



**DISTRICT OF COLUMBIA  
WATER AND SEWER AUTHORITY**

Board of Directors

*Governance Committee*

**May 13, 2015**

**9:00 a.m.**

1. Call to Order.....Ellen Boardman, Chairperson
2. [DC Water Works! Employment Programs Update](#).....Korey Gray, Compliance Officer
3. [Proposed Amendments to the Procurement Manual](#).....Randy Hayman, General Counsel
4. Emerging Issues and Other Business.....Chairperson
5. Agenda for Upcoming Committee Meeting (TBD).....Chairperson
6. Executive Session – To discuss legal, confidential and privileged matters pursuant to Sections 2-575 (b) (4) (A) and (B) of the D.C. Official Code
7. Adjournment.....Chairperson



District of Columbia Water and Sewer Authority  
George S. Hawkins, CEO and General Manager



# ***PROGRAMS UPDATE***

*Presented to the*

**Governance Committee**

*Ellen Boardman, Chairperson*

***Wednesday, May 13, 2015***



District of Columbia Water and Sewer Authority  
George S. Hawkins, CEO and General Manager

# FY 2015 DC Water Contractor Employment Data



## FY 2015 DC Water Goods and Services Employment Data

Goods and Services Contracts: Agreements whereby a contractor/consultant supplies a good (tangible product) time, effort, and/or expertise (e.g., outside contractors, janitorial services, security and fleet services excluding professional services, legal, financial & AE)

- In FY 2015, there were 608 contractor job positions on Goods and Service contracts.
  - 352 positions (58%) were filled (transfers and new hires) by residents within DC Water’s User Jurisdiction.
    - 116 positions (19%) were filled (transfers and new hires) by District of Columbia residents.
  - Goods and Service contract new hires: 24
    - 20 new hires were from the DC Water User Jurisdiction

**Table 1:** Number of Goods and Service Contract Positions

	# of Positions	%
➤ User Jurisdiction	<b>352</b>	<b>58%</b>
○ DC	116	19.1%
○ PGC	107	17.6%
○ MC	51	8.4%
○ FC	72	11.8%
○ LC	6	1%
➤ OTH MD	<b>106</b>	<b>17.4%</b>
➤ OTH VA	<b>76</b>	<b>12.5%</b>
➤ Outside User Jurisdiction	<b>74</b>	<b>12.2%</b>
<b>Total</b>	<b>608</b>	



## FY 2015 DC Water Non-Major Construction Projects Employment Data

- In FY 2015, there were 1,163 contractor job positions on Non Major Construction projects.
  - 777 positions (62%) were filled (transfers and new hires) by residents within DC Water’s User Jurisdiction.
    - 179 positions (14%) were filled (transfers and new hires) by District of Columbia residents.
  - Non-Major Construction new hires: 38
    - 31 new hires were from the DC Water User Jurisdiction

**Table 2:** Number of Non Major Project Positions

	# of Positions	%
➤ User Jurisdiction	<b>777</b>	<b>62%</b>
○ DC	179	14%
○ PGC	325	26%
○ MC	102	8%
○ FC	168	13%
○ LC	3	1%
➤ OTH MD	<b>172</b>	<b>14%</b>
➤ OTH VA	<b>97</b>	<b>8%</b>
➤ Outside User Jurisdiction	<b>201</b>	<b>16%</b>
<b>Total</b>	<b>1247</b>	



## FY 2015 DC Water Major Construction Projects Employment Data

(e.g., Clean Rivers, Enhanced Nitrogen Removal, Tunnel Dewatering Pump Stations and Biosolids Management)

- In FY 15, there were 2,826 contractor job positions on Major Construction contracts.
  - 1,337 positions (47%) were filled (transfers and new hires) by residents within DC Water’s User Jurisdiction.
    - 320 positions (11%) were filled (transfers and new hires) by District of Columbia residents.
  - Major Construction new hires: 21
    - 15 new hires were from the DC Water User Jurisdiction

**Table 3:** Number of Major Project Positions

	# of Positions	%
➤ User Jurisdiction	<b>1,337</b>	<b>47.3%</b>
○ DC	320	11.3%
○ PGC	484	17.1%
○ MC	182	6.4%
○ FC	270	9.6%
○ LC	81	2.9%
➤ OTH MD	<b>473</b>	<b>16.7%</b>
➤ OTH VA	<b>533</b>	<b>18.9%</b>
➤ Outside User Jurisdiction	<b>483</b>	<b>17.1%</b>
<b>Total</b>	<b>2,826</b>	



## FY 2015 Contractor New Hires

### DC Water Job Center Highlights

**Table 4:** New Hires through DC Water’s Job Center (October 2014- April 2015)

Contractor	Positions Hired	Resident Location	New Hires Reported
Bulldog Construction	Class A Driver	Washington, DC	1
EE Cruz	Administrative Asst	Fairfax County	1
EE Cruz	Administrative Asst	Washington, DC	1
EE Cruz	Environmental Engineer	Fairfax County	1
EE Cruz	Flagger	Prince George’s County	1
EE Cruz	Skilled Laborer	Washington, DC	1
<b>Previously Reported</b>			
Million Construction	Laborer	Washington, DC	1
<b>Total New Hires Reported</b>			<b>7</b>



## FY 2015 WaterWorks Highlights

### Update on the February 4, 2015 EE Cruz Job Fair

EE Cruz was interested in meeting candidates for the following positions:

- Carpenters
- Mechanics
- Operators
- Skilled Laborers
- Un-skilled Laborers

(EE Cruz did not have a fixed number individuals needed per position)

Job fair consisted of 5 minute “interviews” with EE Cruz staff.

Initially DC Water scheduled interviews with for 207 participants. However, an additional 284 were walk-ins.

Individuals were rated by EE Cruz from (1) lowest and four (4) highest

31 individuals were rated 3 or 4.

Of these, 4 were hired by EE Cruz:

- 2 Administrative Positions
- 1 Flagger
- 1 Skilled Laborer

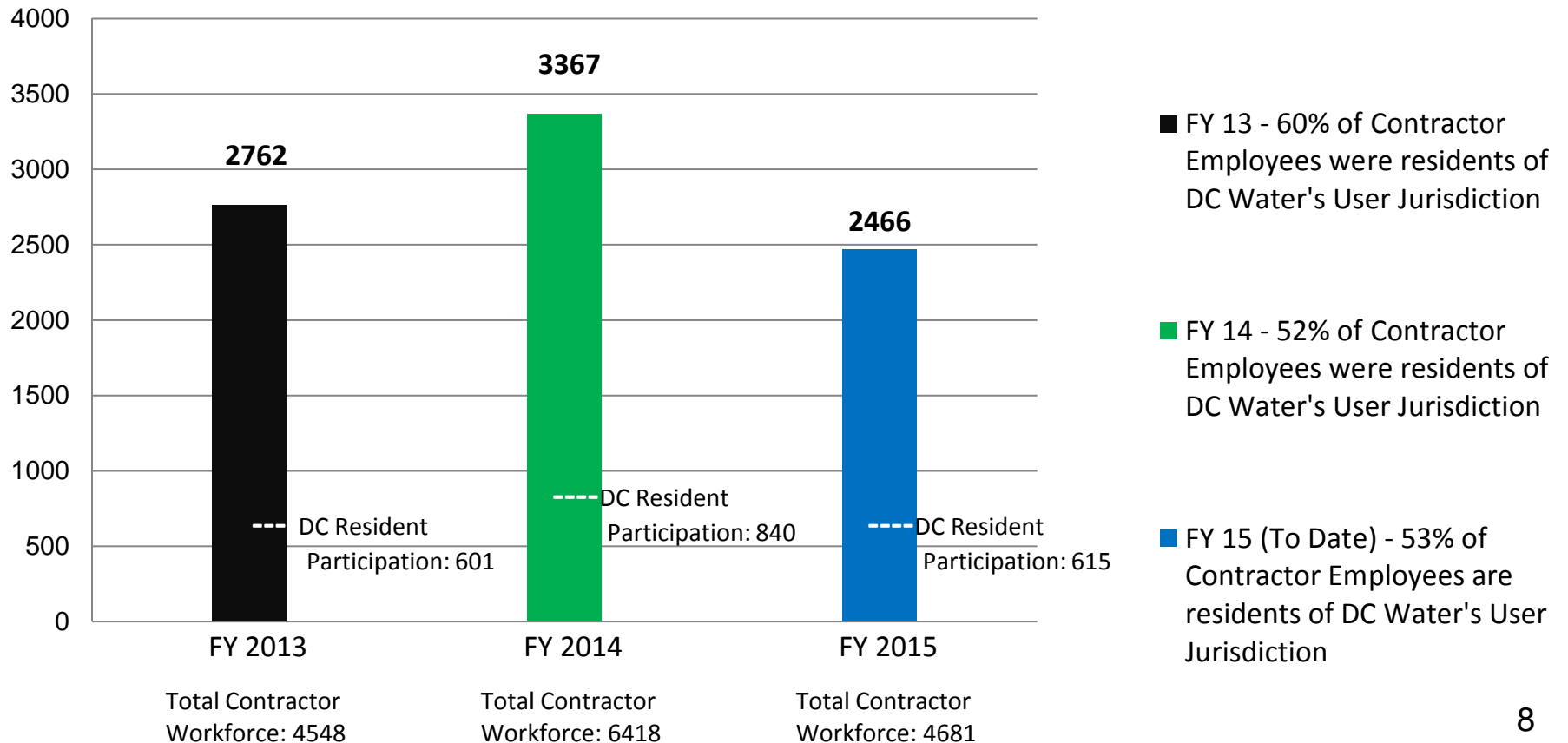
An additional 27 are scheduled to be interviewed through May, 2015





