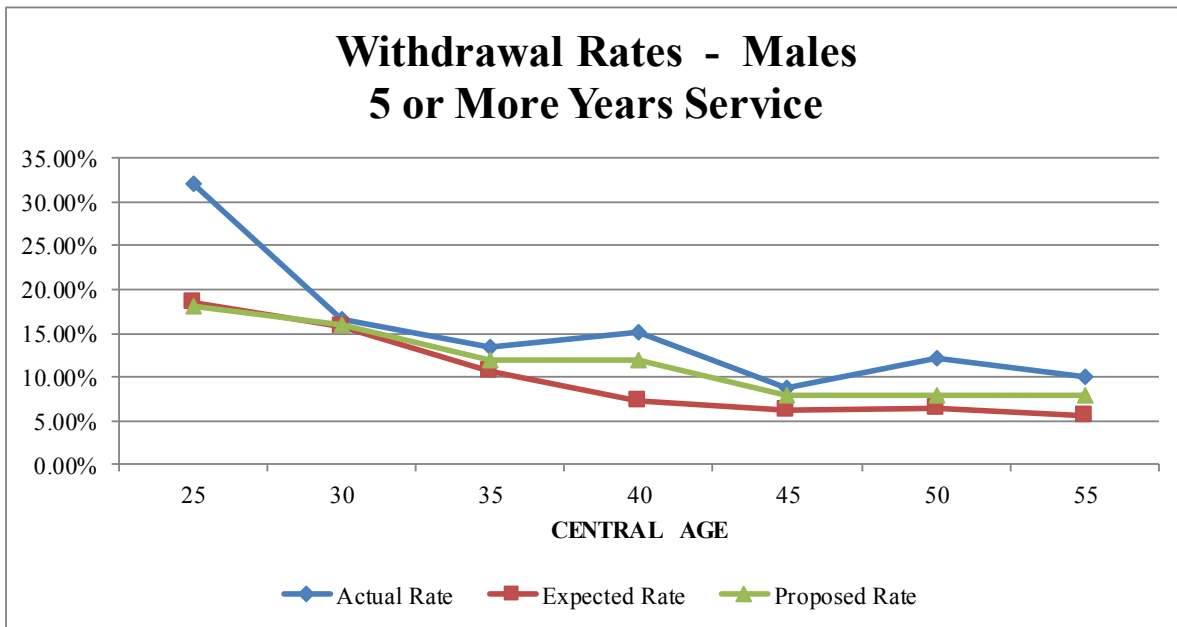
SECTION IV – DEMOGRAPHIC ASSUMPTIONS - TEACHERS' RETIREMENT PLAN

RATES OF WITHDRAWAL FOR ACTIVE MEMBERS





SECTION IV – DEMOGRAPHIC ASSUMPTIONS - TEACHERS' RETIREMENT PLAN



The rates of withdrawal adopted by the Board are used to determine the expected number of separations from active service which will occur as a result of resignation or dismissal. The preceding results indicate that the actual number of withdrawals is somewhat more than expected at less than 5 years of service and even more so at 5 or more years of service. Actual withdrawals were also more than expected during the 2006-2010 period. In addition, we reviewed withdrawals



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - TEACHERS' RETIREMENT PLAN

for males and females separately and found that males are withdrawing at approximately 3% higher rates than females.

Therefore, first, we are recommending withdrawal rates be split for males and females. And second, we are recommending changing the age and service parameters used in applying the rates. Currently, there are different age based withdrawal rates for less than 4 years of service, 5 to 10 years of service, and 10 or more years of service. We recommend simplifying the rate structure into a select and ultimate format with service based rates for all members with less than 5 years of service and age based rates for all members with 5 or more years of service. Last, we are recommending an increase in the withdrawal rates for ages above 30.

SERVICE	RATES OF WITHDRAWAL		
	Less than 5 years of service		
	Present	Proposed	
		MALES	FEMALES
< 1	NA	26.00%	23.00%
1	NA	26.00%	23.00%
2	NA	26.00%	23.00%
3	NA	26.00%	23.00%
4	NA	18.00%	16.00%

AGE	RATES OF WITHDRAWAL		
	5 or more years of service		
	Present	Proposed	
		MALES	FEMALES
25	20.00%	18.00%	18.00%
30	16.00%	16.00%	16.00%
35	14.00%	12.00%	10.00%
40	12.00%	12.00%	8.00%
45	10.00%	8.00%	6.50%
50	10.00%	8.00%	6.50%
55	10.00%	8.00%	6.50%



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - TEACHERS' RETIREMENT PLAN

COMPARATIVE RATES OF WITHDRAWAL

COMPARISON OF ACTUAL AND EXPECTED WITHDRAWALS FROM ACTIVE SERVICE BASED ON PROPOSED RATES

SERVICE	NUMBER OF WITHDRAWALS - MALES		
	Actual	Expected	Ratio of Actual to Expected
	Withdrawals with less than 5 years of service		
Under 1	14	12	1.167
1	193	213	0.906
2	230	194	1.186
3	153	128	1.195
4	66	61	1.082
TOTAL	656	608	1.079

SERVICE	NUMBER OF WITHDRAWALS - FEMALES		
	Actual	Expected	Ratio of Actual to Expected
	Withdrawals with less than 5 years of service		
Under 1	40	36	1.111
1	550	581	0.947
2	520	479	1.086
3	353	324	1.090
4	170	169	1.006
TOTAL	1,633	1,589	1.028


SECTION IV – DEMOGRAPHIC ASSUMPTIONS - TEACHERS' RETIREMENT PLAN

CENTRAL AGE OF GROUP	NUMBER OF WITHDRAWALS - MALES		
	Actual	Expected	Ratio of Actual to Expected
	Withdrawals with 5 or more years of service		
25	8	5	1.600
30	33	32	1.031
35	47	42	1.119
40	63	50	1.260
45	33	30	1.100
50	36	24	1.500
55	22	18	1.222
60	27	15	1.800
TOTAL	269	216	1.245

CENTRAL AGE OF GROUP	NUMBER OF WITHDRAWALS - FEMALES		
	Actual	Expected	Ratio of Actual to Expected
	Withdrawals with 5 or more years of service		
25	33	27	1.222
30	130	126	1.032
35	108	102	1.059
40	115	110	1.045
45	76	71	1.070
50	57	52	1.096
55	56	47	1.191
60	63	34	1.853
TOTAL	638	569	1.121



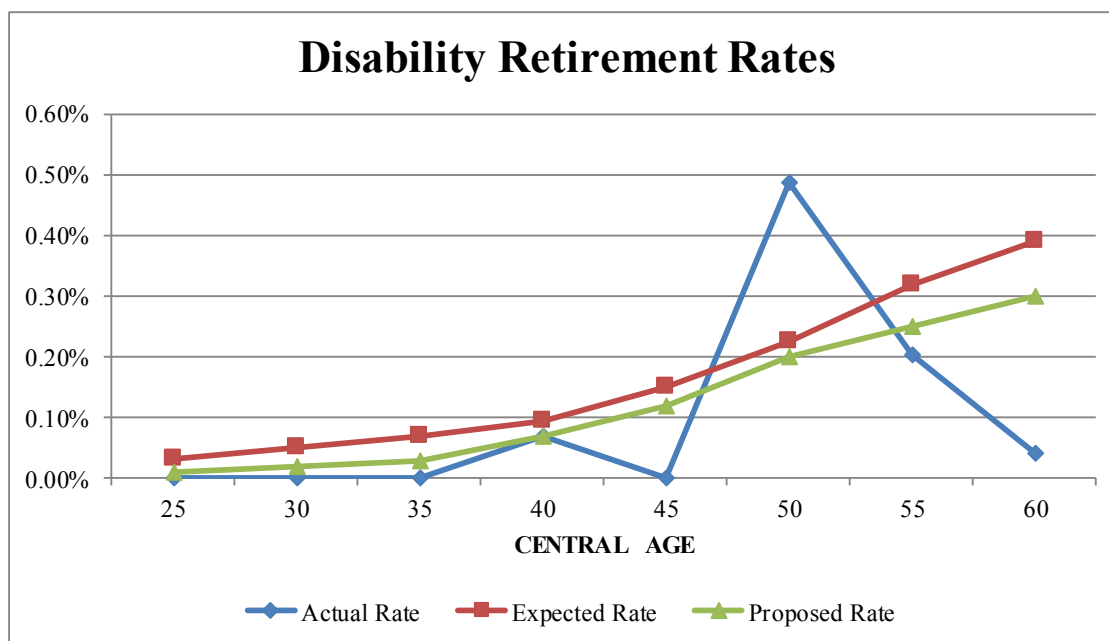
SECTION IV – DEMOGRAPHIC ASSUMPTIONS - TEACHERS' RETIREMENT PLAN

RATES OF DISABILITY RETIREMENT

COMPARISON OF ACTUAL AND EXPECTED DISABILITY RETIREMENTS

CENTRAL AGE OF GROUP	NUMBER OF DISABILITIES		
	Actual	Expected	Ratio of Actual to Expected
25	0	1	0.000
30	0	2	0.000
35	0	2	0.000
40	2	3	0.667
45	0	3	0.000
50	10	5	2.000
55	5	8	0.625
60+	1	12	0.083
TOTAL	18	36	0.500

The following graphs show a comparison of the present, actual, and proposed rates of disability retirements.





SECTION IV – DEMOGRAPHIC ASSUMPTIONS - TEACHERS' RETIREMENT PLAN

During the period under investigation, the actual rates of disability retirement were less than expected. A similar pattern of disability retirements was seen in the last experience investigation. Therefore, we recommend the rates of disability retirement be lowered again to more closely reflect the experience of the System.

The following table shows a comparison between the present disability retirement rates and the proposed rates.

COMPARATIVE RATES OF DISABILITY RETIREMENT

AGE	RATES OF DISABILITY RETIREMENT	
	Present	Proposed
25	0.03%	0.01%
30	0.05%	0.02%
35	0.07%	0.03%
40	0.09%	0.07%
45	0.15%	0.12%
50	0.22%	0.20%
55	0.32%	0.25%
60	0.40%	0.30%

COMPARISON OF ACTUAL AND EXPECTED DISABILITY RETIREMENTS BASED ON PROPOSED RATES

CENTRAL AGE OF GROUP	NUMBER OF DISABILITIES		
	Actual	Expected	Ratio of Actual to Expected
25	0	0	0.000
30	0	1	0.000
35	0	1	0.000
40	2	2	1.000
45	0	3	0.000
50	10	4	2.500
55	5	6	0.833
60+	1	13	0.077
TOTAL	18	30	0.600



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - TEACHERS' RETIREMENT PLAN

RATES OF SERVICE RETIREMENT

COMPARISON OF ACTUAL AND EXPECTED RETIREMENTS

AGE	NUMBER OF SERVICE RETIREMENTS Under 30 Years of Service		
	Actual	Expected	Ratio of Actual to Expected
Under 55	45	22	2.045
55	22	13	1.692
56	24	13	1.846
57	18	13	1.385
58	24	18	1.333
59	22	19	1.158
60	51	50	1.020
61	38	38	1.000
62	60	71	0.845
63	61	52	1.173
64	42	41	1.024
65	41	31	1.323
66	40	23	1.739
67	20	16	1.250
68	23	12	1.917
69	10	7	1.429
70	10	10	1.000
71	6	6	1.000
72	7	4	1.750
73	7	3	2.333
74	1	2	0.500
SUBTOTAL	572	464	1.233
75+	6	11	0.545
TOTAL	578	475	1.217



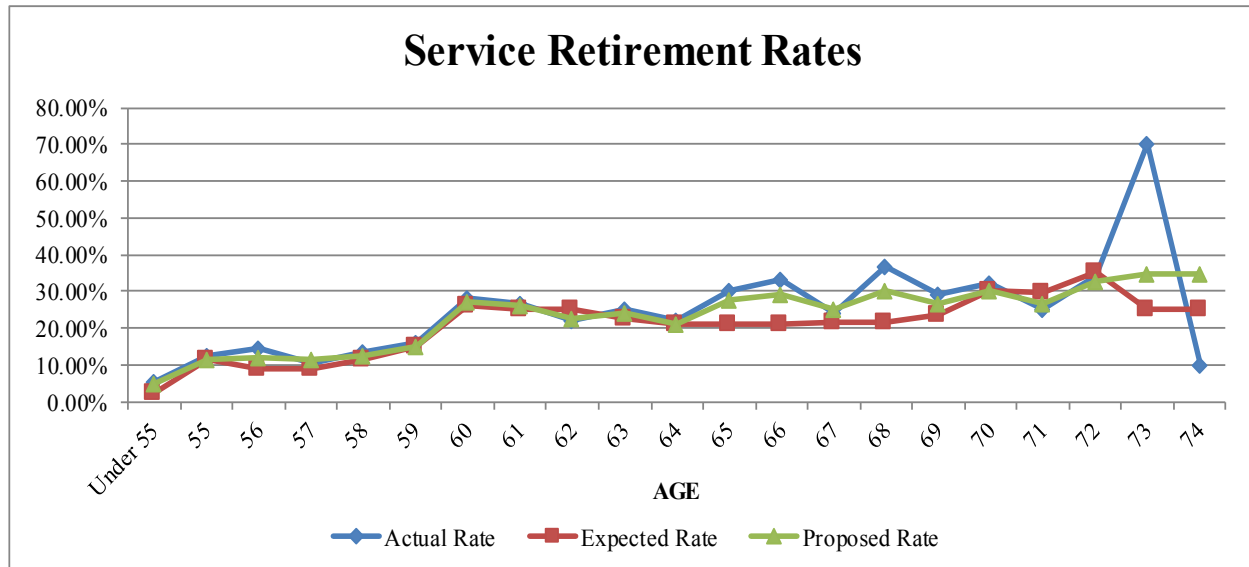
SECTION IV – DEMOGRAPHIC ASSUMPTIONS - TEACHERS' RETIREMENT PLAN

AGE	NUMBER OF SERVICE RETIREMENTS 30 or More Years of Service		
	Actual	Expected	Ratio of Actual to Expected
Under 55	0	1	0.000
55	11	17	0.647
56	16	12	1.333
57	11	12	0.917
58	14	13	1.077
59	24	23	1.043
60	28	23	1.217
61	25	22	1.136
62	20	19	1.053
63	13	15	0.867
64	16	14	1.143
65	20	12	1.667
66	8	8	1.000
67	8	8	1.000
68	9	7	1.286
69	7	6	1.167
70	6	5	1.200
71	2	4	0.500
72	3	6	0.500
73	7	2	3.500
74	0	0	0.000
SUBTOTAL	248	229	1.083
75+	3	8	0.375
TOTAL	251	237	1.059



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - TEACHERS' RETIREMENT PLAN

The following graphs show a comparison of the present and actual rates of service retirements.



