

COUNCIL OF THE DISTRICT OF COLUMBIA

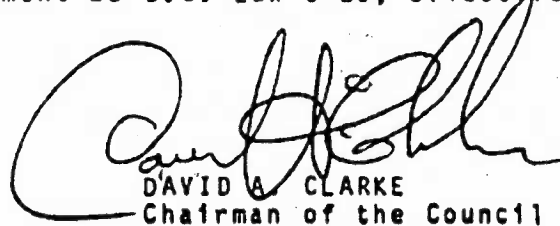
NOTICE

D.C. LAW 6-85

"District of Columbia Procurement Practices Act of 1985".

Pursuant to Section 412 of the District of Columbia Self-government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill 6-191 on first and second readings, November 5, 1985, and November 19, 1985, respectively. Following the signature of the Mayor on December 3, 1985, this legislation was assigned Act 6-110, published in the December 20, 1985, edition of the D. Register, (Vol. 32 page 7396) and transmitted to Congress December 4, 1985 for a 30-day review, in accordance with Section 602 (c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 6-85, effective February 21, 1986.

  
DAVID A. CLARKE  
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

December 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20

January 21, 22, 23, 24, 27, 28, 29, 30, 31

February 3, 4, 5, 6, 7, 18, 19, 20

D.C. LAW 6 - 85

AN ACT

FEB 21 1986

DC. ACT 6 - 110

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DEC 03 1985

Codification  
New Chapter 11A  
of title 1  
Procurement

To provide for a uniform system of procurement management for the District of Columbia government; to adopt a procurement law uniform with other jurisdictions; and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Procurement Practices Act of 1985".

TITLE I -- GENERAL PROVISIONS

Sec. 101. Purposes, rules of construction.

New,  
D.C. Code,  
sec. 1-1181.1  
(1986 supp.)

(a) This act shall be liberally construed and applied to promote its underlying purposes and policies.

(b) In enacting this act, the Council of the District of Columbia ("Council") supports the following statutory purposes:

(1) To simplify, clarify, and modernize the law governing the procurement of property, supplies, services, and construction by the District of Columbia government ("District government");

(2) To foster effective and equitably broad-based competition in the District of Columbia ("District") through support of the free enterprise system, insuring support of the minority business opportunity program as set forth in the Minority Contracting Act of 1976, effective March 29,

1977 (D.C. Law 1-95; D.C. Code, sec. 1-1141 et seq.), and its implementing regulations;

(3) To provide increased procurement opportunities for District-based, women-owned businesses;

(4) To provide for increased public confidence in the procedures followed in public procurement;

(5) To eliminate overlapping or duplication of procurement and related activities;

(6) To provide increased economy in procurement activities and to maximize, to the fullest extent allowed by law, the purchasing power of the District government;

(7) To insure the fair and equitable treatment of all persons who deal with the procurement system of the District government;

(8) To improve the understanding of procurement laws and policies within the District by organizations and individuals doing business with the District government;

(9) To permit the continued development of procurement laws, policies, and practices;

(10) To promote the development of uniform procurement procedures District government-wide;

(11) To provide safeguards for the maintenance of a procurement system of quality and integrity; and

(12) To promote overall efficiency in the District government procurement organization and operation.

Sec. 102. Supplementary general principles of law applicable.

Unless superseded by the particular provisions of this

New,  
D.C. Code,  
sec. 1-1181.2  
(1986 supp.)

act, the principles of law and equity, including the District of Columbia Uniform Commercial Code, approved December 30, 1963 (77 Stat. 631; D.C. Code, sec. 28:1-101 et seq.), and laws relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy, shall supplement the provisions of this act.

Sec. 103. Obligation of good faith.

Every contract or duty within this act imposes an obligation of good faith in its performance or enforcement. For the purposes of this act, the term "good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

New,  
D.C. Code,  
sec. 1-1181.3  
(1986 supp.)

Sec. 104. Application of the act.

(a) Nothing in this act shall abrogate the authority of a separate branch of government or an independent agency, as defined in the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code, sec. 1-150) et seq., to enter into contracts or to issue rules and regulations for the awarding of contracts pursuant to existing law.

New,  
D.C. Code,  
sec. 1-1181.4  
(1986 supp.)

(b) Any existing provisions of District law regarding the conformity to District procurement law of rules and regulations issued or promulgated by independent agencies shall remain in effect.

(c) This act shall apply to all agencies and employees of the District government which are subordinate to the Mayor.

(d) This act shall apply to every contract, interagency agreement, or intergovernmental agreement for procurement or disposal of goods and services by covered agencies and employees, except contracts or agreements for the receipt or the making of a grant-in-aid or for federal financial assistance.

(e) Any branch or agency of government exempted from the provisions of this act by subsection (a) of this section may formally agree to be bound by any provisions of this act, or by the final rules and procedures adopted pursuant to this act.

(f) The Council may enter into contracts to procure supplies and services.

Sec. 105. Limitation of contracting authority.

New,  
D.C. Code,  
sec. 1-1181.5  
(1986 supp.)

(a) No department, agency, or employee subject to this act shall exercise any procurement or contracting authority other than the authority delegated by this act, except authority otherwise provided for receiving or making grants-in-aid or for federal financial assistance.

(b)(1) The Mayor may appoint the head of each agency, subject to the provisions of this act, as a contracting officer for the District subject to all applicable laws, rules, regulations, and standards.

(2) Contracting officers shall have the authority to execute contracts on behalf of an agency subject to review by the Director of the Department of Administrative Service for compliance with provisions of this act.

(3) The Director of the Department of

Administrative Services shall be the central procurement official of the District.

(c) Each contracting officer is authorized to redelegate any contracting authority delegated pursuant to this act to other officials under the contracting officer's administrative control. This delegation shall be subject to any limitations specified in writing, copies of which shall be filed in the contracting officer's office, and submitted to the Mayor, the Director of the Department of Administrative Services, and the Inspector General. The Director shall annually publish a listing of each contracting officer within the District government and a description of the extent of their delegated contracting authority and responsibility.

Sec. 106. Determinations.

Every determination required by this act shall be in writing and based upon written findings of the public official making the determination. These determinations and written findings shall be retained in the official contract file.

New,  
D.C. Code,  
sec. 1-1181.6  
(1986 supp.)

Sec. 107. Definitions.

For the purposes of this act, the term:

(1) "Acquisition" means the obtaining by contract of property, supplies, and services (including construction) by and for the District through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated, and includes the establishment of agency needs, the description

New,  
D.C. Code,  
sec. 1-1181.7  
(1986 supp.)

of requirements to satisfy agency needs, solicitation of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

(2) "Agency" means any officer, employee, office, department, board, commission, or other entity of the District other than an independent agency, the Mayor, or the Council, that is required by law, the Mayor, or the Council to implement any law, rule, or regulation that is adopted pursuant to a law.