## FY 2015 WaterWorks Highlights

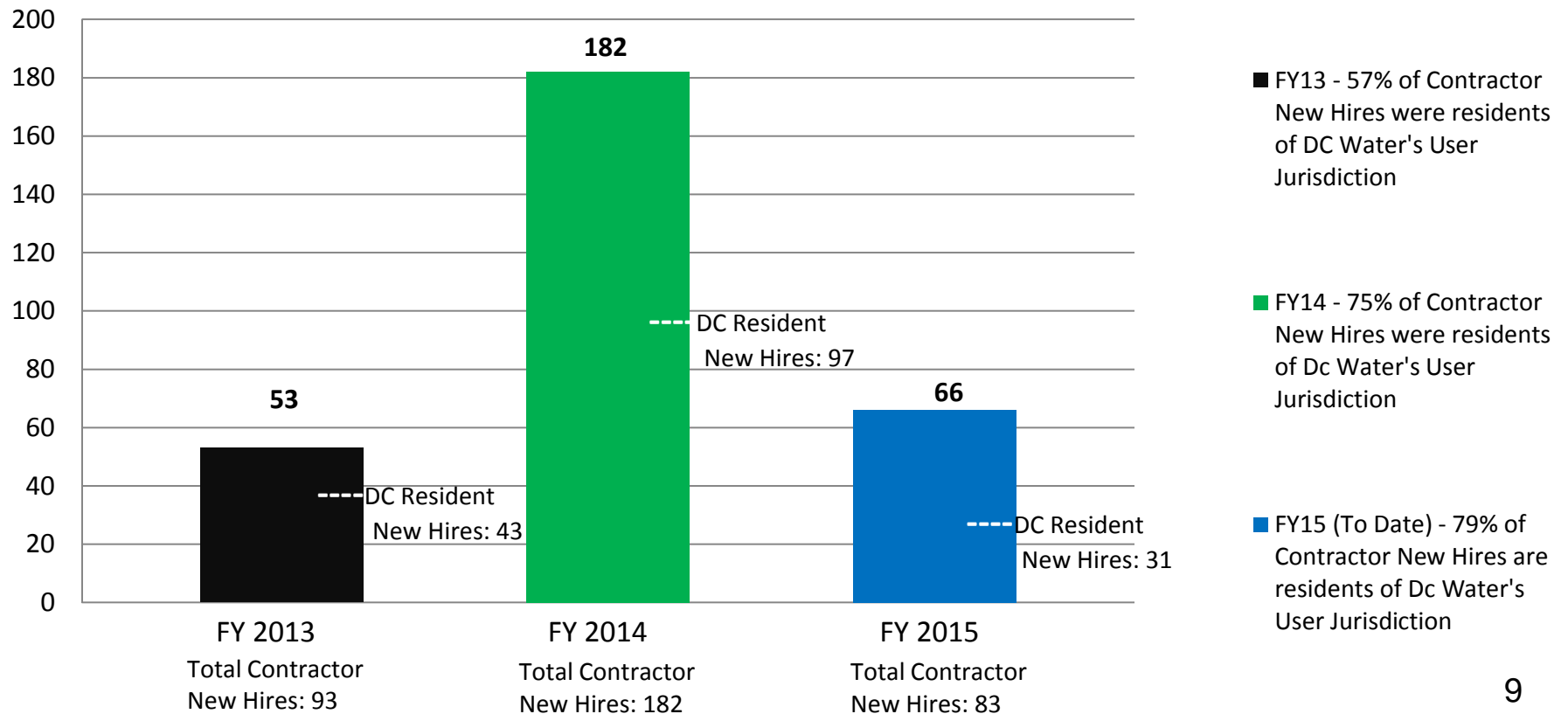
### DC Water Contractor Total Workforce Three (3) Year Review





## FY 2015 WaterWorks Highlights

### DC Water Contractor New Hire Data Three Year Review





District of Columbia Water and Sewer Authority  
George S. Hawkins, CEO and General Manager

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# ***Update on Permanent Program Framework***



# ***DC WaterWorks Program***

## **I. Establish Employment Goals**

- Total Workforce Goal for residents of DC Water’s User Jurisdiction
- New Hire Goal for District of Columbia Residents
- Best Faith Efforts by Contractors to achieve the goals

## **II. Establish Incentives for contractors**

### Pre-Award

- Provide points/preference, as part of the evaluation process, for proposers that demonstrate past experience/ programs that target local hires.

### Post Award

- Semi-Annual “Thank You/ Update” letter on employment participation signed by Chief of Staff
- “Thank you/ Update” letter on local employment participation signed by the General Manager at end of project
- All firms with local hires to be included in annual report (as an appendix). Top five firms will be featured in a “one pager” in the report.



## ***DC WaterWorks Program***

### **III. Training/Placement Providers**

- Engage (up to) three third-party job training and job placement providers to develop and operate job training and job placement assistance programs in support of construction, and service projects.
- Training based on procurement forecast and needs of contractors (Employment Plans)
  - Establish a Business Advisory Committee (made up of contractors and DC Water staff) to assist the provider(s) in developing curriculum for the program.
- Maximize training graduation rates and job placement rates with a goal of achieving an eighty percent (80%) graduation rate and a fifty percent (50%) job placement rate.
- Stipends to trainees; fund testing and certification fees for those proceeding to obtaining certification.
- Solicitation to include a provision that the primary source of employment opportunities will be with DC Water contractors. However, the contractor should have relationships with additional contractors/sources.
- For employment opportunities not covered under the Training/Placement providers program, contractors will submit job opportunities to the DC Water Works team (database) for identification of candidates.



## ***DC WaterWorks Program***

### **IV. New Online Database**

- New system streamlines data collection and provides simpler reporting for contractors.
- Capture Employment Plan data – allow for online updates
- Contractors to post job opportunities online
- Contractors to submit weekly payroll reports (data entry and upload)
- Contractors to submit monthly reports online
- Allow for individuals to search job opportunities and post resumes/information form
- Allow contractors to search resumes/applications
- Generate management (canned/ad-hoc) reports
- Establish links with DOES' Job Centers and DC public Libraries so that individuals visiting these locations can also search for jobs with DC Water's contractors.



