



## **Purchasing Manual**

**Original Adoption Date:**

June 18, 2013

Approved by Steve Dionisio, Superintendent

**Purchasing Manual**  
**Summary of Changes**

The Purchasing Manual is a living document. A history of changes is recorded below. Each changed page shall reflect a change bar beside the margin.

<b>Date</b>	<b>Article</b>	<b>Short Description</b>
2/2/18	1-102	Updated Federal OMB text.
2/2/18	1-301(15)	Updated \$2,500 micropurchase threshold.
2/3/16	2-102	Added text pertaining to mandatory training.
2/2/18	3-202(5)	Updated State bidding preference.
2/7/19	4-201	Added design, performance specifications.
2/7/19	4-202	Add text for reviewing/approving specifications.
2/3/16	9-101(1)	Added text pertaining to vendor communications.
2/2/18	Article 11	Added faith-based organizations.
1/29/19	4-206	Standardization
2/7/22	Throughout	“Purchasing” and “Procurement” shall be considered interchangeable throughout this Manual.
4/7/22	2-102	(to include Professional Services) added
9/28/23	8-101	Fixed and Non-Fixed Assets increased to \$5,000

## **Purchasing Code of Ethics**

The Purchasing Department believes that the following ethical principles should govern the conduct of every person employed by the District's procurement organization:

- Seeks or accepts a position as head (or employee) only when fully in accord with the professional principles applicable thereto and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization.
- Believes in the dignity and worth of the service rendered by the organization, and the societal responsibilities assumed as a trusted public servant.
- Is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.
- Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.
- Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.
- Believes that its staff should at no time, or under any circumstances, accept directly or indirectly, gifts, gratuities, or other things of value from suppliers, which might influence or appear to influence purchasing decisions.
- Keeps the District informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.
- Resists encroachment on control of personnel in order to preserve integrity as a professional manager.
- Handles all personnel matters on a merit basis, and in compliance with applicable laws prohibiting discrimination in employment on the basis of politics, religion, color, national origin, disability, gender, age, pregnancy and other protected characteristics.
- Seeks or dispenses no personal favors. Handles each administrative problem objectively and empathetically, without discrimination.
- Subscribes to and supports the professional aims and objectives of NIGP - The Institute for Public Procurement.

Gregory Herlean, CPPO, CPCM  
Director of Purchasing

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# ARTICLE 1 – GENERAL PROVISIONS

## *Part A – Purposes, Construction, and Application*

### **§1-101 Purposes, Rules of Construction.**

(1) *Interpretation.*

This Manual shall be construed and applied to promote its underlying purposes and policies.

(2) *Purposes and Policies.*

The underlying purposes of this Manual are:

- (a) to simplify, clarify, and modernize the law governing procurement by this District;
- (b) to permit the continued development of procurement practices;
- (c) to make as consistent as possible the procurement procedures among the various District divisions;
- (d) to provide for increased public confidence in the procedures followed in public procurement;
- (e) to ensure the fair and equitable treatment of all persons who deal with the procurement system of this District;
- (f) to provide increased economy in District procurement activities and to maximize to the fullest extent possible the purchasing value of public funds of the District;
- (g) to foster effective broad-based competition within the free enterprise system;
- (h) to provide safeguards for the maintenance of a procurement system of quality and integrity, and
- (i) to obtain in a cost-effective and responsive manner the materials, services, and construction required by District in order to better serve the District's internal customers.

(3) *Singular-Plural and Gender Rules.*

In this Manual, unless the context requires otherwise:

- (a) words in the singular number include the plural, and those in the plural include the singular; and
- (b) words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

**§1-102 Supplementary General Principles of Law Applicable.**

Unless displaced by the particular provisions of this Manual, the principles of law and equity, including Florida statutes and rules, 2 C.F.R. 200 and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this Manual.

**§1-103 Requirement of Good Faith.**

This Manual requires all parties involved in the negotiation, performance, or administration of District contracts to act in good faith.

**§1-104 Application of this Manual.**

(1) *General Application.*

This Manual applies only to contracts solicited or entered into after the effective date of this Manual unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

(2) *Application to District Procurement.*

This Manual shall apply to every expenditure of District funds irrespective of their source, including federal assistance monies except as otherwise specified in Section 11-301 (Compliance with Federal Requirements), by this District, acting through a governmental body as defined herein, under any contract, except that this Manual shall not apply to either grants, or contracts between the [State and its political subdivisions] or other governments, except as provided in Article 10 (Intergovernmental Relations). It shall also apply to the disposal of District surplus items. Nothing in this Manual or in procedures transmitted hereunder shall prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

**§1-105 Severability.**

If any provision of this Manual or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Manual which can be given effect without the invalid provision or application, and to this end the provisions of this Manual are declared to be severable.

**§1-106 Effective Date.**

This Manual shall become effective at on June 18, 2013.

***Part B – Determinations***

**§1-201 Determinations.**

Written determinations required by this Manual shall be retained in the official file of the Purchasing Department.

***Part C – Definitions of Terms Used in this Manual***

**§1-301 Definitions.**

The words defined in this Section shall have the meanings set forth below whenever they appear in this Manual, unless:

- (a) the context in which they are used clearly requires a different meaning; or
  - (b) a different definition is prescribed for a particular Article or provision.
- (1) *Business* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
  - (2) *Change Order* means a written order signed by the Purchasing Director or Maintenance and Operations Director, directing the contractor to make changes which the Changes clause. Such authority cannot exceed the *amount previously approved by District policy or the Board.*
  - (3) *The Purchasing Director* means the person holding the position created in Section 2-201 (Creation of the Office of the Purchasing Director), as the head of the central procurement office of the District.

- (4) *Construction* means the process of building, altering, repairing, improving, or demolishing any public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings, or real property.
- (5) *Contract* means all types of District agreements, regardless of what they may be called, for the procurement or disposal of fixed assets, supplies, services, or construction.
- (6) *Contract Modification* means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- (7) *Contractor* means any person having a contract with a governmental body.
- (8) *Data* means recorded information, regardless of form or characteristic.
- (9) *Designee* means a duly authorized representative of a person holding a superior position.
- (10) *Electronic* means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.
- (11) *Employee* means an individual drawing a salary from a governmental body, whether elected or not, and any non-compensated individual performing personal services for any governmental body.
- (12) *Governmental Body* means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, legislative, or judicial branch.
- (13) *Grant* means the furnishing of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a grant but a procurement contract.
- (14) *May* denotes the permissive.

- (15) *Micropurchases* are purchases that do not require competition and must fall below \$2,500. Micropurchases must be purchased at a fair and reasonable price.
- (16) *Person* means any business, individual, union, committee, club, other organization, or group of individuals.
- (17) *Procurement* means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (18) *Buyer, Purchasing Agent or Procurement Officer* means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.
- (19) *Public Notice* means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation, electronic or paper mailing lists, and web site(s) designated by the District and maintained for that purpose.
- (20) *Purchasing Agency* means any governmental body other than the Purchasing Director which is authorized by this Manual or its implementing procedures, or by way of delegation from the Purchasing Director, to enter into contracts.
- (21) *Regulation* means a governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or procedure, or describing organization, procedure, or practice requirements.
- (22) *Services* means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.
- (23) *Shall* denotes the imperative.
- (24) *Signature* means a manual or electronic identifier, or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and

effect as a manual signature. Reference: Florida Electronic Signature Act of 1996, F.S.A. §282.72(4).

- (25) *Small purchase amount* means an amount not requiring Board approval. This shall not exceed \$50,000 for the single purchase or total contemplated, annual purchase. For any purchase requiring a multi-year obligation, all obligations for those years shall be considered in determining the total contemplated purchase. The Board may increase said small purchase amount in future years based upon an increase in the U.S. Department of Labor's Bureau of Labor Statistics' Producer Price Indices and Employment Cost Indices.
- (26) *Supplies* mean all property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.
- (27) *Division, Department or School* means any organization of the District which utilizes any supplies, services, or construction procured under this Manual.
- (28) *Written or In Writing* means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

## ***Part D – Public Access***

### **§1-401 Public Access to Procurement Information.**

Procurement information shall be a public record to the extent provided in Florida statute 119 and shall be available to the public as provided in such statute.

### **§1-501 Authorization for the Use of Electronic Transmissions.**

The use of electronic media, including acceptance of electronic signatures, is authorized consistent with the State's statutory, regulatory or other guidance for use of such media, so long as such guidance provides for:

- (a) appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
- (b) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

## **ARTICLE 2 – Purchasing Department**

### ***Part A – Purchasing Department***

#### **§2-101 Creation and Membership of the Purchasing Department.**

The Purchasing Department was created and maintained to fulfill the School Board's District Policy 6320. The Purchasing Director reports directly to the District Support Services Assistant Superintendent.

#### **§2-102 Authority and Duties of the Policy Office.**

Except as otherwise provided in this Manual, the Purchasing Department shall have the authority and responsibility to transmit procedures, consistent with this Manual, governing the procurement, management, control, and disposal of any and all supplies, services (to include professional services), and construction to be procured by the District. The Purchasing Department shall transmit the procedures according to Part D of this Article. The Purchasing Director shall consider and decide matters of procedure within the provisions of this Manual. The Purchasing Director shall have the power to audit and monitor the implementation of its procedures and the requirements of this Manual. *The Director of Purchasing shall provide mandatory training pertaining to District Policy 6320.<sup>1</sup>*

### ***Part B – Purchasing Director***

#### **§2-204 Authority of the Purchasing Director.**

- (1) *Principal Contracting Officer of the District.*

The Purchasing Director shall serve as the central procurement officer of the District.

- (2) *Power to Adopt Operational Procedures.*

Consistent with the provisions of this Manual, the Purchasing Director may adopt operational procedures governing the internal functions of the Purchasing Department.

- (3) *Duties.*

Except as otherwise specifically provided in this Manual, the Purchasing Director shall, in accordance with procedures:

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<sup>1</sup> Rev. 2/3/16



- (a) procure or supervise the procurement of all supplies and services.
- (b) coordinate the procurement of construction needs with the Director of Maintenance and Operations;
- (c) exercise general supervision and control over all inventories of supplies belonging to the District;
- (d) sell, trade, or otherwise dispose of surplus supplies and assets belonging to the District;  
  - establish and maintain programs for the inspection, testing, and acceptance of supplies, services; and
- (e) ensure compliance with this Manual and implementing procedures by reviewing and monitoring procurements conducted by any designee, department, agency or official delegated authority under Section 2-205 (Delegation of Authority by the Purchasing Director).

(4) *Procedures.*

The Purchasing Director is authorized to adopt procedures, consistent with the Manual, governing the procurement, management, control, and disposal of any and all supplies, services and construction procured by the District.