(3) "Architect-engineer and land surveying services" means those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the District.

(4) "Best interest of the District government" means courses of action that result in the most favorable position within the market for goods and services, or will maximize the achievement of certain socio-economic policies as expressed in this act or other existing laws.

(5) "Bid bond" means a form of security assuring that the bidder will not withdraw a bid within the period specified for acceptance and will execute a written contract within the time specified in the bid.

(6) "Bond" means a written instrument executed by a contractor (principal) and a second party (surety or sureties) to assure fulfillment of the contractor's obligations to a third party (obligee or the District). If

the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee.

(7) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted.

(8) "Centralized purchasing" means a system of purchasing in which authority, responsibility, and control of purchasing activities are concentrated in 1 administrative unit.

(9) "Central procurement official" means the Director of the Department of Administrative Services.

(10) "Competitive bidding" means the offer of prices by individuals or firms competing for a contract, privilege, or right to supply specified services or materials.

(11) "Competitive sealed proposals" means a process which includes the submission of sealed written technical and price proposals from 2 or more sources and a written evaluation of each proposal in accordance with evaluation criteria which consider price, quality of the items, performance, and other relevant factors.

(12) "Construction" means the process of building, altering, repairing, or improving any public structure or building, or other public improvements of any kind to any public real property. The term "construction" does not include the operation or routine maintenance of



existing structures, buildings, or real property.

(13) "Contract" means all types of mutually binding agreements covered by this act, which, except as otherwise authorized, are in writing. It includes, but is not limited to: (A) awards and notices of awards; (B) contracts providing for the issuance of job or task orders; (C) letter contracts; (D) purchase orders; (E) supplemental agreements and contract modifications with respect to any of the foregoing; and (F) orders.

(14) "Contract modification" means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. The term "contract modification" includes actions such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.

(15) "Contracting officer" means an agency head, or a designee who is vested with the authority to execute contracts on behalf of an agency subject to review by the Director of the Department of Administrative Services for compliance with provisions of this act.

(16) "Contractor" means any business which enters into a contract agreement with the District.

(17) "Cooperative purchasing" means procurement conducted by the District government with, or on behalf of,

a neighboring jurisdiction.

(18) "Cost-plus incentive fee contract" means a type of contract that specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula.

(19) "Cost-reimbursement contract" means a contract under which the District reimburses the contractor for those contract costs, within a stated ceiling, which are recognized as allowable and allocated in accordance with cost principles, and a fee, if any.

(20) "Data" means recorded information, regardless of form or characteristics.

(21) "Designee" means a duly authorized representative of a person holding a superior position.

(22) "Director" means the Director of the Department of Administrative Services, established by Mayor's Order 84-52, dated March 2, 1984.

(23) "Employee" means an individual receiving a salary from the District government, whether elected or not, and any nonsalaried individual performing personal services for the District government.

(24) "Established catalogue price" means the price included in the most current catalogue, price list, schedule, or other form that:

(A) Is regularly maintained by the manufacturer or supplier of an item;

(B) Is either published or otherwise available for inspection by customers;

(C) States prices at which sales are

currently or were last made to a significant number of buyers constituting the general public for that item; and

(D) States discontinued prices at which sales are currently or were last made to state, local, or federal agencies.

(25) "Evaluated bid price" means the dollar amount of a bid after bid price adjustments are made under objective measurable criteria, set forth in the invitation for bid, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, and residual value.

(26) "Excess supplies" means any supplies other than expendable supplies having a remaining useful life but which are no longer required by the using agency.

(27) "Expendable supplies" means all tangible supplies other than nonexpendable supplies.

(28) "Fixed-price contract" means a contract where the price is not subject to any adjustment on the basis of the contractor's cost experience in the performance of the contract.

(29) "Fixed-price incentive contract" means a contract that provides for adjusting profit and establishes the final contract price by a formula based on the relationship of final negotiated price to total target cost. The final price is subject to a target ceiling that is negotiated at the outset.

(30) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for

soliciting bids pursuant to section 303.

(31) "Mayor" means the Mayor of the District of Columbia or a designee.

(32) "Negotiation" means contracting by either the method set forth in section 304 or 305.

(33) "Nonexpendable supplies" means all tangible supplies having an original acquisition cost of over \$100 per unit and a probable useful life of 2 years or more.

(34) "Payment bond" means a bond to assure payment, as required by law, to all persons supplying labor or material in the performance of the work provided in the contract.

(35) "Performance bond" means a bond to secure performance and fulfillment of the contractor's obligations under the contract.

(36) "Person" means any business entity, individual, union, committee, club, or other organization or group of individuals.

(37) "Procurement" means acquisition.

(38) "Procurement request" means a document in which a using agency requests that a contract be obtained for a specified need, and may include, but is not limited to, the technical description of the requested items, delivery schedule, transportation criteria for evaluation of solicitees, suggested sources of supply, and information supplied for the making of any required written determination and finding.

(39) "Request for proposals" means all documents,

UNCONTROLLED ORIGINAL

whether attached or incorporated by reference, utilized for soliciting proposals pursuant to section 304.

(40) "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.

(41) "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

(42) "Services" means the rendering, by a contractor, of its time and effort rather than the furnishing of a specific product other than reports which are merely incidental to the required performance of services.

(43) "Sole source" means that a single source in a competitive marketplace can fulfill the specifications of a contract or is found, for a justifiable reason, to be most advantageous to the District government for the purpose of contract award.

(44) "Source selection" means the process of soliciting a bidder or offeror for the awarding of a contract.

(45) "Specification" means any description of physical or functional characteristics, or of the nature of a supply, service, or construction item. The term "specification" may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(46) "Supplemental agreement" means any contract modification which is accomplished by the mutual action of the parties.

(47) "Supplies" means all property subject to this act.

(48) "Surety" means a business legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation.

(49) "Term contract" means a contract established for a period of time for bulk purchase of certain common-use items.

(50) "Using agency" means any agency of the District government which utilizes any supplies, services, or construction procured under this act.

## TITLE II -- PROCUREMENT ORGANIZATION

### Sec. 201. Policy.

(a) It is the policy of the Council that the District government's contracting and procurement system provide for uniform rules and regulations and the equitable application of the rules and regulations to increase competition and to broaden private participation in meeting government requirements.