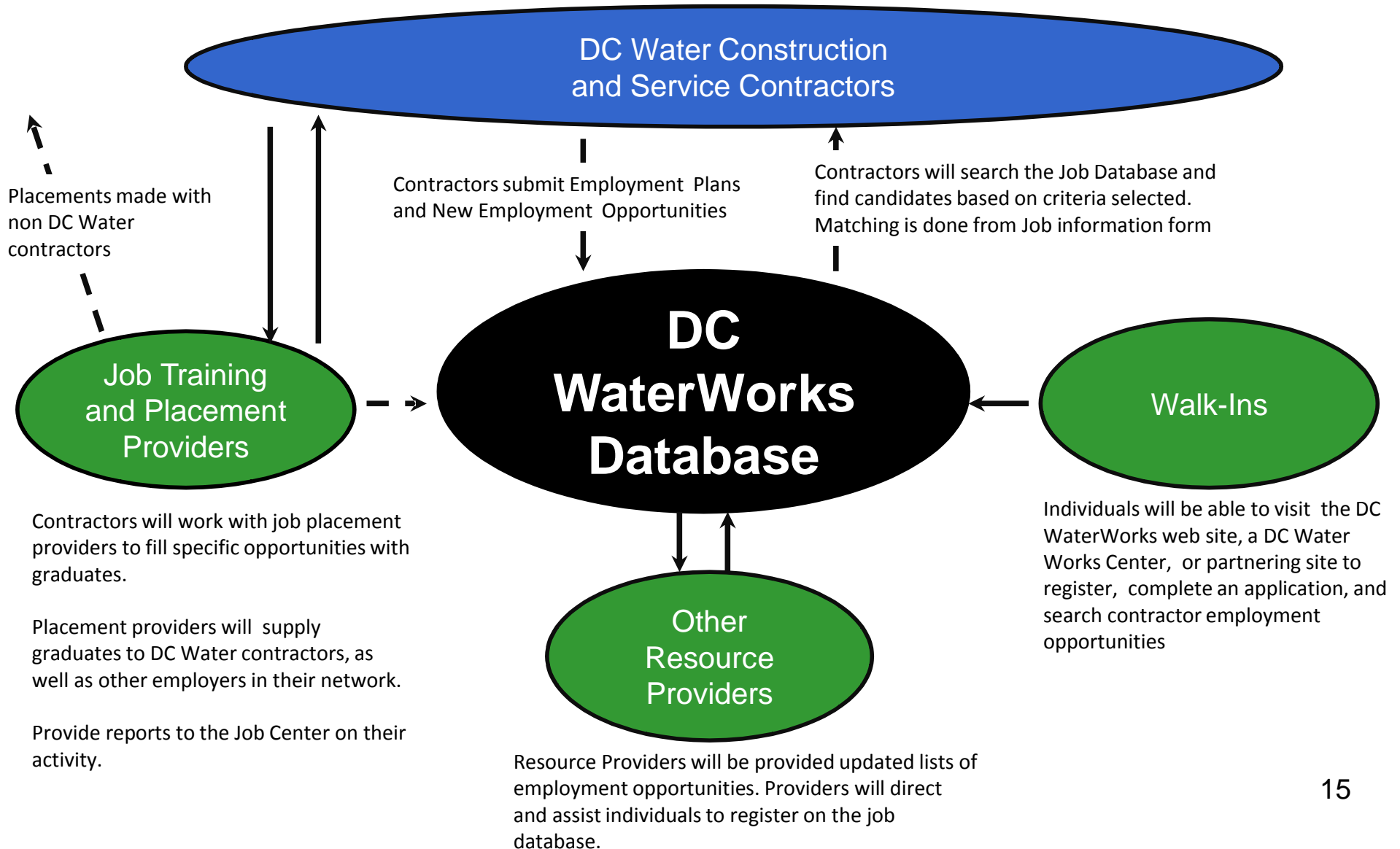
## ***DC WaterWorks Program***

### **V. Job Centers**

- Community presence
- Allow individuals to view contractor employment opportunities, complete applications, post resumes
  - Applications are recorded in an electronic database and then made available to DC Water contractors.
- Applicant support – DC Water will direct applicants to external resources (job training, job banks, etc).
- Resume writing support
- Contractor Days- Once per month, representatives from DC Water’s contractors to meet with individuals to provide an overview of their respective project(s) as well as qualifications needed to gain employment in their field. Registration required.



## Job Referral Flow Chart







# ***DC WaterWorks Program***

## **VI. Contractor Responsibilities**

### All construction contractors and service contractors

- Submit new employment opportunities with the Job Center
- Work with Training Provider(s) to place graduates of training program
- Contractors intending to use apprentices to follow Department of Labor guidelines

### Construction contractors with contracts of \$300k or greater

- Submit employment plans
- Submit monthly reports
- Participate in surveys, job fairs, additional outreach initiatives

### Service contractors with contracts of \$100k or greater

- Submit employment plans
- Submit monthly reports
- Participate in surveys, job fairs, additional outreach initiatives

### Exemptions

- Goods providers are exempt
- Professional Service providers are exempt
- Contractors with pre-existing CBA's, PLA's, established employment programs, and other federal, state, or local regulations. (Contractors will still submit reports).



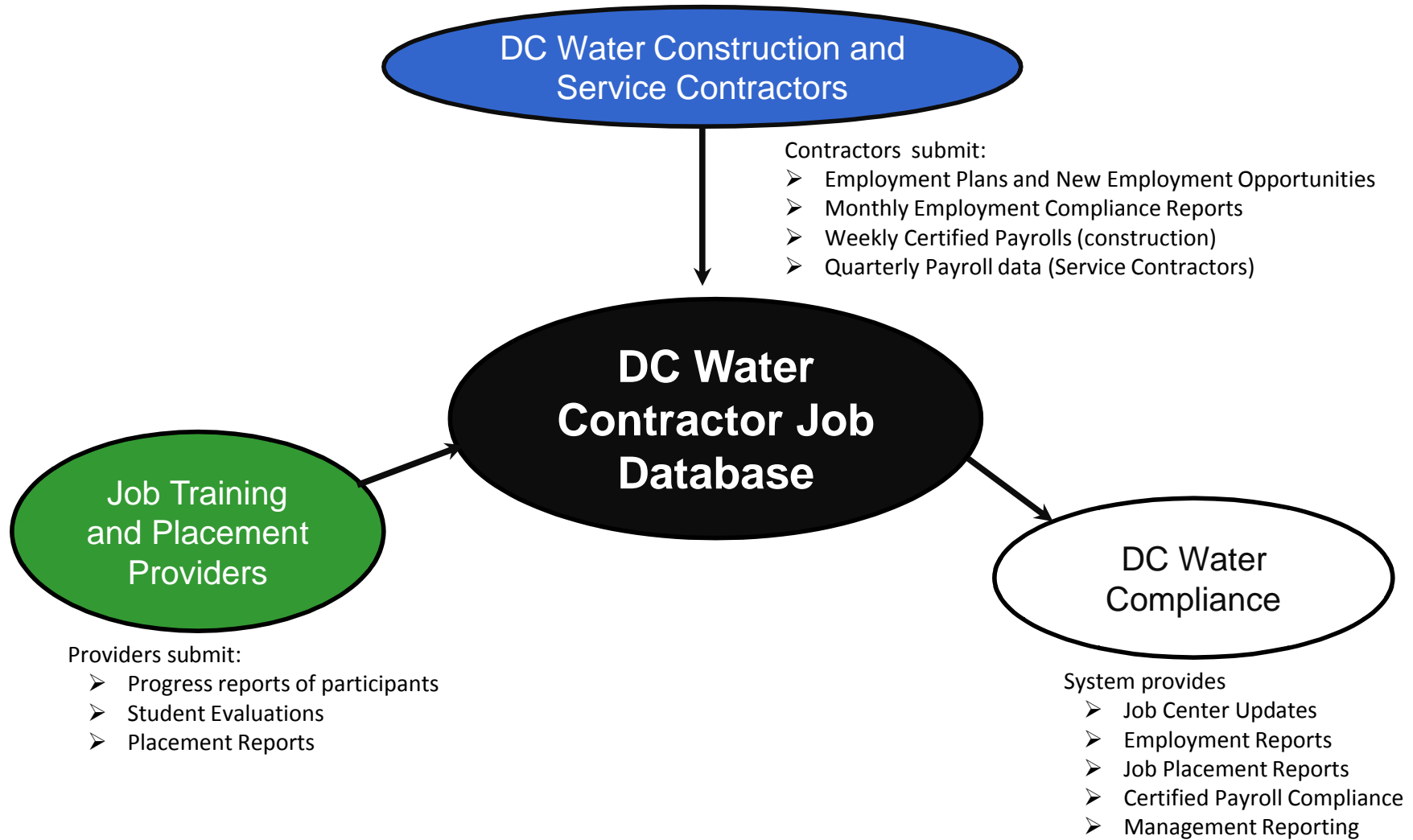
## ***DC WaterWorks Program***

### **VII. DC Water Responsibilities**

- Water Works language is included in construction and service solicitations
- Program goals are discussed in DC Water's pre-bid meetings/ conferences
- Program goals are discussed at DC Water's post award meetings and Compliance Orientation/Trainings
- Weekly Certified Payrolls (Davis Bacon) and Quarterly Payroll data (Service Contract Act) reports are submitted via the Job Center Database.
- Monthly reports are submitted via the Job Center Database.
- Review monthly reports from contractors. Follow up with contractors.
- Run monthly reports for AGM Report input
- Run Bi-monthly reports for Governance Committee
- Run reports for Annual Report data
- Ad hoc reports run at the request of DC Water management



### Program Reporting Flow Chart





## ***DC WaterWorks Program***

### **VIII. Outreach to Certified Firms**

- Share procurement forecasts and procurement opportunities with regional certified business authorities and business organizations
  - Examples: DSLBD, NUCA, MD/DC Business Supplier Council, DC Chamber of Commerce
- Share solicitations with regional certified business authorities/organizations
- Conduct semi –annual roundtables with DSLBD
- Conduct an annual procurement conference at DC Water
- Continue with Vendor Day Program
- For LSBE Projects, provide preference points (RFP/IFB) to bidders/proposers that submit mentor protégé programs. Template based on DCPL. (May require edits to the Business Development Plan).
- For M/WBE projects, develop language encouraging the use of mentor protégé programs.

Date Issued: June 12, 2009  
Date Last Revised: May 3, 2015

## CHAPTER 5. Bonds and Insurance

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## 5.1 Policy

The Authority may, on an individual or class of requirement basis, require bonds (bid, performance, labor and material payment, fidelity, or other type of bonding or any combination thereof) and insurance as deemed necessary to protect the interests of the Authority. The Authority shall require bonds on any federally funded construction project according to federal requirements.