**§2-205 Delegation of Authority by the Purchasing Director.**

Subject to procedures, the Purchasing Director may delegate authority to designees or to any department, agency, or official subject to any limitations in this Manual.

*Part C – Organization of Public Procurement*

**§2-301 Centralization of Procurement Authority.**

Except as otherwise provided in this Part, all rights, powers, duties, and authority of issuing purchase orders for supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction are covered in this Manual.

**§2-302 Authority to Contract for Legal Services.**

No contract for the services of legal counsel may be awarded without the approval of the District School Board or through direction to its designated attorney.

## ***Part D – District Procurement Procedures***

### **§2-401 District Procurement Procedures.**

(1) *Procedures.*

Procedures shall be transmitted in accordance with District policies.

(2) *Purchasing Director Shall Not Delegate Power to Transmit Procedures.*

The Purchasing Director shall not delegate its power to transmit procedures.

(3) *Procedures Shall Not Change Existing Contract Rights.*

No regulation shall change any commitment, right, or obligation of the District or of a contractor under a contract in existence on the effective date of such regulation.

## ***Part E – Coordination, Training, and Education***

### **§2-501 Collection of Data Concerning Public Procurement.**

The Purchasing Director shall cooperate with the Finance Department, external auditor and the State Auditor in the preparation of statistical data concerning the procurement, usage, and disposition of all supplies, services, and construction, and employ such trained personnel as may be necessary to carry out this function. All Divisions shall furnish such reports as the Purchasing Director may require concerning usage, needs, and stocks on hand, and the Purchasing Director shall have authority to prescribe forms to be used by the Divisions in requisitioning, ordering, and reporting of supplies, services, and construction.

### **§2-502 Procurement Advisory Groups.**

(1) *Procurement Advisory Council.*

The Purchasing Director may establish a Procurement Advisory Council. If created, such Council, upon adequate public notice, shall meet at least once a year for the discussion of problems and recommendations for improvement of the procurement process. When requested by Purchasing Director, the Procurement Advisory Council may conduct studies, research, analyses, and make reports and recommendations with respect to subjects or matters within the jurisdiction of the Purchasing Director. The Procurement Advisory Council may consist of qualified representatives of District stakeholders and such other persons as the Purchasing Director may deem desirable.

(2) *Other Advisory Groups.*

The Purchasing Director may appoint Advisory Groups to assist with respect to specifications or procurement in specific areas, and with respect to any other matters within the authority of the Purchasing Director.

**§2-503 Procurement Institute.**

(1) *Creation.*

The Purchasing Director may establish and maintain a Procurement Institute, either alone or in cooperation with the State, county, municipalities or other units of local government, or other persons.

(2) *Functions.*

The Procurement Institute may:

- (a) conduct or participate in procurement education and training programs for District employees and others, including persons not employed by the District;
- (b) conduct research into existing and new methods of procurement;  
and
- (c) establish and maintain a District Procurement Library.

(3) *Funding.*

The Purchasing Director may allocate funds from approved budget amounts towards the Procurement Institute.

*Part F – Duties of the District’s Attorney*

**§2-601 Duties of the District’s Attorney.**

The District’s Attorney shall provide necessary legal services to the Purchasing Director in coordination with the District Support Services Assistant Superintendent.

## ARTICLE 3 – SOURCE SELECTION AND CONTRACT FORMATION

### *Part A – Definitions*

#### §3-101 Definitions of Terms Used in this Article.

- (1) *Cost-Reimbursement Contract* means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Manual, and a fee, if any.
- (2) *Established Catalogue Price* means the price included in a catalogue, price list, schedule, or other form that:
  - (a) is regularly maintained by a manufacturer or contractor;
  - (b) is either published or otherwise available for inspection by customers; and
  - (c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.
- (3) *Invitation to Bids* means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (4) *Purchase Description* means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of the solicitation.
- (5) *Request for Proposals/Qualifications/Invitations to Negotiate* means all documents, whether attached or incorporated by reference, utilized for soliciting proposals or qualifications.
- (6) *Responsible Bidder* or *Offeror* means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (7) *Responsive Bidder* means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

## ***Part B – Methods of Source Selection***

### **§3-201 Methods of Source Selection.**

Unless otherwise authorized by law, all District contracts shall be awarded by one of the following methods:

- (a) Section 3-202 (Competitive Sealed Bidding);
- (b) Section 3-203 (Competitive Sealed Proposals or Qualifications or Invitations to Negotiate);
- (c) Section 3-204 (Small Purchases);
- (d) Section 3-205 (Sole Source Procurement);
- (e) Section 3-206 (Emergency Procurements);
- (f) Section 3-207 (Special Procurements);

### **§3-202 Competitive Sealed Bidding.**

- (1) *Conditions for Use.* Contracts shall be awarded by competitive sealed bidding except as otherwise provided in Section 3-201 (Methods of Source Selection).
- (2) *Invitation for Bids.* An Invitation for Bids shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement.
- (3) *Public Notice.* Adequate public notice of the Invitation for Bids shall be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with procedures.
- (4) *Bid Opening.* Bids may be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as may be specified by procedure, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection per Florida Statute 119.
- (5) *Bid Acceptance and Bid Evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Manual. Bids shall be evaluated based on the requirements set forth in the Invitation to Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively

measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation for Bids. However, per Florida Statutes 283.35 and 287.084, the following State preferences shall be applied. This excludes procurements for which Federal funds were utilized.

a. Preference for Florida Businesses in Awarding Printing Contracts. When awarding a contract to have materials printed, the District shall grant a preference to the lowest responsible and responsive vendor having a principal place of business in Florida. The preference shall be five percent (5%) if the lowest bid is submitted by a vendor whose principal place of business is located outside of Florida and if the printing can be performed in Florida at a level of quality comparable to that obtainable from the vendor submitting the lowest bid located outside of Florida.

b. Preference for Florida Businesses in Competitive Solicitations. When the District is required to make purchases of personal property through competitive solicitation and the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, then the District shall award a preference to the lowest responsible and responsive vendor having a principal place of business within Florida, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive vendor has its principal place of business.

In a competitive solicitation in which the lowest bid is submitted by a vendor whose principal place of business is located outside of Florida and that state does not grant a preference in competitive solicitation to vendors having a principal place of business in that state, the preference to the lowest responsible and responsive vendor having a principal place of business in this Florida shall be five percent (5%).

- 6) *Correction or Withdrawal of Bids; Cancellation of Awards.* Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be

permitted in accordance with procedures or the written instructions within the Invitation to Bid. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Director.

(a) Correction or withdrawal of bids before or after contract award requires careful consideration to maintain the integrity of the competitive bidding system, to assure fairness, and to avoid delays or poor contract performance. While bidders should be expected to be bound by their bids, circumstances frequently arise where correction or withdrawal of bids is proper and should be permitted.

(b) To maintain the integrity of the competitive sealed bidding system, a bidder should not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition.

(c) An otherwise low bidder should be permitted to correct a material mistake of fact in its bid, including price, when the intended bid is obvious from the bid document or is otherwise supported by proof that has evidentiary value. A low bidder should not be permitted to correct a bid for mistakes or errors in judgment.

(d) In lieu of bid correction, the District should permit a low bidder alleging a material mistake of fact to withdraw its bid when there is reasonable proof that a mistake was made and the intended bid cannot be ascertained with reasonable certainty and there is no bonding requirement in the solicitation.

(e) After bid opening an otherwise low bidder should not be permitted to delete exceptions to the bid conditions or specifications which affect price or substantive obligations; however, such bidder should be permitted the opportunity to furnish other information called for by the Invitation for Bids and not supplied due to oversight, so long as it does not affect responsiveness and provide an advantage to such low bidder.

(f) A suspected bid mistake can give rise to a duty on the part of the District to request confirmation of a bid, and failure to do so can result in a nonbinding award, where there is an appearance of mistake. Therefore, the bidder should be asked to reconfirm the bid before award. In such instances, a bidder should be permitted to correct the bid or to withdraw it when the bidder acknowledges that a mistake was made. Any correction after bid opening must not give such bidder an advantage over competitors.

(7) Nothing in this Section is intended to prohibit the District from accepting a voluntary reduction in price from a low bidder after bid opening; provided that such reduction is not conditioned on, or results in, the modification or deletion of any conditions contained in the Invitation for Bids.

(7) *Award.* The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. In the event all bids exceed available funds or those considered reasonable to provide the good or service, the Purchasing Director is authorized to negotiate with the low responsive, responsible bidders in situations where time or economic considerations preclude re-solicitation of work. In this event, the Purchasing Director shall first negotiate with the lowest responsive, responsible bidder, then the second lowest responsive,

responsible bidder, etc. In the event the low responsive, responsible bidder can no longer provide the good and service during the bid/contract duration, inclusive of option years, the Purchasing Director is authorized to award to the second lowest, responsive, responsible bidder provided a price or cost analysis is first performed to ensure a new bid would not better serve the District's needs. If the second lowest, responsive, responsible bidder cannot honor their previous bid, the next low, responsive, responsible bidder may be considered, etc., subject to the same price or cost analysis described above.

- (8) *Multi-Step Sealed Bidding.* When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation for Bids may be issued requesting the submission of un-priced offers to be followed by an Invitation for Bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

### **§3-203 Competitive Sealed Proposals, Qualifications, or Invitation to Negotiate.**

- (1) *Conditions for Use.*
  - (a) A contract may be entered into by competitive sealed proposals or qualifications or Invitations to Negotiate (hereinafter called "proposals") when the Purchasing Director determines in writing, pursuant to procedures, that the use of competitive sealed bidding is either not practicable or not advantageous to the District.
  - (b) Procedures may provide that it is either not practicable or not advantageous to the District to procure specified types of supplies, services, or construction by competitive sealed bidding.
  - (c) Contracts for the construction manager/general contractor (CM/GC), design-build, design-build-operate-maintain, or design-build-finance-operate-maintain project delivery methods specified in Article 5 shall be entered into by competitive sealed proposals, except as otherwise provided in Subsections (c), (d), (e), and (f) of Section 3-201 (Methods of Source Selection).
    - i) Under competitive sealed bidding, judgmental factors may be used only to determine if the supply, service, or construction item bid meets the purchase description. Under competitive sealed proposals, judgmental factors may be used to determine not only if the items being offered meet the purchase description but may also be used to evaluate the relative merits of competing proposals. The effect of this different use of judgmental evaluation factors is that under competitive sealed bidding, once the judgmental evaluation is completed, award is



made on a purely objective basis to the lowest responsive and responsible bidder. Under competitive sealed proposals, the quality of competing products or services may be compared and trade-offs made between price and quality of the products or services offered (all as set forth in the solicitation). Award under competitive sealed proposals is then made to the responsible offeror whose proposal is most advantageous to the District.

ii) Competitive sealed bidding and competitive sealed proposals also differ in that, under competitive sealed bidding, no change in bids is allowed once they have been opened, except for correction of errors in limited circumstances and as set forth in this Manual. The competitive sealed proposal method, on the other hand, permits discussions after proposals have been opened to allow clarification and changes in proposals provided that adequate precautions are taken to treat each offeror fairly and to ensure that information gleaned from competing proposals is not disclosed to other offerors.