The preceding results indicate that for service retirements of members, the actual number of retirements was more than the expected number over this period. We recommend the rates of retirement be revised to more closely reflect the experience of the System.

The following table shows a comparison between the present service retirement rates and the proposed rates.



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - TEACHERS' RETIREMENT PLAN

COMPARATIVE RATES OF SERVICE RETIREMENT

AGE	RATES OF SERVICE RETIREMENT			
	Less than 30 years of service		30 or more years of service	
	Present	Proposed	Present	Proposed
50	2.5%	5.0%	2.5%	5.0%
51	2.5%	5.0%	2.5%	5.0%
52	2.5%	5.0%	2.5%	5.0%
53	2.5%	5.0%	2.5%	5.0%
54	2.5%	5.0%	2.5%	5.0%
55	6.0%	9.0%	33.0%	22.0%
56	6.0%	9.0%	19.0%	22.0%
57	6.0%	9.0%	19.0%	20.0%
58	9.0%	10.0%	19.0%	20.0%
59	10.0%	10.0%	25.0%	25.0%
60	27.0%	27.0%	25.0%	28.0%
61	25.0%	25.0%	25.0%	28.0%
62	25.0%	22.0%	25.0%	25.0%
63	22.0%	25.0%	25.0%	22.0%
64	20.0%	20.0%	25.0%	25.0%
65	20.0%	25.0%	25.0%	35.0%
66	20.0%	30.0%	25.0%	25.0%
67	20.0%	25.0%	25.0%	25.0%
68	20.0%	30.0%	25.0%	30.0%
69	20.0%	25.0%	30.0%	30.0%
70	30.0%	30.0%	30.0%	30.0%
71	25.0%	25.0%	40.0%	30.0%
72	25.0%	35.0%	50.0%	30.0%
73	25.0%	35.0%	25.0%	35.0%
74	25.0%	35.0%	25.0%	35.0%
75	100.0%	100.0%	100.0%	100.0%



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - TEACHERS' RETIREMENT PLAN

COMPARISON OF ACTUAL AND EXPECTED SERVICE RETIREMENTS BASED ON PROPOSED RATES

AGE	NUMBER OF SERVICE RETIREMENTS Under 30 Years of Service		
	Actual	Expected	Ratio of Actual to Expected
Under 55	45	48	0.938
55	22	19	1.158
56	24	19	1.263
57	18	19	0.947
58	24	21	1.143
59	22	19	1.158
60	51	50	1.020
61	38	38	1.000
62	60	63	0.952
63	61	59	1.034
64	42	41	1.024
65	41	38	1.079
66	40	35	1.143
67	20	21	0.952
68	23	18	1.278
69	10	9	1.111
70	10	10	1.000
71	6	6	1.000
72	7	6	1.167
73	7	4	1.750
74	1	3	0.333
SUBTOTAL	572	546	1.048
75+	6	11	0.545
TOTAL	578	557	1.038


SECTION IV – DEMOGRAPHIC ASSUMPTIONS - TEACHERS' RETIREMENT PLAN

AGE	NUMBER OF SERVICE RETIREMENTS 30 or More Years of Service		
	Actual	Expected	Ratio of Actual to Expected
Under 55	0	3	0.000
55	11	11	1.000
56	16	14	1.143
57	11	13	0.846
58	14	14	1.000
59	24	23	1.043
60	28	26	1.077
61	25	24	1.042
62	20	19	1.053
63	13	13	1.000
64	16	14	1.143
65	20	17	1.176
66	8	8	1.000
67	8	8	1.000
68	9	8	1.125
69	7	6	1.167
70	6	5	1.200
71	2	3	0.667
72	3	4	0.750
73	7	3	2.333
74	0	0	0.000
SUBTOTAL	248	236	1.051
75+	3	8	0.375
TOTAL	251	244	1.029



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - TEACHERS' RETIREMENT PLAN

RATES OF SALARY INCREASE

COMPARISON OF ACTUAL AND EXPECTED SALARIES OF ACTIVE MEMBERS

SERVICE OF GROUP	SALARIES AT END OF YEAR (1000's)		
	MALES AND FEMALES		
	Actual	Expected	Ratio of Actual to Expected
0	181,453	182,020	0.997
1	144,091	143,520	1.004
2	102,572	104,429	0.982
3	88,722	88,805	0.999
4	75,492	75,147	1.005
5 - 9	263,125	263,622	0.998
10 - 14	239,311	240,012	0.997
15 - 19	138,841	137,383	1.011
20 - 24	152,836	150,964	1.012
25 - 29	122,351	123,527	0.990
30 +	61,082	60,679	1.007
TOTAL	1,569,876	1,570,108	1.000

The preceding results indicate that the actual rates of salary increases were very close to expected over this five-year period at almost all service group levels. Therefore, we recommend no change in the rates of salary increase at this time.



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - TEACHERS' RETIREMENT PLAN

OTHER ASSUMPTIONS AND METHODS

PERCENT MARRIED: Currently, 64% of active members are assumed to be married with the male three years older than his spouse. Active members are assumed to have one child age ten. Since the data we currently have does not include spousal or family information, we will recommend no change to this assumption at this time, but will review closely during the next experience study if this data can be provided.

VALUATION COST METHOD: The Entry Age Normal (EAN) cost method is currently used to determine the annual cost of the plans. The EAN cost method is the most widely used cost method of large public sector plans and has demonstrated the highest degree of contribution stability as compared to alternative methods. Actuarial gains and losses under EAN are reflected in the unfunded actuarial accrued liability. We recommend no change at this time.

WITHDRAWAL ASSUMPTION: It is assumed that 35% of the vested members who terminate elect to withdraw their contributions while the remaining 65% elect to leave their contributions in the plan in order to be eligible for a benefit at their retirement date. After reviewing the refund logs provided over the past 6 years, we recommend changing this assumption to 15% of vested members withdrawing their contributions upon termination, and the remaining 85% leaving their contributions in the plan in order to receive a deferred benefit at their normal retirement date.

ADMINISTRATIVE EXPENSE ASSUMPTION: Starting with the 2012 actuarial valuation, it has been assumed that administrative expenses would be 1.20% of expected payroll for all active members and this assumption is weighted the same for all Plans. This is a common approach for allocating administrative expenses where there are multiple Plans with commingled assets. However, it appears actual administrative expenses as shown in the financial statements are being allocated based on asset values instead of payroll or headcount.

Over the experience period, total administrative expenses have actually been higher than expected during the experience period, with teacher administrative expenses slightly lower than expected and police officer and firefighter administrative expenses higher than expected. **We recommend keeping the administrative expense assumption for Teachers' Plan at 1.20% of payroll.**



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - POLICE OFFICERS' RETIREMENT PLAN

RATES OF WITHDRAWAL

COMPARISON OF ACTUAL AND EXPECTED WITHDRAWALS FROM ACTIVE SERVICE

SERVICE	NUMBER OF WITHDRAWALS - LESS THAN 5 YEARS OF SERVICE					
	MALES			FEMALES		
	Actual	Expected	Ratio of Actual to Expected	Actual	Expected	Ratio of Actual to Expected
Under 1	14	9	1.556	3	3	1.000
1	55	59	0.932	20	15	1.333
2	30	49	0.612	9	12	0.750
3	32	19	1.684	5	3	1.667
4	29	19	1.526	7	3	2.333
TOTAL	160	155	1.032	44	36	1.222

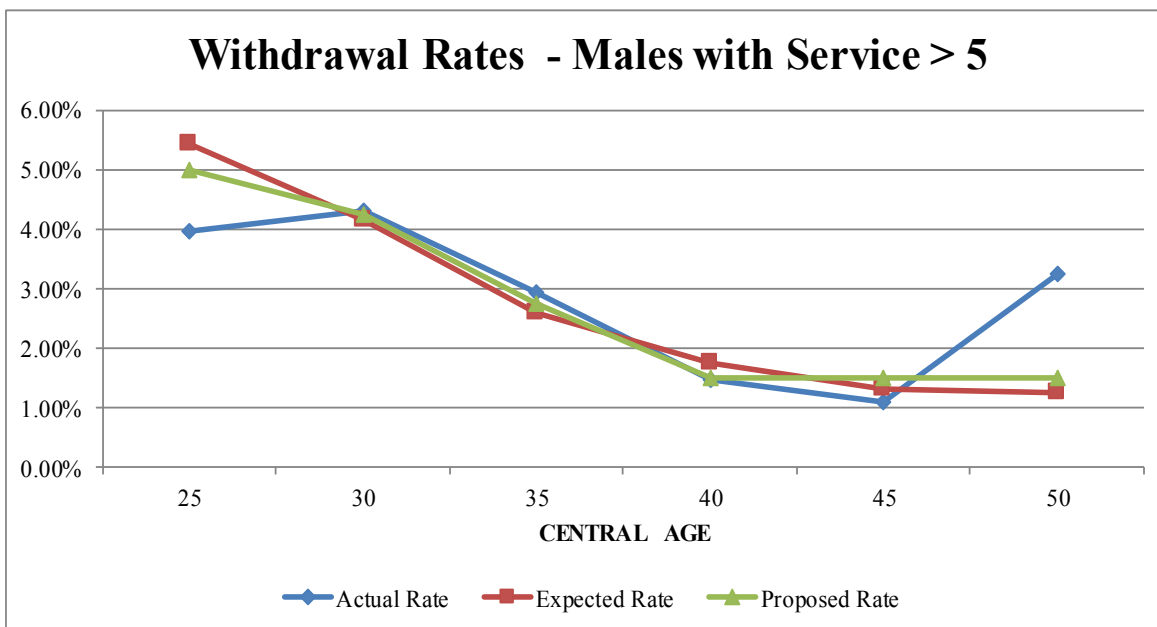
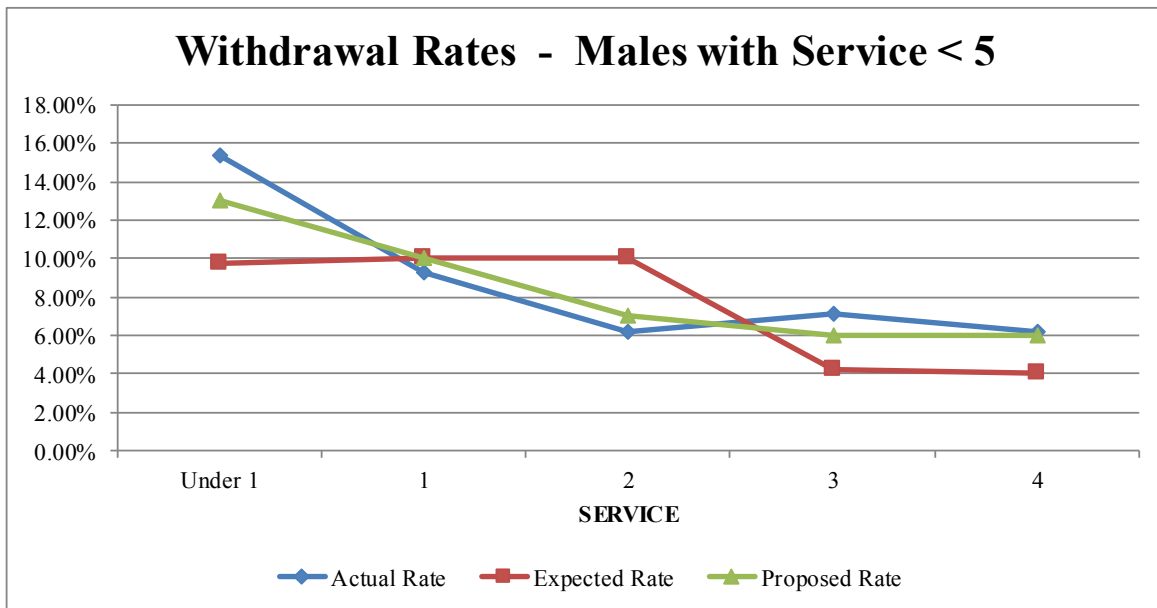
CENTRAL AGE OF GROUP	NUMBER OF WITHDRAWALS - 5 OR MORE YEARS OF SERVICE					
	MALES			FEMALES		
	Actual	Expected	Ratio of Actual to Expected	Actual	Expected	Ratio of Actual to Expected
25	6	8	0.750	2	2	1.000
30	60	58	1.034	23	13	1.769
35	52	46	1.130	17	9	1.889
40	33	39	0.846	10	11	0.909
45	39	46	0.848	13	14	0.929
50	68	26	2.615	26	8	3.250
55	17	4	4.250	4	1	4.000
60	2	0	0.000	0	0	0.000
TOTAL	277	227	1.220	95	58	1.638



