

2200 INTRODUCTION

- 2200.1 Authority. The Public Service Commission of the District of Columbia (Commission) is an independent agency of the Government of the District of Columbia responsible for regulating utility and telecommunications companies conducting business in Washington, D.C. Procurement authority is vested in the Commission pursuant to § 13 (c) (2) of the Residential Real Property Seller Disclosure, Funeral Services Date Change, and Public Service Commission Independent Procurement Authority Act of 1998 (D.C. Law 12-263). The Commission is statutorily exempt from the D.C. procurement rules as set forth in D.C. Code § 1-1181 et seq.
- 2200.2 Responsibility. The contracting authority for the Commission shall be implemented through the Commission Chair. With the concurrence of the Commission, the Commission Chair may delegate elements of contracting authority as necessary for the efficient conduct of the Commission's procurement system. The delegation authority shall include the appointment of one or more Contracting Officers, who shall be highly qualified in the fields of purchasing and business management. Contracting Officer delegations shall be in writing and shall clearly set forth the extent to which a Contracting Officer may engage in procurement actions on behalf of the Commission. The appointment of a Contracting Officer requires the approval of a majority of the Commission. Contracting Officers shall be held accountable for conducting procurements in accordance with the policies and procedures established by the Commission.
- 2200.3 Policy. The purpose of these regulations is to set forth the policy and procedures of the Commission for acquiring supplies, materials, equipment, and services, including the professional services of experts and consultants. These regulations are intended to permit the Commission to acquire supplies and services efficiently and at the least cost or the best value for the Commission.
- 2200.4 It is the policy of the Commission to acquire supplies and services in a manner that achieves maximum practical competition based upon the size and complexity of the requirement.
- 2200.5 Procurements shall be made only from responsible contractors. Procurement of Commission requirements may be made through the use of simplified acquisition procedures or competitive negotiation procedures. Sole source procedures may be used but shall be limited to procurements that meet the requirements of these regulations.
- 2200.6 To the maximum extent practicable, Commission contracts shall be at a firm-fixed price.
- 2200.7 Ethics. It is the policy of the Commission that the highest ethical standards be maintained in its procurements.
- 2200.8 Commission personnel shall ensure that contracts are awarded only to qualified responsible sources capable of fulfilling Commission requirements.

2200.9 Commission personnel shall take appropriate action to avoid conflicts of interest. This includes taking appropriate measures to minimize any appearance of impropriety.

SOURCE: Final Rulemaking published at 42 DCR 5126 (September 8, 1995); as amended by emergency Rulemaking published at 45 DCR 6356 (September 4, 1998) [EXPIRED]; as amended by emergency Rulemaking published at 47 DCR 913 (February 11, 2000) [EXPIRED]; as amended by Final Rulemaking published at 47 DCR 2600 (April 14, 2000).

2201 PRESOLICITATION

- 2201.1 Procurement Planning. Procurement planning is the process of selecting the appropriate method of satisfying a Commission need considering the value, complexity, and schedule of the requirement. The procurement planning process should be a team effort that includes the participation of the contracting personnel and the legal and technical staff of the Commission.
- 2201.2 Market Research. Commission representatives should engage in market research to the extent necessary to conduct effective procurements and to develop qualified sources to fulfill Commission requirements. Market research should include, but not be limited to, an assessment of the market conditions and the technology relating to the requirement as well as an evaluation of the experience of other customers of the required product or service. Market research should be used to help ensure that an adequate pool of qualified firms is available to compete for Commission requirements. Market research techniques include publishing requests for information (RFIs), holding presolicitation conferences, conducting Internet searches, and attendance by Commission personnel at seminars and symposia.
- 2201.3 Sources of Supplies and Services. The Commission's goal is to obtain supplies and services from qualified suppliers while ensuring the maximum level of supplier diversity in its acquisition of supplies and services.
- 2201.4 Supplier Diversity. The Equal Opportunity for Local, Small, and Disadvantaged Business Enterprise Act of 1999, D.C. Law 12-268, establishes a fifty (50) percent goal for D.C. government contracts with local small business enterprises and provides a preference for local and disadvantaged businesses in all areas of D.C. government contracting. Commission representatives are required to plan and conduct procurements in a manner to help achieve this goal, as follows:
- (a) To enhance supplier diversity the Commission may establish partnership, teaming, or mentor-protege programs in which established firms are encouraged to team with local, small and disadvantaged enterprises to provide supplies or services to satisfy Commission requirements. The program would include incentive provisions, as specified by the Commission, to reward established firms for helping local, small and disadvantaged enterprises qualify as responsible contractors with the Commission;
 - (b) Supplier diversity may also be enhanced by using blanket purchase agreements and other simplified acquisition techniques specified in these regulations that facilitate participation by small businesses owned and controlled by minorities and women.
- 2201.5 Obtaining Competition. The Commission, and its Contracting Officer(s) operating within the limits of their delegations, shall conduct procurements in a manner that solicits and encourages maximum practicable competition. This effort shall include encouraging Commission staff to describe their needs in terms that foster competition including, whenever possible, the use of