(b)(1) Nothing in this act or its implementing regulations shall be construed to abrogate the powers or duties of the Mayor pursuant to the District of Columbia Self-Government and Governmental Reorganization Act, effective December 24, 1973 (87 Stat. 744; D.C. Code, sec. 1-101 et seq.), or the Employment Opportunity Act of 1978,

New,  
D.C. Code,  
sec. 1-1182.1  
(1986 supp.)

effective March 3, 1979 (D.C. Law 2-128; D.C. Code, sec. 36-601 et seq.), or any other law not specifically repealed by this act.

(2) Nothing in this act or its implementing regulations shall be construed to supersede any provision of the Minority Contracting Act of 1976, effective March 29, 1977 (D.C. Law 1-95; D.C. Code, sec. 1-1141 et seq.).

(c) It is the intent of the Council to simplify and clarify the organization for contracting and procurement in the District government, while maintaining a proper separation of powers, and preserving the benefits and protections conferred on minority-owned companies by the Minority Contracting Act of 1976.

Sec. 202. Procurement regulations and information system.

New,  
D.C. Code,  
sec. 1-1182,  
(1986 supp.)

(a)(1) The Mayor shall issue rules consistent with this act governing the procurement, management, control, and disposal of any supplies, services, and construction.

(2) The Mayor shall consider and decide matters of policy within the provisions of this act, and may audit and monitor the implementation of rules and the requirements of this act.

(3) All rules issued under this act must be approved by the Council pursuant to section 205.

(b) The Director shall provide overall leadership in the implementation of procurement regulations, shall coordinate all procurement activities of the District government in accordance with the provisions of the act, and

shall develop a system of unified and simplified procurement procedures and forms.

(c)(1) Within 12 months of the effective date of this act, the Director shall develop and establish a comprehensive computer-based material management information system for collecting, organizing, disseminating, maintaining, and reporting procurement data which takes into account the needs of all branches of the District government, and the best interest of the District government.

(2) The system shall be designed to permit measuring and assessing the impact of procurement activities on the economy of the District government, and the extent to which local, women-owned, and minority business concerns are sharing in District government contracts.

(3) The system shall: (A) serve for policy and management control purposes, such as forecasting material requirements, inventory control, warehousing, accounting, and purchasing, (B) reflect the state of the art in information systems technology, and (C) have the ability to accommodate future technical enhancements, including the use of bar coding.

(d) All agencies subordinate to the Mayor shall cooperate with the Director in the establishment of the Material Management Information System ("MMIS") and shall furnish information to the system on all proposed procurements at the time the requirements for the procurement are established.



(e) All agencies independent of the Mayor shall develop or modify their existing material management information systems to be compatible with the reporting system described in subsection (d) of this section. In the event this becomes impractical, independent agencies are authorized to utilize the reporting system established by the Director on a cost-reimbursable basis. The Mayor shall issue rules setting forth requirements to promote compatibility between the MMIS and the procurement information systems of the various independent agencies. The rules shall specify reporting formats, minimum levels of information, and other data concerning procurement operations and compliance with applicable laws necessary to facilitate the exchange of procurement information, and to enable the Council to make accurate determinations regarding the District government's entire procurement process.

Sec. 203. Duties of the Director.

(a) The Director shall be the central procurement official of the District.

(b) The Director shall have the following authority and responsibility:

(1) To serve as the central procurement and contracting officer for the District;

(2) To identify gaps, omissions, or inconsistencies in procurement laws, regulations, and policies, or in laws, regulations and policies affecting procurement-related activities, and to recommend changes to regulations, rules, and procedures for adoption pursuant to

New,  
D.C. Code,  
sec. 1-1182.1  
(1986 supp.)

this act;

(3) To develop the MMIS to review all contracts for the acquisition of supplies, services, and construction for compliance with this act;

(4) To sell, trade, or otherwise dispose of surplus supplies and services belonging to the District government;

(5) To control the leasing of warehouse space and exercise automated control over all warehouses, storerooms, store supplies, inventories, and equipment belonging to the District government, consistent with the District Government Procurement Regulations;

(6) To establish and maintain programs for the development and use of purchasing specifications and for the inspection, testing, and acceptance of supplies, services, and construction;

(7) To develop guidelines for the recruitment, training, career development, and performance evaluation of procurement personnel; and

(8) To require agencies to order supplies and services from the Director when there exists a term contract for a particular supply or service, for the purposes of bulk purchasing and reducing costs, notwithstanding section 306, and to purchase, and contract for supplies for agencies in excess of their small purchase authority.

(c) The Director shall prepare reports considered necessary for the proper conduct of the Director's duties, and shall deliver the reports to the Mayor and Council as

required.

(d)(1) The Director may establish and terminate procurement advisory councils which, if created, and upon adequate public notice, shall meet at least once a year for the discussion of problems and recommendations for improvement of the procurement process.

(2) The councils shall be composed of representatives of using agencies who are selected by the respective agency head based on demonstrated procurement and professional expertise.

(3) A council may conduct studies, research, and analyses on subjects or matters within the jurisdiction of and as directed by the Director.

Sec. 204 Regulatory powers of the Mayor.

New,  
D.C. Code,  
sec. 1-118  
(1986 supp

(a) The Mayor shall have power and authority over, and shall, except as otherwise provided in this act, issue rules that are consistent with this act and adopted in accordance with the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1204; D.C. Code, sec. 1-1501 et seq.), governing (1) procedures for the review and approval of procurement contracts, including multiyear contracts, (2) conditions and procedures for delegating procurement authority, including designation of control authorities, (3) procedures for the review of determinations, and (4) procedures for the certification of adequacy of appropriations and availability of funds.

(b) The District Government Procurement Regulations shall include, but not be limited to, the following:

- (1) Procedures for the prequalification, qualification, suspension, disqualification, and reinstatement of prospective bidders;
- (2) Small purchase procedures;
- (3) Procedures for the procurement of perishables and items for resale;
- (4) Procedures for the procurement of supplies, services, or construction financed by federal contracts or grants;
- (5) Procedures for cooperative procurement;
- (6) Procedures for procurement by District government agencies which is financed by revenue bonds;
- (7) Conditions, including emergencies, and procedures under which procurement may be made by means other than competitive sealed bidding;
- (8) Procedures for the opening or rejection of bids and offers, consideration of alternative bids and offers, and waiver of informalities in bids and offers;
- (9) Procedures for safeguarding confidential, proprietary information, and trade secrets submitted by actual or prospective bidders and offerers;
- (10) Procedures for partial and multiple awards;
- (11) Procedures for supervision of storerooms and inventories, including the determination of appropriate stock levels, and the management, transfer, sale, or other disposal of publicly owned supplies;
- (12) Definitions and classes of contractual services and procedures for acquiring them;

(13) Procedures for conducting price analysis;

(14) Procedures for use of payment and performance bonds in connection with contracts for supplies and services;

(15) Guidelines for use of cost principles in negotiations, adjustments, and settlements; and

(16) Guidelines for the cancellation of invitations for bids or requests for proposals.