## 5.2 Bid Bonds and Other Security

Bid bonds are required whenever a performance bond or a performance and payment bond is required; however, the Chief Contracting Officer may, prior to the bid opening/proposal due date, waive the requirement to obtain a bid bond when it is determined that a bid bond is not in the best interest of the Authority for a specific acquisition.

A bid bond securing multiple bids is acceptable for contracts for goods and services. Only separate bid bonds are acceptable for construction contracts.

## 5.3 Noncompliance with Bid Security Requirements

Noncompliance with a solicitation requirement for a bid bond in sealed bidding renders the bid non-responsive, and requires rejection of the bid. When conducting a procurement using competitive proposals and an award is to be made based on initial proposals without discussion, noncompliance with a solicitation requirement for a proposal security renders the proposal unacceptable.

## 5.4 Performance and Payment Security

All required bonds or alternative payment protection, including any necessary reinsurance agreements, must be received by the Authority before issuing a notice to proceed with the work or allowing work to start.

### 5.4.1 Federally Funded Construction Contracts with a Value Greater than \$100,000

Bid performance and payment bonds are required for any federally funded construction contract exceeding \$100,000.

### 5.4.2 Other Construction Contracts

Bid, performance and payment bonds are required for any non-federally funded construction contracts exceeding \$100,000. ~~In determining any required security, consideration~~ Consideration may be given to accepting ~~one or possibly up to~~ two of the following forms of security in lieu of a performance and payment bond:

1. An irrevocable letter of credit (ILC);
2. A tripartite escrow agreement;
3. Certificates of deposit;
4. United States Bonds or Notes; or
5. Certified or Cashier's Checks, Bank Drafts, Money Orders, or Currency.

### 5.4.3 Other than Construction Contracts

Performance and payment bonds should not normally be required for other than construction contracts; however, performance and payment bonds may be required for contracts exceeding the large procurement threshold (\$100,000) when necessary to protect the Authority's interest. The amount of the bond may be the value of the contract or the amount that could be at risk.

A performance and payment bond should be considered when:

1. Authority property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material);
2. A contractor sells assets to or merges with another concern, and the Authority, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable;
3. Progress payments are made substantially exceeding the value of end items delivered, such as when end

item design or tooling is funded with progress payments; or

4. Additional performance bond protection is required because of an increase in contract price and the terms of the bond do not automatically increase the amount.

### **5.5 Security Bonds and Other Security**

When bonds are required, the Authority shall obtain adequate security for bonds (including coinsurance and reinsurance agreements). Forms of security that the Contracting Officer may consider include:

1. Corporate or individual sureties licensed to provide bonds in the District of Columbia;
2. United States Bonds or Notes;
3. Certified or Cashier's Checks, Bank Drafts, Money Orders, or Currency; or
4. Irrevocable Letter of Credit (ILC).

### **5.6 Sureties**

The Contracting Officer shall determine the acceptability of proposed sureties and shall ensure that the surety's pledged assets are sufficient to cover the bond obligation.

### **5.7 Insurance**

Contractors are required by law to provide insurance for certain types of perils (e.g., workers' compensation). Insurance is mandatory also when the contractor is making use of Authority property, and the type of operation, circumstances of ownership, or condition of the contract makes insurance necessary for the protection of the Authority.

Authority solicitations and contracts shall specify the insurance requirements depending on the nature of work performed. When applicable, the Rolling Owner Controlled Insurance Program shall be included in Authority solicitations and contracts.

Contractor self-insurance programs may be approved when in the Authority's interest.

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## CHAPTER 23. Contract Management and Administration

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### **23.1 Policy**

Contracts for goods and services including construction must be managed and administered to ensure that they are delivered on time, at projected cost, and meet all performance requirements. Contract management and administration is the management of contracts made with customers, vendors, partners, or employees. Contract management includes negotiating the terms and conditions in contracts and ensuring compliance with the terms and conditions, as well as documenting and agreeing to any changes that may arise during contract implementation or execution

### **23.2 Authority and Responsibilities**

Only Contracting Officers acting within the scope of their delegation authority may:

1. Award, modify, extend, terminate, and close-out contracts;
2. Exercise contract options; and
3. Settle contract claims and disputes.

Contracting Officer Representatives (COR) acting within the scope of their delegated authority may perform the following functions as they relate to construction contracts:

1. Negotiate adjustments of contract price above the level of their delegation and/or time with a contractor and recommend acceptance or rejection of negotiation results;
2. Prepare Authority estimates of contract modifications;
3. Modify the contract in accordance with the CHANGES clause within the limits of their delegation;
4. Issue orders for goods or services under the provisions of a blanket purchase agreement; a basic ordering agreement, or other contract type that provides for the placement of orders under the contract terms;
5. Perform other duties that the Chief Contracting Officer, or the Contracting Officer may assign because of special situations; and
6. Perform duties normally assigned to a COTR.

Contracting Officer's Technical Representatives (COTR) may provide such management oversight and technical direction for a particular procurement or contract as specified in writing from the Contracting Officer. A COTR may perform functions such as inspecting, testing, and accepting contract line items, monitoring the contractor's performance, controlling Authority-furnished property, reviewing and approving and/or recommending to the Contracting Officer approval/disapproval of vouchers/invoices, etc.

Contracting Officers, CORs, COTRs, and cognizant department personnel are responsible for monitoring contractor performance and ensuring contractor compliance with contractual commitments and obligations.

### **23.3 Approval of Award Actions**

Contracting Officers acting within the scope of their delegation authority may approve award actions.

Except for emergency procurements, no award action may be approved until all required reviews, clearances, determinations, justifications, and other applicable procedures have been completed, and Board of Director's approval has been obtained, where applicable.

### **23.4 Pre-Award Orientation**

A Pre-Award Orientation may be used for construction contracts, complex contracts, or for contracts where

there are outstanding issues which need to be discussed and/or resolved prior to contract award. The Contracting Officer in coordination with the COTR will determine whether to hold such a conference, identify who should attend, set the agenda, and make the necessary arrangements.

### **23.5 Post-Award (Pre-Construction) Conference with Contractor**

A Post-Award Conference may be conducted for construction contracts or complex contracts before the work under contract begins. Such a meeting provides key members of both organizations (Authority and the contractor) an opportunity to establish lines of authority and communication and identify their respective duties and responsibilities. Discussions may also cover specific projects plans, specifications, safety requirements, unusual conditions, and schedules of completion. A thorough understanding of equal employment regulations, civil rights requirements, applicable labor laws as described in Section 23.28.6, and other pertinent features of the contract will promote better relations and usually improve contract performance.

A summary report of the post-award conference will be prepared with all information and guidance provided to the contractor, all items discussed, including areas requiring resolution, controversial matters, the names of the participants assigned responsibility for further actions, and the due dates for the actions.

### **23.6 Post-Award Conference with Subcontractor**

The prime contractor is normally responsible for conducting post-award conferences with subcontractors. The prime contractor may invite Authority representatives to a conference with subcontractors or the Authority may request that the prime contractor initiate a conference with subcontractors.

The Authority lacks privity of contract with subcontractors and shall not take any action that is inconsistent with or alters the subcontracts.

### **23.7 Contract Execution by the Authority**

Only a Contracting Officer is authorized to sign and enter into a contract on behalf of the Authority. The Contracting Officer's name and official title shall be typed, stamped, or printed on the contract. The Contracting Officer shall generally sign the contract after it has been signed by the contractor and shall ensure that the person signing for the contractor has authority to bind the contractor.

### **23.8 Contract Execution by Contractor**

Only an individual or individuals with the authority to bind the contractor shall sign a contract with the Authority on behalf of the contractor. The Contracting Officer may request satisfactory evidence of the signer's authority to bind the contractor.

### **23.9 Contract Distribution**

Copies of contracts or modifications shall be distributed within 10 days after execution by all parties. Copies shall be distributed simultaneously to the contractor, requiring department, and budget office.

### **23.10 Contract Files**

The Authority shall establish and maintain files containing the records of all contractual actions. The documentation in the files shall be sufficient to constitute a complete history of the procurement. Normally, each file should be kept separately; however, if appropriate, any or all of the files may be combined. Contents of contract files that contain contractor bid or proposal information or source selection information must be protected from disclosure to unauthorized persons.

The COTR shall maintain separate contract files as specified by the Contracting Officer.

### **23.11 Changes to Contract**

Contracts shall contain a clause that will give the Contracting Officer the right to make any change in the work, within the general scope of the contract, by a written order designated as a change order.

Changes resulting from direction from Authority representatives believed to be a requirement of the contract based on erroneous interpretation of the contract documents, constitute a constructive change, and require a determination of merit by the Contracting Officer in order for the directive to constitute a change order.