performance-based specifications and statements of work (SOWs). For purchases at or below the simplified acquisition ceiling, it shall be sufficient for the Contracting Officer to obtain three quotations. For purchases of \$ 2,500 or less, competition is preferred but not required. For purchases above the simplified acquisition ceiling, the Contracting Officer shall obtain maximum practical competition.

- 2201.6 Source Lists. To the extent feasible, the Contracting Officer will maintain a source list of qualified contractors by type of supply or service for use in obtaining competition. When a source list for a class of supplies or services becomes too large for effective solicitation of all the listed firms, the Commission or the Contracting Officer may use a part of the list for an individual solicitation. In such cases, for each subsequent procurement of the particular class of supplies or services, the Commission or the Contracting Officer shall rotate the list to ensure that firms not previously solicited will have an opportunity to compete.
- 2201.7 Outreach. To the maximum extent practicable, Commission personnel are encouraged to participate in small business fairs and other symposia and to use innovative methods of attracting qualified suppliers to compete for Commission requirements.
- 2201.8 Publication of Requirements. Commission requirements shall be announced and given the extent of publication that reflects the size and complexity of the proposed procurement.
- 2201.9 Publication Thresholds. An individual procurement of the Commission expected to exceed \$ 100,000 shall be published. Such publication may be in newspapers and trade journals. When the Commission or Contracting Officer deems it effective in obtaining sources for Commission requirements, publication may be made in the Commerce Business Daily, published by the U.S. Government Printing Office.
- 2201.10 Sources Sought Announcements. In instances where the Commission has difficulty obtaining qualified contractors, or to broaden the diversity of contractors available to the Commission, the Contracting Officer shall publish announcements seeking to identify new firms as potential contractors. Such announcements should identify the categories of supplies and services typically purchased by the Commission.
- 2201.11 Prequalification of Prospective Contractors. In cases where the Commission has a continuing need for a type of supply or service, it may elect to establish a list of prequalified contractors. The intent to establish such a list shall be made by published announcement. On the basis of an evaluation of a potential contractor's qualifications, the Commission may include the contractor on the list of prequalified contractors that will be solicited to compete for selected Commission contracts. Application for placement on the prequalified list shall be available at all times; however, a procurement for Commission requirements may be limited to solicitation of contractors included on the list as of the date that the solicitation is released.

District of Columbia Municipal Regulations:
CHAPTER 22: PROCUREMENT REGULATIONS

- 2201.12 Describing Requirements. Commission activities having requirements for supplies or services shall be responsible for developing the description, specification, or SOW that identifies the requirement. To the maximum extent practicable, the requirements shall be described in terms of the required function, performance, or objective of the procurement.
- 2201.13 Supplies. For supplies, the requirements may be identified by citing the desired performance of functional characteristics or the industry standards, or by specifying a brand name for which equivalent products will be accepted.
- 2201.14 Services. For services, the requirement shall, to the maximum extent practicable, be identified in an SOW that sets forth the performance objectives and expected outcomes of the work. The standards for the required level of performance and the methods of evaluation will be specified.

SOURCE: Final Rulemaking published at 42 DCR 5126 (September 8, 1995); as amended by emergency Rulemaking published at 45 DCR 6356 (September 4, 1998) [EXPIRED]; as amended by emergency Rulemaking published at 47 DCR 913 (February 11, 2000) [EXPIRED]; as amended by Final Rulemaking published at 47 DCR 2600 (April 14, 2000).