Sec. 205. Establishment and effect of District Government Procurement Regulations.

New,  
D.C. Code,  
sec. 1-1182.5  
(1986 supp.)

(a)(1) The existing procurement regulations, to the degree that they are consistent with this act, shall remain in effect until permanent rules are approved by the Council.

(2) The Mayor shall publish the District Government Procurement Regulations.

(3) Final rules shall be transmitted to the Council within 180 days following the effective date of this act for a 30-day review period, excluding Saturdays, Sundays, holidays, and days of Council recess.

(4) The Council may, by resolution, approve or disapprove the regulations, in whole or in part, within the 30-day review period. If the Council, by resolution, does not approve or disapprove the regulations before the expiration of the 30-day review period, the regulations shall become effective at the expiration of the 30-day review period.

(b) Any additional rules or modifications issued subsequent to the adoption of the final regulations shall be

transmitted to the Council for a 30-day review pursuant to subsection (a) of this section.

(c) No District government procurement rule or regulation shall change in any way a contract commitment by the District government or of a contractor to the District government which was in existence on the effective date of the rule or regulation.

(d)(1) Except as otherwise provided in this act, a contract which is entered into in violation of this act or the rules and regulations issued pursuant to this act is void, unless it is determined in a proceeding pursuant to this act or subsequent judicial review that good faith has been shown by all parties, and there has been substantial compliance with the provisions of the act and the rules and regulations.

(2) If a contract is void, a contractor who has entered into the contract in good faith, without directly contributing to a violation and without knowledge of any violation of the act or rules and regulations prior to the awarding of the contract, shall be compensated for costs actually incurred.

Sec. 206. Contract information hotline.

(a)(1) Within 30 days of the effective date of this act, the Director shall establish a telephone line or system of telephone lines known as the contract information hotline.

(2) The primary purpose of the contract information hotline is to provide callers with prerecorded

New,  
D.C. Code,  
sec. 1-1182.6  
(1986 supp.)

information on all contracting opportunities that are currently available with agencies of the District government.

(3) The following information shall be provided by prerecorded message to callers on the contract information hotline:

(A) The title of the invitation for bid, or other identifying information on the contract;

(B) The nature of the procurement, including whether the procurement is for supplies, services, or construction;

(C) A brief description of the type of supplies, services, or construction being sought and whether the offer is for spot acquisition or term contract;

(D) The amount of deposit required, if any;

(E) Whether the contract is restricted to the sheltered market or is available to the open market;

(F) The date and time by which bids or requests for proposals must be submitted and the place for submission;

(G) Where and when further information on the contracts may be obtained; and

(H) Any other information the Director considers appropriate and practicable.

(b) The information described in subsection (a) of this section shall be updated at least once per week as the Director considers appropriate and practicable.

Sec. 207. Centralization of procurement authority.

New,  
D.C. Code  
sec. 1-1  
(1986 su)

The Mayor shall transfer from the agencies under his direct control the personnel necessary to carry out the purposes of this act.

Sec. 208. Creation and duties of the Office of the Inspector General.

New,  
D.C. Code,  
sec. 1-1182.8  
(1986 supp.)

(a)(1) There is created within the executive branch of the District government the Office of the Inspector General.

(2) All existing positions, funding, powers, duties, functions, and other resources presently assigned to the Office of the Inspector General, established pursuant to Mayor's Order 79-7, dated January 7, 1979, are transferred to, and shall constitute the office created by this subsection.

~~(3) The Inspector General shall (A) conduct independent fiscal and management audits of District government operations; (B) act as liaison representative for the Mayor for all external audits of the District government executive branch; (C) serve as principal liaison between the District government and the U.S. General Accounting Office; (D) conduct other special audits, assignments, and investigations the Mayor shall assign; and (E) annually conduct an operational audit of all procurement activities carried out pursuant to this act in accordance with regulations and guidelines prescribed by the Mayor and issued in accordance with section 205.~~

(b) In determining the procedures to be followed and the extent of the examinations of invoices, documents, and records, the Inspector General shall give due regard to the



provisions of this act, as well as generally accepted procurement principles, practices, and procedures, including, but not limited to, federal and District government case law, decisions of the U.S. Comptroller General, and decisions of federal contract appeals boards.

(c) The Inspector General shall have access to all books, accounts, records, reports, findings relating to contracts and procurement, and all other papers, things, or property belonging to or in use by any department or agency under the direct supervision of the Mayor necessary to facilitate the Inspector General's work.

(d)(1) The Inspector General shall compile for submission to the Mayor and the Council, at least once every fiscal year, a report setting forth the scope of the Inspector General's operational audit, and a summary of all findings and determinations made as a result of the findings.

(2) Included in the report shall be any comments and information necessary to keep the Mayor and the Council informed of the adequacy and effectiveness of procurement operations, the integrity of the procurement process, and adherence to the provisions of this act.

(3) The report shall contain any recommendations deemed advisable by the Inspector General for improvements to procurement operations and compliance with the provisions of this act.

(e) The Inspector General may undertake reviews and investigations, and make determinations or render opinions

as requested by the Director. Any reports generated as a result of the requests shall be automatically transmitted to the Council within 10 days of publication.

TITLE III -- SOURCE SELECTION AND CONTRACT FORMATION

Sec. 301. District-based businesses preference.

New,  
D.C. Code,  
sec. 1-118  
(1986 supp

(a) The Director shall, in the purchase of materials, equipment, and supplies, give preference, so far as may be in the best interest of the District, to materials, equipment, and supplies produced in the District government or sold by District-based businesses.

(b) The Mayor shall issue rules articulating the various factors to be considered in determining whether a business is District-based, including the number of District residents employed, the size of the work force, and other factors considered to be in the best interest of the District government.

Sec. 302. Methods of source selection and record keeping.

New,  
D.C. Code,  
sec. 1-118  
(1986 supp

(a) Except as otherwise authorized by law, all District government contracts shall be awarded by:

- (1) Competitive sealed bidding pursuant to section 303;
- (2) Competitive sealed proposals pursuant to section 304;
- (3) Sole source contracts pursuant to section 305; or
- (4) Small purchase procedures pursuant to section 306.