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - POLICE OFFICERS' RETIREMENT PLAN

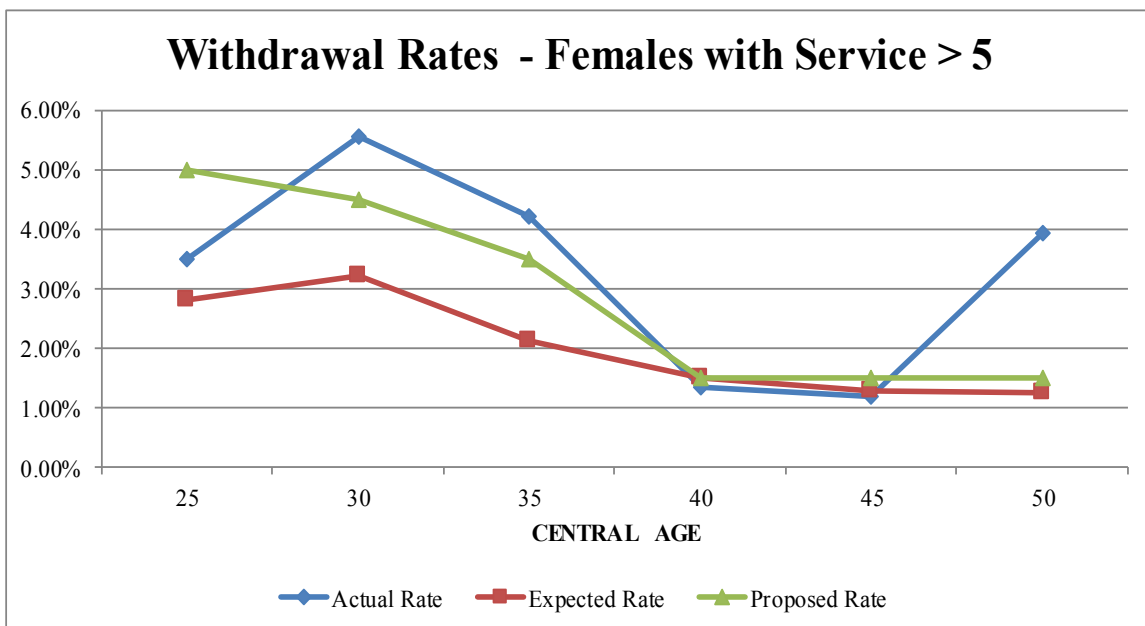
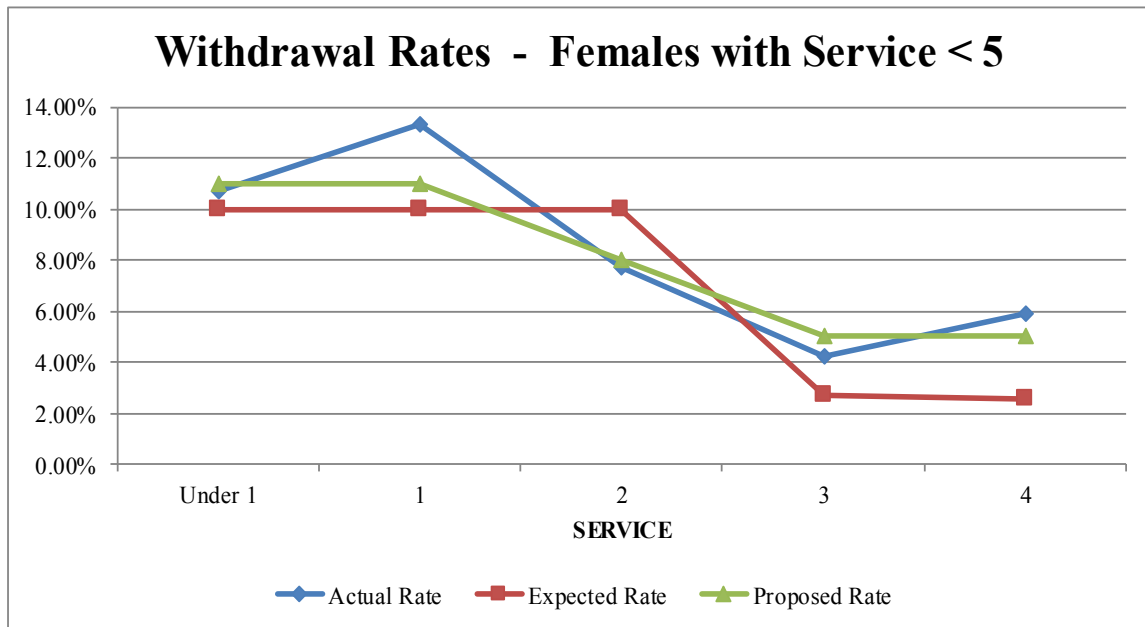
The following graphs show a comparison of the present, actual and proposed rates of withdrawal.

RATES OF WITHDRAWAL FOR ACTIVE MEMBERS





SECTION IV – DEMOGRAPHIC ASSUMPTIONS - POLICE OFFICERS' RETIREMENT PLAN



The rates of withdrawal adopted by the Board are used to determine the expected number of separations from active service which will occur as a result of resignation or dismissal. The preceding results indicate that the actual number of withdrawals is more than expected for males



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - POLICE OFFICERS' RETIREMENT PLAN

and females at both service breakdowns. We recommend that the rates of withdrawal be revised to more closely reflect the experience of the system.

The following table shows a comparison between the present withdrawal rates and the proposed withdrawal rates for members.

COMPARATIVE RATES OF WITHDRAWAL

SERVICE	RATES OF WITHDRAWAL - LESS THAN 5 YEARS OF SERVICE			
	MALES		FEMALES	
	Present	Proposed	Present	Proposed
< 1	10.0%	13.0%	10.0%	11.0%
1	10.0%	10.0%	10.0%	11.0%
2	10.0%	7.0%	10.0%	8.0%
3	NA	6.0%	NA	5.0%
4	NA	6.0%	NA	5.0%

AGE	RATES OF WITHDRAWAL - MORE THAN 5 YEARS OF SERVICE			
	MALES		FEMALES	
	Present	Proposed	Present	Proposed
25	6.00%	5.00%	2.50%	5.00%
30	4.25%	4.25%	3.50%	4.50%
35	2.50%	2.75%	2.00%	3.50%
40	1.75%	1.50%	1.50%	1.50%
45	1.25%	1.50%	1.25%	1.50%
50	1.25%	1.50%	1.25%	1.50%
55	1.25%	1.50%	1.25%	1.50%


SECTION IV – DEMOGRAPHIC ASSUMPTIONS - POLICE OFFICERS' RETIREMENT PLAN
**COMPARISON OF ACTUAL AND EXPECTED WITHDRAWALS
FROM ACTIVE SERVICE BASED ON PROPOSED RATES**

SERVICE	NUMBER OF WITHDRAWALS - LESS THAN 5 YEARS OF SERVICE					
	MALES			FEMALES		
	Actual	Expected	Ratio of Actual to Expected	Actual	Expected	Ratio of Actual to Expected
Under 1	14	12	1.167	3	3	1.000
1	55	59	0.932	20	17	1.176
2	30	34	0.882	9	9	1.000
3	32	27	1.185	5	6	0.833
4	29	28	1.036	7	6	1.167
TOTAL	160	160	1.000	44	41	1.073

CENTRAL AGE OF GROUP	NUMBER OF WITHDRAWALS - 5 OR MORE YEARS OF SERVICE					
	MALES			FEMALES		
	Actual	Expected	Ratio of Actual to Expected	Actual	Expected	Ratio of Actual to Expected
25	6	8	0.750	2	3	0.667
30	60	59	1.017	23	19	1.211
35	52	49	1.061	17	14	1.214
40	33	34	0.971	10	11	0.909
45	39	53	0.736	13	16	0.813
50	68	31	2.194	26	10	2.600
55	17	5	3.400	4	1	4.000
60	2	0	0.000	0	0	0.000
TOTAL	277	239	1.159	95	74	1.284



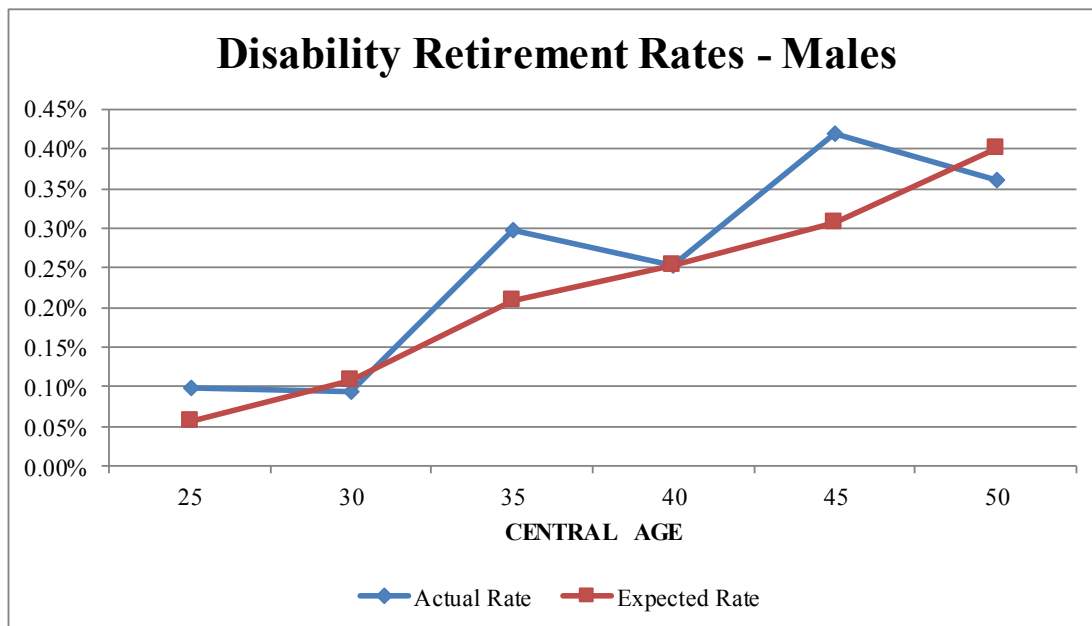
SECTION IV – DEMOGRAPHIC ASSUMPTIONS - POLICE OFFICERS' RETIREMENT PLAN

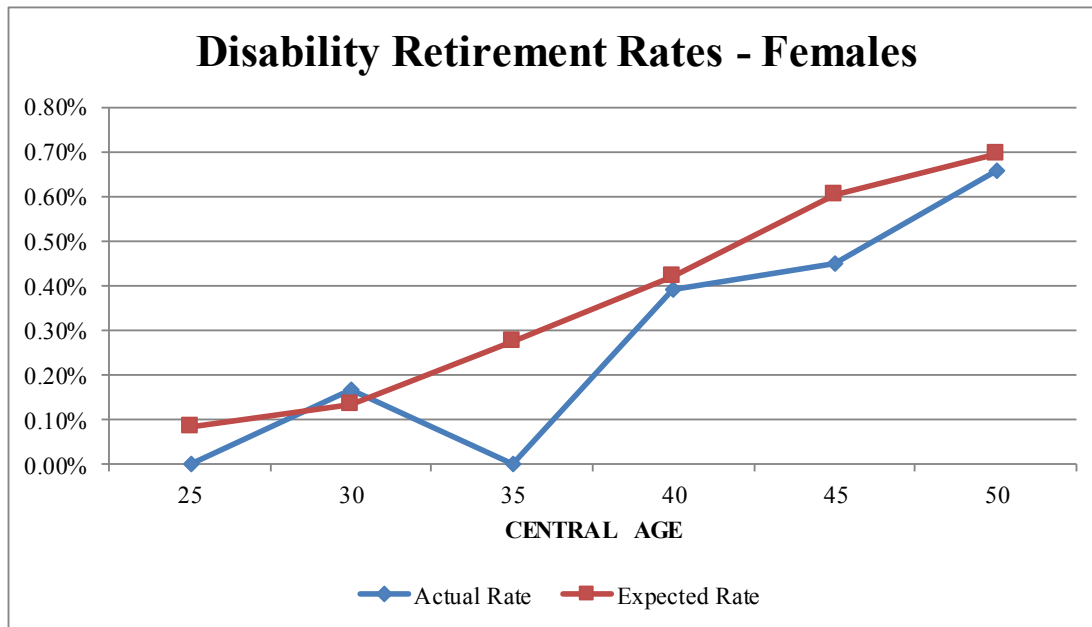
RATES OF DISABILITY RETIREMENT

COMPARISON OF ACTUAL AND EXPECTED DISABILITY RETIREMENTS

CENTRAL AGE OF GROUP	NUMBER OF DISABILITY RETIREMENTS					
	MALES			FEMALES		
	Actual	Expected	Ratio of Actual to Expected	Actual	Expected	Ratio of Actual to Expected
25	1	1	0.000	0	0	0.000
30	2	2	1.000	1	1	1.000
35	6	4	1.500	0	1	0.000
40	6	6	1.000	3	3	1.000
45	15	11	1.364	5	7	0.714
50	10	11	0.909	6	6	1.000
55+	0	4	0.000	3	2	1.500
TOTAL	40	39	1.026	18	20	0.900

The following graphs show a comparison of the present and actual rates of disability retirements.