Claims or disputes that are subsequently recognized as meritorious may be processed as changes, based on a determination of merit issued by the Contracting Officer.

Changes that are outside the general scope of the contract will require a justification as to the reason the change should be issued to an existing contract, rather than procuring the requirement on competitive basis. The Contracting Officer does not have the contractual authority to issue such changes unilaterally, and must obtain agreement from the contractor prior to issuance. Such changes are issued as supplemental agreements to the contract.

The procurement record will include the reason and necessity for the change.

The equitable adjustment for directed changes, supplemental agreements and value engineering changes will be determined by cost analysis based on an independent Authority Estimate, and a reconciliation of the differences between the contractor's and the authority's figures of the individual work elements.

The equitable adjustment for meritorious claims for work performed will be based on the contractor's incurred costs, adjusted as appropriate for reasonableness and allowability.

If there is no agreement between the Authority and the contractor on the equitable adjustment, the Contracting Officer may determine the equitable adjustment based on the Authority's estimate, and implement the change by a unilateral contract modification. A quantum dispute will be processed as a claim.

### **23.12 Contract Modifications**

Contract modifications are issued to provide the equitable adjustment as a result of changes issued under the contract under the "changes" clause, including supplement agreements, or other clauses. The equitable adjustment may also be provided in a single step by the change order.

Contract modifications require concurrence of the equitable adjustment and acceptance by the Contracting Officer in order for the action to be finalized.

A contract modification executed by both parties cannot be reopened for adjustment unless the Contracting Officer determines the existence of a mutual mistake. Such mistakes are addressed by a separate contract modification which must refer to the modification that requires adjustment or remedy.

If the contractor does not agree with the price or time adjustment, and declines to sign the contract modification, the Contracting Officer may execute the modification on a unilateral basis. Unilateral contract modifications become claims at this point, and they are processed according to the procedures for claims and disputes.

Contract modifications stemming from directed changes may be issued in two parts, if work must commence immediately, but the full or detailed scope cannot be defined at the outset.

Contract modifications are also issued to implement direction, or changes involving other clauses, such as:

1. Differing site conditions;
2. Value engineering proposals;
3. Weather delays or strikes;
4. Suspension of work;
5. Termination for convenience;
6. Termination for default; or

7. To incorporate a Letter Contract into a definitive contract.

The above actions may also be implemented by the issuance of a "change order." The procurement record for contract modifications will include as a minimum:

1. Description of the changed statement of work or specification;
2. Contractor proposal;
3. Independent authority estimate;
4. Record of negotiations; and
5. Executed contract modification.

### **23.13 Novation and Change of Name Agreements**

A novation agreement recognizes a successor in interest to an Authority contract when contractor assets are transferred. The novation agreement is executed by the contractor (transferor), the successor in interest (transferee), and the Authority, and by which the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Authority recognizes the transfer of the contract.

A change-of-name recognizes a change in the contractor's name. A change-of-name agreement is executed by the contractor and the Authority, and recognizes the legal change of name of the contractor without disturbing the original contractual rights and obligations of the parties.

### **23.14 Suspension of Work for Noncompliance**

The Authority may suspend the work, partially or completely when the contractor's performance is not satisfactory or for the contractor's failure to comply with a material requirement of the contract, such as providing proof of insurance. The contractor shall not be allowed to resume work until the condition giving rise to the suspension of work has been remedied.

The Contracting Officer, or the Contracting Officer's representative where applicable, shall notify the contractor in writing of the suspension or stoppage of work, stating the reasons for the suspension or stoppage, the corrective action required by the contractor, and a date by which the corrective action must be accomplished. Consideration should be given to stating that the contract will be terminated for default unless the corrective action is accomplished or the time allowed for the corrective action is extended.

If the contractor does not complete the required corrective action by the specified date, the Contracting Officer may extend the suspension, or terminate the contract.

The Authority shall not be liable for any costs incurred by the contractor as a result of the suspension or stoppage of work caused by the contractor's unsatisfactory performance or failure to comply with a material requirement of the contract.

#### **23.14.1 Suspension of Work for the Convenience of the Authority**

The Authority may, when in its interest, order a partial or complete suspension of work, or a work stoppage. The Contracting Officer shall notify the contractor in writing of the suspension or stoppage of work.

The notice shall include:

1. A description of the work to be suspended;
2. The period of the suspension or stoppage of work;
3. Instructions concerning the contractor's issuance of further orders for materials or services;
4. Guidance to the contractor on action to be taken on any subcontracts; and

5. Other suggestions to the contractor for minimizing costs

Prior to the expiration of the suspension, the Contracting Officer shall take appropriate action to:

1. Rescind the suspension/stop-work order;
2. Extend the period of suspension/ stop-work order; or
3. Terminate the contract for the convenience of the Authority

If a suspension/stop-work order is rescinded, or the period of the order or any extension thereof expires, and if the order or extension does not contain an automatic termination for convenience, the contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and modify the contract in writing.

If the contract is terminated, the Contracting Officer shall allow reasonable costs resulting from the stop work order.

### **23.15 Termination for Default**

The Authority may terminate a contract, in whole or in part for default, if it is determined that the contractor has failed to meet the terms and conditions of the contract or the anticipated failure of the contractor to perform its contractual obligations.

Conditions that may be grounds for termination for default are:

1. Contractor failure to make delivery of the goods or to perform the services within the time specified in the contract;
2. Contractor failure to ~~satisfactorily perform~~ **perform or unsatisfactory performance of** any other term or condition of the contract; or
3. Contractor failure to make progress so as to endanger performance of the contract.

The contracts will be terminated in accordance with the Termination for Default clause in the contract. Contracts terminated for default may be completed by the Authority using its own workforce or by contract. In either case, the terminated contractor shall be liable for any additional costs incurred by the Authority to complete the work. If a performance bond applies, the surety will be responsible for the completion.

### **23.16 Termination for Convenience**

The Authority may terminate a contract, in whole or in part for convenience when it is in the best interest of the Authority. When the price of the undelivered balance of the contract is very small, the contract may be permitted to run to completion.

When termination for convenience is considered appropriate, a notice of termination shall be sent to the contractor specifying:

1. That the contract is being terminated for the convenience of the Authority;
2. The effective date of termination;
3. The extent of termination; and
4. Any special instructions.

Any work not terminated will continue. Contracts will be terminated for convenience in accordance with the Termination for Convenience clause in the contract.



### **23.17 Consent to Subcontract**

The Authority may require consent to subcontract if the Authority determines that an individual consent action is required to protect the Authority because of the subcontract type, complexity, value, or because the subcontract needs special surveillance (e.g. subcontracts for critical systems, subsystems, components, or services).

The Contracting Officer shall ensure that any requirements for consent to subcontract are included in the contract.

### **23.18 Authority-Furnished Property**

Contractors are ordinarily required to furnish all property necessary to perform Authority contracts. The Authority may furnish property to its contractors when it is its best interest.

When the Authority furnishes property under a contract or the contractor acquires property and the Authority reimburses the contractor (e.g. cost-reimbursement contract) for the property, the Contracting Officer shall include a provision in solicitations and contracts that provides for control and accountability of Authority property.

### **23.19 Negotiation Meetings**

All negotiation meetings should be conducted at Authority facilities. The Contracting Officer, or the Contracting Officer's Representative where applicable, may approve exceptions on a case-by-case basis.

### **23.20 Delivery and Performance**

The Authority shall clearly state delivery or performance requirements in each solicitation and contract. The Contracting Officer shall ensure that delivery or performance requirements are realistic and meet the requirements of the procurement.

The Authority may establish different delivery or performance requirements for separable items of work. When establishing delivery or performance requirements, the Contracting Officer shall take into account factors pertaining to the ability of the contractor to actually begin performance, such as time for receipt of notice by the contractor of the contract award or acceptance by the Authority, or the time for receipt by the contractor of an executed contract.

The Contracting Officer is responsible to ensure that goods, services, or construction procured under each Authority contract conform to the quality, safety and quantity requirements of the contract. The Contracting Officer shall be notified immediately of any delivery or performance issues.

### **23.21 Acceptance and Rejection of Goods and Services**

Each Authority contract shall include appropriate inspection and test and other quality requirements, including warranty and reliability clauses necessary to protect the Authority's interests. Goods and services procured by the Authority shall be inspected to ensure the goods are delivered or the services are performed as specified.

The ordering department is responsible for notifying the Contracting Officer when goods delivered or services performed comply, or fail to comply, with the terms and conditions of the contract.

The Contracting Officer is responsible for acceptance or rejection of goods delivered or services performed. The Contracting Officer shall notify the contractor of the rejection of goods or services and may require the contractor to correct the deficiencies or take other action as authorized by the appropriate contract clause. Any costs incurred by the contractor to correct the deficiencies, including any re-inspection costs shall be borne solely by the contractor. Any shipping costs incurred by the Authority to return rejected goods to the contractor shall be chargeable to the contractor.