(b) In selecting 1 of the methods authorized by this section for the awarding of contracts, it is the policy of the District government that competitive sealed bidding shall be the preferred method for awarding contracts.

(c) The Director shall maintain a record listing all bids and proposals made under sections 303, 304, and 305. Each bid or proposal file shall be kept for a minimum of 5 years, and shall contain the following information:

- (1) The invitation number;
- (2) The bid or proposal opening and closing dates;
- (3) A general description of the procurement item;
- (4) The names of bidders or proposers contacted and the nature of the contact, as well as, the names of all bidders or proposers responding;
- (5) The prices bid or proposed;
- (6) Any other information required for bid or proposal evaluation also must be entered into this abstract or record and be available for public inspection upon request.

Sec. 303. Competitive sealed bidding.

(a) Contracts exceeding the amount provided by section 306 shall be awarded by competitive sealed bidding unless the Director determines in writing that:

- (1) Specifications cannot be prepared that permit an award on the basis of either the lowest bid price or the lowest evaluated bid price;

New,  
D.C. Code,  
sec. 1-1183.3  
(1986 supp.)

(2) There is only 1 available source;

(3) There is an unanticipated emergency which leaves insufficient time to use this method; or

(4) There is some other reason in the best interest of the District government which is so compelling as to use 1 of the other authorized methods.

(b) The invitation for bids shall state whether an award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter basis is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids.

(c) Adequate public notice of the invitation for bids shall be given at a sufficient time before the date set forth in the notice for the opening of bids, but shall not be less than 30 days for all contracts. The notice shall include publication in a newspaper of general circulation, and in trade publications considered appropriate by the Director which will give adequate public notice.

(d) Bids shall be opened publicly at the time and place designated in the invitation for bids. Each bid, with the name of the bidder, shall be recorded and be open to public inspection.

(e) The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid will be most advantageous to the District, considering price and other factors.

(f) Correction or withdrawal of bids may be allowed only to the extent permitted by rules issued by the Mayor.

304. Competitive sealed proposals.

New,  
D.C. Code,  
sec. 1-1183.4  
(1986 supp.)

(a) When it is determined in writing, pursuant to rules issued by the Mayor, that the use of competitive sealed bidding is not practical, but that there is more than 1 available source for the subject of the contract, the contract may be awarded by competitive sealed proposal.

(b) Proposals shall be solicited from the maximum number of qualified sources and in a manner consistent with the nature of and the need for the supplies or services being acquired, with adequate public notice of the intended procurement pursuant to section 303(a).

(c) The request for proposals shall indicate the relative importance of each evaluation factor, including price.

(d) Every request for proposal shall include a statement of work which shall be used as a basis for the evaluation of proposals.

(e) Any written or oral negotiations shall be conducted with all responsible offerors in a competitive range. These negotiations may not disclose any information derived from proposals submitted by competing offerors. If the request for proposals so notifies all offerors, negotiations need not be conducted:

(1) With respect to prices fixed by law or regulation, except that consideration shall be given to competitive terms and conditions;

(2) If time of delivery or performance will not permit negotiations; or

(3) If it can be demonstrated clearly from the existence of adequate competition or accurate prior cost experience with the particular supply, service, or construction item that acceptance of an initial offer without negotiation would result in a fair and reasonable price.

(f) After all approvals required by law or rules and regulations have been obtained, the award of the contract shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the District government, considering price and the evaluation factors set forth in the request for proposals.

(g) The Mayor shall issue rules concerning the procurement of architectural and engineering services, medical and human care services, and real property appraisal services. The rules and procedures shall be consistent with the requirements set forth in title IX of the Federal Property and Administrative Services Act of 1949, approved October 27, 1972 (86 Stat. 1278; 40 U.S.C. 541-544).

Sec. 305. Sole source procurement.

(a) Procurement contracts may be awarded through noncompetitive negotiations when under rules issued by the Mayor and approved by the Council, the Director or a designee determines in writing that 1 of the following conditions exists:

(1) There is only 1 source for the required commodity, service, or construction item;

(2) The contract is for the purchase of real

New,  
D.C. Code,  
sec. 1-1183.5  
(1986 supp.)

property or interests in real property;

(3) The contract is with a vendor who maintains a price agreement or schedule with any federal agency, so long as no contract executed under this provision authorizes a price higher than is contained in the contract between the federal agency and the vendor; or

(4) Contracts for the purchase of commodities, supplies, equipment, or construction services that would ordinarily be purchased on a competitive basis when an emergency has been declared pursuant to section 312.

(b) When a contract or subcontract has been designated, before solicitation of bids, to be awarded as part of the Sheltered Market Program as defined in the Minority Contracting Act of 1976, effective March 29, 1977 (D.C. Law 1-95; D.C. Code, sec. 1-1142(7)), but only 1 firm certified by Minority Business Opportunity Commission can fulfill the requirements of the contract or subcontract, a sole source contract may be awarded, consistent with rules issued by the Mayor.

Sec. 306. General limitations; small purchase procurements.

New,  
D.C. Code,  
sec. 1-1183.6  
(1986 supp.)

Purchases, by each agency subordinate to the Mayor, may be made in accordance with this act, not to exceed amounts established in the District Government Procurement Regulations. The purchase authority of an agency shall be based on a sliding scale as established by the District Government Procurement Regulations, and take into account the size and mission of the agency, but shall not exceed

\$10,000. Procurement requirements shall not be parcelled, split, divided, or purchased over a period of time in order to not exceed the dollar limitations for use of the small purchase procedures.

Sec. 307. Cancellation of invitations for bids.

An invitation for bids, a request for proposals, or other solicitations may be cancelled, or all bids or proposals may be rejected, only if it is determined in writing by the Director that the action is taken in the best interest of the District government. This information must be forwarded to the Inspector General for review within 72 hours of the action.

New,  
D.C. Code,  
sec. 1-1183.7  
(1986 supp.)

Sec. 308. Cost or pricing data.

(a) A contractor or offeror shall submit cost or pricing data and shall certify that, to the best of the contractor's or offeror's knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date, before entering into:

New,  
D.C. Code,  
sec. 1-1183.1  
(1986 supp.)

(1) Any contract awarded through competitive sealed proposals or through sole source procurement; or

(2) Any change order or contract modification.

(b) Every contract, change order, or modification under which a cost and price certificate is required shall contain a provision that the price, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the contractor furnished cost or price information which, as of the date specified in subsection



(a) of this section, was inaccurate, incomplete, or not current.

(c) This section need not be applied to contracts for which the price negotiated is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulations.

Sec. 309. Cost-plus-a-percentage-of-cost contract.

