

## **Procedure 3200-PR(3): Procurement Policy - Contract Formation Guidelines**

Original Adopted Date: September 17, 2025

Status: Approved

### **CONTRACT FORMATION**

The District shall utilize formal contract documents when procuring goods and services. The CFO shall include in solicitations and contracts all contract clauses necessary to ensure the District's interests are addressed.

1. The CFO may permit or require the inclusion of clauses providing for appropriate remedies, adjustments in prices, time of performance or other contract provisions.
2. The CFO may modify clauses for inclusion in any particular contract, provided that any variations are supported by a written determination that describes the circumstances justifying the variation and if notice of any material variation is described in the solicitation.

### **TYPES OF CONTRACTS**

#### **Competitive Bid Contract**

A contract awarded pursuant to an IFB, RFP, or RFQ.

#### **Sole Source Contract**

A sole source contract is one in which only one vendor can supply the commodities or services required by the District. The requestor must document why the proposed vendor is the only viable source for the commodities and/or services needed by the District.

#### **Emergency Contract**

An emergency contract is one in which an urgent and unexpected situation occurs where health and public safety or the conservation of public resources is at risk. Where an emergency exists, the CFO or designee may issue procurement contracts without complying with formal competitive bidding requirements. However, the CFO or designee should make a reasonable attempt to obtain at least three oral quotes. Governing Board approval must be obtained for an emergency contract at the next regularly scheduled board meeting.

#### **Competition Impracticable Contract**

A competition impracticable contract is one in which, although there are two or more potential offerors, the CFO has determined that it is in the best interest of the District to procure from a particular vendor.

#### **Piggyback Contract**

At times, CFO or designee of the District may find it more efficient to establish a contract based on another governmental entity's contract. This is known as "piggybacking" and may be used in accordance with the criteria established in the other governmental entity's contract.

#### **Multiple Term Contracts**

1. Unless otherwise provided by law, a contract for materials or services may be entered into for a period of time up to five years and a contract for job-order-contracting construction

services may also be entered into for a period of time up to five years, as deemed to be in the best interest of the District, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. Notwithstanding any other law, a contract may be entered into for materials or services for a period exceeding five years if the CFO determines in writing that such a contract would be advantageous to the District. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

2. Before the use of a multiple term contract, it shall be determined in writing that:
  - a. Estimated requirements cover the period of the contract and are reasonable and continuing.
  - b. Such a contract will serve the best interests of the District by encouraging effective competition or otherwise promoting economies in District procurement.
3. The CFO shall submit a request to the District Governing Board in writing indicating:
  - a. The time period requested for the contract.
  - b. Documentation that the estimated requirements are reasonable and continuing.
  - c. Documentation to demonstrate why more frequent competition is not practicable and that such a contract will serve the best interests of the District.
4. The CFO shall include in all multiple term contracts a clause specifying that the contract shall be cancelled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year. If the contract is cancelled under this section, the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable.

### **Multiple Source Contracts**

Multiple source contracts shall be limited to the least number of suppliers necessary to meet the requirements of the District.

### **CONTRACT ADMINISTRATION**

Contract Administration involves the functions performed after the parties have signed the contract. Typical contract administration activities are goal oriented, aimed at ensuring enforcement of the contract terms and conditions while giving attention to the achievement of the stated output and outcome of the contract. Contract administration requires that all parties clearly understand the contract and cooperate and act in good faith with mutual confidence and respect. The specific nature, extent, and effort required to administer the contract depends on the requirements, complexity, value, and importance of the contract.

### **Contract Change Order(s) and Amendments**

1. The CFO may extend or authorize options in a contract provided the price of the extension or option is evaluated under the contractor's original offer.
2. A change order exceeding the original contract amount may be executed only after the CFO determines in writing that the change order is advantageous to the District and the price is determined fair and reasonable.
3. The CFO may, in situations in which time or economic consideration preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements.

### **Terms and Conditions**

1. The CFO may publish uniform terms and conditions for use in solicitations and contracts issued by the District Governing Board.
2. Prior to offer due date and time, the CFO may make changes to uniform terms and conditions.
3. After offer due date and time, the CFO may negotiate the uniform terms and conditions, as appropriate.

### **Assignment of Rights or Duties**

A contractor shall not assign or transfer the rights or duties of a District contract without the written consent of the CFO.