2202 SOLICITATION AND AWARD OF CONTRACTS

- 2202.1 Purchasing Methods. The Contracting Officer, in his or her discretion, shall select the purchasing method that is best suited to provide for economical, effective, and efficient procurement of Commission requirements.
- 2202.2 Simplified Acquisition Procedures. Simplified acquisition procedures are designed to facilitate quick and efficient methods for purchasing relatively low-cost requirements. The ceiling for use of simplified acquisition procedures is \$ 100,000. These procedures are available for the acquisition of supplies or services, including expert and consulting services. A proposed procurement shall not be split into smaller parts to enable the use of simplified procedures.
- 2202.3 Obtaining Competitive Quotations. Price, delivery, and other terms for requirements at or below the simplified acquisition ceiling may be obtained by written or electronic RFQs. Competition is not required for purchases of \$ 2,500 or less. In such cases, the Contracting Officer is required to use particular care in determining that the price is reasonable and that the purchase is in the best interest of the Commission. The quotations and the methods used to obtain them shall be included in the purchase file maintained by the Contracting Officer.
- 2202.4 Award. Award of simplified purchases may be made using purchase orders, orders under blanket purchase agreements, orders under task-order contracts, orders under GSA schedule contracts, orders under the D.C. Schedule, or orders using a purchase card adopted by the Commission.
- 2202.5 Negotiation Procedures. Negotiation procedures include (1) contracts awarded after obtaining maximum practical competition and (2) sole source awards.
- 2202.6 Competitive Negotiation. When negotiation procedures are selected as the appropriate method for conducting a procurement, the Contracting Officer will solicit competitive proposals from qualified contractors. The RFP shall state the basis upon which the selection of the winning contractor will be made. Selection criteria may range from the lowest price of a technically acceptable solution to the best value in relation to technical, price, or other specified factors.
- 2202.7 Evaluation Factors. The RFP shall identify all factors and significant subfactors that will be used for scoring and ranking proposals. The relative weight given to each factor and significant subfactor will be provided. Evaluation factors typically include areas such as the following:
- (a) Technical approach, understanding the requirement;
 - (b) Management approach;
 - (c) Key personnel qualifications and experience;
 - (d) Past performance on previous contracts; and
 - (e) Price or cost.

- 2202.8 The Contracting Officer shall ensure that the offeror's technical approach, experience, and price or cost are included as factors in all negotiated procurements. Past performance shall be considered unless the Contracting Officer determines that it is inappropriate for the particular procurement.
- 2202.9 Proposal Evaluation. Proposal evaluation is an assessment of each offeror's approach to meeting the Commission's requirement and of the offeror's ability to perform the contract. Evaluation of both technical and cost factors is necessary to fully assess the quality of a proposal. After considering the size and complexity of the requirement, one or more evaluation teams may be established to evaluate key aspects of each proposal. The evaluation of proposals must conform to the evaluation factors and the relative weights listed in the solicitation. Each proposal shall be evaluated individually.
- 2202.10 Technical evaluation of each proposal shall be made to determine the degree to which the offeror understands the requirement and its ability to meet Commission needs. An evaluation of price or cost shall be made to determine reasonableness considering the nature of the requirement. Analysis of the proposed price or cost should be made, as appropriate, to provide added insight into the offeror's understanding of the technical requirement.
- 2202.11 Generally, if adequate price competition exists between responsible contractors, no further price analysis is required. However, if the Commission or Contracting Officer, under his or her delegation of authority, deems it appropriate, additional analysis of price or cost may be made.
- 2202.12 The RFP may require that offerors provide oral presentations of elements of their proposals as a means of expediting the proposal evaluation process. The Contracting Officer shall be responsible for establishing the procedures for and conduct of oral presentations.
- 2202.13 The identity of the offerors and the contents of their proposals shall be kept confidential. The evaluation shall be made solely on the basis of the factors and significant subfactors identified in the RFP. After an evaluation of each proposal, a comparative assessment of the proposals shall be made.
- 2202.14 The method used for scoring proposals is a matter of discretion within the Commission and may, at the discretion of the Contracting Officer, be included in the RFP.
- 2202.15 Best Value Analysis. Best value analysis allows the exercise of business judgment in selecting the offer that is most advantageous to the Commission. Best value analysis permits the use of trade-offs among the weighted evaluation factors. For example, the Commission or the Contracting Officer may recommend that an offer that is neither the highest rated on technical merit nor the lowest in price be selected for contract award. Or it may be determined that an offeror with a high technical rating but a poor record of past performance represents a high risk, such that it would not be recommended for award. Further, when specified in the RFP, award may be made to the offeror that meets the specified minimum technical requirement at the lowest price.