**SECTION IV – DEMOGRAPHIC ASSUMPTIONS - POLICE OFFICERS' RETIREMENT PLAN**

During the period under investigation, the actual rates of disability retirement matched the expected amounts for males overall and were just slightly less than expected for females. Therefore, we recommend keeping the current rates of disability.



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - POLICE OFFICERS' RETIREMENT PLAN

RATES OF SERVICE RETIREMENT

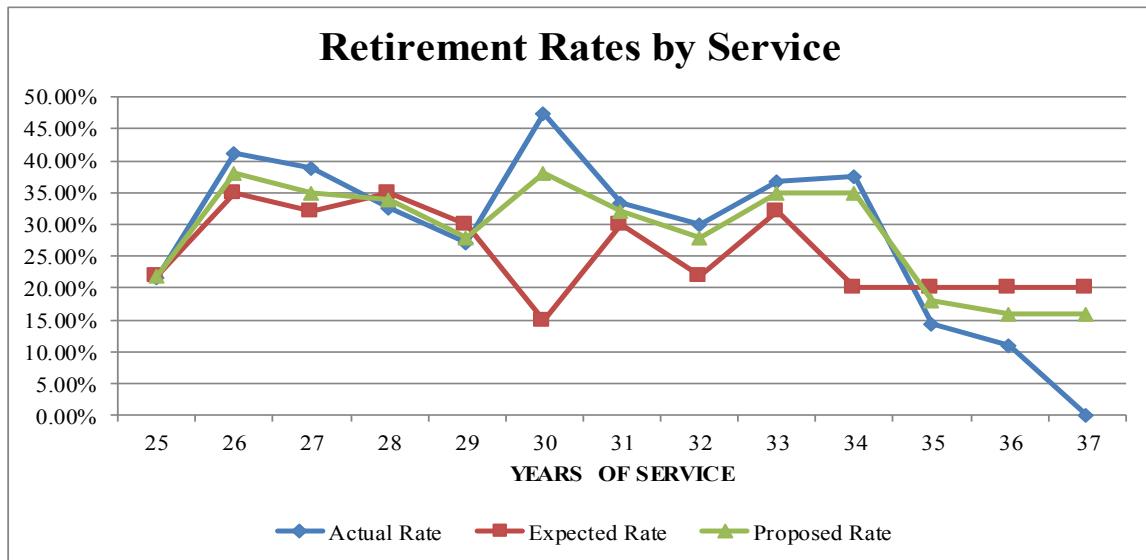
COMPARISON OF ACTUAL AND EXPECTED RETIREMENTS

SERVICE	NUMBER OF SERVICE RETIREMENTS		
	Actual	Expected	Ratio of Actual to Expected
Under 25	5	3	1.667
25	100	101	0.990
26	123	105	1.171
27	76	63	1.206
28	53	57	0.930
29	43	48	0.896
30	53	17	3.118
31	17	15	1.133
32	9	7	1.286
33	7	6	1.167
34	3	2	1.500
35	1	1	1.000
36	1	2	0.500
37	0	1	0.000
38	0	1	0.000
39	1	1	1.000
SUBTOTAL	492	430	1.144
40 and Over	16	48	0.333
TOTAL	508	478	1.063

The following graphs show a comparison of the present and actual rates of service retirements.



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - POLICE OFFICERS' RETIREMENT PLAN



The preceding results indicate that overall, the actual number of retirements was slightly more than expected. Therefore, we recommend revising the rates of retirement to match the experience more closely.

The following table shows a comparison between the present and the proposed retirement rates.



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - POLICE OFFICERS' RETIREMENT PLAN

COMPARATIVE RATES OF SERVICE RETIREMENT

RATES OF SERVICE RETIREMENT		
SERVICE	Present*	Proposed*
Under 25	12.5%	15.0%
25	22.0%	22.0%
26	35.0%	38.0%
27	32.0%	35.0%
28	35.0%	34.0%
29	30.0%	28.0%
30	15.0%	38.0%
31	30.0%	32.0%
32	22.0%	28.0%
33	32.0%	35.0%
34	20.0%	35.0%
35	20.0%	18.0%
36	20.0%	16.0%
37	20.0%	16.0%
38	20.0%	16.0%
39	20.0%	16.0%
40 and Over	20.0%	16.0%

* 100% assumed rate at age 65.



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - POLICE OFFICERS' RETIREMENT PLAN

COMPARISON OF ACTUAL AND EXPECTED SERVICE RETIREMENTS BASED ON PROPOSED RATES

SERVICE	NUMBER OF SERVICE RETIREMENTS		
	Actual	Expected	Ratio of Actual to Expected
Under 25	5	5	1.000
25	100	101	0.990
26	123	114	1.079
27	76	69	1.101
28	53	55	0.964
29	43	45	0.956
30	53	43	1.233
31	17	16	1.063
32	9	8	1.125
33	7	7	1.000
34	3	3	1.000
35	1	1	1.000
36	1	1	1.000
37	0	1	0.000
38	0	1	0.000
39	1	1	1.000
SUBTOTAL	492	471	1.045
40 and Over	16	46	0.348
TOTAL	508	517	0.983



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - POLICE OFFICERS' RETIREMENT PLAN

RATES OF SALARY INCREASE

COMPARISON OF ACTUAL AND EXPECTED SALARIES OF ACTIVE MEMBERS

SERVICE OF GROUP	SALARIES AT END OF YEAR (1000's)		
	MALES AND FEMALES		
	Actual	Expected	Ratio of Actual to Expected
0	41,937	42,121	0.996
1	33,336	33,166	1.005
2	32,126	33,230	0.967
3	33,048	35,451	0.932
4	41,335	42,688	0.968
5 - 9	243,204	252,055	0.965
10 - 14	220,009	227,779	0.966
15 - 19	149,156	154,839	0.963
20 - 24	467,797	495,944	0.943
25 - 29	95,795	103,390	0.927
30 +	14,216	15,018	0.947
TOTAL	1,371,959	1,435,681	0.956

The preceding results indicate that salary increases were less than expected over this five-year period as was the case over the previous four-year study period. These results indicate a need to reduce the rate of assumed salary increases. This will automatically take place due to the proposed reduction in the price inflation assumption. In addition to the change in the price inflation assumption, we have also refined the merit scale portion of the assumption to match the step, retention, and longevity increases included in the most recent collective bargaining agreement.



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - POLICE OFFICERS' RETIREMENT PLAN

SERVICE OF GROUP	SALARY INCREASE RATES	
	Present	Proposed
< 1	9.46%	9.46%
1	9.46%	8.94%
2	9.46%	7.38%
3	9.46%	6.86%
4	7.96%	6.34%
5	7.96%	5.83%
6	7.96%	5.83%
7-18	7.12%	5.83%
19	6.86%	12.47%
20	14.15%	5.57%
21	6.86%	5.31%
22	6.86%	5.05%
23	6.86%	4.79%
24	6.86%	7.07%
25	16.34%	4.53%
26 +	5.29%	4.27%

The following table shows a comparison of actual salary increases to the proposed increases over the 5 year study period.

SERVICE OF GROUP	SALARIES AT END OF YEAR (1000's)		
	MALES AND FEMALES		
	Actual	Expected	Ratio of Actual to Expected
0	41,937	42,119	0.996
1	33,336	33,007	1.010
2	32,126	32,598	0.986
3	33,048	34,609	0.955
4	41,335	42,048	0.983
5 - 9	243,204	248,284	0.980
10 - 14	220,009	226,172	0.973
15 - 19	149,156	154,796	0.964
20 - 24	467,797	484,049	0.966
25 - 29	95,795	98,282	0.975
30 +	14,216	14,465	0.983
TOTAL	1,371,959	1,410,430	0.973



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - POLICE OFFICERS' RETIREMENT PLAN

OTHER ASSUMPTIONS AND METHODS

PERCENT MARRIED: Currently 80% of active members are assumed to be married with the male three years older than his spouse. Active members are assumed to have one child age ten. Since the data we currently have does not include spousal or family information, we will recommend no change to this assumption at this time, but will review closely during the next experience study if this data can be provided.

VALUATION COST METHOD: The Entry Age Normal (EAN) cost method is currently used to determine the annual cost of the plans. The EAN cost method is the most widely used cost method of large public sector plans and has demonstrated the highest degree of contribution stability as compared to alternative methods. Actuarial gains and losses under EAN are reflected in the unfunded actuarial accrued liability. We recommend no change at this time.

WITHDRAWAL ASSUMPTION: It is assumed that 80% of the vested members who terminate elect to withdraw their contributions while the remaining 20% elect to leave their contributions in the plan in order to be eligible for a benefit at their retirement date. After reviewing the refund logs provided over the past 6 years, we recommend changing this assumption to 25% of vested members withdrawing their contributions upon termination, and the remaining 75% leaving their contributions in the plan in order to receive a deferred benefit at their normal retirement date.

ADMINISTRATIVE EXPENSE ASSUMPTION: Starting with the 2012 actuarial valuation, it has been assumed that administrative expenses would be 1.20% of expected payroll for all active members and this assumption is weighted the same for all Plans. This is a common approach for allocating administrative expenses where there are multiple Plans with commingled assets. However, it appears actual administrative expenses as shown in the financial statements are being allocated based on asset values instead of payroll or headcount.

Over the experience period, total administrative expenses have actually been higher than expected during the experience period, with teacher administrative expenses slightly lower than expected and police officer and firefighter administrative expenses higher than expected. **We recommend increasing the administrative expense assumption for the Police Officers' Plan and Firefighters' Plan to 2.10% of payroll.**

PRE-RETIREMENT DEATH BENEFITS: To value the pre-retirement death benefit, the benefit form for all retirements (normal or disabled) is assumed to be a 67.8% Joint and Survivor annuity for all participants (based on 40% of average pay survivor benefits). One-fourth of all active deaths are assumed to occur in the line of duty. We recommend maintaining this assumption.

PERCENT OF DISABILITY: Three-fourths of all disabilities are assumed to occur in the line of duty. For all disability retirements occurring in the line of duty, the percent of disability is assumed to be 100%. We recommend no change to these assumptions.



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - FIREFIGHTERS' RETIREMENT PLAN

RATES OF WITHDRAWAL

COMPARISON OF ACTUAL AND EXPECTED WITHDRAWALS FROM ACTIVE SERVICE

SERVICE	NUMBER OF WITHDRAWALS LESS THAN 5 YEARS OF SERVICE		
	Actual	Expected	Ratio of Actual to Expected
Under 1	0	0	0.000
1	13	15	0.845
2	14	6	2.219
3	21	7	3.061
4	21	10	2.057
TOTAL	69	39	1.780