### **Change of Name**

If a contractor requests to change the name in which it holds a District contract, the CFO may, upon receipt of a document indicating name change, enter into a written amendment with the contractor to affect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.

### **E-Verify**

Suppliers shall certify they comply with the E-Verify and their workers are eligible to work in the United States.

### **Insurance Requirements**

Work may not be performed without a Certificate of Insurance in the contract file which conforms to the indemnification clause, including minimum scope and limits of insurance, as mandated by the IFB, RFP, RFQ, or contract. The Certificate of Insurance (ACORD 25) is generally effective for a one-year term as of the date it was originally issued. The CFO should identify the expiration date of the Certificate of Insurance to ensure an updated certificate is obtained prior to expiration. The Certificate of Insurance should reflect the agency, and its address, as the additional insured. Certificates are to be emailed by the insurance carrier directly to the contracting agency.

### **Right of Offset**

In the event a contractor delivers non-conforming goods and/or services per the contract, the District is entitled to offset any expenses, costs, or damages incurred by the District against sums due to the contractor.

### **Contract Termination**

The potential need to terminate a contract may arise from several different circumstances including, but not limited to, the following:

- **Conflict of Interest:** District representatives should maintain awareness of contractor representatives with whom contract administration corresponds. If at any time the District representative becomes aware that a former District employee, of whom had a significant procurement role in the initiating, negotiating, drafting, or creating of the contract, is employed or sub-contracted by the contractor, a potential conflict of interest may exist. This potential conflict of interest should be immediately brought to the District's attention.
- **Payment of Gratuities:** A gratuity is defined as either employment or a payment, which was either offered or made, to an officer of the District for the purposes of influencing the outcome of the procurement, an amendment, favorable treatment, or the making of a determination about contract performance. Suspicion of gratuities paid or offered by the contractor should be immediately brought to the agency's attention. Gratuities might not always seem obvious or even have ill-intent, and the agency should be made aware of each circumstance to manage it appropriately. For example, contractor delivery of holiday cookies should be discouraged, whereas an envelope of cash is almost certainly illegal.
- **Suspension or Debarment:** Contract administration activities by a District representative also necessitates ongoing and routine monitoring of contractor performance throughout the public sector. Although it is the responsibility of the contractor to notify the District if they become debarred or suspended in any governmental body, the District representative should routinely run a search on the SAM Website ([www.sam.gov](http://www.sam.gov)) for suspended or debarred contractors. As a best practice, review of the contractor's suspension or debarment status should correspond with the contract's extension or renewal schedule.
- **Default:** The act of contract administration includes collaboratively collaborating with end-users and the contractor to ensure the contract's terms and conditions are satisfied as well as the quality of goods and services are as expected. However, during contract administration it may become apparent that the contractor is not performing as agreed, which may lead to submittals of Vendor Performance Reports, Demands for Assurance, and Right to Offset. In addition to end-user dissatisfaction, the procurement officer should be vigilant to ensure the contractor maintains all required insurance policies, bonds, licenses, and permits. As a best practice, review of the contractor's insurance and licensing requirements should correspond with each document's respective expiration date and at contract extension or renewal. Failure by the contractor to respond to, or remedy, a Demand for Assurance should be immediately brought to the CFO's attention for potential contract termination for default.

**Convenience**

The District reserves the right to terminate a contract, in whole or in part, at any time when it is in the best interest of the District. Determination to terminate a contract for convenience is made by the CFO or designee. In the event of contract termination for convenience, the contractor is entitled to receive just and equitable compensation for work completed and in progress. It is the District's responsibility to ensure, as of the date the notice of termination for convenience is received by the contractor, that any further costs incurred are minimized.

**Israel Anti-Boycott**

The Israel Anti-Boycott Act (IABA) (H.R. 1697; S. 720) was a proposed anti-BDS law and amendment to the Export Administration Act of 1979 designed to allow U.S. states to enact laws requiring contractors to sign pledges promising not to boycott any goods from Israel, or their contracts would be terminated.

**Uyghur Forced Labor Prevention Act (UFLPA)**

It establishes a rebuttable presumption that the importation of any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People's Republic of China, or produced by certain entities, is prohibited by Section 307 of the Tariff Act of 1930 and that such goods, wares, articles, and merchandise are not entitled to entry to the United States.