- 2202.16 Discussions. After an evaluation of the quality of the proposals received, the Commission may decide or the Contracting Officer may recommend to the Commission that award be made without further communication with the competing contractors regarding their offers. This should occur only when the Contracting Officer determines that discussions would not improve the quality of proposals to meet the Commission's requirements more effectively. The terms of the RFP shall state that the Commission reserves the right to make an award without discussions.
- 2202.17 Where discussions are deemed necessary and in the best interest of the Commission, the Commission may decide or the Contracting Officer shall so advise the Commission and determine those offerors that are most highly rated and establish a competitive range. Offerors that are not included in the competitive range shall be notified that they are no longer being considered for an award. Oral or written discussions shall be conducted with all offerors included in the competitive range. Discussions will be conducted by the Commission or, under the Commission's delegation, through the Contracting Officer and the appropriate procurement team. The purpose of these discussions is to improve the evaluation team's understanding of each proposal and each offeror's understanding of the Commission's requirements. The goal of discussions is to improve each offeror's chance for an award. Such discussions shall be tailored to each proposal and shall include questions regarding weaknesses in the respective proposals and how such proposals may be improved to better meet the needs of the Commission.
- 2202.18 Offerors shall not be told how to improve their proposals and shall not be provided any information regarding other proposals either directly or indirectly. All offerors shall be treated in a fair and objective manner.
- 2202.19 Proposal Revisions. During the course of discussions, the Commission or the Contracting Officer may permit offerors to make written revisions to their proposals to incorporate adjustments and improvements that have resulted from the discussions. An offeror whose proposal is no longer under consideration may be eliminated from the competitive range.
- 2202.20 Best and Final Offers. After discussions are completed, the Commission or the Contracting Officer shall notify the offerors in the competitive range that they may submit best and final offers. The Commission or the Contracting Officer shall advise the offerors that no further discussions are permitted and that the award will be made on the basis of the best and final offers, and provide the date that best and final offers are due.
- 2202.21 Award. The award decision shall be based on a comparative assessment of proposals against the evaluation criteria in the RFP. The selecting official (i.e., the Commission or the Contracting Officer) shall document the decision and include the rationale for business judgments and trade-offs made in selecting the winning contractor. The award decision shall be based on the independent judgment of the Commission or the Contracting Officer acting under delegation of the Commission. Written notice of an award, including any additional terms and conditions agreed to during negotiations, will be provided to the successful

offeror. Unsuccessful offerors will be provided written notice of the award that includes the name of the successful offeror, the total amount of the contract, and any unit prices specified in the contract.

2202.22 Debriefing. An unsuccessful offeror may request a debriefing if the Commission receives the offeror's request within three (3) business days of the date the offeror received notification that an award was made. The debriefing shall provide the basis for the award decision. Debriefings shall not include proprietary or confidential information regarding the successful offeror's proposal. Debriefings may be oral or written.

2202.23 Sole Source Acquisitions. Sole source acquisitions are permitted when they are necessary to support the Commission's objectives. Sole source acquisitions must be supported by a written determination and findings (D&F) prepared by the Contracting Officer. Circumstances that permit sole source acquisitions may include one or more of the following:

- (a) Only one firm can meet the Commission's requirements. This includes such factors as special expertise or uniqueness of its product or service;
- (b) The requirement cannot be reasonably modified to permit procurement of an alternative product or service on a competitive basis;
- (c) There is a need for an interim short-term contract to meet Commission requirements in advance of a competitive procurement; and/or
- (d) Procurement of the product or service on a sole source basis is in the best interest of the Commission.

2202.24 The Contracting Officer shall prepare a written D&F that sets forth the justification for a sole source acquisition. In addition, the D&F should identify the efforts that will be made to secure competition for future requirements. Except for purchases not expected to exceed \$ 2,500, sole source acquisitions shall require the approval of the Commission.

2202.25 Special Categories. Special categories include procurements from local, small, and disadvantaged business enterprises, from small business competitions, and of expert and consultant services.

2202.26 Local, Small, and Disadvantaged Business Enterprises. The Equal Opportunity Local, Small, and Disadvantaged Business Enterprise Act of 1999, which establishes a fifty (50) percent goal for D.C. government contracts with local, small, and small disadvantaged business enterprises, further provides for the following preference points when evaluating proposals:

- (a) Five points for local business enterprises;
- (b) Five points for disadvantaged business enterprises; and
- (c) Two points for firms located in enterprise zones.