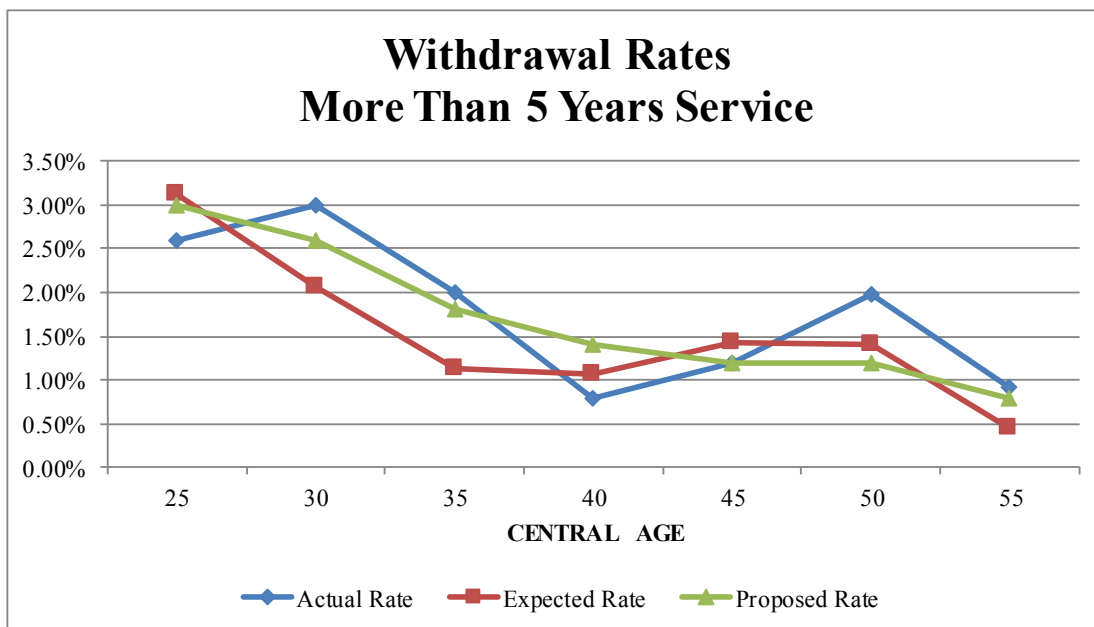
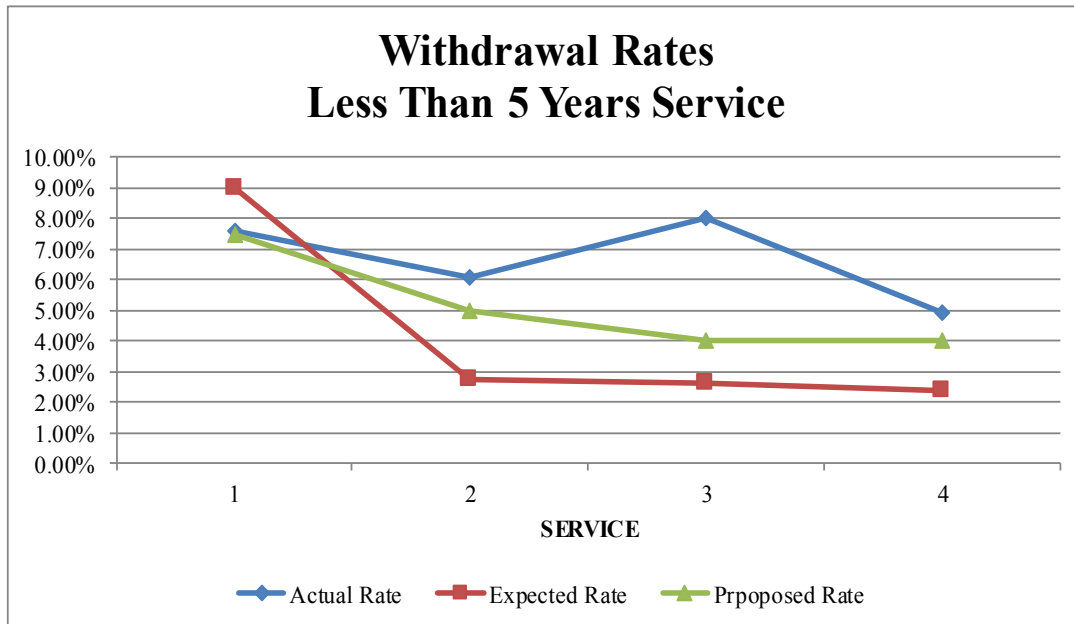
CENTRAL AGE OF GROUP	NUMBER OF WITHDRAWALS 5 OR MORE YEARS OF SERVICE		
	Actual	Expected	Ratio of Actual to Expected
25	11	13	0.828
30	35	24	1.455
35	24	13	1.783
40	11	15	0.744
45	17	21	0.829
50	16	11	1.411
55	1	0	2.083
60	0	0	0.000
TOTAL	115	98	1.175



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - FIREFIGHTERS' RETIREMENT PLAN

The following graph shows a comparison of the present, actual and proposed rates of withdrawal.

RATES OF WITHDRAWAL FOR ACTIVE MEMBERS





SECTION IV – DEMOGRAPHIC ASSUMPTIONS - FIREFIGHTERS' RETIREMENT PLAN

The rates of withdrawal adopted by the Board are used to determine the expected number of separations from active service which will occur as a result of resignation or dismissal. The preceding results indicate that the actual number of withdrawals for members with less than 5 years of service is significantly more than expected. For members with 5 more years of service, the actual number of withdrawals is somewhat more than expected. Therefore, we recommend that the rates of withdrawal be revised to more closely reflect the experience of the system.

The following table shows a comparison between the present withdrawal rates and the proposed withdrawal rates for members with five or more years of service.

COMPARATIVE RATES OF WITHDRAWAL

SERVICE	RATES OF WITHDRAWAL	
	Less than 5 years of service	
	Present	Proposed
< 1	9.00%	7.50%
1	9.00%	7.50%
2	NA	5.00%
3	NA	4.00%
4	NA	4.00%

AGE	RATES OF WITHDRAWAL	
	5 or more years of service	
	Present	Proposed
25	3.50%	3.00%
30	2.00%	2.60%
35	1.00%	1.80%
40	1.00%	1.40%
45	1.50%	1.20%
50	1.50%	1.20%
55	0.00%	0.80%



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - FIREFIGHTERS' RETIREMENT PLAN

COMPARISON OF ACTUAL AND EXPECTED WITHDRAWALS FROM ACTIVE SERVICE BASED ON PROPOSED RATES

SERVICE	NUMBER OF WITHDRAWALS LESS THAN 5 YEARS OF SERVICE		
	Actual	Expected	Ratio of Actual to Expected
Under 1	0	0	0.000
1	13	13	1.014
2	14	12	1.217
3	21	10	2.004
4	21	17	1.232
TOTAL	69	52	1.331

CENTRAL AGE OF GROUP	NUMBER OF WITHDRAWALS 5 OR MORE YEARS OF SERVICE		
	Actual	Expected	Ratio of Actual to Expected
25	11	13	0.863
30	35	30	1.155
35	24	22	1.110
40	11	19	0.569
45	17	17	0.989
50	16	10	1.656
55	1	1	1.147
60	0	0	0.000
TOTAL	115	112	1.029



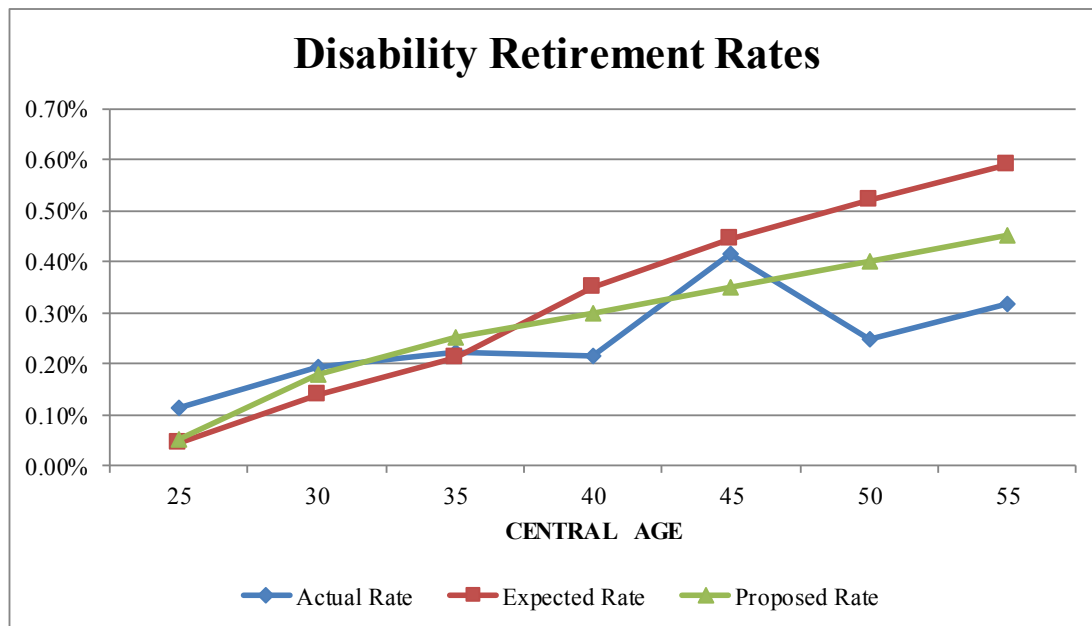
SECTION IV – DEMOGRAPHIC ASSUMPTIONS - FIREFIGHTERS' RETIREMENT PLAN

RATES OF DISABILITY RETIREMENT

COMPARISON OF ACTUAL AND EXPECTED DISABILITY RETIREMENTS

CENTRAL AGE OF GROUP	NUMBER OF DISABILITY RETIREMENTS		
	Actual	Expected	Ratio of Actual to Expected
30	4	3	1.556
35	3	3	1.060
40	3	5	0.619
45	6	6	0.939
50	3	6	0.480
55	2	4	0.535
60	1	0	3.571
TOTAL	22	27	0.818

The following graphs show a comparison of the present, actual, and proposed rates of disability retirements.



During the period under investigation, the actual rates of disability retirement were less than expected. Therefore, we recommend the rates of disability retirement be revised to more closely reflect the experience of the System.



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - FIREFIGHTERS' RETIREMENT PLAN

The following table shows a comparison between the present disability retirement rates and the proposed rates.

COMPARATIVE RATES OF DISABILITY RETIREMENT

AGE	RATES OF DISABILITY RETIREMENT	
	Present	Proposed
25	0.02%	0.05%
30	0.15%	0.18%
35	0.20%	0.25%
40	0.35%	0.30%
45	0.45%	0.35%
50	0.52%	0.40%
55	0.60%	0.45%
60	0.70%	0.50%

COMPARISON OF ACTUAL AND EXPECTED DISABILITY RETIREMENTS BASED ON PROPOSED RATES

CENTRAL AGE OF GROUP	NUMBER OF DISABILITY RETIREMENTS		
	Actual	Expected	Ratio of Actual to Expected
30	4	3	1.228
35	3	3	0.894
40	3	4	0.719
45	6	5	1.190
50	3	5	0.624
55	2	3	0.703
60	1	0	2.941
TOTAL	22	24	0.924



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - FIREFIGHTERS' RETIREMENT PLAN

RATES OF SERVICE RETIREMENT

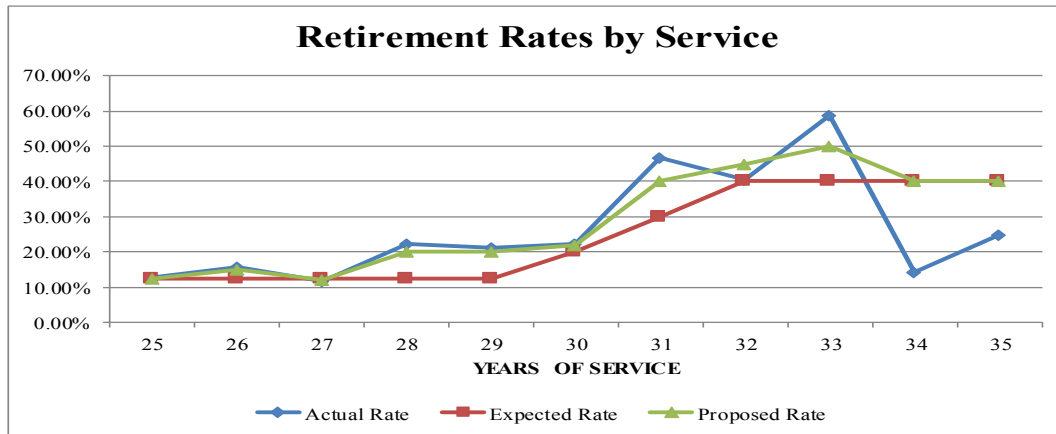
COMPARISON OF ACTUAL AND EXPECTED RETIREMENTS

YEARS OF SERVICE	NUMBER OF SERVICE RETIREMENTS		
	Actual	Expected	Ratio of Actual to Expected
Under 25	3	11	0.282
25	16	16	1.032
26	25	20	1.249
27	15	16	0.951
28	35	20	1.717
29	33	20	1.638
30	22	20	1.078
31	30	21	1.408
32	15	17	0.904
33	10	8	1.250
34	1	4	0.250
35	1	2	0.455
36	1	2	0.625
37	4	3	1.538
38	1	2	0.455
39	2	2	1.111
40 & Over	1	1	1.000
TOTAL	215	184	1.167



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - FIREFIGHTERS' RETIREMENT PLAN

The following graphs show a comparison of the present and actual rates of service retirements.



RATES OF RETIREMENT FOR ACTIVE MEMBERS

The preceding results indicate that the actual number of retirements during this period of investigation is slightly more than expected. Therefore, we recommend adjusting the rates of retirement to more closely match the experience of the Plan. The following table shows a comparison between the present retirement rates and the proposed rates.