### **23.22 Acceptance and Rejection of Construction (RESERVED)**

### **23.23 Additional Contract Compliance Responsibilities**

Authority contracts shall not preclude the Authority from performing inspection, test, or other pertinent quality assurance measures.

Contract quality assurance shall be conducted before acceptance by or under the direction of Authority personnel. The Authority department responsible for the technical requirements shall provide any quality plan specifications necessary for inspection, testing, and other contract quality requirements.

The necessary requirements for the contractor's control of quality for the goods, services, or construction shall be included in Authority solicitations and contracts.

### **23.24 Liquidated Damages**

Liquidated damages shall be included in all construction contracts exceeding \$100,000. Liquidated damages may also be included in other than construction contracts when the time of delivery or performance is such an important factor in the award of the contract that the Authority may reasonably expect to suffer damages if the project is delayed.

The Contracting Officer shall determine a rate of liquidated damages for each contract that will approximate the amount of the damages that the Authority will incur as a result of the delay.

The Authority contracts may include an overall maximum dollar amount or period of time during which liquidated damages may be assessed, or both, to prevent an unreasonable assessment of liquidated damages. The Contracting Officer may use more than one liquidated damages rate when necessary and appropriate.

The Contracting Officer must take all reasonable steps to mitigate liquidated damages, including cure notices when progress is not maintained, and there is probability for late completion.

### **23.25 Contract Funding and Fiscal Year**

Before executing any contract, the Contracting Officer shall obtain certification that funds are available in the amount and for the purpose of the contract.

The Contracting Officer shall include in a contract that is based on the availability of funds a provision expressly stating that the portion of the contract requiring payment of any amount in excess of available funding is conditioned upon the appropriation or allocation of additional budget authority.

The Contracting Officer shall include in a contract that is based on future fiscal year funding a provision stating that the portion of the contract requiring expenditures in a future fiscal year is conditioned upon the appropriation of budget authority for that fiscal year.

A contractor shall not perform services or deliver goods under a contract conditioned upon the availability of funds until the Contracting Officer has given written notice to the contractor that funds are available.

The Authority shall not accept goods, services, or construction services under a contract conditioned upon the availability of funds until the Contracting Officer has given written notice to the contractor that funds are available.

### **23.26 Limitation of Cost or Funds**

The Contracting Officer, upon learning that the contractor is approaching the estimated cost of the contract or the limit of the funds allotted, shall promptly obtain programming information pertinent to the contract's continuation.

The Contracting Officer shall notify the contractor in writing that:

1. The contract is to be continued and additional funds have been allotted or that the estimated cost has been increased, in a specified amount;

2. The contract is not to be continued and the contractor should submit a proposal for an adjustment of fee, if any, based on the percentage of work completed in relation to the total work called for under the contract; or
3. The contract is to be terminated.

### **23.27 Invoicing and Payment**

Authority contracts shall include invoicing and payment instructions. The Authority shall promptly pay contractors for goods, services, and construction that are delivered and accepted, meet contract quality requirements, and are properly invoiced. Payment for goods is normally made after delivery and acceptance. Payment for services is normally made based on established milestones or monthly for services rendered. Payment for construction is normally made by progress payments.

#### **23.27.1 Advance Payments**

The Authority shall not make advance payments on any contract, except for contracts for the payment of rents, tuition, insurance premiums, and subscriptions to publications

#### **23.27.2 Progress Payments for Construction Contracts (Reserved)**

#### **23.27.3 Progress Payments for Other than Construction Contracts**

The Contracting Officer shall include a clause in each solicitation that will describe the method of determining payments under the contract.

The clause may include one of the following methods, or other methods that are determined appropriate:

1. Payment based on the contractual value of the deliverable, upon delivery, inspection and acceptance;
2. Payment based on milestone achievements as established in the contract; or
3. Payment based on progress based on an assessment by the Authority as to the status of the contract. Progress payment cycles normally cover one month, but cycles with shorter periods may be specified when appropriate.

#### **23.27.4 Progress Payments to Subcontractors**

The Contracting Officer shall include provisions in each contract providing for progress payments requiring the contractor to include in the terms of each subcontract, the substance of the progress payment provisions in the prime contract. The subcontract payment provision should be modified to indicate that the contractor awards the subcontract and administers the progress payments.

#### **23.27.5 Risk of Loss**

The Contracting Officer shall include provisions in each contract providing for progress payments that, except for normal spoilage, the contractor shall bear the risk of loss, theft, destruction, or damage to property affected by the provision, unless the Authority has expressly assumed that risk.

#### **23.27.6 Protection of Authority Title**

The Contracting Officer shall include provisions in each contract that would give the Authority title to all of the materials, work-in-progress, finished goods, **intellectual property**, and other items for which payments have been made under the contract.

#### **23.27.7 Setoff and Withholding of Payments**

The Authority may setoff or withhold payments due a contractor to settle a contract debt. Prior to using a setoff or withholding payments, the Contracting Officer, or other designated official **designated**, shall use all **reasonable** means available, **short of litigation**, to collect the debts.

#### **23.27.8 Assignment of Contract Payments by Contractor**

A contractor may assign moneys due or to become due under a contract if the contract does not prohibit the

assignment.

Any assignment not prohibited by the contract shall be made to a bank, trust company, or other financing institution, including any Federal lending agency and shall not be further assigned, except for any assignment made to one party as agent or trustee for two or more parties participating in the financing of the contract.

### **23.27.9 Final Payments**

Final payments are made only after completion and acceptance of all goods, services or construction required under the contract, presentation of a properly executed voucher, and presentation of release of all claims against the Authority arising under the contract.

### **23.28 Contract Closeout**

Authority contracts will be closed out when they are both physically and administratively complete and all aspects of contractual performance have been accomplished, terminated, or otherwise disposed of by contract modification. Authority contracts are physically complete only after all articles and services called for under the contract, including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by the Authority, including those articles, have been delivered to and accepted by the Authority, including those articles and services for which no specific compensation may have been stipulated. Authority contracts are administratively complete when all payments have been made and administrative actions accomplished. This includes a determination by the Contracting Officer that the Authority has recovered the cost incurred by the Authority for its review and consideration of, and action taken relating to, any Labor Violations (as defined in Section 23.28.6 of this Procurement Manual) determined by the Authority to have occurred during the course of and in connection with the contract.

The Contracting Officer is responsible for review of the contract file and obtaining all necessary documentation to ensure:

1. All deliverables and/or services (including any reports) required under the contract have been received and accepted;
2. The terms and conditions of the contract have been complied with;
3. The disposition of accountable property under the contract has been accomplished;
4. A final audit, when appropriate, has been performed and all questioned costs have been resolved;
5. The surety for the payment bond, if any, has consented to releasing final payment to the contractor;
6. All costs incurred by the Authority for its review and consideration of, and action taken relating to, any Labor Violations determined by the Authority to have occurred during the course of and in connection with the contract (and any related subcontracts) shall be paid by the contractor. "Labor Violation" is hereby defined as any violation of an applicable labor law including but not limited to any violation of the National Labor Relations Act, prevailing wage laws, wage and hour laws, anti-discrimination laws, and occupational safety and health laws. Such "Labor Violation" shall also include retaliation against an employee for exercising or attempting to exercise any right or interest under law arising from, in connection with, or related to a contract covered herein or intimidation of an employee to prevent the exercise of such right or interest. The contractor shall include a provision in any subcontract entered into during the course of and in connection with the contract stating the subcontractor shall not engage in any Labor Violations, and shall require that all subcontractors disclose to the contractor all Labor Violations by subcontractor or any affiliated person or entity, including subcontractor's owners, parent entity, predecessors and subsidiaries ("Affiliated Entities"), that have resulted in any adverse administrative determination, arbitral award or decision, or civil judgment on the merits, or unless precluded by law or contractual non-disclosure provisions, in a settlement or consent decree resolving admitted or alleged violations in the three (3) year period preceding the proposed effective date of the contract, and any pending formal charges of Labor Violations that have not been settled or otherwise adjudicated and addressed to the satisfaction of the contractor, with such documentation and records as it may request, the details of any such violations and corrective measures, if any, taken; and

7. All necessary actions required to close the contract are completed and documented.

Small purchase files shall be considered closed when the Contracting Officer receives evidence of receipt of goods or services and final payment.

### **23.29 Quick Close of Cost Reimbursement Contracts**

Cost reimbursement contracts may be closed out in advance of the determination of final indirect cost rates if the contract is physically complete and the amount of unsettled indirect cost to be allocated to the contract is relatively insignificant.

Indirect cost amounts will be considered insignificant when the total unsettled indirect cost to be allocated to any one contract does not exceed \$1,000,000 and the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15 percent of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year.