- (2) *Request for Proposals.* Proposals shall be solicited through a Request for Proposals.
- (3) *Public Notice.* Adequate public notice of the Request for Proposals shall be given in the same manner as provided in Section 3-202(3) (Competitive Sealed Bidding, Public Notice).
- (4) *Receipt of Proposals.* Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A list of Proposals shall be prepared in accordance with procedures, and shall be open for public inspection as set forth in Florida Statute 119.
- (5) *Evaluation Factors.* The Request for Proposals shall state the relative importance of price and other factors and sub-factors, if any.

Subsection (5) requires that the Request for Proposals ("RFP") set forth the relative importance of the factors and any sub-factors, in addition to price, that will be considered in awarding the contract. A statement in the RFP of the specific weighting to be used by the jurisdiction for each factor and sub-factor, while not required, is recommended so that all offerors will have sufficient guidance to prepare their proposals. This Subsection serves two purposes. First, a fair competition necessitates an understanding on the part of all competitors of the basis upon which award will be made. Second, a statement of the basis for award is also essential to assure that the proposals will be as responsive as possible so that the jurisdiction can obtain the optimum benefits of the competitive solicitation. The requirement for disclosure of the relative importance of all evaluation factors and sub-factors applies to the areas or items that will be separately evaluated and scored, e.g., the items listed on evaluation score sheets. The requirement does not extend to advance disclosure of the separate items or emphasis that are considered in the mental process of the evaluators in formulating their scores for the factors and sub-factors that are described in the solicitation.

- (6) *Discussion with Responsible Offerors and Revisions to Proposals.* As provided in the Request for Proposals, and under procedures, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for

discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

- (7) *Award.* Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the District taking into consideration price and the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful offeror shall be promptly given to all offerors.

- (8) *Debriefings.* The Procurement Officer is authorized to provide debriefings that furnish the basis for the source selection decision and contract award.

Debriefings may be given orally, in writing, or by any other method acceptable to the Purchasing Director. A post-award debriefing may include: (a) the evaluation of significant weaknesses or deficiencies in the proposal, if applicable; (b) the overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror; (c) the overall ranking of all proposals, when any such ranking was developed during the source selection; (d) a summary of the rationale for award; (e) reasonable responses to relevant questions about whether source selection procedures contained in the Request For Proposal and applicable law were followed. Post-award debriefings should not include point-by-point comparisons of the debriefed proposal with those of other offerors. Any debriefing should not reveal any information prohibited from disclosure by law, or exempt from release under the applicable public records laws, including trade secrets, or privileged or confidential commercial or manufacturing information.

### **§3-204 Small Purchases.**

Any procurement not exceeding the amount established by regulation may be made in accordance with small purchase procedures, provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section. The Purchasing Department usually issues requests for quotations exceeding \$7,500.

### **§3-205 Sole Source Procurement.**

A contract may be awarded for a supply, service, or construction item without competition when, under procedures, the Purchasing Director or designee determines

in writing that there is only one source for the required supply, service, or construction item.

### **§3-206 Emergency Procurements.**

Notwithstanding any other provision of this Manual, the Purchasing Director or a designee may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in procedures; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. Emergency procurements exceeding the small purchase amount shall be reported to the District Board.

### **§3-207 Special Procurements.**

Notwithstanding any other provision of this Manual, the Purchasing Director may with prior public notice and Board approval initiate a procurement above the small purchase amount specified in Section 3-204 where the officer determines that an unusual or unique situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest. Any special procurement under this Section shall be made with such competition as is practicable under the circumstances.

## ***Part C – Cancellation of Invitations for Bids or Requests for Proposals***

### **§3-301 Cancellation of Invitations for Bids or Requests for Proposals.**

An Invitation to Bid, a Request for Proposal or Qualification, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the District in accordance with procedures. The reasons shall be made part of the contract file. If such solicitation shall be reissued, bids or proposals may be exempt from public release for a period of time set forth in Florida Statute 119.

## ***Part D – Qualifications and Duties***

### **§3-401 Responsibility of Bidders and Offerors.**

*Determination of Non-responsibility.* A written determination of non-responsibility of a bidder or offeror shall be made in accordance with procedures.

The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

### **§3-402 Prequalification of Suppliers.**

Prospective suppliers may be prequalified for particular types of supplies, services, and construction. The method of submitting prequalification information and the information required in order to be prequalified shall be determined by the Purchasing Director.

- (1) Prequalification is not a conclusive determination of responsibility, and a prequalified bidder or offeror may be rejected as non-responsible on the basis of subsequently discovered information. Similarly, a prior failure to prequalify will not bar a subsequent determination that a bidder or offeror is responsible with respect to any given procurement.
- (2) Prequalification is only of limited utility if a procurement cannot be limited to prequalified suppliers. Procedures should establish that unless an emergency exists or the contract is for a small purchase, a competition may not be limited to pre-qualified offerors unless public notice of the procurement was given in sufficient time for any interested firms to prepare necessary submissions and become prequalified.

### **§3-403 Substantiation of Offered Prices.**

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

- (1) the price is not:
  - (a) based on adequate price competition;
  - (b) based on established catalogue or market prices; or
  - (c) set by law or regulation; and
- (2) the price or cost exceeds an amount established in the procedures.

## ***Part E – Types of Contracts***

### **§3-501 Types of Contracts.**

Subject to the limitations of this Section, any type of contract which will promote the best interests of the District may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made that such contract is likely to be less costly

to the District than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

### **§3-502 Approval of Accounting System.**

Procedures shall be issued requiring that contractors submit appropriate documentation prior to the award of contracts in which the District agrees to reimburse costs, confirming that:

- (a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- (b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

### **§3-503 Multi-Year Contracts.**

- (1) *Specified Period.* Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the District provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.
- (2) *Use.* A multi-year contract is authorized where:
  - (a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and
  - (b) such a contract will serve the best interests of the District by encouraging effective competition or otherwise promoting economies in District procurement.
- (3) *Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.

## ***Part F – Inspection of Plant and Audit of Records***

### **§3-601 Right to Inspect Plant.**

The District may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the District.

### **§3-602 Right to Audit Records**

- (1) *Audit of Cost or Pricing Data.* The District may, at reasonable times and places, audit the books and records of any person who has submitted data in substantiation of offered prices pursuant to Section 3-403 (Substantiation of Offered Prices) to the extent that such books and records relate to that data. Any person who receives a contract, change order, or contract modification for which such data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.
- (2) *Contract Audit.* The District shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of five (5) years from the date of final payment under the subcontract or purchase order, unless a shorter period is otherwise authorized in writing.

## **Part G – Determinations and Reports**

### **§3-701 Finality of Determinations.**

The determinations required by Section 3-202(6) (Competitive Sealed Bidding, Correction or Withdrawal of Bids; Cancellation of Awards), Section 3-203(1) (Competitive Sealed Proposals, Conditions for Use), Section 3-203(7) (Competitive Sealed Proposals, Award), Section 3-205 (Sole Source Procurement), Section 3-206 (Emergency Procurements), Section 3-207 (Special Procurements), Section 3-401(1) (Responsibility of Bidders and Offerors, Determination of Non-responsibility), Section 3-403(3) (Substantiation of Offered Prices), Section 3-501 (Types of Contracts), Section 3-502 (Approval of Accounting System), Section 3-503(2) (Multi-Term Contracts, Determination Prior to Use) and Section 5-203 (Choice of Project Delivery Methods) are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

### **§3-702 Reporting of Anticompetitive Practices.**

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the Superintendent and Board Attorney.

**§3-703 Retention of Procurement Records.**

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by State statute and District policies. All retained documents shall be made available per Florida Statute 119.

## ARTICLE 4 – SPECIFICATIONS

### *Part A – Definitions*

#### **§4-101 Definitions of Terms Used in this Article.**

- (1) *Specification* means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

### *Part B – Specifications*

#### **§4-201 Procedures for Specification Preparation.**

Procedures shall set standards for the preparation, maintenance, and content of specifications for supplies, services, and construction required by the District. Either design specifications, performance specifications or combination of the two may be utilized, as deemed appropriate by the Purchasing Director.

#### **§4-202 Duties of the Purchasing Director.**

The Purchasing Director shall ~~monitor~~ review and approve the use of specifications for supplies and services. The architect, engineer or building official shall prepare, modify, review and approve the use of specifications for construction required by the District.

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#### **§4-203 Relationship With Requesters.**

The Purchasing Director shall obtain advice and assistance from District personnel in the development of specifications and may delegate to a Division, department or office the authority to prepare and utilize its own specifications.

#### **§4-204 Maximum Practicable Competition.**

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the District's needs, and shall not be unduly restrictive.

#### **§4-205 Specifications Prepared by Other Than District Personnel.**

The requirements of this Article regarding the purposes and non-restrictiveness of specifications shall apply to all specifications prepared other than by District personnel, including, but not limited to, those prepared by architects, engineers, and designers.



#### **§4-206 Standardization**

- (1) Standardization may be required when there has been a previous determination with regard to an identical procurement activity, or there is a need to standardize the requirement following recent procurement activity.
- (2) A previous determination means that what needs to be purchased is determined by a previous purchase, e.g. there is no other choice but to obtain the goods or services from the entity that was contracted for the previous purchase (e.g. a piece of equipment was previously purchased and components that can only be obtained from the manufacturer now needs to be replaced; complex services were purchased from a vendor and additional services requiring specific knowledge related to previous assignment now need to be purchased.
- (3) Only the vendor who performed the initial services can realistically provide the additional services.
- (4) Standardization shall be acceptable when identical goods, equipment or technology have recently been purchased from a supplier or contractor, and it is determined that a quantity of additional supplies must be procured, or because of the need for compatibility with existing goods, equipment or technology.
- (5) The effectiveness of the original procurement in meeting the needs of the end user, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods in question shall always be taken into account and justified.
- (6) It should be noted, however, that branding is not necessarily a justification for exceptions. A competitive process should be undertaken if multiple sources of supply exist.
- (7) A justification is required or an explanation of the previous determination or as to why standardization is required and reasonableness of costs (e.g. comparison with previous purchase prices, comparison with prices of equipment from other suppliers, equivalent in performance, etc.).