- 2202.27 Under the Act, a proposal may be entitled to any or all of these preferences for which it is qualified. Commission personnel are required to make every effort practicable to identify firms that are eligible for this program as potential sources.
- 2202.28 Small Business Competitions. The Commission or the Contracting Officer may conduct a procurement that provides for exclusive participation by small business firms when it is determined that two or more responsible small business firms can satisfy the Commission's requirement at a reasonable price.
- 2202.29 Expert or Consultant Services. The procurement of expert or consultant services is a legitimate means of ensuring the efficiency of Commission operations. Such services include, but are not limited to, accounting, legal, financial, management, technical, economic, professional, or other expert and consultant services. The procurement of such services is authorized when essential to the Commission's needs. When a particular expert or consultant has historical expertise regarding a particular Commission requirement, services of the expert or consultant may be acquired on a noncompetitive basis. Written justification supporting the procurement of expert or consultant services shall demonstrate that one or more of the following conditions apply:
- (a) The technical or professional expertise is not available from sources within the Commission;
 - (b) Outside knowledge is required to avoid a too limited position on a critical issue;
 - (c) The opinions, special knowledge, and skills of acknowledged experts are required; and/or
 - (d) The expert's opinions is necessary to fully address issues before the Commission.
- 2202.30 The Commission may acquire the use of expert or consultant services, rather than using Commission employees, when in the best interest of the Commission and when one or more of the following conditions apply:
- (a) The services are needed for short periods of time only or are needed in connection with a specific project that is to be completed within a specified period of time;
 - (b) The services are difficult to obtain because of the scarcity of skilled personnel or because of the highly specialized nature of the services; and/or
 - (c) The workload of Commission personnel precludes their availability to provide such services.
- 2202.31 The Commission or Contracting Officer shall ensure that a procurement of expert or consulting services shall not establish or allow any of the following:

- (a) An employer-employee relationship between the Commission and the contractor;
- (b) Detailed supervision by Commission personnel of the contractor or its employees with respect to the day-to-day operations of the contractor or its methods of accomplishing services;
- (c) Supervision of Commission employees by the contractor; or
- (d) Representation of the Commission by the contractor in dealing with the public.

2202.32 The Commission shall not contract for expert or consultant services for any of the following purposes:

- (a) To perform work of a decision-making or managerial nature that is the direct responsibility of Commission officials;
- (b) To help influence or enact legislation in the Council of the District of Columbia; or
- (c) To afford preferential treatment to former Commission employees.

2202.33 Selecting the Contract Type. The Contracting Officer shall use the type of contract that provides for the reasonable allocation of performance and economic risks between the contractor and the Commission.

2202.34 Firm-Fixed Price Contracts. To the maximum extent practicable, the requirements of the Commission shall be written to facilitate the use of firm-fixed price contracts. Firm-fixed price contracts allocate the risk of performance and full responsibility for all costs and resulting profit or loss under the contract to the contractor. The Commission or the Contracting Officer, after consulting with the Commission, may waive this requirement on a case-by-case basis. Other contract types providing for price adjustments, escalation, or payment on a cost reimbursement basis may be authorized when in the best interest of the Commission. When contract types other than firm-fixed price are authorized, the Commission or the Contracting Officer shall ensure that adequate terms and conditions are included to protect the interests of the Commission when adjustments in price are required. Such terms include adjustments tied to nationally recognized indexes and access to contractor accounting data regarding cost of performance.

2202.35 Indefinite-Quantity/Task-Order Contracts. The Commission may enter into indefinite-quantity contracts or task-order contracts that provide for an indefinite quantity of supplies or tasks for services, including expert or consultant services, for a fixed period of time. Requirements under such contracts shall be subject to stated limits and may require the Commission to order a minimum quantity of supplies or services. During the effective period of the contract, the contractor shall be required to provide any additional quantities of supplies or services ordered by the Commission up to the maximum provided under the contract.

- 2202.36 Solicitation of indefinite-quantity/task-order contracts may specify that a single award to an individual contractor will be made or that multiple awards to several contractors will be made from those who respond to the solicitation. When multiple awards are made, future orders of supplies or task orders for services will be competed for among the multiple awardees. Competition among contractors under a multiple award task-order contract is intended to be quick and efficient. Task-order requirements are exempt from publication and may be awarded using limited factors and streamlined procedures. The award of a task order under a multiple award task-order contract is exempt from the protest procedures of these regulations.
- 2202.37 Indefinite-quantity/task-order contracts may be established for a term of one year and provide for no more than two one-year options.
- 2202.38 Unless otherwise specified by the Contracting Officer, contracts of this type shall provide for firm-fixed prices for the designated supplies or services.