The cost-plus-a-percentage-of-cost-contract system of contracting shall not be used.

New,  
D.C. Code,  
sec. 1-1183.9  
(1986 supp.)

Sec. 310. Cost-reimbursement contracts.

(a) No cost-reimbursement contract may be awarded pursuant to sections 303, 304, or 305 unless it is determined in writing that such a contract is likely to be less costly to the District government than any other type of contract, or that it is impracticable to obtain supplies or services of the kind or quality required except under such a contract.

New,  
D.C. Code,  
sec. 1-1183.10  
(1986 supp.)

(b) All cost-reimbursement contracts shall contain a provision that only costs determined in writing to be reimbursable by the contracting officer, in accordance with cost principles set forth in rules issued pursuant to title VI of this act, shall be reimbursable.

Sec. 311. Use of other types of contracts.

(a) Subject to the limitations of section 310 and this section, any type of contract which will promote the best interest of the District government may be used.

New,  
D.C. Code,  
sec. 1-1183.11  
(1986 supp.)

(b) Preference shall be given in the order indicated

to the following types of contracts: first, fixed-price; second, fixed-price incentive; third, cost-plus incentive fee; and fourth, cost-plus fixed fee or cost-reimbursement.

Sec. 312. Emergency procurements.

New,  
D.C. Code,  
sec. 1-1183  
(1986 supp.)

(a)(1) Notwithstanding any other provision of this act, the 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 rules adopted pursuant to this act.

(2) Emergency procurements shall be made with as much competition as is maximally practicable under the circumstances.

(3) A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file which shall be kept in the office of the Director.

(b) The Director shall maintain a record listing all contracts entered into pursuant to this section for a minimum of 5 years. The record shall contain:

- (1) The contract number;
- (2) The name and address of each contractor;
- (3) The dollar amount of each contract;
- (4) The type of contract; and
- (5) A listing of the supplies, services, or construction procured under each contract.

Sec. 313. Multiyear contracts.

New,  
D.C. Code,  
sec. 1-1183  
(1986 supp.)

(a) Unless otherwise provided in an appropriations act, a contract for supplies, services, or construction may

be entered into for periods which extend beyond the fiscal year in which the contract is contemplated.

(b) Before the utilization of a multiyear contract, it shall be determined in writing that:

(1) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(2) Such a contract will serve the best interest of the District government, encourage effective competition, or otherwise promote economies in District government procurement.

(c) If funds are not appropriated or otherwise made available for the continued performance in a subsequent year of a multiyear contract, the contract for the subsequent year shall be terminated, either automatically or in accordance with the termination clause of the contract, if any. Unless otherwise provided for in the contract, the effect of termination is to discharge both the District government and the contractor from future performance of the contract, but not from their existing obligations. The contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

Sec. 314. Inspection of plant and audit of records.

(a) The Director may inspect the plant or place of business of a contractor or any subcontractor under any contract awarded or to be awarded, by the District government.

New,  
D.C. Code,  
sec. 1-1183.  
(1986 supp.)

(b) The Director may audit the books and records pertaining to the contract of:

(1) Any business which has submitted cost or pricing data pursuant to section 308;

(2) Any prime contractor awarded a contract under competitive sealed proposals or a subcontract other than a firm fixed-price contract; and

(3) Any contractor providing professional services to the District government if the contract price exceeds \$25,000.

(c) Books and records shall be maintained by the contractor for a period of 3 years from the date of final payment under the contract and shall be made available within 3 work days, excluding Saturdays, Sundays, and holidays, to the Director upon his or her written request.

Sec. 315. Finality of determinations.

The determinations required by sections 303, 304, 305, 307, 308, and 310 are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

New,  
D.C. Code,  
sec. 1-1183.11  
(1986 supp.)

Sec. 316. Collusive bidding or negotiation.

(a) A business which enters into a contract with the District government after engaging in collusion with another business for the purpose of defrauding the District government is liable in a suit brought by the Corporation Counsel in the appropriate court for damages equal to 3 times the value of the loss to the District government attributable to the collusion.

New,  
D.C. Code,  
sec. 1-1183.16  
(1986 supp.)

(b) If there is a reasonable basis for believing that collusion has occurred among any businesses for the purpose of defrauding the District government, the Director shall send a written notice of this belief to the Corporation Counsel and to the Mayor.

(c) All documents involved in any procurement in which collusion is suspected shall be retained until the Corporation Counsel gives notice that they may be destroyed. All documents shall be made available to the Corporation Counsel.

Sec. 317. Prohibitions.

(a) Every contract shall contain the following prohibition against contingent fees: "The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty, the District government shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee."

(b) A contractor may not offer to pay any fee or other consideration that is contingent on the making of a contract.

New,  
D.C. Code,  
sec. 1-1183.1  
(1986 supp.)

(c) An employee of a District government agency may not solicit or secure, or offer to solicit or secure, a contract for which the employee is paid or is to be paid any fee or other consideration contingent on the making of the contract between the employee and any other person.

(d) The District Government Procurement Regulations shall provide that information which has been designated as confidential or proprietary by a business, and which has been submitted by that business as a part of its response to an invitation for bids, a request for proposals, or competitive sealed proposals, is to be treated by the Director, an employee of that office, or any other employee of the District in a confidential manner, and is to be disclosed only to District employees for use in the procurement process and is not to be disclosed to other persons or parties without the prior written consent of that business.

Sec. 318. Termination of contracts.

New,  
D.C. Code,  
sec. 1-1183.1  
(1986 supp.)

(a) The Director may terminate without liability any contract and may deduct from the contract price or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid in violation of this title, if:

(1) The contractor has been convicted of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract; or

(2) There has been any breach or violation of:

(A) Any provision of this act; or

(B) The contract provision against contingent fees.

(b) If a contract is terminated pursuant to this section, the contractor:

(1) May be paid only the actual costs of the work performed to the date of termination, plus termination costs, if any; and

(2) Shall refund all profits or fixed fees realized under the contract.

(c) The rights and remedies contained in this section are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law.

Sec. 319. Report of procurement actions made pursuant to sections 305 and 312.

New,  
D.C. Code,  
sec. 1-1183.11  
(1986 supp.)

(a) The Director shall make an annual report to the Council, within 90 days following the close of each fiscal year, of contracts made pursuant to sections 305 and 312 during the preceding fiscal year. The report shall include for each contract:

- (1) The contract number;
- (2) The name and address of each contractor;
- (3) The dollar amount of the contract;
- (4) The type of contract;
- (5) A listing of the supplies, services, or construction provided under the contract;
- (6) Whether the contract was in the open or sheltered market; and

(7) As attachments, copies of all determinations and findings required to be made by the provisions of this title and the implementing regulations.