# ARTICLE 5 – PROCUREMENT OF FACILITIES AND CONSTRUCTION SERVICES

## *Part A – Definitions*

### §5-101 Definitions.

- (1) *Architectural and Engineering Services* means:
  - (a) professional services of an architectural or engineering nature, as defined by Florida Statute 287.055, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this Subsection;
  - (b) professional services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.
- (2) *Design-bid-build* means a project delivery method in which the Board sequentially awards separate contracts, the first for architectural and engineering services to design the project and the second for construction of the project according to the design.
- (3) *Design-build* means a project delivery method in which the Board enters into a single contract for design and construction of an infrastructure facility.
- (4) *Design-build-finance-operate-maintain* means a project delivery method in which the Board enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period. Little or no District funds are appropriated to pay for any part of the services provided by the contractor during the contract period.
- (5) *Design-build-operate-maintain* means a project delivery method in which the Board enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period. All or a portion of the funds required to pay for the services provided by the contractor during the contract period

are either appropriated by the District prior to award of the contract or secured by the District through fare, toll, or user charges.

- (6) *Design requirements* means the written description of the infrastructure facility or service to be procured under this Article, including:
- (a) required features, functions, characteristics, qualities, and properties that are required by the District;
  - (b) the anticipated schedule, including start, duration, and completion; and
  - (c) estimated budgets (as applicable to the specific procurement) for design, construction, operation and maintenance.

The design requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project.

- (7) *Independent Peer Reviewer Services* are additional architectural and engineering services provided to the District in design-build-operate-maintain or design-build-finance-operate-maintain procurements. The function of the independent peer reviewer is to confirm that the key elements of the professional engineering and architectural design provided by the contractor are in conformance with the applicable standard of care.
- (8) *Infrastructure Facility* means a building; structure; or networks of buildings, structures, pipes, controls, and equipment that provide transportation, utilities, public education, or public safety services. This includes but is not limited to office buildings, schools, distribution systems, pumping stations, collection systems, roads, parking facilities.
- (9) *Operations and Maintenance* means a project delivery method whereby the Board enters into a single contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility.
- (10) *Proposal development documents* means drawings and other design related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate to the applicable project delivery method.

## ***Part B – Contracting for Infrastructure Facilities and Services***

### **§5-201 Project Delivery Methods Authorized.**

- (1) The following project delivery methods are authorized for procurements relating to infrastructure facilities and services in this District:
  - (a) Design-bid-build;
  - (b) Operations and maintenance;
  - (c) Design-build;
  - (d) Design-build-operate-maintain;
  - (e) Design-build-finance-operate-maintain; and
  - (f) Construction management at-risk
- (2) Participation in a report or study that is subsequently used in the preparation of design requirements for a project shall not disqualify a firm from participating as a member of a proposing team in a design-build, design-build-operate-maintain, or design-build-finance-operate-maintain, construction management at-risk procurement unless such participation would provide the firm with a substantial competitive advantage.

### **§5-202 Source Selection Methods Assigned to Project Delivery Methods.**

#### *(1) Scope*

This Section specifies the source selection methods applicable to procurements for the project delivery methods identified in Section 5-201 (Project Delivery Methods Authorized), except as provided in Section 3-204 (Small Purchases), 3-205 (Sole Source Procurement), 3-206 (Emergency Procurements), and 3-207 (Special Procurements).

#### *(2) Design-bid-build*

- (a) Design: Architectural and Engineering Services.

The qualifications based selection process set forth in Section 5-205 (Design: Architectural and Engineering Services) shall be used to procure architectural and engineering services in design-bid-build procurements.

(b) Construction.

Competitive sealed bidding, as set forth in Section 3-202 (1)(b) (Competitive Sealed Bidding), shall be used to procure construction in design-bid-build procurements, except where procedures authorize the use of competitive sealed proposals, as set forth in Section 3-203 (Competitive Sealed Proposals), for contracts for construction management at-risk.

(3) *Operations and Maintenance.*

Contracts for operations and maintenance shall be procured as set forth in Section 3-201 (Methods of Source Selection).

(4) *Design-build.*

Contracts for design-build shall be procured by competitive sealed proposals, as set forth in Section 3-203 (Competitive Sealed Proposals), except that the procedures may describe the circumstances under which particular design-build procurements will not require the submission of proposal development documents as required in Section 5-204(2)(b).

(5) *Design-build-operate-maintain.*

Contracts for design-build-operate-maintain shall be procured by competitive sealed proposals, as set forth in Section 3-203 (Competitive Sealed Proposals).

(6) *Design-build-finance-operate-maintain.*

Contracts for design-build-finance-operate-maintain shall be procured by competitive sealed proposals, as set forth in Section 3-203 (Competitive Sealed Proposals).

(7) *Construction management at-risk.*

Contracts for construction management at-risk shall be procured by competitive sealed proposals, as set forth in Section 3-203 (Competitive Sealed Proposals). Once the CM/GC is selected, the CM/GC conducts its own competitive (whenever possible), "best value" procurements. This process is overseen by the Director of Maintenance and Operations or designee.

### **§5-203 Choice of Project Delivery Methods.**

Procedures shall be transmitted describing the project delivery methods listed in Section 5-201 (Project Delivery Methods Authorized). These procedures shall:

- (a) set forth criteria to be used in determining which project delivery method is to be used for a particular project;
- (b) grant to the Purchasing Director, Maintenance and Operations Director and the Support Services Assistant Superintendent of the Division responsible for carrying out the project, the discretion to select an appropriate project delivery method for a particular project;
- (c) describe the bond, insurance, and other security provisions contained in Part C of this Article that apply to each project;
- (d) describe the appropriate contract clauses and fiscal responsibility requirements contained in Part D of this Article that apply to each project; and

### **§5-204 Additional Procedures Applicable to Procurement of Certain Project Delivery Methods.**

- (1) *Applicability.* In addition to the requirements of Section 3-203 (Competitive Sealed Proposals), the procedures in this Section shall apply to procurements for design-build (Section 5-202(4)), design-build-operate-maintain (Section 5-202-(5)), design-build-finance-operate-maintain (Section 5-202(6)) and construction management at-risk (Section 5-202(7))
- (2) *Content of Request for Proposals.* Each Request for Proposals for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain:
  - (a) shall include design requirements;
  - (b) shall solicit proposal development documents; and
  - (c) may, when the Purchasing Director, Maintenance and Operations and the Support Services Assistant Superintendent of the Division responsible for carrying out the project, determines that the cost of preparing proposals is high in view of the size, estimated price, and complexity of the procurement:

- (i) prequalify offerors by issuing a Request for Qualifications in advance of the Request for Proposals/Invitation to Negotiate; and
  - (ii) select a short list of responsible offerors prior to discussions and evaluations under Subsection 3-203(6), provided that the number of proposals that will be short-listed is stated in the Request for Proposals or Invitation to Negotiate and prompt public notice is given to all offerors as to which proposals have been short-listed as set forth in the solicitation; or
- (3) *Evaluation Factors.* Each Request for Proposals or Invitation to Negotiate for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain, construction management at-risk:
  - (a) may state the relative importance of (1) demonstrated compliance with the design requirements, (2) offeror qualifications, (3) financial capacity, (4) project schedule, (5) price (or life-cycle price for design-build-operate-maintain and design-build-finance-operate-maintain procurements), and (6) other factors, if any; and
  - (b) may require each offeror, to identify an Independent Peer Reviewer whose competence and qualifications to provide such services shall be an additional evaluation factor in the award of the contract.

### **§5-205 Architectural and Engineering Services.**

#### *(1) Procedure.*

It is the procedure of this District to publicly announce all requirements for Architectural and Engineering Services and to negotiate contracts for Architectural and Engineering Services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

#### *(2) Architectural and Engineering Selection Committee.*

In the procurement of Architectural and Engineering Services, the Purchasing Director and Director of Maintenance and Operations shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data if significant changes occur at an individual firm, or every four years without such changes. The District Support Services Assistant Superintendent and the Maintenance and Operations shall select the Architect-Engineer Selection Committee members for each Architectural and Engineering

Services contract over the thresholds set by Florida statute 287.055. The Selection Committee for Architectural and Engineering Services contracts under this amount shall be established in accordance with procedures transmitted by the District's Professional Services Selection Procedures. The Selection Committee shall evaluate current statements of qualifications and performance data on file with the District, together with those that may be submitted by other firms regarding the proposed contract. The Selection Committee shall conduct discussions with no less than three firms regarding the contract and the relative utility of alternative methods of approach for furnishing the required services, and then shall select therefrom, in order of preference, based upon criteria established and published by the Selection Committee, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(3) *Negotiation.*

The District Support Service Assistant Superintendent and Maintenance and Operations Director shall negotiate a contract with the highest qualified firm for Architectural and Engineering Services at compensation determined in writing to be fair and reasonable to the District. In making this decision, they shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the District be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be formally terminated. The District shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the District shall formally terminate negotiations. The District shall then undertake negotiations with the third most qualified firm. Should the District be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the District shall select additional firms in order of their competence and qualifications, and the District shall continue negotiations in accordance with this Section until an agreement is reached.

## ***Part C – Bonds, Insurance, Guarantees***

### **§5-301 Bid Security.**

- (1) *Requirement for Bid Security.* Bid security shall be required for all competitive sealed bidding for construction contracts in a design-bid-build procurement when the price is estimated by the Procurement Officer to exceed \$200,000. Bid security shall be a bond provided by a surety company authorized to do business in this State, or the equivalent in cash, or otherwise supplied in a form satisfactory to the District. Nothing herein prevents the requirement of such bonds on such contracts under \$200,000 when the circumstances warrant.



- (2) *Amount of Security.* Bid security shall be in an amount equal to at least 5% of the amount of the bid.
- (3) *Rejection of Bids for Noncompliance with Bid Security Requirements.* When the Invitation for Bids requires security, noncompliance requires that the bid be rejected.
- (4) *Withdrawal of Bids.* After bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids (except as provided for bids in Section 3-202(6)). If a bidder is permitted to withdraw its bid (or proposal) before award, or is excluded from the competition before award, no action shall be had against the bidder or the bid security.

**§5-302 Contract Performance and Payment Bonds.**

- (1) *When Required – Amounts.* When a construction, design-build, design-build-operate-maintain, or design-build-finance-operate-maintain contract is awarded in excess of \$200,000, the following bonds or security shall be delivered to the District and shall become binding on the parties upon the execution of the contract:
  - (a) a performance bond satisfactory to the District, executed by a surety company authorized to do business in this State and listed on the U.S. Treasury list, in an amount equal to 100% of the portion of the contract price that does not include the cost of operation, maintenance, and finance; and
  - (b) a payment bond satisfactory to the District, executed by a surety company authorized to do business in this State and listed on the U.S. Treasury list, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond shall be in an amount equal to 100% of the portion of the contract price that does not include the cost of operation, maintenance, and finance.
- (2) *Reduction of Bond Amounts.* State statutes and procedures authorize the Maintenance and Operations Director to reduce the amount of performance and payment bonds to 50% of the amounts established in Subsection (1) of this Section.
- (3) *Authority to Require Additional Bonds.* Nothing in this Section shall be construed to limit the authority of the District to require a performance bond or other security in addition to such bonds, or in circumstances other than specified in Subsection (1) of this Section.