SOURCE: Final Rulemaking published at 42 DCR 5126 (September 8, 1995); as amended by emergency Rulemaking published at 45 DCR 6356 (September 4, 1998) [EXPIRED]; as amended by emergency Rulemaking published at 47 DCR 913 (February 11, 2000) [EXPIRED]; as amended by Final Rulemaking published at 47 DCR 2600 (April 14, 2000).

2203 CONTRACTOR RESPONSIBILITY

- 2203.1 Debarment. No individual or firm that is debarred, suspended, or otherwise ineligible to participate in procurement at any other D.C. government agency shall be eligible to participate in solicitations or negotiations before the Commission.
- 2203.2 The Commission may debar or suspend an individual or firm for any of the following reasons:
- (a) Engaging in contract fraud or a criminal offense incident to obtaining, attempting to obtain, or performing a public contract or subcontract;
 - (b) Violation of Federal or state antitrust statutes arising out of submission of bids and proposals;
 - (c) Engaging in acts involving embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, false statements, tax evasion, or any other offense indicating a lack of business integrity or business honesty; and
 - (d) Conviction of any other offense that indicates a lack of business integrity or lack of present responsibility as a contractor.
- 2203.3 The Commission, in its discretion, may debar or suspend any bidder or contractor as a result of the following:
- (a) Willful failure to perform in accordance with the specifications within the time limit provided in a contract;
 - (b) A record of failure to perform or of unsatisfactory performance of the terms of one or more contracts; or
 - (c) False assertion of status giving rise to special benefits under the laws of the District of Columbia.
- 2203.4 Suspension. The Commission, in its discretion, may suspend a contractor from participating in Commission solicitations, negotiations, and contracts pending the outcome of a criminal indictment or investigation by a District, Federal, or state regulatory agency.
- 2203.5 Ineligibility. The Commission, in its discretion, may determine a contractor to be ineligible for participation in Commission contracts or subcontracts if the contractor is currently included on The List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

SOURCE: Final Rulemaking published at 42 DCR 5126 (September 8, 1995); as amended by emergency Rulemaking published at 45 DCR 6356 (September 4, 1998) [EXPIRED]; as amended by emergency Rulemaking published at 47 DCR 913 (February

District of Columbia Municipal Regulations:
CHAPTER 22: PROCUREMENT REGULATIONS

11, 2000) [EXPIRED]; as amended by Final Rulemaking published at 47 DCR 2600 (April 14, 2000).

2204 PUBLICATION OF CONTRACT AWARDS

2204.1 The Office of the Commission Secretary shall submit notices of solicitation and awards of contracts, as well as modification and amendments, over \$ 100,000 to the Office of Contracts and Procurements for publication in the District of Columbia Procurement Digest.

SOURCE: Final Rulemaking published at 42 DCR 5126 (September 8, 1995); as amended by emergency Rulemaking published at 45 DCR 6356 (September 4, 1998) [EXPIRED]; as amended by emergency Rulemaking published at 47 DCR 913 (February 11, 2000) [EXPIRED]; as amended by Final Rulemaking published at 47 DCR 2600 (April 14, 2000).

2205 CONTRACT ADMINISTRATION

- 2205.1 Responsibility. The Contracting Officer shall coordinate the monitoring of contractor performance. Commission staff are required to provide technical support in the monitoring process by evaluating the quality of contractor performance. The Contracting Officer shall be responsible for ensuring that appropriate action is taken to protect the rights of the Commission.
- 2205.2 Contract Modifications. The Commission, in its discretion, may modify, amend, or adjust any contract. All contract modifications and amendments must be approved by the Commission or the Contracting Officer and shall be made in writing prior to the effective date of the change. The term “modify” as used in this subsection shall not be construed to mean the incorporation of additional supplies, tasks, and duties that alter the scope of the contract.
- 2205.3 Terminations. The Commission, in its discretion, may terminate a contract for any reason prior to its completion under the following conditions:
- (a) For cause, if the Commission determines that the performance under the contract is unsatisfactory, the Contracting Officer may, upon written notice, terminate the contract. If the contract is terminated for cause, the contractor is not entitled to receive any compensation and shall be liable to the Commission for the costs entailed in securing another contract for supplies or services or for the cost of completion in a contract for construction; and
 - (b) For convenience, if the Contracting Officer determines that it is in the best interest of the Commission to terminate the contract, he or she may do so upon the approval of the Commission. Upon termination for convenience, the contractor may be entitled to receive compensation only for services rendered.