COMPARATIVE RATES OF SERVICE RETIREMENT

Years of Service	RATES OF SERVICE RETIREMENT*	
	Present	Proposed
25	12.5%	12.5%
26	12.5%	15.0%
27	12.5%	12.0%
28	12.5%	20.0%
29	12.5%	20.0%
30	20.0%	22.0%
31	30.0%	40.0%
32	40.0%	45.0%
33	40.0%	50.0%
34	40.0%	40.0%
35	40.0%	40.0%

*100% assumed rate at age 60



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - FIREFIGHTERS' RETIREMENT PLAN

COMPARISON OF ACTUAL AND EXPECTED SERVICE RETIREMENTS BASED ON PROPOSED RATES

YEARS OF SERVICE	NUMBER OF SERVICE RETIREMENTS		
	Actual	Expected	Ratio of Actual to Expected
Under 25	3	2	1.600
25	16	16	1.032
26	25	24	1.042
27	15	15	0.992
28	35	31	1.122
29	33	31	1.071
30	22	22	1.020
31	30	26	1.172
32	15	17	0.901
33	10	9	1.176
34	1	3	0.357
35	1	2	0.625
36	1	2	0.625
37	4	2	2.000
38	1	2	0.625
39	2	1	1.667
40 & Over	1	0	2.500
TOTAL	215	202	1.064



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - FIREFIGHTERS' RETIREMENT PLAN

RATES OF SALARY INCREASE

COMPARISON OF ACTUAL AND EXPECTED SALARIES OF ACTIVE MEMBERS

SERVICE OF GROUP	SALARIES AT END OF YEAR (1000's)		
	MALES AND FEMALES		
	Actual	Expected	Ratio of Actual to Expected
0	7,783	7,803	0.997
1	10,924	10,990	0.994
2	12,777	12,732	1.004
3	22,067	21,963	1.005
4	23,909	24,707	0.968
5 - 9	145,292	146,342	0.993
10 - 14	95,594	96,701	0.989
15 - 19	74,580	77,175	0.966
20 - 24	121,082	125,097	0.968
25 - 29	76,879	81,785	0.940
30 +	8,321	8,787	0.947
TOTAL	599,208	614,082	0.976

The preceding results indicate that salary increases were less than expected over this five-year period, especially with service levels 15 years and over. This was also the case in the prior experience study. Therefore, we recommend modest decreases for the 15 years of service and over group in the rates of salary increase at this time. Most of the decrease is due to the decrease in the inflation assumption. The merit/seniority portion of the scale is based on the collective bargaining agreement pay scales.

SERVICE OF GROUP	SALARY INCREASE RATES	
	Present	Proposed
0	2.50%	3.00%
1	2.50%	3.00%
2	2.50%	3.00%
3	2.50%	3.00%
4	2.50%	3.00%
5 - 9	2.50%	3.00%
10 - 14	2.50%	3.00%
15 +	2.50%	1.25%



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - FIREFIGHTERS' RETIREMENT PLAN

A comparison of actual pay increases to the proposed salary scale are seen in the following table.

SERVICE OF GROUP	SALARIES AT END OF YEAR (1000's)		
	MALES AND FEMALES		
	Actual	Expected	Ratio of Actual to Expected
0	7,783	7,822	0.995
1	10,924	11,017	0.992
2	12,777	12,764	1.001
3	22,067	22,017	1.002
4	23,909	24,768	0.965
5 - 9	145,292	146,704	0.990
10 - 14	95,594	96,940	0.986
15 - 19	74,580	76,085	0.980
20 - 24	121,082	122,642	0.987
25 - 29	76,879	79,079	0.972
30 +	8,321	9,087	0.916
TOTAL	599,208	608,925	0.984



SECTION IV – DEMOGRAPHIC ASSUMPTIONS - FIREFIGHTERS' RETIREMENT PLAN

OTHER ASSUMPTIONS AND METHODS

PERCENT MARRIED: Currently 80% of active members are assumed to be married with the male three years older than his spouse. Active members are assumed to have one child age ten. Since the data we currently have does not include spousal or family information, we will recommend no change to this assumption at this time, but will review closely during the next experience study if this data can be provided.

VALUATION COST METHOD: The Entry Age Normal (EAN) cost method is currently used to determine the annual cost of the plans. The EAN cost method is the most widely used cost method of large public sector plans and has demonstrated the highest degree of contribution stability as compared to alternative methods. Actuarial gains and losses under EAN are reflected in the unfunded actuarial accrued liability. We recommend no change at this time.

WITHDRAWAL ASSUMPTION: It is assumed that 80% of the vested members who terminate elect to withdraw their contributions while the remaining 20% elect to leave their contributions in the plan in order to be eligible for a benefit at their retirement date. After reviewing the refund logs provided over the past 6 years, we recommend changing this assumption to 15% of vested members withdrawing their contributions upon termination, and the remaining 85% leaving their contributions in the plan in order to receive a deferred benefit at their normal retirement date.

ADMINISTRATIVE EXPENSE ASSUMPTION: Starting with the 2012 actuarial valuation, it has been assumed that administrative expenses would be 1.20% of expected payroll for all active members and this assumption is weighted the same for all Plans. This is a common approach for allocating administrative expenses where there are multiple Plans with commingled assets. However, it appears actual administrative expenses as shown in the financial statements are being allocated based on asset values instead of payroll or headcount.

Over the experience period, total administrative expenses have actually been higher than expected during the experience period, with teacher administrative expenses slightly lower than expected and police officer and firefighter administrative expenses higher than expected. **We recommend increasing the administrative expense assumption for the Police Officers' Plan and Firefighters' Plan to 2.10% of payroll.**

PRE-RETIREMENT DEATH BENEFITS: To value the pre-retirement death benefit, the benefit form for all retirements (normal or disabled) is assumed to be a 67.8% Joint and Survivor annuity for all participants (based on 40% of average pay survivor benefits). One-fourth of all active deaths are assumed to occur in the line of duty. We recommend maintaining this assumption.

PERCENT OF DISABILITY: Three-fourths of all disabilities are assumed to occur in the line of duty. For all disability retirements occurring in the line of duty, the percent of disability is assumed to be 100%. We recommend no change to these assumptions.



APPENDIX A

Historical September CPI (U) Index

Year	CPI (U)	Year	CPI (U)
1965	31.6	1991	137.2
1966	32.7	1992	141.3
1967	33.6	1993	145.1
1968	35.1	1994	149.4
1969	37.1	1995	153.2
1970	39.2	1996	157.8
1971	40.8	1997	161.2
1972	42.1	1998	163.6
1973	45.2	1999	167.9
1974	50.6	2000	173.7
1975	54.6	2001	178.3
1976	57.6	2002	181.0
1977	61.4	2003	185.2
1978	66.5	2004	189.9
1979	74.6	2005	198.8
1980	84.0	2006	202.9
1981	93.2	2007	208.5
1982	97.9	2008	218.8
1983	100.7	2009	216.0
1984	105.0	2010	218.4
1985	108.3	2011	226.9
1986	110.2	2012	231.4
1987	115.0	2013	234.1
1988	119.8	2014	238.0
1989	125.0	2015	237.9
1990	132.7		



APPENDIX B

Capital Market Assumptions and Asset Allocation

Real Rates of Return and Standard Deviations by Asset Class

Asset Class	Expected Real Rate of Return	Standard Deviation
Domestic Equity	5.3%	18.0%
International Developed Equity	5.9%	20.0%
International Emerging Equity	8.6%	26.5%
Investment Grade Bonds	0.7%	4.5%
High Yield Bonds	3.5%	12.5%
TIPS	0.4%	7.5%
Emerging Market Debt	3.5%	14.0%
Foreign Developed Market Debt	(0.3)%	9.0%
Bank Loans	2.3%	10.0%
Absolute Return Assets	3.1%	10.5%
Private Equity	7.0%	24.0%
Real Estate	3.9%	29.0%
Infrastructure	3.6%	16.0%
Private Energy Assets	6.0%	22.0%

Asset Allocation Targets

Asset Class	Asset Allocation
Domestic Equity	20%
International Developed Equity	16%
International Emerging Equity	10%
Investment Grade Bonds	11%
High Yield Bonds	4%
TIPS	6%
Emerging Market Debt	4%
Foreign Developed Market Debt	2%
Bank Loans	3%
Absolute Return Assets	4%
Private Equity	9%
Real Estate	6%
Infrastructure	3%
Private Energy Assets	2%



APPENDIX B

Asset Correlation Matrix

ASSET CLASS	Domestic Equity	International Dev. Eq.	Emerging Markets Eq.	Invest Grade Bonds	High Yield Bonds	TIPS	Emerging Markets Debt	Foreign Dev. Debt	Bank Loans	Absolute Return	Private Equity	Real Estate	Infrastructure	Private Energy
Domestic Equity	1.00													
International Dev. Eq.	0.90	1.00												
Emerging Markets Eq.	0.80	0.90	1.00											
Invest Grade Bonds	0.05	0.05	0.05	1.00										
High Yield Bonds	0.70	0.70	0.70	0.20	1.00									
TIPS	0.15	0.15	0.15	0.80	0.30	1.00								
Emerging Markets Debt	0.65	0.75	0.80	0.35	0.65	0.40	1.00							
Foreign Dev. Debt	0.25	0.45	0.35	0.60	0.25	0.60	0.60	1.00						
Bank Loans	0.60	0.60	0.55	0.00	0.80	0.20	0.40	0.05	1.00					
Absolute Return	0.80	0.85	0.85	0.05	0.70	0.20	0.65	0.30	0.65	1.00				
Private Equity	0.85	0.80	0.75	0.05	0.65	0.05	0.55	0.20	0.65	0.50	1.00			
Real Estate	0.50	0.45	0.40	0.20	0.50	0.10	0.30	0.35	0.45	0.40	0.45	1.00		
Infrastructure	0.55	0.55	0.50	0.30	0.60	0.30	0.60	0.45	0.50	0.60	0.45	0.60	1.00	
Private Energy	0.65	0.00	0.60	0.10	0.45	0.10	0.60	0.30	0.40	0.00	0.55	0.45	0.55	1.00



APPENDIX C

Social Security Administration Wage Index

Year	Wage Index	Annual Increase	Year	Wage Index	Annual Increase
1963	4,396.64	2.45%	1989	20,099.55	3.96%
1964	4,576.32	4.09	1990	21,027.98	4.62
1965	4,658.72	1.80	1991	21,811.60	3.73
1966	4,938.36	6.00	1992	22,935.42	5.15
1967	5,213.44	5.57	1993	23,132.67	0.86
1968	5,571.76	6.87	1994	23,753.53	2.68
1969	5,893.76	5.78	1995	24,705.66	4.01
1970	6,186.24	4.96	1996	25,913.90	4.89
1971	6,497.08	5.02	1997	27,426.00	5.84
1972	7,133.80	9.80	1998	28,861.44	5.23
1973	7,580.16	6.26	1999	30,469.84	5.57
1974	8,030.76	5.94	2000	32,154.82	5.53
1975	8,630.92	7.47	2001	32,921.92	2.39
1976	9,226.48	6.90	2002	33,252.09	1.00
1977	9,779.44	5.99	2003	34,064.95	2.44
1978	10,556.03	7.94	2004	35,648.55	4.65
1979	11,479.46	8.75	2005	36,952.94	3.66
1980	12,513.46	9.01	2006	38,651.41	4.60
1981	13,773.10	10.07	2007	40,405.48	4.54
1982	14,531.34	5.51	2008	41,334.97	2.30
1983	15,239.24	4.87	2009	40,711.61	(1.50)
1984	16,135.07	5.88	2010	41,673.83	2.36
1985	16,822.51	4.26	2011	42,979.61	3.13
1986	17,321.82	2.97	2012	44,321.67	3.12
1987	18,426.51	6.38	2013	44,888.16	1.28
1988	19,334.04	4.93	2014	46,481.52	3.55