- (4) *Suits on Payment Bonds – Right to Institute.* Every person who has furnished labor or material to the contractor or its subcontractors for the work provided in the contract, in respect of which a payment bond is furnished under this Section, and who has not been paid in full therefor before the expiration of a period of 90 days after the day on which the last of the labor was done or performed by such person or material was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action for the sum or sums justly due such person; provided, however, that any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship express or implied with the contractor furnishing said payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be personally served or served by other form of receipted transmittal that confirms actual delivery to the contractor at any place the contractor maintains an office or conducts its business.
- (5) *Suits on Payment Bonds – Where and When Brought.* Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or district in which the construction contract was to be performed, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

**§5-303 Bond Forms and Copies.**

- (1) *Bond Forms.* The Purchasing Department shall specify the form of the bonds required by this Part.
- (2) *Certified Copies of Bonds.* Any person may request and obtain from the District a certified copy of a bond upon payment of the cost of reproduction of the bond and postage. A certified copy of a bond shall be *prima facie* evidence of the contents, execution, and delivery of the original.

#### **§5-304 Errors and Omissions Insurance.**

Procedures shall be transmitted that specify when the Purchasing Director shall require offerors to provide appropriate errors and omissions insurance to cover architectural and engineering services under the project delivery methods set forth in Section 5-201 (1) (a), (c), (d), and (e).

#### **§5-305 Other Forms of Security.**

Procedures shall be transmitted authorizing the Purchasing Director to require a Request for Proposals to include one or more of the following forms of security to assure the timely, faithful, and uninterrupted provision of operations and maintenance services procured separately, or as one element of design-build-operate-maintain or design-build-finance-operate-maintain services:

- (a) Operations period surety bonds that secure the performance of the contractor's operations and maintenance obligations under the project delivery methods set forth in Section 5-201 (1) (b), (d) and (e);
- (b) Letters of credit in an amount appropriate to cover the cost to the District of preventing infrastructure service interruptions for a period up to twelve months under the project delivery methods set forth in Section 5-201 (1) (b), (d) and (e); and
- (c) Appropriate written guarantees from the contractor (or depending upon the circumstances, from parent corporations) to secure the recovery of procurement costs to the District in the event of a default in performance by the contractor.

### ***Part D – Contract Clauses and Fiscal Responsibility***

#### **§5-401 Contract Clauses and Their Administration.**

- (1) *Contract Clauses.*

Procedures shall be transmitted requiring the inclusion in District contracts issued under this Article 5 of clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:

- (a) the unilateral right of the District to order in writing:
  - (i) changes in the work within the scope of the contract; and

- (ii) changes in the time of performance of the contract that do not alter the scope of the contract work;
- (b) variations occurring between estimated quantities of work in a contract and actual quantities;
- (c) suspension of work ordered by the District; and
- (d) site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses need not be included in a contract:
  - (i) when the contract is negotiated;
  - (ii) when the contractor provides the site or design; or
  - (iii) when the parties have otherwise agreed with respect to the risk of differing site conditions.

(2) *Price Adjustments.*

- (a) Adjustments in price pursuant to clauses transmitted under Subsection (1) of this Section shall be computed in one or more of the following ways:
  - (i) by agreement on a fixed-price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (ii) by unit prices specified in the contract or subsequently agreed upon;
  - (iii) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
  - (iv) in such other manner as the contracting parties may mutually agree; or
  - (v) in the absence of agreement by the parties, by a unilateral determination by the District of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the District in accordance with applicable sections of the procedures transmitted under Article 7 (Cost Principles) and subject to the provisions of Article 9 (Contractual Remedies).

- (b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 3-403 (Substantiation of Offered Prices).

(3) *Additional Contract Clauses.*

The Purchasing Director and Maintenance and Operations Director, as applicable, shall required additional contract clauses to include but not limited to:

- (a) liquidated damages as appropriate;
- (b) specified excuses for delay or nonperformance;
- (c) termination of the contract for default; and
- (d) termination of the contract in whole or in part for the convenience of the District.

(4) *Modification of Required Clauses.*

The Purchasing Director and Maintenance and Operations Director, as applicable, may vary the clauses under Subsection (1) and Subsection (3) of this Section for inclusion in any particular District construction contract. Invitation for Bids or Request for Proposals should include these clauses upfront so bidders cannot later claim this materially changes their understanding of the scope and terms of engagement.

**§5-402 Fiscal Responsibility.**

Every contract modification, change order, contract price adjustment or accumulation of such actions under a construction contract with the District in excess of small purchase amount shall be subject to District Board approval. In the event that the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget and/or the total contract budget, the Procurement Officer shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this Section.

## **ARTICLE 6 – MODIFICATION AND TERMINATION OF CONTRACTS FOR SUPPLIES AND SERVICES**

### **§6-101 Contract Clauses and Their Administration.**

- (1) *Contract Clauses.* The Purchasing Director may transmit procedures permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions as appropriate covering the following subjects:
  - (a) the unilateral right of the District to order in writing:
    - (i) changes in the work within the scope of the contract; and
    - (ii) temporary stopping of the work or delaying performance; and
  - (b) variations occurring between estimated quantities of work in a contract and actual quantities.
  
- (2) *Price Adjustments.*
  - (a) Adjustments in price pursuant to clauses transmitted under Subsection (1) of this Section shall be computed in one or more of the following ways:
    - (i) by agreement on a fixed-price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
    - (ii) by unit prices specified in the contract or subsequently agreed upon;
    - (iii) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
    - (iv) in such other manner as the contracting parties may mutually agree; or
    - (v) in the absence of agreement by the parties, by a unilateral determination by the District of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the District in accordance with applicable sections of the procedures transmitted under Article

7 (Cost Principles) and subject to the provisions of Article 9 (Contractual Remedies).

- (b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 3-403 (Cost or Pricing Data).
- (3) *Additional Contract Clauses.* The Purchasing Director may transmit procedures including, but not limited to, procedures permitting or requiring the inclusion in District contracts of clauses providing for appropriate remedies and covering the following subjects:
  - (a) liquidated damages as appropriate;
  - (b) specified excuses for delay or nonperformance;
  - (c) termination of the contract for default; and
  - (d) termination of the contract in whole or in part for the convenience of the District.
- (4) *Modification of Clauses.* The Purchasing Director may vary the clauses under Subsection (1) and Subsection (3) of this Section for inclusion in any particular District contract; provided that any variations are supported by a written determination that states the circumstances justifying such variation and provided that notice of any such material variation be stated in the Invitation for Bids or Request for Proposals or Qualifications.
- (5) *Custodian of Procurement Records.* The Maintenance and Operations Director shall be the primary custodian of construction management at-risk records. The Finance Department shall be the primary custodian of records associated with purchase ordered for purposes of encumbering and budgeting funds. For records not referenced above, the Purchasing Department shall be the custodian of records.

## **ARTICLE 7 – COST PRINCIPLES**

### **§7-101 Cost Principles Procedures Required.**

The Purchasing Director shall use generally accepted accounting principles to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs.



## **ARTICLE 8 – PROPERTY MANAGEMENT**

### ***Part A – Definitions***

#### **§8-101 Definitions of Terms Used in this Article.**

- (1) *Fixed Assets* means all tangible Property having an original acquisition cost equal or over \$5,000 per unit and a probable useful life of more than one year.
- (2) *Non-Fixed Assets* means the following tangible Property having an original acquisition cost of less than \$5,000 per unit and a probable useful life of more than one year: all musical instruments, all electronic tablets, electronic notebooks, electronic notepads, and all electronic devices
- (3) *Property* means, for purposes of this Article, property owned by the District.
- (4) *Surplus Property* means any Property that has exceeded its useful life or need to the District.

### ***Part B – Procedures Required***

#### **§8-201 Property Management Procedures Required.**

The Purchasing Director shall administer:

- (a) the management of Fixed Assets during their entire life cycle;
- (b) the sale, lease, or disposal of surplus Property by public auction, competitive sealed bidding, or other appropriate method designated by regulation; and
- (c) transfer of Surplus Property.

### ***Part C – Proceeds***

#### **§8-301 Allocation of Proceeds from Sale or Disposal of Surplus Property.**

Unless otherwise provided by law, the Purchasing Director shall allocate proceeds from the sale, lease, or disposal of surplus Property as directed by the District's Chief Financial Officer or Budget Officer.

## ***Part D – Property Handling of Surplus Property***

### **§8-401 Property Handling for Disposal of Surplus Property.**

- (1) Property shall be declared surplus to the school or department and reason for surplus declaration by the responsible director or principal, or above. Such declaration shall be made on a Disposition of Property or Inventory Change Notice/Report of Transfer of Equipment form, as appropriate, transmitted to the Purchasing Department. Upon receipt of such form, the Purchasing Director shall determine if property could be used for another school or building. The Purchasing Department shall coordinate with the Maintenance and Operations Department, as appropriate. If surplus property cannot be used at another school or building, such property shall be disposed in the following manner: i) sale or trade for new property, ii) donate or, iii) discard. Unless otherwise requested by the District Support Services Assistant Superintendent, this is also the order in which surplus property shall be disposed.
- (2) Any District employee declaring property to be surplus shall be ineligible from personally purchasing or receiving such property, unless approved by this individual's supervisor and the Purchasing Director. Likewise, Immediate Family members (defined in Article 12) are also prohibited from purchasing or receiving such property declared surplus by said employee.

## ***Part E – Incoming Assets***

### **§8-501 Property Handling for Incoming Assets to the District.**

- (1) In addition to all other items required on District purchase orders, end-users shall take particular care to enter the following onto their purchase requisition: complete item descriptions, correct financial coding to identify Fixed Assets or Non-Fixed Asset. If a Non-Fixed Asset, indicate this on the "Association Codes" screen.
- (2) The Purchasing Department shall run receiving reports on purchase orders for purposes of receiving, tagging Assets and assigning Assets to a school or department in the District's Enterprise Resource Planning (ERP) system, Sungard/Bi-Tech.
- (3) Administrators shall assign Assets to rooms, responsible individuals and students, as applicable, in the District's ERP system.