SOURCE: Final Rulemaking published at 42 DCR 5126 (September 8, 1995); as amended by emergency Rulemaking published at 45 DCR 6356 (September 4, 1998) [EXPIRED]; as amended by emergency Rulemaking published at 47 DCR 913 (February 11, 2000) [EXPIRED]; as amended by Final Rulemaking published at 47 DCR 2600 (April 14, 2000).

**2206 PROTESTS REGARDING SOLICITATION AND
AWARD**

- 2206.1 An actual or prospective offeror or contractor who is aggrieved in connection with the solicitation, negotiation, or award of any contract may file a written protest with the Office of the Commission Secretary. The protest shall clearly set forth the facts and legal basis of the protest. Protests shall be filed within ten (10) business days of the solicitation, award, or modification of a contract. Resolution of protests shall be made under the claims procedure of these regulations. Except where there is a determination by the Commission, the filing of a protest shall not require the suspension or termination of a contract.

SOURCE: Final Rulemaking published at 42 DCR 5126 (September 8, 1995); as amended by emergency Rulemaking published at 45 DCR 6356 (September 4, 1998) [EXPIRED]; as amended by emergency Rulemaking published at 47 DCR 913 (February 11, 2000) [EXPIRED]; as amended by Final Rulemaking published at 47 DCR 2600 (April 14, 2000).

2207 CLAIMS AND DISPUTES

- 2207.1 Disputes. The Contracting Officer shall meet with the contractor to resolve matters that are the subject of a disagreement regarding the contract. Matters that cannot be resolved to the satisfaction of the parties shall, upon the submission of a written claim, be subject to the Commission's claims procedures.
- 2207.2 Claims Procedures. When a claim or dispute is raised that cannot be resolved between the contractor and the Contracting Officer, the contractor may, upon written request within ten (10) business days of the event giving rise to the claim or dispute, request a review on the record.
- 2207.3 Hearings. Upon notice of the filing of a hearing request, the General Counsel shall appoint a staff attorney who shall act as a Hearing Officer. All parties to the dispute shall be notified of the hearing date, time, and place. All hearings shall be held within thirty (30) business days of the appointment of a Hearing Officer unless extended, for cause, by the General Counsel.
- 2207.4 Decisions. Within thirty (30) business days after a hearing is conducted, the Hearing Officer shall render a final written decision.
- 2207.5 Appeals. Appeals of the Hearing Officer's decision by the contractor shall be filed in writing with the Commission for consideration by the Commissioners. Appeals to the Commission shall be filed within ten (10) business days of the receipt of the final written decision from the Office of the General Counsel. Thereafter, a decision on the appeal shall be issued in not less than thirty (30) business days. The decision of the Commission is final in the matters raised by the appeal.

SOURCE: Final Rulemaking published at 42 DCR 5126 (September 8, 1995); as amended by emergency Rulemaking published at 45 DCR 6356 (September 4, 1998) [EXPIRED]; as amended by emergency Rulemaking published at 47 DCR 913 (February 11, 2000) [EXPIRED]; as amended by Final Rulemaking published at 47 DCR 2600 (April 14, 2000).

2298 WAIVER

2298.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

SOURCE: Final Rulemaking published at 67 DCR 011091 (September 18, 2020).

2299 DEFINITIONS

2299.1 When used in these regulations, the following terms and phrases shall have the meanings set forth in this section. Words and terms not defined in these regulations shall have their commonly recognized meanings, unless specifically defined where they appear in the document.

Best Value – The combination of quality, price, and other factors that provide the most effective overall response consistent with the solicitation of a Commission requirement.

Blanket Purchase Agreement – A simplified method of fulfilling future needs by establishing an agreement between the Commission and a qualified prospective contractor that sets forth the terms and conditions under which future purchases may be made.

Claim – A written demand or written assertion by 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 related to the contract. A matter is not a claim unless a dispute exists between the Commission and the Contractor regarding the subject matter of the claim.

Consultant – A firm or individual with knowledge and special abilities not generally available to the Commission who renders services of a purely advisory nature relating to and in support of Commission functions, administration, or management. A consultant is prohibited from making Commission policy.