(b) The reports shall be retained for a period of 3 years and shall be made available to the public upon request.

#### TITLE IV -- SPECIFICATIONS

##### Sec. 401. Specifications.

The Director shall:

(1) Prepare and issue standard specifications for supplies, services, and construction required by the District government on needs identifications supplied by the agencies;

(2) Revise all standard specifications to conform to existing technical and scientific advances pertaining to supplies, services, and construction described in those specifications;

(3) Obtain expert advice and assistance from personnel of the various agencies in the development of standard and nonstandard specifications, and may delegate in writing to a using agency the authority to prepare its own specifications; and

(4) Assist each agency in developing an unambiguous statement of the technical requirements and evaluation criteria necessary to prepare a nonstandard procurement specification.

##### Sec. 402. Energy conservation.

(a) Specifications for the procurement of goods,

New,  
D.C. Code,  
sec. 1-1184.1  
(1986 supp.)

New,  
D.C. Code,  
sec. 1-1184.2  
(1986 supp.)



whenever possible, shall contain standards for energy efficiency.

(b) Specifications for the acquisition of all motor fleet and mobile equipment shall include life cycle or total ownership costs among factors to be considered in the evaluation of bids and proposals.

#### TITLE V -- BONDS AND CONSTRUCTION PROCUREMENT

##### Sec. 501. Bonds.

New,  
D.C. Code,  
sec. 1-1185.1  
(1986 supp.)

(a) The District Government Procurement Regulations shall set forth the conditions and procedures for bid bonds, performance bonds, and payment bonds for all contracts estimated to exceed \$100,000, which shall include the mandatory provisions for construction contracts set forth in this title.

(b) The procurement regulations may waive bid, performance, and payment bonds for contracts estimated not to exceed \$100,000 unless the bonds are required by federal law, rule or regulation, or as a condition of federal assistance.

(c) Nothing in this title shall be construed to limit the authority of the Mayor to require a performance bond or other security in addition to those, or in circumstances other than those, specified in this section.

(d) Notwithstanding other provisions of this act, the Mayor 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 businesses certified by the Minority Business

Opportunity Commission, women-owned businesses, and small District-based businesses.

Sec. 502. Bid bonds for construction contracts.

New,  
D.C. Code,  
sec. 1-1185.2  
(1986 supp.)

(a)(1) Bid security shall be required for all competitive sealed bids and competitive sealed proposals for construction contracts when the price is estimated by the Mayor to exceed \$100,000.

(2) This amount is subject to revision by the procurement regulations. Bid security shall be a bond provided by a surety company authorized to do business in the District, or the equivalent in cash, or otherwise supplied in a form satisfactory to the Mayor.

(3) Nothing in this act shall prevent the requirement of bonds on construction contracts under \$100,000, when the circumstances warrant.

(b) The bid bond shall be in an amount equal to at least 5% of the amount of the bid or price proposal.

(c) If the invitation for bids or request for proposals requires that a bid bond be provided, a bidder or offeror that does not comply shall be rejected unless, pursuant to the District Government Procurement Regulations, it is determined that the bid fails to comply in a nonsubstantial manner with the security requirements.

(d) Once opened, bids or price proposals are irrevocable for the period specified in the invitation for bids or the request for proposal, except as may be provided in the District Government Procurement Regulations. If a bidder or offeror is permitted to withdraw a bid or proposal

before award because of a mistake in the bid or proposal, no action shall be taken against the bid bond.

Sec. 503. Performance bonds for construction contracts.

New,  
D.C. Code,  
sec. 1-1185.3  
(1986 supp.)

On all contracts estimated to exceed \$100,000, the contractor shall furnish a performance bond executed by a surety authorized to do business in the District, the equivalent in cash, or other security considered satisfactory to the Mayor. The performance bond shall be in an amount considered adequate by the Mayor to ensure the protection of the District government.

Sec. 504. Payment bonds for construction contracts.

New,  
D.C. Code,  
sec. 1-1185.4  
(1986 supp.)

(a) On all contracts estimated by the Mayor to exceed \$100,000, the contractor shall furnish a payment bond executed by a surety authorized to do business in the District, or the equivalent in cash, or other security considered satisfactory to the Mayor. The payment bond shall be for the protection of all businesses supplying labor and materials, including lessors of equipment to the extent of the fair rental value of the equipment, to the contractor or a subcontractor in the performance of work provided for by the contract.

(b) The payment bond shall be in an amount not less than 50% of the total amount payable by the terms of the contract.

(c) Any contractor, prior to receiving a progress or final payment under a contract covered by this act, shall certify in writing that the contractor has made payment from

the proceeds of prior payments, and that the contractor will make timely payments from the proceeds of the progress or final payment then due the contractor, to the contractor's subcontractors and suppliers in accordance with his or her contractual arrangements with them.

Sec. 505. Bond forms, filings, and copies.

(a) Bonds or other security shall be payable to the District government, on forms prescribed by rule or regulation, and shall be filed with the Mayor.

(b) The Mayor shall furnish a certified copy of a payment bond or other security to any person making application who submits an affidavit that the person has supplied labor or materials for which payment has not been made, or that the person is being sued on any bond or other security.

(c)(1) A certified copy of the bond or other security shall be prima facie evidence of the contents, execution, and delivery of the bond or other security as applicable.

(2) Applicants shall pay for the certified copies and the fees set by the Mayor to cover the costs of preparation.

Sec. 506. Suits on payment bonds.

(a) Every person who has furnished labor or materials to the contractor or a subcontractor for the work provided in the contract, in respect to which a payment bond or other security is furnished under this section, and who has not been paid in full before the expiration of a period of 90 days after the day on which the last of the labor was done

New,  
D.C. Code,  
sec. 1-1185.5  
(1986 supp.)

New,  
D.C. Code,  
sec. 1-1185.6  
(1986 supp.)

or performed by the person or material was furnished or supplied by the person for which claim is made, shall have the right to sue on the payment bond or other security for the amount, or the balance unpaid at the time of institution of the suit, and to prosecute the action to final judgement and execution for the sum or sums justly due the person.

(b) Any person having a direct contractual relationship with a subcontractor of the contractor, but having no contractual relationship, expressed or implied, with the contractor furnishing the payment bond or other security, shall have a right of action upon the payment bond or other security upon giving written notice to the contractor within 90 days from the date on which the person performed the last of the labor or furnished or supplied the last material for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed.