## ARTICLE 9 –CONTRACTUAL REMEDIES

### ***Part A – Pre-Litigation Resolution of Controversies***

#### **§9-101 Authority to Resolve Protested Solicitations and Awards.**

- (1) *Right to Protest.* Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Purchasing Director or the head of a Purchasing Agency. The protest shall be submitted in writing within 72 hours after such aggrieved person knows or should have known of the facts giving rise thereto. Additionally, questions/comments concerning the solicitation’s content shall be submitted by the specified cut-off date, if any. After these time periods mentioned above, the aggrieved party forfeits the right of protest. *To foster fair and open competition throughout the procurement process, all vendors shall communicate solely through the Purchasing Director or the designee indicated in the solicitation. Such communication starts from issuance of the solicitation and ends at award, to include Board approval if required. This does not exclude any appeal to the Superintendent, or designee, or exclude any request to provide comments at a Board meeting. Violation(s) of the above mentioned paragraph may be cause for immediate disqualification of the responsible company or individual without appeal or administrative hearing.*<sup>2</sup>
  
- (2) *Authority to Resolve Protests.* The Purchasing Director shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract. This authority shall be exercised in accordance with procedures transmitted by the Purchasing Director.

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<sup>2</sup> Rev. 2/3/16

- (3) *Decision.* If the protest is not resolved by mutual agreement, the Purchasing Director shall promptly issue a decision in writing. The decision shall,
  - (a) state the reasons for the action taken; and
  - (b) inform the protestant of its right to judicial or administrative review as provided in this Article.
- (4) *Notice of Decision.* A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.
- (5) *Finality of Decision.* A decision under Subsection (3) of this Section shall be final and conclusive, unless fraudulent, or:
  - (a) any person adversely affected by the decision commences an action in court in accordance with Section 9-401(1) (Waiver of Sovereign Immunity in Connection with Contracts, Solicitation and Award of Contracts); or
  - (b) any person adversely affected by the decision appeals administratively to the Superintendent or designee in accordance with Section 9-506 (Protest of Solicitations or Awards).
- (6) *Stay of Procurements During Protests.* In the event of a timely protest under Subsection (1) of this Section, under Section 9-401(1)(Waiver of Sovereign Immunity in Connection with Contracts, Solicitation and Award of Contracts), or under Section 9-505 (Jurisdiction of Superintendent or designee), the District shall not proceed further with the solicitation or with the award of the contract until the Purchasing Director, after consultation with the Superintendent or designee, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the District.

#### **§9-102 Authority to Debar or Suspend.**

- (1) *Authority.* After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Purchasing Director, after consultation with the Superintendent or designee, shall have authority to debar a person or firm for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. The Purchasing Director, after consultation with the Superintendent or designee, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding one year.

The authority to debar or suspend shall be exercised in accordance with procedures.

- (2) *Causes for Debarment or Suspension.* The causes for debarment or suspension include the following:
  - (a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
  - (b) conviction under State or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a District contractor;
  - (c) conviction under State or federal antitrust statutes arising out of the submission of bids or proposals,
  - (d) violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Director to be so serious as to justify debarment action:
    - (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
    - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
  - (e) any other cause the Purchasing Director determines to be so serious and compelling as to affect responsibility as a District contractor, including debarment by another governmental entity for any cause listed in procedures; and
  - (f) for violation of the ethical standards set forth in Article 12 (Ethics in Public Contracting).
- (3) *Decision.* The Purchasing Director shall issue a written decision to debar or suspend. The decision shall:
  - (a) state the reasons for the action taken; and

- (b) inform the debarred or suspended person involved of its rights to judicial or administrative review as provided in this Article.
- (4) *Notice of Decision.* A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.
- (5) *Finality of Decision.* A decision under Subsection (3) of this Section shall be final and conclusive, unless fraudulent, or
  - (a) the debarred or suspended person commences an action in court in accordance with Section 9-403(2) (Waiver of Sovereign Immunity in Connection with Contracts, Debarment or Suspension); or
  - (b) the debarred or suspended person appeals administratively to the Superintendent or designee in accordance with Section 9-507 (Suspension or Debarment Proceedings).

**§9-103 Authority to Resolve Contract and Breach of Contract Controversies.**

- (1) *Applicability.* This Section applies to controversies between the District and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.
- (2) *Authority.* The Purchasing Director is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in Subsection (1) of this Section. This authority shall be exercised in accordance with procedures,
- (3) *Decision.* If such a controversy is not resolved by mutual agreement, the Purchasing Director shall promptly issue a decision in writing. The decision shall:
  - (a) state the reasons for the action taken; and
  - (b) inform the contractor of its right to judicial or administrative review as provided in this Article.
- (4) *Notice of Decision.* A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the contractor.

- (5) *Finality of Decision.* The decision under Subsection (3) of this Section shall be final and conclusive, unless fraudulent, or:
  - (a) the contractor commences an action in court in accordance with Section 9-401(3) (Waiver of Sovereign Immunity in Connection with Contracts, Actions Under Contracts or for Breach of Contract); or
  - (b) the contractor appeals administratively to the Superintendent or designee in accordance with Section 9-508 (Contract and Breach of Contract Controversies).
- (6) *Failure to Render Timely Decision.* If the Purchasing Director does not issue the written decision required under Subsection (3) of this Section within [120 days] after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

## ***Part B – Solicitations or Awards in Violation of Law***

### **§9-201 Applicability of this Part.**

The provisions of this Part apply where it is determined administratively, or upon administrative or judicial review, that a solicitation or award of a contract is in violation of law.

### **§9-202 Remedies Prior to an Award.**

If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

- (a) cancelled; or
- (b) revised to comply with the law.

### **§9-203 Remedies After an Award.**

If after an award it is determined that a solicitation or award of a contract is in violation of law, then:

- (a) if the person awarded the contract has not acted fraudulently or in bad faith:
  - (i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the District; or
  - (ii) the contract may be terminated.

- (b) if the person awarded the contract has acted fraudulently or in bad faith:
  - (i) the contract may be declared null and void; or
  - (ii) the contract may be ratified and affirmed if such action is in the best interests of the District, without prejudice to the District's rights to such damages as may be appropriate.

### ***Part C – Interest***

#### **§9-301 Interest.**

Interest on amounts ultimately determined to be due to a contractor or the District shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

### ***Part D – Waiver of Sovereign Immunity; Limitations on Actions***

#### **§9-401 Waiver of Sovereign Immunity in Connection with Contracts.**

- (1) *Solicitation and Award of Contracts.* The designated court or courts of the State shall have jurisdiction over an action between the District and a bidder, offeror, or contractor, prospective or actual, to determine whether a solicitation or award of a contract is in accordance with the Constitution, statutes, procedures, and the terms and conditions of the solicitation. The designated court or courts of the State shall have such jurisdiction, whether the actions are at law or in equity, and whether the actions are for monetary damages or for declaratory, injunctive, or other equitable relief.
- (2) *Debarment or Suspension.* The designated court or courts of this State shall have jurisdiction over an action between the District and a person who is subject to a suspension or debarment proceeding, to determine whether the debarment or suspension is in accordance with the Constitution, statutes, and procedures. The designated court or courts of the State shall have such jurisdiction, whether the actions are at law or in equity, and whether the actions are for declaratory, injunctive, or other equitable relief.
- (3) *Actions Under Contracts or for Breach of Contract.* The designated court or courts of this State shall have jurisdiction over an action between the District and a contractor, for any cause of action which arises under, or by virtue of, the contract, whether the action is at law or in equity,



whether the action is on the contract or for a breach of the contract, and whether the action is for monetary damages or declaratory, injunctive, or other equitable relief.

- (4) *Limited Finality for Administrative Determinations.* In any judicial action under this Section, factual or legal determinations by employees, agents, or other persons appointed by the District shall have no finality and shall not be conclusive, notwithstanding any contract provision, regulation, or rule of law to the contrary, except to the extent provided in:
- (a) Section 3-701 (Finality of Determinations);
  - (b) Section 9-506(4) (Protest of Solicitations or Awards, Standard of Review for Factual Issues);
  - (c) Section 9-507(4) (Suspension or Debarment Proceedings, Standard of Review for Factual Issues); and
  - (d) Section 9-508(4) (Contract and Breach of Contract Controversies, Standard of Review for Factual Issues).

#### **§9-402 Time Limitations on Actions.**

- (1) *Protested Solicitations and Awards.* Any action under Section 9-401(1) (Waiver of Sovereign Immunity in Connection with Contracts, Solicitations and Award of Contracts) shall be initiated as follows:
- (a) within 30 days after the aggrieved person knows or should have known of the facts giving rise to the action; or
  - (b) within 14 days after receipt of a final administrative decision pursuant to either Section 9-101(3) (Authority to Resolve Protested Solicitations and Awards, Decision) or Section 9-506(3) (Protest of Solicitations or Awards, Decision), whichever is applicable.
- (2) *Debarments and Suspensions for Cause.* Any action under Section 9-401(2) (Waiver of Sovereign Immunity in Connection with Contracts, Debarment or Suspension) shall be commenced within six months after receipt of the decision of the Purchasing Director under Section 9-102(3) (Authority to Debar or Suspend, Decision), the decision of the Superintendent or designee under

Section 12-302(2)(c) (Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards, Supplemental Remedies), or the decision of the Procurement Appeals Board under Section 9-507(3) (Suspension or Debarment Proceedings, Decision), whichever is applicable.

- (3) *Actions Under Contracts or for Breach of Contract.* The statutory limitations on an action between private persons on a contract or for breach of contract shall apply to any action commenced pursuant to Section 9-401(3) (Waiver of Sovereign Immunity in Connection with Contracts, Actions Under Contracts or for Breach of Contract), except notice of appeals from the Superintendent or designee pursuant to Section 9-510(1) (Appeal and Review of Procurement Appeals Board Decisions, Appeal) concerning actions on a contract or for breach of contract shall be filed within 12 months after the date of the Superintendent or designee decision.

### ***Part E – Appeal Review by the Superintendent or designee***

#### **§9-501 Final Appeal.**

The District Support Services Assistant Superintendent by himself or by selecting two other members may review appeals.

**§9-502 Rules of Procedure.**

The Superintendent or designee may adopt rules of procedure which, to the fullest extent possible, will provide for the expeditious resolution of controversies.

**§9-504 Decisions.**

The Superintendent or designee shall issue a decision in writing or take other appropriate action on each appeal submitted. A copy of any decision shall be provided to all parties and the Purchasing Director.