APPENDIX D

TABLE 1
TEACHERS' RETIREMENT PLAN
RATES OF SEPARATION FROM ACTIVE SERVICE

Age	Rates of Withdrawal		Rates of Disability	Rates of Death		Rates of Retirement
	Males	Females		Males	Females	
19	18.00%	18.00%	0.010%	0.0559%	0.0222%	
20	18.00%	18.00%	0.010%	0.0615%	0.0214%	
21	18.00%	18.00%	0.010%	0.0671%	0.0218%	
22	18.00%	18.00%	0.010%	0.0730%	0.0222%	
23	18.00%	18.00%	0.010%	0.0760%	0.0226%	
24	18.00%	18.00%	0.010%	0.0770%	0.0231%	
25	18.00%	18.00%	0.010%	0.0752%	0.0236%	
26	17.60%	17.60%	0.012%	0.0733%	0.0244%	
27	17.20%	17.20%	0.014%	0.0720%	0.0255%	
28	16.80%	16.80%	0.016%	0.0712%	0.0268%	
29	16.40%	16.40%	0.018%	0.0709%	0.0283%	
30	16.00%	16.00%	0.020%	0.0711%	0.0299%	
31	15.20%	14.80%	0.022%	0.0717%	0.0317%	
32	14.40%	13.60%	0.024%	0.0726%	0.0336%	
33	13.60%	12.40%	0.026%	0.0739%	0.0356%	
34	12.80%	11.20%	0.028%	0.0756%	0.0376%	
35	12.00%	10.00%	0.030%	0.0775%	0.0397%	
36	12.00%	9.60%	0.038%	0.0797%	0.0417%	
37	12.00%	9.20%	0.046%	0.0820%	0.0441%	
38	12.00%	8.80%	0.054%	0.0846%	0.0470%	
39	12.00%	8.40%	0.062%	0.0875%	0.0505%	
40	12.00%	8.00%	0.070%	0.0912%	0.0547%	5.00%
41	11.20%	7.70%	0.080%	0.0958%	0.0598%	5.00%
42	10.40%	7.40%	0.090%	0.1019%	0.0658%	5.00%
43	9.60%	7.10%	0.100%	0.1096%	0.0730%	5.00%
44	8.80%	6.80%	0.110%	0.1194%	0.0812%	5.00%
45	8.00%	6.50%	0.120%	0.1313%	0.0907%	5.00%
46	8.00%	6.50%	0.136%	0.1455%	0.1013%	5.00%
47	8.00%	6.50%	0.152%	0.1619%	0.1130%	5.00%
48	8.00%	6.50%	0.168%	0.1806%	0.1258%	5.00%
49	8.00%	6.50%	0.184%	0.2015%	0.1394%	5.00%
50	8.00%	6.50%	0.200%	0.2243%	0.1537%	5.00%
51	8.00%	6.50%	0.210%	0.2490%	0.1685%	5.00%
52	8.00%	6.50%	0.220%	0.2757%	0.1839%	5.00%
53	8.00%	6.50%	0.230%	0.3045%	0.1997%	5.00%
54	8.00%	6.50%	0.240%	0.3357%	0.2162%	5.00%
55	8.00%	6.50%	0.250%	0.3697%	0.2332%	22.00%
56	8.00%	6.50%	0.260%	0.4071%	0.2510%	22.00%
57	8.00%	6.50%	0.270%	0.4485%	0.2697%	20.00%
58	8.00%	6.50%	0.280%	0.4950%	0.2896%	20.00%
59	8.00%	6.50%	0.290%	0.5475%	0.3111%	25.00%
60	8.00%	6.50%	0.300%	0.6069%	0.3347%	28.00%
61	8.00%	6.50%	0.300%	0.6743%	0.3606%	28.00%
62	8.00%	6.50%	0.300%	0.7504%	0.3892%	25.00%
63	8.00%	6.50%	0.300%	0.8362%	0.4209%	22.00%
64	8.00%	6.50%	0.300%	0.9326%	0.4561%	25.00%
65	8.00%	6.50%	0.300%	1.0406%	0.4950%	35.00%
66	8.00%	6.50%	0.300%	1.1612%	0.5456%	25.00%
67	8.00%	6.50%	0.300%	1.2739%	0.6013%	25.00%
68	8.00%	6.50%	0.300%	1.3974%	0.6627%	30.00%
69	8.00%	6.50%	0.300%	1.5330%	0.7303%	30.00%
70	8.00%	6.50%	0.300%	1.6816%	0.8049%	30.00%
71	8.00%	6.50%	0.300%	1.8447%	0.8871%	30.00%
72	8.00%	6.50%	0.300%	2.0237%	0.9777%	30.00%
73	8.00%	6.50%	0.300%	2.2199%	1.0775%	35.00%
74	8.00%	6.50%	0.300%	2.4353%	1.1875%	35.00%
75	8.00%	6.50%	0.300%	2.6715%	1.3088%	100.00%



APPENDIX D

TABLE 2
POLICE OFFICERS' RETIREMENT PLAN
RATES OF SEPARATION FROM ACTIVE SERVICE

Age	Rates of Withdrawal		Rates of Disability		Rates of Death	
	Males	Females	Males	Females	Males	Females
19	5.00%	5.00%	0.030%	0.020%	0.0559%	0.0222%
20	5.00%	5.00%	0.030%	0.020%	0.0615%	0.0214%
21	5.00%	5.00%	0.036%	0.026%	0.0671%	0.0218%
22	5.00%	5.00%	0.042%	0.032%	0.0730%	0.0222%
23	5.00%	5.00%	0.048%	0.038%	0.0760%	0.0226%
24	5.00%	5.00%	0.054%	0.044%	0.0770%	0.0231%
25	5.00%	5.00%	0.060%	0.050%	0.0752%	0.0236%
26	4.85%	4.90%	0.070%	0.060%	0.0733%	0.0244%
27	4.70%	4.80%	0.080%	0.070%	0.0720%	0.0255%
28	4.55%	4.70%	0.090%	0.080%	0.0712%	0.0268%
29	4.40%	4.60%	0.100%	0.090%	0.0709%	0.0283%
30	4.25%	4.50%	0.110%	0.100%	0.0711%	0.0299%
31	3.95%	4.30%	0.120%	0.110%	0.0717%	0.0317%
32	3.65%	4.10%	0.130%	0.120%	0.0726%	0.0336%
33	3.35%	3.90%	0.140%	0.130%	0.0739%	0.0356%
34	3.05%	3.70%	0.150%	0.140%	0.0756%	0.0376%
35	2.75%	3.50%	0.160%	0.150%	0.0775%	0.0397%
36	2.50%	3.10%	0.174%	0.180%	0.0797%	0.0417%
37	2.25%	2.70%	0.188%	0.210%	0.0820%	0.0441%
38	2.00%	2.30%	0.202%	0.240%	0.0846%	0.0470%
39	1.75%	1.90%	0.216%	0.270%	0.0875%	0.0505%
40	1.50%	1.50%	0.230%	0.300%	0.0912%	0.0547%
41	1.50%	1.50%	0.248%	0.320%	0.0958%	0.0598%
42	1.50%	1.50%	0.266%	0.340%	0.1019%	0.0658%
43	1.50%	1.50%	0.284%	0.360%	0.1096%	0.0730%
44	1.50%	1.50%	0.302%	0.380%	0.1194%	0.0812%
45	1.50%	1.50%	0.320%	0.400%	0.1313%	0.0907%
46	1.50%	1.50%	0.340%	0.440%	0.1455%	0.1013%
47	1.50%	1.50%	0.360%	0.480%	0.1619%	0.1130%
48	1.50%	1.50%	0.380%	0.520%	0.1806%	0.1258%
49	1.50%	1.50%	0.400%	0.560%	0.2015%	0.1394%
50	1.50%	1.50%	0.420%	0.600%	0.2243%	0.1537%
51	1.50%	1.50%	0.424%	0.620%	0.2490%	0.1685%
52	1.50%	1.50%	0.428%	0.640%	0.2757%	0.1839%
53	1.50%	1.50%	0.432%	0.660%	0.3045%	0.1997%
54	1.50%	1.50%	0.436%	0.680%	0.3357%	0.2162%
55	1.50%	1.50%	0.440%	0.700%	0.3697%	0.2332%
56	1.50%	1.50%	0.454%	0.760%	0.4071%	0.2510%
57	1.50%	1.50%	0.468%	0.820%	0.4485%	0.2697%
58	1.50%	1.50%	0.482%	0.880%	0.4950%	0.2896%
59	1.50%	1.50%	0.496%	0.940%	0.5475%	0.3111%
60	1.50%	1.50%	0.510%	1.000%	0.6069%	0.3347%
61	1.50%	1.50%	0.510%	1.000%	0.6743%	0.3606%
62	1.50%	1.50%	0.510%	1.000%	0.7504%	0.3892%
63	1.50%	1.50%	0.510%	1.000%	0.8362%	0.4209%
64	1.50%	1.50%	0.510%	1.000%	0.9326%	0.4561%
65	1.50%	1.50%	0.510%	1.000%	1.0406%	0.4950%
66	1.50%	1.50%	0.510%	1.000%	1.1612%	0.5456%
67	1.50%	1.50%	0.510%	1.000%	1.2739%	0.6013%
68	1.50%	1.50%	0.510%	1.000%	1.3974%	0.6627%
69	1.50%	1.50%	0.510%	1.000%	1.5330%	0.7303%
70	1.50%	1.50%	0.510%	1.000%	1.6816%	0.8049%
71	1.50%	1.50%	0.510%	1.000%	1.8447%	0.8871%
72	1.50%	1.50%	0.510%	1.000%	2.0237%	0.9777%
73	1.50%	1.50%	0.510%	1.000%	2.2199%	1.0775%
74	1.50%	1.50%	0.510%	1.000%	2.4353%	1.1875%
75	1.50%	1.50%	0.510%	1.000%	2.6715%	1.3088%



APPENDIX D

TABLE 3
FIREFIGHTERS' RETIREMENT PLAN
RATES OF SEPARATION FROM ACTIVE SERVICE

Age	Rates of Withdrawal	Rates of Disability	Rates of Death	
			Males	Females
19	3.00%	0.010%	0.0559%	0.0222%
20	3.00%	0.010%	0.0615%	0.0214%
21	3.00%	0.010%	0.0671%	0.0218%
22	3.00%	0.020%	0.0730%	0.0222%
23	3.00%	0.030%	0.0760%	0.0226%
24	3.00%	0.040%	0.0770%	0.0231%
25	3.00%	0.050%	0.0752%	0.0236%
26	2.92%	0.076%	0.0733%	0.0244%
27	2.84%	0.102%	0.0720%	0.0255%
28	2.76%	0.128%	0.0712%	0.0268%
29	2.68%	0.154%	0.0709%	0.0283%
30	2.60%	0.180%	0.0711%	0.0299%
31	2.44%	0.194%	0.0717%	0.0317%
32	2.28%	0.208%	0.0726%	0.0336%
33	2.12%	0.222%	0.0739%	0.0356%
34	1.96%	0.236%	0.0756%	0.0376%
35	1.80%	0.250%	0.0775%	0.0397%
36	1.72%	0.260%	0.0797%	0.0417%
37	1.64%	0.270%	0.0820%	0.0441%
38	1.56%	0.280%	0.0846%	0.0470%
39	1.48%	0.290%	0.0875%	0.0505%
40	1.40%	0.300%	0.0912%	0.0547%
41	1.36%	0.310%	0.0958%	0.0598%
42	1.32%	0.320%	0.1019%	0.0658%
43	1.28%	0.330%	0.1096%	0.0730%
44	1.24%	0.340%	0.1194%	0.0812%
45	1.20%	0.350%	0.1313%	0.0907%
46	1.20%	0.360%	0.1455%	0.1013%
47	1.20%	0.370%	0.1619%	0.1130%
48	1.20%	0.380%	0.1806%	0.1258%
49	1.20%	0.390%	0.2015%	0.1394%
50	1.20%	0.400%	0.2243%	0.1537%
51	1.12%	0.410%	0.2490%	0.1685%
52	1.04%	0.420%	0.2757%	0.1839%
53	0.96%	0.430%	0.3045%	0.1997%
54	0.88%	0.440%	0.3357%	0.2162%
55	0.80%	0.450%	0.3697%	0.2332%
56	0.76%	0.460%	0.4071%	0.2510%
57	0.72%	0.470%	0.4485%	0.2697%
58	0.68%	0.480%	0.4950%	0.2896%
59	0.64%	0.490%	0.5475%	0.3111%
60	0.60%	0.500%	0.6069%	0.3347%
61	0.60%		0.6743%	0.3606%
62	0.60%		0.7504%	0.3892%
63	0.60%		0.8362%	0.4209%
64	0.60%		0.9326%	0.4561%
65	0.60%		1.0406%	0.4950%
66	0.60%		1.1612%	0.5456%
67	0.60%		1.2739%	0.6013%
68	0.60%		1.3974%	0.6627%
69	0.60%		1.5330%	0.7303%
70	0.60%		1.6816%	0.8049%
71	0.60%		1.8447%	0.8871%
72	0.60%		2.0237%	0.9777%
73	0.60%		2.2199%	1.0775%
74	0.60%		2.4353%	1.1875%
75	0.60%		2.6715%	1.3088%



APPENDIX D

TABLE 4
POLICE OFFICERS' AND FIREFIGHTERS' RETIREMENT PLAN
RATES OF RETIREMENT FROM ACTIVE SERVICE

Years of Service	Police*	Fire**
20	15.0%	12.5%
21	15.0%	12.5%
22	15.0%	12.5%
23	15.0%	12.5%
24	15.0%	12.5%
25	22.0%	12.5%
26	38.0%	15.0%
27	35.0%	12.0%
28	34.0%	20.0%
29	28.0%	20.0%
30	38.0%	22.0%
31	32.0%	40.0%
32	28.0%	45.0%
33	35.0%	50.0%
34	35.0%	40.0%
35	18.0%	40.0%
36	16.0%	40.0%
37	16.0%	40.0%
38	16.0%	40.0%
39	16.0%	40.0%
40+	16.0%	40.0%

*Assumed rate of retirement is 100% at age 65 for Police Officers, regardless of service.