Consulting Services – Services of a purely advisory nature relating to Commission functions, administration and management, or program management that are normally provided by persons who are considered to have knowledge and special abilities not generally available within the Commission.

Contracting Officer – An individual with a written delegation of authority from the Commission to manage and oversee the financial, legal and administrative processing of a procurement and to legally obligate the Commission as a party to a contract. The Contracting Officer may delegate elements of his or her authority to staff members for the purpose of managing a solicitation and processing a procurement.

Cost Reimbursement Contract – A contract that provides for payment of contractor-incurred costs of performance that are allowable to the extent permitted by the terms of the contract.

Debar – An action taken by the Commission to exclude a contractor from contracting and subcontracting for a specified period. An excluded contractor is considered “debarred.”

Discussions – The conduct of oral or written communications regarding the content of a proposal. These communications include negotiations regarding terms, conditions, price, and other matters pertaining to a procurement with

prospective contractors that have submitted proposals in response to a request for proposals (RFP).

Dispute – A material disagreement between the Commission and the contractor regarding matters arising under the contract or relating to the contract that may result in a claim.

Expert – A person or firm with special 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 a particular field of activity, or of a specialized area within the field, are clearly superior to those usually possessed by ordinarily competent persons in that activity. The qualifications of such persons or firms are such that they are regarded as authorities or practitioners of unusual competence and skill by other persons in the profession, occupation, or activity. Special licenses and advanced degrees in the profession are usually evidence of such qualifications.

Firm-Fixed Price Contract – A contract where the total obligation of the Commission is defined and not subject to change or adjustment on the basis of the contractor's cost experience. Price adjustments may be made on the basis of amendments issued by the Commission.

Ineligible – Any current or prospective contractor excluded from D.C. contracting or subcontracting under the authority of a Federal statute or regulation applicable to the District (such as the Davis Bacon Act, 40 U.S.C. §§ 276(a) et. seq.; the Service Contract Act, 41 U.S.C. §§ 351-358; or the Equal Employment Opportunity Act of 1972, 5 U.S.C. §§ 5108, 5313 et seq., and 42 U.S.C. § 2203) or excluded under the authority of a District statute or regulation. The term includes contractors included on The List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the General Services Administration (GSA).

Local, Small, and Disadvantaged Business Enterprises – For Commission procurement, the term “Local, Small, and Disadvantaged Business Enterprises” shall be governed by the provision of the Equal Opportunity Local, Small, and Disadvantaged Business Enterprise Act of 1999, D.C. Law 12-268.

Maximum Practical Competition – Full and free competition encouraging all responsible contractors to compete for Commission requirements. Consideration may be given to the estimated value, complexity, and schedule requirements of the Commission.

Negotiated Contracts – Contracts resulting from an RFP under which sealed proposals (binding legal offers) have been submitted by prospective contractors. Negotiated contracts may be awarded on the basis of the initial offers received in response to the RFP without conducting discussions with the offerors, or after establishing a competitive range and conducting confidential discussions with offerors included in the competitive range.

Request for Quotation (RFQ) – An inquiry by a Commission representative seeking information from prospective contractors regarding price or cost of supplies or services and terms of sale. An RFQ is not a solicitation for a contract.

Responsible Contractor – A contractor that possesses the capability to perform the required contract. Elements of capability include adequate facilities, personnel, finances, record of performance, and business ethics. Responsibility may also include any special requirements included in the solicitation such as licenses, permits, and business size. A contractor that is debarred, suspended, or ineligible is not a responsible contractor.

Simplified Acquisition – The acquisition of supplies and services using streamlined and expeditious methods in an aggregate amount not exceeding the simplified acquisition ceiling set forth in these regulations.

Solicitation – An RFP that invites prospective contractors to submit offers to satisfy a Commission procurement requirement.

Small Business Competition – A procurement that is reserved for exclusive participation by small business firms as defined under the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1999, D.C. Law 12-268.

Suspension – An action by the Commission to disqualify a contractor temporarily from contracting and approved subcontracting for the purpose of protecting the integrity of Commission contracting pending a decision to debar the contractor.

SOURCE: Final Rulemaking published at 42 DCR 5126 (September 8, 1995); as amended by emergency Rulemaking published at 45 DCR 6356 (September 4, 1998) [EXPIRED]; as amended by emergency Rulemaking published at 47 DCR 913 (February 11, 2000) [EXPIRED]; as amended by Final Rulemaking published at 47 DCR 2600 (April 14, 2000).