**§9-505 Jurisdiction of the Superintendent or designee.**

Unless an action has been initiated previously in the designated court or courts for essentially the same cause of action, or unless within 15 days after the action is brought before the Superintendent or designee, written objection is made by either the aggrieved bidder, offeror, or contractor, prospective or actual, or the Purchasing Director with the concurrence of the Superintendent or designee shall have jurisdiction to review and determine *de novo*:

- (a) any protest of a solicitation or award of a contract addressed to the Superintendent or designee by an aggrieved actual or prospective bidder or offeror, or a contractor; and
- (b) any appeal by an aggrieved party from a determination by the Purchasing Director which is authorized by:
  - (i) Section 9-101 (Authority to Resolve Protested Solicitations and Awards);
  - (ii) Section 9-102 (Authority to Debar or Suspend); and
  - (iii) Section 9-103 (Authority to Resolve Contract and Breach of Contract Controversies).

**§9-506 Protest of Solicitations or Awards.**

- (1) *Scope.* This Section applies to:
  - (a) a protest of a solicitation or award of a contract addressed to the Superintendent or designee by an aggrieved actual or prospective bidder or offeror, or a contractor; and
  - (b) an appeal addressed to the Superintendent or designee of a decision under Section 9-101(3) (Authority to Resolve Protested Solicitations and Awards, Decision).
- (2) *Time Limitations on Filing a Protest or an Appeal.*

- (a) For a protest under Subsection (1)(a) of this Section, the aggrieved person shall file a protest with the Board within 72 hours after the aggrieved person knew or should have known of the facts and circumstances upon which the protest is based.
  - (b) For an appeal under Subsection (1)(b) of this Section, the aggrieved person shall file an appeal within ten (10) days of receipt of a decision under Section 9-101(3) (Authority to Resolve Protested Solicitations and Awards, Decision).
- (3) *Decision.* On any direct protest under Subsection (1)(a) of this Section or appeal under Subsection (1)(b) of this Section, the Superintendent or designee shall promptly decide whether the solicitation or award was in accordance with the statutes, procedures, and the terms and conditions of the solicitation. The proceeding shall be *de novo*. Any prior determinations by administrative officials shall not be final or conclusive.
- (4) *Standard of Review for Factual Issues.* A determination of an issue of fact by the Superintendent or designee under Subsection (3) of this Section shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

**§9-507 Suspension or Debarment Proceedings.**

- (1) *Scope.* This Section applies to a review by the Superintendent or designee of a decision under Section 9-102 (Authority to Debar or Suspend).
- (2) *Time Limitation on Filing an Appeal.* The aggrieved person shall file its appeal with the Board within ten (10) days of the receipt of a decision under Section 9-102(3) (Authority to Debar or Suspend, Decision).
- (3) *Decision.* The Superintendent or designee shall promptly decide whether, or the extent to which, the debarment or suspension was in accordance with the Constitution, statutes, procedures, and the best interests of the District, and was fair. The proceeding shall be *de novo*. Any prior determinations by administrative officials shall not be final or conclusive.
- (4) *Standard of Review for Factual Issues.* A determination of an issue of fact by the Superintendent or designee under Subsection (3) of this Section shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

**§9-508 Contract and Breach of Contract Controversies.**

- (1) *Scope.* This Section applies to a review by the Superintendent or designee of a decision under Section 9-103 (Authority to Resolve Contract and Breach of Contract Controversies).
- (2) *Time Limitation on Filing an Appeal.* The aggrieved contractor shall file its appeal with the Superintendent or designee within ten (10) days of the receipt of the decision under Section 9-103(3) (Authority to Resolve Contract and Breach of Contract Controversies, Decision).
- (3) *Decision.* The Superintendent or designee shall promptly decide the contract or breach of contract controversy. The proceeding shall be *de novo*. Any prior determinations by administrative officials shall not be final or conclusive.
- (4) *Standard of Review for Factual Issues.* A determination of an issue of fact by the Superintendent or designee under Subsection (3) of this Section shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

**§9-509 No Finality to a Decision on an Issue of Law.**

No determination by the Superintendent or designee on an issue of law shall be final or conclusive.

**§9-510 Appeal and Review of Superintendent or designee Decisions.**

- (1) *Appeal.* Any person receiving an adverse decision, the District, or both may appeal from a decision by the Superintendent or designee to the designated court or courts of the State.
- (2) *Authorization of Appeal by the District.* No such appeal shall be made by the District unless recommended by the Purchasing Director and approved by the Superintendent or designee.

**§9-511 Discontinuance of Contractor's Appeal.**

After notice of an appeal to the Superintendent or designee has been filed with the Purchasing Director, a contractor may not discontinue such appeal without prejudice, except as authorized by the Superintendent or designee.

# ARTICLE 10 – INTERGOVERNMENTAL RELATIONS

## ***Part A – Definitions***

### **§10-101 Definitions of Terms Used in this Article.**

- (1) *Cooperative Purchasing* means procurement conducted by, or on behalf of, one or more Public Procurement Units, as defined in this Manual.
- (2) *External Procurement Activity* means any buying organization not located in this State which, if located in this State, would qualify as a Public Procurement Unit. Agencies of the United States and of any other State in the United States of America are External Procurement Activities.
- (3) *Local Public Procurement Unit* means any county, city, town, and any other subdivision of the State or public agency of any such subdivision, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of Property, services, and construction, and any nonprofit corporation operating a charitable hospital.
- (4) *Public Procurement Unit* means any one of the following:
  - (a) a Local Public Procurement Unit,
  - (b) an External Procurement Activity,
  - (c) a State Public Procurement Unit, and
  - (d) any not-for-profit entity comprised of more than one Unit or Activity listed in subparagraphs (a), (b), or (c).
- (5) *State Public Procurement Unit* means the Office of the Purchasing Director of this or any other State and any other Purchasing Agency of this State or any other State.

## ***Part B – Cooperative Purchasing***

### **§10-201 Cooperative Purchasing Authorized.**

- (1) Any Public Procurement Unit may either participate in, sponsor, conduct, or administer a Cooperative Purchasing agreement for the procurement of any supplies, services, or construction with one or more Public Procurement Units in accordance with an agreement entered into

between the participants. Such Cooperative Purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units and open-ended Public Procurement Unit contracts that are made available to other Public Procurement Units.

- (2) All Cooperative Purchasing conducted under this Article shall be through contracts awarded through full and open competition, including use of source selection methods substantially equivalent to those specified in Article 3 (Source Selection and Contract Formation) of this Manual.

**§10-202 Sale, Acquisition, or Use of Supplies by a Public Procurement Unit.**

Any Public Procurement Unit may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit independent of the requirements of Article 3 (Source Selection and Contract Formation) and Article 8 (Supply Management) of this Manual.

**§10-203 Cooperative Use of Supplies or Services.**

Any Public Procurement Unit may enter into an agreement, independent of the requirements of Article 3 (Source Selection and Contract Formation) and Article 8 (Supply Management) of this Manual, with any other Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

**§10-204 Joint Use of Facilities.**

Any Public Procurement Unit may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another Public Procurement Unit under the terms agreed upon between the parties.

**§10-205 Supply of Personnel, Information, and Technical Services.**

- (1) *Supply of Personnel.* Any Public Procurement Unit is authorized, in its discretion, upon written request from another Public Procurement Unit to provide personnel to the requesting Public Procurement Unit. The Public Procurement Unit making the request shall pay the Public Procurement Unit providing the personnel the direct and indirect cost of furnishing the personnel, in accordance with an agreement between the parties.
- (2) *Supply of Services.* The informational, technical, and other services of any Public Procurement Unit may be made available to any other Public Procurement Unit. The requesting Public Procurement Unit shall pay for the expenses of the services so provided, in accordance with an agreement between the parties.



## ***Part C – Contract Controversies***

### **§10-301 Contract Controversies.**

Contract controversies shall be resolved under the Public Procurement Unit's terms and conditions and/or requesting Public Procurement Unit's terms and conditions depending upon its applicability.

# **ARTICLE 11 – ASSISTANCE TO SMALL/DISADVANTAGED BUSINESSES AND FAITH-BASED ORGANIZATIONS; FEDERAL ASSISTANCE OR CONTRACT PROCUREMENT REQUIREMENTS**

## ***Part A – Definitions***

### **§11-101 Definitions of Terms Used in this Article.**

Set forth below are procedures establishing detailed definitions of the following terms, including the number of employees and the dollar volume of business. As used in this Article:

- (1) *Disadvantaged Business* means a small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.
- (2) *Small Business* means a United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.
- (3) *A Faith-Based Organization* is an organization whose values are based on faith and/or beliefs, which has a mission based on social values of the particular faith, and which most often draws its activists (leaders, staff, volunteers) from a particular faith group.

## ***Part B – Assistance to Small and Disadvantaged Businesses***

### **§11-201 Statement of Policy and Its Implementation.**

- (1) *Statement of Policy.* It shall be the procedure of this District to assist small and disadvantaged businesses and faith-based organizations in learning how to do business with the District.
- (2) *Implementation.* The Purchasing Director shall implement the procedure set forth in Subsection (1) of this Section in accordance with procedures under this Article.

### **§11-202 Mandatory Duties of the Purchasing Director.**

- (1) *Assistance Within District Agencies.* Where feasible, the Purchasing Director shall provide appropriate staff to assist District small and disadvantaged businesses and faith-based organizations in learning how to do business with the District.
- (2) *Publication.* The Purchasing Director shall give issue information on the Purchasing Department's website designed to assist small and disadvantaged businesses and faith-based organizations in learning how to do business with the District.
- (3) *Source Lists.* The Purchasing Director shall develop, compile, maintain, and make available small and disadvantaged businesses and faith-based organizations for the purpose of encouraging procurement from them .
- (4) *Solicitation Mailing Lists.* The Purchasing Director shall include small and disadvantaged businesses on solicitation notifications.
- (5) *Solicitation of Small and Disadvantaged Businesses & and Faith-Based Organizations.* The Purchasing Director shall assure that small and disadvantaged businesses and faith-based organizations are solicited on each procurement for which such businesses may be suited.
- (6) *Training Programs.* The Purchasing Director shall offer a training program for assist small and disadvantaged businesses and faith-based organizations in learning how to do business with the District.

### **§11-203 Discretionary Duties of the Purchasing Director.**

- (1) *Bonding.* Notwithstanding other provisions of this Manual, the Purchasing Director may reduce the level or change the types of bonding normally required or accept alternative forms of security to the extent reasonably necessary to encourage procurement from small and disadvantaged businesses and faith-based organizations provided it does not fall below Florida Statute.
- (2) *Progress Payments.* The Purchasing Director or Maintenance and Operations Director (for construction) may make such special provisions for progress payments as such officer may deem reasonably necessary to encourage procurement from small and disadvantaged businesses and faith-based organizations.

## ***Part C – Federal Assistance or Contract Procurement Requirements***

### **§11-301 Compliance with Federal Requirements.**

Where a procurement involves the expenditure of federal assistance or contract funds, the Purchasing Director shall comply with such federal law and authorized procedures which are mandatorily applicable. The District shall not act as a disseminating agent for any person or outside agency.