The Contracting Officer may waive the 15 percent restriction based upon a risk assessment that considers the contractor's accounting, estimating, and purchasing systems; other concerns of the cognizant contract auditors; and any other pertinent information and agreement can be reached on a reasonable estimate of allocable dollars.

Indirect cost rates used in the quick closeout of a contract shall not be considered a binding precedent when establishing the final indirect cost rates for other contracts.

### **23.30 Evaluation of Contractors**

The Authority shall evaluate all contractors providing goods and services including construction in excess of \$100,000. Contractor evaluation occurs during and after contract performance and shall be used in evaluating contractor past performance during future solicitations.

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## CHAPTER 23. Contract Management and Administration

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### **23.1 Policy**

Contracts for goods and services including construction must be managed and administered to ensure that they are delivered on time, at projected cost, and meet all performance requirements. Contract management and administration is the management of contracts made with customers, vendors, partners, or employees. Contract management includes negotiating the terms and conditions in contracts and ensuring compliance with the terms and conditions, as well as documenting and agreeing to any changes that may arise during contract implementation or execution

### **23.2 Authority and Responsibilities**

Only Contracting Officers acting within the scope of their delegation authority may:

1. Award, modify, extend, terminate, and close-out contracts;
2. Exercise contract options; and
3. Settle contract claims and disputes.

Contracting Officer Representatives (COR) acting within the scope of their delegated authority may perform the following functions as they relate to construction contracts:

1. Negotiate adjustments of contract price above the level of their delegation and/or time with a contractor and recommend acceptance or rejection of negotiation results;
2. Prepare Authority estimates of contract modifications;
3. Modify the contract in accordance with the CHANGES clause within the limits of their delegation;
4. Issue orders for goods or services under the provisions of a blanket purchase agreement; a basic ordering agreement, or other contract type that provides for the placement of orders under the contract terms;
5. Perform other duties that the Chief Contracting Officer, or the Contracting Officer may assign because of special situations; and
6. Perform duties normally assigned to a COTR.

Contracting Officer's Technical Representatives (COTR) may provide such management oversight and technical direction for a particular procurement or contract as specified in writing from the Contracting Officer. A COTR may perform functions such as inspecting, testing, and accepting contract line items, monitoring the contractor's performance, controlling Authority-furnished property, reviewing and approving and/or recommending to the Contracting Officer approval/disapproval of vouchers/invoices, etc.

Contracting Officers, CORs, COTRs, and cognizant department personnel are responsible for monitoring contractor performance and ensuring contractor compliance with contractual commitments and obligations.

### **23.3 Approval of Award Actions**

Contracting Officers acting within the scope of their delegation authority may approve award actions.

Except for emergency procurements, no award action may be approved until all required reviews, clearances, determinations, justifications, and other applicable procedures have been completed, and Board of Director's approval has been obtained, where applicable.

### **23.4 Pre-Award Orientation**

A Pre-Award Orientation may be used for construction contracts, complex contracts, or for contracts where there are outstanding issues which need to be discussed and/or resolved prior to contract award. The Contracting Officer in coordination with the COTR will determine whether to hold such a conference, identify who should attend, set the agenda, and make the necessary arrangements.

### **23.5 Post-Award (Pre-Construction) Conference with Contractor**

A Post-Award Conference may be conducted for construction contracts or complex contracts before the work under contract begins. Such a meeting provides key members of both organizations (Authority and the contractor) an opportunity to establish lines of authority and communication and identify their respective duties and responsibilities. Discussions may also cover specific projects plans, specifications, safety requirements, unusual conditions, and schedules of completion. A thorough understanding of equal employment regulations, civil rights requirements, applicable labor laws as described in Section 23.28.6, and other pertinent features of the contract will promote better relations and usually improve contract performance.

A summary report of the post-award conference will be prepared with all information and guidance provided to the contractor, all items discussed, including areas requiring resolution, controversial matters, the names of the participants assigned responsibility for further actions, and the due dates for the actions.

### **23.6 Post-Award Conference with Subcontractor**

The prime contractor is normally responsible for conducting post-award conferences with subcontractors. The prime contractor may invite Authority representatives to a conference with subcontractors or the Authority may request that the prime contractor initiate a conference with subcontractors.

The Authority lacks privity of contract with subcontractors and shall not take any action that is inconsistent with or alters the subcontracts.

### **23.7 Contract Execution by the Authority**

Only a Contracting Officer is authorized to sign and enter into a contract on behalf of the Authority. The Contracting Officer's name and official title shall be typed, stamped, or printed on the contract. The Contracting Officer shall generally sign the contract after it has been signed by the contractor and shall ensure that the person signing for the contractor has authority to bind the contractor.

### **23.8 Contract Execution by Contractor**

Only an individual or individuals with the authority to bind the contractor shall sign a contract with the Authority on behalf of the contractor. The Contracting Officer may request satisfactory evidence of the signer's authority to bind the contractor.

### **23.9 Contract Distribution**

Copies of contracts or modifications shall be distributed within 10 days after execution by all parties. Copies shall be distributed simultaneously to the contractor, requiring department, and budget office.

### **23.10 Contract Files**

The Authority shall establish and maintain files containing the records of all contractual actions. The documentation in the files shall be sufficient to constitute a complete history of the procurement. Normally, each file should be kept separately; however, if appropriate, any or all of the files may be combined. Contents of contract files that contain contractor bid or proposal information or source selection information must be protected from disclosure to unauthorized persons.

The COTR shall maintain separate contract files as specified by the Contracting Officer.

### **23.11 Changes to Contract**

Contracts shall contain a clause that will give the Contracting Officer the right to make any change in the work, within the general scope of the contract, by a written order designated as a change order.

Changes resulting from direction from Authority representatives believed to be a requirement of the contract based on erroneous interpretation of the contract documents, constitute a constructive change, and require a determination of merit by the Contracting Officer in order for the directive to constitute a change order.

Claims or disputes that are subsequently recognized as meritorious may be processed as changes, based on a determination of merit issued by the Contracting Officer.



Changes that are outside the general scope of the contract will require a justification as to the reason the change should be issued to an existing contract, rather than procuring the requirement on competitive basis. The Contracting Officer does not have the contractual authority to issue such changes unilaterally, and must obtain agreement from the contractor prior to issuance. Such changes are issued as supplemental agreements to the contract.

The procurement record will include the reason and necessity for the change.

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Contract modifications are also issued to implement direction, or changes involving other clauses, such as:

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1. Description of the changed statement of work or specification;
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The Contracting Officer, or the Contracting Officer's representative where applicable, shall notify the contractor in writing of the suspension or stoppage of work, stating the reasons for the suspension or stoppage, the corrective action required by the contractor, and a date by which the corrective action must be accomplished. Consideration should be given to stating that the contract will be terminated for default unless the corrective action is accomplished or the time allowed for the corrective action is extended.

If the contractor does not complete the required corrective action by the specified date, the Contracting Officer may extend the suspension, or terminate the contract.

The Authority shall not be liable for any costs incurred by the contractor as a result of the suspension or stoppage of work caused by the contractor's unsatisfactory performance or failure to comply with a material requirement of the contract.

#### **23.14.1 Suspension of Work for the Convenience of the Authority**

The Authority may, when in its interest, order a partial or complete suspension of work, or a work stoppage. The Contracting Officer shall notify the contractor in writing of the suspension or stoppage of work.

The notice shall include:

1. A description of the work to be suspended;
2. The period of the suspension or stoppage of work;
3. Instructions concerning the contractor's issuance of further orders for materials or services;
4. Guidance to the contractor on action to be taken on any subcontracts; and
5. Other suggestions to the contractor for minimizing costs

Prior to the expiration of the suspension, the Contracting Officer shall take appropriate action to:

1. Rescind the suspension/stop-work order;
2. Extend the period of suspension/ stop-work order; or
3. Terminate the contract for the convenience of the Authority

If a suspension/stop-work order is rescinded, or the period of the order or any extension thereof expires, and if the order or extension does not contain an automatic termination for convenience, the contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and modify the contract in writing.

If the contract is terminated, the Contracting Officer shall allow reasonable costs resulting from the stop-work order.

### **23.15 Termination for Default**

The Authority may terminate a contract, in whole or in part for default, if it is determined that the contractor has failed to meet the terms and conditions of the contract or the anticipated failure of the contractor to perform its contractual obligations.

Conditions that may be grounds for termination for default are:

1. Contractor failure to make delivery of the goods or to perform the services within the time specified in the contract;
2. Contractor failure to perform or unsatisfactory performance of any other term or condition of the contract; or
3. Contractor failure to make progress so as to endanger performance of the contract.

The contracts will be terminated in accordance with the Termination for Default clause in the contract. Contracts terminated for default may be completed by the Authority using its own workforce or by contract. In either case, the terminated contractor shall be liable for any additional costs incurred by the Authority to complete the work. If a performance bond applies, the surety will be responsible for the completion.