(c) The notice shall be personally served or served by registered or certified mail, postage prepaid, addressed to the contractor at any place the contractor maintains an office or conducts business, or at the contractor's residence.

(d) No suit instituted under this section shall be commenced after 1 year from the date the final labor was performed or the material was supplied.

Sec. 507. Clauses, modifications, and fiscal responsibility.

New,  
D.C. Code,  
sec. 1-1185.7  
(1986 supp.)

(a) In all construction contracts estimated to exceed \$50,000, the Mayor shall include, but not be limited to, clauses concerning.

- (1) Termination for the convenience of the District government, or for default;
- (2) Liquidated damages;
- (3) Excuses for nonperformance;
- (4) A change order;
- (5) Differing site conditions from those indicated in the specifications;
- (6) Suspension of work; and
- (7) Disputes.

(b)(1) Every supplemental agreement, change order, or adjustment in contract price is subject to prior approval by the Director and certification by the appropriate fiscal authority as to availability of funds and the effect of the modification, change, or adjustment on the project budget or the total construction cost.

(2) If the certification discloses a resulting increase in the project budget or total construction cost, there shall be no modification, change, or adjustment unless sufficient funds are made available, or the scope of the project is adjusted to permit its completion within the project budget.

Sec. 508. Nondiscrimination.

(a) A contract subject to this title may not be awarded to any contractor unless the contract contains provisions obligating the contractor not to discriminate in

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any manner against any employee or applicant for employment that would constitute a violation of section 211 of the District of Columbia Human Rights Act, approved December 13, 1977 (D.C. Law 2-38· D.C. Code, sec. 1-2512), and obligating the contractor to include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, the contractor and subcontractor shall agree to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of the nondiscrimination clause provided in section 251 of the District of Columbia Human Rights Act (D.C. Code, sec. 1-2522).

(b) Failure to include such a contract provision may render any contract void ab initio at the election of the Director, but any party shall be entitled to reasonable value of services performed and materials supplied.

(c) If the contractor wilfully fails to comply with the nondiscrimination provisions, the Director may, when the contract is still executory in part, compel continued performance of the contract, but the District government shall be liable only for the actual cost of services performed and materials supplied from the date of wilfull noncompliance, and profits previously paid by the District government under the contract shall be set off against the sums to become due as the contract is performed.

(d) If the subcontractor wilfully fails to comply with the nondiscrimination provisions, the contractor may void the contract and shall be liable only for the actual costs

of the services performed and materials supplied.

(e)(1) Any person with information concerning violations of the requirements of this section may inform the Director.

(2) The Director, upon receiving information of an alleged violation, shall immediately inform the Director of the Office of Human Rights in writing, and request an investigation of the charges.

(3) If the Office of Human Rights concludes that the charges are true, the Director shall invoke the remedies set forth in this section, in addition to other remedies or action provided pursuant to title III of the District of Columbia Human Rights Act, effective December 13, 1977 (D.C. Law 2-38; D.C. Code, sec. 1-2541 et seq.).

TITLE VI -- COST PRINCIPLES

Sec. 601. Rules required.

The Mayor shall issue rules for determining the reasonableness of price and establishing cost principles, based upon generally accepted accounting principles, which shall be used:

New,  
D.C. Code,  
sec. 1-1186.1  
(1986 supp.)

(1) As guidelines in the negotiation of:

(A) Estimated costs or fixed prices if the absence of open market competition precludes the use of sealed bidding;

(B) Equitable adjustments for District government directed changes or modifications in contract performance;

(C) Settlements of contracts which have been



terminated; and

(D) The allowability of costs under contract provisions which provide for the reimbursement of costs; and

(2) In any other situation that requires the determination of the estimated or incurred costs of performing the contracts.

#### TITLE VII -- SUPPLY MANAGEMENT

Sec. 701. Supply management rules.

The Mayor shall issue rules governing:

(1) The management of supplies during their entire life cycle;

(2) The sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by regulation and providing that no employee of the disposing agency shall be entitled to purchase any surplus supplies; and

(3) Transfer of excess supplies.

Sec. 702. Proceeds from the disposal of surplus goods.

Unless otherwise provided by law, the Director shall send proceeds from the sale, lease, or disposal of surplus goods and supplies back to the General Fund. The Director shall transmit to the Council a quarterly report providing detailed information on transactions made under this section.

#### TITLE VIII -- ADMINISTRATIVE AND CIVIL REMEDIES

Sec. 801. Sovereign immunity defense not available.

Unless otherwise specifically provided by law of the District, the District government and every officer,

New,  
D.C. Code,  
sec. 1-1187.  
(1986 supp.)

New,  
D.C. Code,  
sec. 1-1187

New,  
D.C. Code,  
sec. 1-118  
(1986 supp)

department, agency or other unit of the District government may not raise the defense of sovereign immunity in the courts of the District in an action based upon a written procurement contract executed on behalf of the District government.

Sec. 802. District government not liable for punitive damages.

New,  
D.C. Code,  
sec. 1-1188.  
(1986 supp.)

In an action in contract based upon a written contract executed on behalf of the District government, or by an official or employee acting within the scope of the official's or the employee's authority, the District government, its officers, departments, agencies, or other units of government are not liable for punitive damages.

Sec. 803. Claims by the District government against a contractor.

New,  
D.C. Code,  
sec. 1-1188.  
(1986 supp.)

(a)(1) All claims by the District government against a contractor arising under or relating to a contract shall be the subject of an informal hearing and decision by the Director, who shall issue the decision in writing, and shall mail or otherwise furnish a copy of the decision to the contractor.

(2) The decision shall be supported by reasons and shall inform the contractor of his or her rights as provided in this title. Specific findings of fact are not required, but, if made, shall not be binding in any subsequent proceeding.

(3) The authority of this subsection shall not apply to a claim or dispute for penalties or forfeitures

prescribed by statute or regulation which another District government agency is specifically authorized to administer, settle, or determine.

(4) This subsection shall not authorize the Director to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(b) The decision of the Director shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced as authorized by section 904.

(c) Nothing in this title shall prohibit the Director from including a clause in District government contracts requiring that pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the decision of the Director.

Sec. 804. Authority to debar or suspend.

(a)(1) After reasonable notice to the business involved and reasonable opportunity for that business to be heard, the Director may debar a business for cause from consideration for award of contracts or subcontracts.

(2) The debarment shall not be for a period of more than 3 years.

(3) The Director may suspend a business from consideration for award of contracts if there is probable cause for debarment.

(4) The suspension shall be exercised in accordance with rules issued by the Mayor.

New,  
D.C. Code,  
sec. 1-1188.4  
(1986 supp.)