# ARTICLE 12 – ETHICS IN PUBLIC CONTRACTING

## *Part A – Definitions*

### §12-101 Definitions of Terms Used in this Article.

- (1) *Blind Trust* means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.
- (2) *Confidential Information* means any information which is available to an employee only because of the employee's status as an employee of this District and is not a matter of public knowledge or available to the public on request.
- (3) *Conspicuously* means written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.
- (4) *Direct or Indirect Participation* means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
- (5) *Financial Interest* means:
  - (a) ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than 10 percent of the gross income and which exceeds \$1,500 per fiscal year, or its equivalent;
  - (b) ownership of such interest in any property or any business as may be specified by the Superintendent or designee; or
  - (c) holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (6) *Gratuity* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

- (7) *Immediate Family* means a spouse, children, parents, brothers and sisters, and such other relatives as may be designated by the Superintendent or designee.
- (8) *Official Responsibility* means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct District action.
- (9) *Purchase Request* means that document whereby a Division requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this Manual.

## ***Part B – Standards of Conduct***

### **§12-201 Statement of Policy.**

Public employment is a public trust. It is the procedure of the District to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the District. Such procedure is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the District procurement organization.

To achieve the purpose of this Article, it is essential that those doing business with the District also observe the ethical standards prescribed herein.

### **§12-202 General Standards of Ethical Conduct.**

- (1) *General Ethical Standards for Employees.* Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.

In order to fulfill this general prescribed standard, employees must also meet the specific standards set forth in: Section 12-204 (Employee Conflict of Interest); Section 12-205 (Employee Disclosure Requirements); Section 12-206 (Gratuities and Kickbacks); Section 12-207 (Prohibition Against Contingent Fees); Section 12-208

(Restrictions on Employment of Present and Former Employees); and Section 12-209 (Use of Confidential Information).

- (2) *General Ethical Standards for Non-Employees.* Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Section and Section 12-204 through Section 12-209 of this Article is also a breach of ethical standards.

### **§12-203 Criminal Sanctions.**

To the extent that violations of the ethical standards of conduct set forth in this Part constitute criminal violations, they shall be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth in this Article.

### **§12-204 Employee Conflict of Interest.**

- (1) *Conflict of Interest.* It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:
  - (a) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
  - (b) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
  - (c) any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
- (2) *Financial Interest in a Blind Trust.* Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the District Support Services Division, Assistant Superintendent.
- (3) *Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver.* Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved.

#### **COMMENTARY:**

The term "financial interest" used in this Section is defined in Section 12-101(5).

### **§12-205 Employee Disclosure Requirements.**

- (1) *Disclosure of Benefit Received from Contract.* Any employee who has, or obtains any benefit from, any District contract with a business in which the employee has a financial interest shall report such benefit to the Superintendent or designee; provided, however, this Section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.
- (2) *Failure to Disclose Benefit Received.* Any employee who knows or should have known of such benefit, and fails to report such benefit to the Superintendent or designee, is in breach of the ethical standards of this Section.

### **§12-206 Gratuities and Kickbacks.**

- (1) *Gratuities.* It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.
- (2) *Kickbacks.* It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (3) *Contract Clause.* The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.

### **§12-207 Prohibition Against Contingent Fees.**

- (1) *Contingent Fees.* It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a District contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of *bona fide* employees



or *bona fide* established commercial selling agencies for the purpose of securing business.

- (2) *Representation of Contractor.* Every person, before being awarded a District contract, shall represent, in writing, that such person has not retained anyone in violation of Subsection (1) of this Section. Failure to do so constitutes a breach of ethical standards.
- (3) *Contract Clause.* The representation prescribed in Subsection (2) of this Section shall be conspicuously set forth in every contract and solicitation therefor.

**COMMENTARY:**

The proscription stated in Subsection (1) shall not be understood to prevent an attorney, an accountant, or other professional person from representing a client in the pursuit of professional duties. For example, it would not prevent an attorney from representing a client in a bid protest nor would it prevent an attorney or an accountant from entering into contract negotiations with a District agency. However, it would preclude a professional or any other person engaged in the actual act of soliciting or selling to the District from being paid on a contingent basis.

**§12-208 Restrictions on Employment of Present and Former Employees.**

- (1) *Contemporaneous Employment Prohibited.* Except as may be permitted by procedures or rulings of the Superintendent or designee, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed.
- (2) *Restrictions on Former Employees in Matters Connected with Their Former Duties.*
  - (a) *Permanent Disqualification of Former Employee Personally Involved in a Particular Matter.* It shall be a breach of ethical standards for any former employee knowingly to act as a principal, or as an agent for anyone other than the District, in connection with any:
    - (i) judicial or other proceeding, application, request for a ruling, or other determination;
    - (ii) contract;
    - (iii) claim; or
    - (iv) charge or controversy,in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or

otherwise while an employee, where the District is a party or has a direct and substantial interest.

- (b) *One Year Representation Restriction Regarding Matters for Which a Former Employee Was Officially Responsible.* It shall be a breach of ethical standards for any former employee, within one year after cessation of the former employee's official responsibility, knowingly to act as a principal, or as an agent for anyone other than the District, in connection with any:
- (i) judicial or other proceeding, application, request for a ruling, or other determination;
  - (ii) contract;
  - (iii) claim; or
  - (iv) charge or controversy,
- in matters which were within the former employee's official responsibility, where the District is a party or has a direct or substantial interest.

- (3) *Disqualification of Business When an Employee Has a Financial Interest.* It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the District, in connection with any:

- (a) judicial or other proceeding, application, request for a ruling, or other determination;
- (b) contract;
- (c) claim; or
- (d) charge or controversy,

in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the District is a party or has a direct and substantial interest.

- (4) *Selling to the District After Termination of Employment is Prohibited.* It shall be a breach of ethical standards for any former employee to engage in selling or attempting to sell supplies, services, or construction to the District for one year following the date employment ceased.

The term "sell" as used herein means signing a bid, proposal, or contract; negotiating a contract; contacting any employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefor is subsequently negotiated by another person; provided, however, that this Section is not intended to preclude a former employee from accepting employment with private industry solely because the former employee's employer is a contractor with this District, nor shall a former employee be precluded from serving as a consultant to this District.

**COMMENTARY:**

- (1) This Section places restrictions on the simultaneous employment of present employees who are involved in the procurement process. It also places disqualifications on the employment of former employees.
- (2) Subsection (1) provides that no employee participating directly or indirectly in the procurement process may become an employee of parties contracting with the particular governmental body in which the employee is employed except as may be permitted by Superintendent or designee. For the definition of "direct or indirect participation," Section 12-101(4) should be consulted.
- (3) Subsection (2)(a) provides that former employees are disqualified from knowingly acting as a principal, or agent for anyone other than the District, in certain matters in which the employee had participated personally and substantially while employed by the District where the District is a party or has a direct and substantial interest.
- (4) Under Subsection (2)(b) a former employee is also prevented from appearing for one year after cessation of the employee's official responsibility before any court, department, or agency in connection with any matter which was within the employee's official responsibility where the District is a party or directly and substantially interested.
- (5) Subsection (3) prohibits businesses in which the employee has a financial interest from knowingly acting as principals, or as agents for anyone other than the District, in any matters in which the District employee personally and substantially participates or which is the subject of the employee's official responsibility where the District is a party or has a direct and substantial interest. The definition of "financial interest" is found in Section 12-101(5). This provision, which applies to businesses of employees, is distinguishable from Subsection (1), which is applicable to employees themselves. Section 12-204 (Employee Conflict of Interest) is also applicable only to employees and, unlike the immediate Section which relates to employment and business arrangements, is aimed at a broader array of financial interests.

**§12-209 Use of Confidential Information.**

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

**COMMENTARY:**

The term "confidential information" is limited by its definition in Section 12-101(2) to information which is available only because of one's status as a District employee.

## ***Part C – Remedies***

### **§12-301 Civil and Administrative Remedies Against Employees Who Breach Ethical Standards.**

- (1) *Existing Remedies Not Impaired.* Civil and administrative remedies against employees which are in existence on the effective date of this Manual shall not be impaired.
- (2) *Supplemental Remedies.* In addition to existing remedies for breach of the ethical standards of this Article or procedures transmitted hereunder, the Superintendent may impose any one or more of the following:
  - (a) oral or written warnings or reprimands;
  - (b) suspension with or without pay for specified periods of time; and
  - (c) termination of employment.
- (3) *Right to Recovery from Employee Value Received in Breach of Ethical Standards.* The value of anything received by an employee in breach of the ethical standards of this Article or procedures transmitted hereunder shall be recoverable by the District as provided in Section 12-303 (Recovery of Value Transferred or Received in Breach of Ethical Standards).
- (4) *Due Process.* All procedures under this Section shall be in accordance with due process requirements and existing law. In addition, notice and an opportunity for a hearing shall be provided prior to imposition of any suspension or termination of employment.

### **§12-302 Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards.**

- (1) *Existing Remedies Not Impaired.* Civil and administrative remedies against non-employees which are in existence on the effective date of this Manual shall not be impaired.
- (2) *Supplemental Remedies.* In addition to existing remedies for breach of the ethical standards of this Article or procedures transmitted hereunder, the Superintendent or designee may impose any one or more of the following:
  - (a) written warnings or reprimands;
  - (b) termination of transactions; and

- (c) debarment or suspension from being a contractor or subcontractor under District contracts.
- (3) *Right to Recovery from Non-Employee Value Transferred in Breach of Ethical Standards.* The value of anything transferred in breach of the ethical standards of this Article or procedures transmitted hereunder by a non-employee shall be recoverable by the District as provided in Section 12-303 (Recovery of Value Transferred or Received in Breach of Ethical Standards).
- (4) *Right of the District to Debar or Suspend.* Debarment or suspension may be imposed by the Superintendent or designee in accordance with the procedures set forth in Section 9-102 (Authority to Debar or Suspend) for breach of the ethical standards of this Article, provided that such action may not be taken without the concurrence of the District's Attorney.
- (5) *Due Process.* All procedures under this Section shall be in accordance with due process requirements, including, but not limited to, a right to notice and an opportunity for a hearing prior to imposition of any termination, debarment, or suspension from being a contractor or subcontractor under a District contract.

**§12-303 Recovery of Value Transferred or Received in Breach of Ethical Standards.**

- (1) *General Provisions.* The value of anything transferred or received in breach of the ethical standards of this Article or procedures transmitted hereunder by an employee or a non-employee may be recovered from both the employee and non-employee.
- (2) *Recovery of Kickbacks by the District.* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the District and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

**COMMENTARY:**

The definition of "kickback" may be found in Section 12-206(2).