**Assumed rate of retirement is 100% at age 60 for Firefighters, regardless of service.



APPENDIX D

TABLE 5

**RATES OF MORTALITY FOR MEMBERS RETIRED ON ACCOUNT OF SERVICE
AND BENEFICIARIES OF DECEASED MEMBERS**

Age	Males	Females	Age	Males	Females
19	0.0559%	0.0222%	70	1.9399%	1.4553%
20	0.0615%	0.0214%	71	2.1101%	1.6038%
21	0.0671%	0.0218%	72	2.2991%	1.7695%
22	0.0730%	0.0222%	73	2.5091%	1.9529%
23	0.0760%	0.0226%	74	2.7430%	2.1549%
24	0.0770%	0.0231%	75	3.0040%	2.3766%
25	0.0752%	0.0236%	76	3.2952%	2.6199%
26	0.0733%	0.0244%	77	3.6204%	2.8876%
27	0.0720%	0.0255%	78	3.9835%	3.1836%
28	0.0712%	0.0268%	79	4.3889%	3.5127%
29	0.0709%	0.0283%	80	4.8414%	3.8805%
30	0.0711%	0.0299%	81	5.3460%	4.2932%
31	0.0717%	0.0317%	82	5.9081%	4.7576%
32	0.0726%	0.0336%	83	6.5333%	5.2808%
33	0.0739%	0.0356%	84	7.2280%	5.8698%
34	0.0756%	0.0376%	85	7.9987%	6.5321%
35	0.0775%	0.0397%	86	8.8524%	7.2752%
36	0.0797%	0.0417%	87	9.7971%	8.1081%
37	0.0820%	0.0441%	88	10.8417%	9.0408%
38	0.0846%	0.0470%	89	11.9965%	10.0848%
39	0.0875%	0.0505%	90	13.2734%	11.2535%
40	0.0912%	0.0547%	91	14.6859%	12.5111%
41	0.0958%	0.0598%	92	16.1673%	13.8377%
42	0.1019%	0.0658%	93	17.6800%	15.2252%
43	0.1096%	0.0730%	94	19.2095%	16.6747%
44	0.1194%	0.0812%	95	20.7589%	18.1931%
45	0.1313%	0.0907%	96	22.3428%	19.7901%
46	0.1455%	0.1013%	97	23.9822%	21.4754%
47	0.1619%	0.1130%	98	25.6980%	23.2551%
48	0.1806%	0.1258%	99	27.5058%	25.1285%
49	0.2015%	0.1394%	100	29.4103%	27.0858%
50	0.2243%	0.4105%	101	31.3988%	29.1040%
51	0.5604%	0.4235%	102	33.4365%	31.1444%
52	0.5906%	0.4381%	103	35.4599%	33.1900%
53	0.6229%	0.4544%	104	37.4524%	35.2232%
54	0.6574%	0.4727%	105	39.3982%	37.2273%
55	0.6944%	0.4933%	106	41.2831%	39.1860%
56	0.7342%	0.5165%	107	43.0946%	41.0849%
57	0.7771%	0.5428%	108	44.8227%	42.9112%
58	0.8234%	0.5726%	109	46.4592%	44.6544%
59	0.8736%	0.6066%	110	47.9987%	46.3061%
60	0.9286%	0.6452%	111	49.4376%	47.8604%
61	0.9893%	0.6890%	112	50.0000%	49.3137%
62	1.0567%	0.7383%	113	50.0000%	50.0000%
63	1.1314%	0.7940%	114	50.0000%	50.0000%
64	1.2145%	0.8570%	115	50.0000%	50.0000%
65	1.3067%	0.9283%	116	50.0000%	50.0000%
66	1.4089%	1.0092%	117	50.0000%	50.0000%
67	1.5221%	1.1010%	118	50.0000%	50.0000%
68	1.6475%	1.2051%	119	50.0000%	50.0000%
69	1.7862%	1.3227%	120	100.0000%	100.0000%



APPENDIX D

TABLE 6

RATES OF MORTALITY FOR MEMBERS RETIRED ON ACCOUNT OF DISABILITY

Age	Males	Females	Age	Males	Females
19	0.0285%	0.2642%	70	3.2231%	4.7498%
20	0.0285%	0.2758%	71	3.3611%	5.1467%
21	0.0285%	0.2898%	72	3.5133%	5.5788%
22	0.0350%	0.3059%	73	3.6812%	6.0488%
23	0.0412%	0.3239%	74	3.8660%	6.5593%
24	0.5873%	0.3433%	75	4.0690%	7.1128%
25	0.6461%	0.3638%	76	4.2916%	7.7121%
26	0.7048%	0.3852%	77	4.5353%	8.3602%
27	0.7662%	0.4071%	78	4.8018%	9.0599%
28	0.7982%	0.4292%	79	5.0929%	9.8144%
29	0.8089%	0.4513%	80	5.4109%	10.6271%
30	0.7896%	0.4774%	81	5.7583%	11.5016%
31	0.7700%	0.5088%	82	6.1382%	12.4419%
32	0.7563%	0.5465%	83	6.5542%	13.4525%
33	0.7480%	0.5921%	84	7.0106%	14.5555%
34	0.7449%	0.6469%	85	7.5122%	15.7466%
35	0.7466%	0.7122%	86	8.0642%	17.0213%
36	0.7527%	0.7891%	87	8.6728%	18.3751%
37	0.7628%	0.8786%	88	9.3445%	19.8037%
38	0.7766%	0.9809%	89	10.0864%	21.3026%
39	0.7938%	1.0253%	90	10.9061%	22.8674%
40	0.8139%	1.0693%	91	11.8114%	24.4937%
41	0.8366%	1.1127%	92	12.8104%	26.1771%
42	0.8616%	1.1555%	93	13.9118%	27.9130%
43	0.8883%	1.1977%	94	15.1248%	29.6972%
44	0.9193%	1.2394%	95	16.4592%	31.5251%
45	0.9575%	1.2806%	96	17.9257%	33.3924%
46	1.0066%	1.3215%	97	19.3867%	35.2946%
47	1.0701%	1.3624%	98	20.8457%	37.2273%
48	1.1515%	1.4036%	99	22.3065%	39.1860%
49	1.2537%	1.4458%	100	23.7725%	41.0849%
50	1.3787%	1.4897%	101	25.2475%	42.9112%
51	1.5276%	1.5362%	102	26.7351%	44.6544%
52	1.6184%	1.5864%	103	28.2387%	46.3061%
53	1.7079%	1.6414%	104	29.7622%	47.8604%
54	1.7959%	1.7026%	105	31.3090%	49.3137%
55	1.8825%	1.7714%	106	32.8828%	50.0000%
56	1.9674%	1.8494%	107	34.4872%	50.0000%
57	2.0507%	1.9381%	108	36.1258%	50.0000%
58	2.1324%	2.0392%	109	37.8023%	50.0000%
59	2.2126%	2.1541%	110	39.5201%	50.0000%
60	2.2916%	2.2844%	111	41.2831%	50.0000%
61	2.3700%	2.4317%	112	43.0946%	50.0000%
62	2.4484%	2.5974%	113	44.8227%	100.0000%
63	2.5279%	2.7828%	114	46.4592%	50.0000%
64	2.6094%	2.9893%	115	47.9987%	100.0000%
65	2.6943%	3.2181%	116	49.4376%	50.0000%
66	2.7840%	3.4705%	117	50.0000%	50.0000%
67	2.8800%	3.7482%	118	50.0000%	50.0000%
68	2.9841%	4.0527%	119	50.0000%	50.0000%
69	3.0979%	4.3859%	120	100.0000%	100.0000%


APPENDIX D

TABLE 7
RATES OF ANTICIPATED SALARY INCREASES

Years of Service	Teachers	Police	Fire
<1	8.3680%	9.7200%	7.1200%
1	8.3680%	9.2000%	7.1200%
2	8.3680%	7.6400%	7.1200%
3	8.3680%	7.1200%	7.1200%
4	8.3680%	6.6000%	7.1200%
5	8.3680%	6.0800%	7.1200%
6	8.1600%	6.0800%	7.1200%
7	7.9520%	6.0800%	7.1200%
8	7.7440%	6.0800%	7.1200%
9	7.5360%	6.0800%	7.1200%
10	7.3280%	6.0800%	7.1200%
11	6.2880%	6.0800%	7.1200%
12	5.4560%	6.0800%	7.1200%
13	5.2480%	6.0800%	7.1200%
14	5.2480%	7.5360%	7.1200%
15	5.2480%	6.0800%	9.2000%
16	5.2480%	6.0800%	5.3000%
17	5.2480%	6.0800%	5.3000%
18	5.2480%	6.0800%	5.3000%
19	5.2480%	12.7360%	5.3000%
20	5.2480%	5.8200%	9.2000%
21	5.2480%	5.5600%	5.3000%
22	5.2480%	5.3000%	5.3000%
23	5.2480%	5.0400%	5.3000%
24	5.2480%	7.3280%	5.3000%
25	5.2480%	4.7800%	9.2000%
26	5.2480%	4.5200%	5.3000%
27	5.2480%	4.2600%	5.3000%
28	5.2480%	4.0000%	5.3000%
29	5.2480%	7.2240%	5.3000%
30	5.2480%	4.0000%	9.2000%
31+	5.2480%	4.0000%	5.3000%

Board Meeting - Additional Materials

DC Retirement Board Conference Listing as of September 28, 2017					
Sponsor	Name of Conference	Date	Location	Cost	Description
National Conference on Public Employee Retirement Systems	NCPERS 2017 Public Safety Employees Pension & Benefits Conference	October 1-4, 2017	San Antonio, TX	Early Bird Registration \$700	The Public Safety Employees Pension & Benefits Conference provides quality education that is specifically tailored for the unique needs and demands of public safety pensions. The conference has educated hundreds of public safety pension trustees, administrators and staff; union officials; and local elected officials by featuring presentations from recognized leaders in both the worlds of finance and politics, providing news on the latest developments, and offering attendees the opportunity to network with fellow trustees.
The NYC Mayor's Office of Pensions and Investments	Public Pension Trustee Fiduciary Conference	October 3-4, 2017	New York, NY	Registration thru 08/31/2017 \$695 and after \$795	The Public Pension Trustee Fiduciary Conference will be a venue for public pension trustees from around the country to explore together how our beliefs and values have a crucial role to play in a proactive approach to fiduciary duty. The conference program is by and for trustees emphasizing collaboration, small-group activities, real-time feedback, and discussion, interspersed with a handful of engaging on-topic speakers and high-quality panel discussion.
National Council on Teacher Retirement	NCTR 95th Annual Conference	October 6-11, 2017	Tucson, Arizona	Registration thru 09/10/2017 \$1,135 and after \$1,285	NCTR provides vital support for the retirement security for America's teachers. There are thousands of dedicated individuals involved in our mission, but with more pressure on retirement systems, the need is greater than ever for the leadership, support, and connections that NCTR provides for its members.
International Foundation of Employee Benefit Plans	IFEBP's Certificate of Achievement in Public Plan Policy (Part II)	October 21-22, 2017	Las Vegas, NV	Registration thru 09/10/2017 \$1,095	The course provides an understanding of the fundamental areas of public sector benefit plans by earning a Certificate of Achievement in Public Plan Policy (CAPPP). CAPPP addresses core concepts and current trends in legal, legislative, plan design and fiduciary aspects of public sector benefit plans.
International Foundation of Employee Benefit Plans	IFEBP's 63rd Annual Employee Benefits Conference	October 22-24, 2017	Las Vegas, NV	Registration thru 09/10/2017 \$1,525 and after \$1,825	Trustees, Administrators, and Fiduciaries supporting employee benefit plans will find relevant, objective information on the issues and topics impacting their role today. The annual conference will uncover effective solutions and useful tools you can use to prepare your plans for what may lie ahead.
National Conference on Public Employee Retirement Systems	NCPERS Legislative Conference	January 28-30, 2018	Washington, DC	Registration:\$400	NCPERS Legislative Conference for public fund trustees and plan administrators, highlights the issues on Capitol Hill and in federal regulatory agencies that affect pension funds today.

DISTRICT OF COLUMBIA RETIREMENT BOARD**Training & Travel Report****As of****September 28, 2017**

Name	Description	Sponsor/Vendor	Dates		
			Location	From	To
Trustees					
Mary Collins	Conference	Council of Institutional Investors (CII)	San Diego, CA	09/12/17	09/15/17
Staff					
Nina Bridgers	Conference	Skillpath Seminars Indispensable Assistant	Washington, DC	08/31/17	08/31/17
Peter Dewar	Conference	National Association of State Retirement Administrators 63rd Annual Conference (NASRA)	Baltimore, MD	08/07/17	08/07/17
Adina Dorch	Training/Education	National Association of Public Pension Attorneys 2017 Legal Conference (NAPPA)	Monterey, CA	06/27/17	06/30/17
Leslie King	Training/Education	NAPPA	Monterey, CA	06/27/17	06/30/17
Sheila Morgan-Johnson	Meeting	Z Capital, Waterton, and GEM Realty Annual Meeting	Chicago, IL	06/27/17	06/29/17
	Meeting	ONEX Group, ICV Partners, Petrichor Healthcare Capital Partners, Tiger Infrastructure Partners, and Centerbridge Real Estate Meeting	New York, NY	07/13/17	07/14/17
	Conference	NASRA	Baltimore, MD	08/05/17	08/09/17
Joan Passerino	Conference	NASRA	Baltimore, MD	08/05/17	08/09/17
Patrick Sahm	Meeting	Z Capital, Waterton, and GEM Realty Annual Meeting	Chicago, IL	06/27/17	06/29/17
	Meeting	ONEX Group, ICV Partners, Petrichor Healthcare Capital Partners, Tiger Infrastructure Partners, and Centerbridge Real Estate Meeting	New York, NY	07/13/17	07/14/17
	Meeting	Resource Capital 17th Annual LP Meeting	Denver, CO	09/13/17	09/15/17
Erie Sampson	Conference	Northern Trust Executive Summit	New York, NY	08/24/17	08/25/17
Anthony Shelborne	Conference	Governmental Accounting and Auditing Update Conference	Washington, DC	08/07/17	08/08/17
	Conference	Northern Trust Executive Summit	New York, NY	08/24/17	08/25/17
Michael Xanthopoulos	Due Diligence	Spectrum Equity Fund VIII Due Diligence Meeting	Boston, MA	08/02/17	08/02/17
	Due Diligence	Encap Flatrock Midstream Fund IV Due Diligence Meeting	San Antonio, TX	08/10/17	08/10/17