### **23.16 Termination for Convenience**

The Authority may terminate a contract, in whole or in part for convenience when it is in the best interest of the Authority. When the price of the undelivered balance of the contract is very small, the contract may be permitted to run to completion.

When termination for convenience is considered appropriate, a notice of termination shall be sent to the contractor specifying:

1. That the contract is being terminated for the convenience of the Authority;
2. The effective date of termination;
3. The extent of termination; and
4. Any special instructions.

Any work not terminated will continue. Contracts will be terminated for convenience in accordance with the Termination for Convenience clause in the contract.

### **23.17 Consent to Subcontract**

The Authority may require consent to subcontract if the Authority determines that an individual consent action is

required to protect the Authority because of the subcontract type, complexity, value, or because the subcontract needs special surveillance (e.g. subcontracts for critical systems, subsystems, components, or services).

The Contracting Officer shall ensure that any requirements for consent to subcontract are included in the contract.

### **23.18 Authority-Furnished Property**

Contractors are ordinarily required to furnish all property necessary to perform Authority contracts. The Authority may furnish property to its contractors when it is its best interest.

When the Authority furnishes property under a contract or the contractor acquires property and the Authority reimburses the contractor (e.g. cost-reimbursement contract) for the property, the Contracting Officer shall include a provision in solicitations and contracts that provides for control and accountability of Authority property.

### **23.19 Negotiation Meetings**

All negotiation meetings should be conducted at Authority facilities. The Contracting Officer, or the Contracting Officer's Representative where applicable, may approve exceptions on a case-by-case basis.

### **23.20 Delivery and Performance**

The Authority shall clearly state delivery or performance requirements in each solicitation and contract. The Contracting Officer shall ensure that delivery or performance requirements are realistic and meet the requirements of the procurement.

The Authority may establish different delivery or performance requirements for separable items of work. When establishing delivery or performance requirements, the Contracting Officer shall take into account factors pertaining to the ability of the contractor to actually begin performance, such as time for receipt of notice by the contractor of the contract award or acceptance by the Authority, or the time for receipt by the contractor of an executed contract.

The Contracting Officer is responsible to ensure that goods, services, or construction procured under each Authority contract conform to the quality, safety and quantity requirements of the contract. The Contracting Officer shall be notified immediately of any delivery or performance issues.

### **23.21 Acceptance and Rejection of Goods and Services**

Each Authority contract shall include appropriate inspection and test and other quality requirements, including warranty and reliability clauses necessary to protect the Authority's interests. Goods and services procured by the Authority shall be inspected to ensure the goods are delivered or the services are performed as specified.

The ordering department is responsible for notifying the Contracting Officer when goods delivered or services performed comply, or fail to comply, with the terms and conditions of the contract.

The Contracting Officer is responsible for acceptance or rejection of goods delivered or services performed. The Contracting Officer shall notify the contractor of the rejection of goods or services and may require the contractor to correct the deficiencies or take other action as authorized by the appropriate contract clause. Any costs incurred by the contractor to correct the deficiencies, including any re-inspection costs shall be borne solely by the contractor. Any shipping costs incurred by the Authority to return rejected goods to the contractor shall be chargeable to the contractor.

### **23.22 Acceptance and Rejection of Construction (RESERVED)**

### **23.23 Additional Contract Compliance Responsibilities**

Authority contracts shall not preclude the Authority from performing inspection, test, or other pertinent quality

assurance measures.

Contract quality assurance shall be conducted before acceptance by or under the direction of Authority personnel. The Authority department responsible for the technical requirements shall provide any quality plan specifications necessary for inspection, testing, and other contract quality requirements.

The necessary requirements for the contractor's control of quality for the goods, services, or construction shall be included in Authority solicitations and contracts.

#### **23.24 Liquidated Damages**

Liquidated damages shall be included in all construction contracts exceeding \$100,000. Liquidated damages may also be included in other than construction contracts when the time of delivery or performance is such an important factor in the award of the contract that the Authority may reasonably expect to suffer damages if the project is delayed.

The Contracting Officer shall determine a rate of liquidated damages for each contract that will approximate the amount of the damages that the Authority will incur as a result of the delay.

The Authority contracts may include an overall maximum dollar amount or period of time during which liquidated damages may be assessed, or both, to prevent an unreasonable assessment of liquidated damages. The Contracting Officer may use more than one liquidated damages rate when necessary and appropriate.

The Contracting Officer must take all reasonable steps to mitigate liquidated damages, including cure notices when progress is not maintained, and there is probability for late completion.

#### **23.25 Contract Funding and Fiscal Year**

Before executing any contract, the Contracting Officer shall obtain certification that funds are available in the amount and for the purpose of the contract.

The Contracting Officer shall include in a contract that is based on the availability of funds a provision expressly stating that the portion of the contract requiring payment of any amount in excess of available funding is conditioned upon the appropriation or allocation of additional budget authority.

The Contracting Officer shall include in a contract that is based on future fiscal year funding a provision stating that the portion of the contract requiring expenditures in a future fiscal year is conditioned upon the appropriation of budget authority for that fiscal year.

A contractor shall not perform services or deliver goods under a contract conditioned upon the availability of funds until the Contracting Officer has given written notice to the contractor that funds are available.

The Authority shall not accept goods, services, or construction services under a contract conditioned upon the availability of funds until the Contracting Officer has given written notice to the contractor that funds are available.

#### **23.26 Limitation of Cost or Funds**

The Contracting Officer, upon learning that the contractor is approaching the estimated cost of the contract or the limit of the funds allotted, shall promptly obtain programming information pertinent to the contract's continuation.

The Contracting Officer shall notify the contractor in writing that:

1. The contract is to be continued and additional funds have been allotted or that the estimated cost has been increased, in a specified amount; or
2. The contract is not to be continued and the contractor should submit a proposal for an adjustment of fee, if any, based on the percentage of work completed in relation to the total work called for under the contract; or

3. The contract is to be terminated.

### **23.27 Invoicing and Payment**

Authority contracts shall include invoicing and payment instructions. The Authority shall promptly pay contractors for goods, services, and construction that are delivered and accepted, meet contract quality requirements, and are properly invoiced. Payment for goods is normally made after delivery and acceptance. Payment for services is normally made based on established milestones or monthly for services rendered. Payment for construction is normally made by progress payments.

#### **23.27.1 Advance Payments**

The Authority shall not make advance payments on any contract, except for contracts for the payment of rents, tuition, insurance premiums, and subscriptions to publications

#### **23.27.2 Progress Payments for Construction Contracts (Reserved)**

#### **23.27.3 Progress Payments for Other than Construction Contracts**

The Contracting Officer shall include a clause in each solicitation that will describe the method of determining payments under the contract.

The clause may include one of the following methods, or other methods that are determined appropriate:

1. Payment based on the contractual value of the deliverable, upon delivery, inspection and acceptance;
2. Payment based on milestone achievements as established in the contract; or
3. Payment based on progress based on an assessment by the Authority as to the status of the contract. Progress payment cycles normally cover one month, but cycles with shorter periods may be specified when appropriate.

#### **23.27.4 Progress Payments to Subcontractors**

The Contracting Officer shall include provisions in each contract providing for progress payments requiring the contractor to include in the terms of each subcontract, the substance of the progress payment provisions in the prime contract. The subcontract payment provision should be modified to indicate that the contractor awards the subcontract and administers the progress payments.

#### **23.27.5 Risk of Loss**

The Contracting Officer shall include provisions in each contract providing for progress payments that, except for normal spoilage, the contractor shall bear the risk of loss, theft, destruction, or damage to property affected by the provision, unless the Authority has expressly assumed that risk.

#### **23.27.6 Protection of Authority Title**

The Contracting Officer shall include provisions in each contract that would give the Authority title to all of the materials, work-in-progress, finished goods, intellectual property, and other items for which payments have been made under the contract.

#### **23.27.7 Setoff and Withholding of Payments**

The Authority may setoff or withhold payments due a contractor to settle a contract debt. Prior to using a setoff or withholding payments, the Contracting Officer, or other designated official, shall use all reasonable means available, short of litigation, to collect the debts.

#### **23.27.8 Assignment of Contract Payments by Contractor**

A contractor may assign moneys due or to become due under a contract if the contract does not prohibit the assignment.

Any assignment not prohibited by the contract shall be made to a bank, trust company, or other financing

institution, including any Federal lending agency and shall not be further assigned, except for any assignment made to one party as agent or trustee for two or more parties participating in the financing of the contract.

#### **23.27.9 Final Payments**

Final payments are made only after completion and acceptance of all goods, services or construction required under the contract, presentation of a properly executed voucher, and presentation of release of all claims against the Authority arising under the contract.

#### **23.28 Contract Closeout**

Authority contracts will be closed out when they are both physically and administratively complete and all aspects of contractual performance have been accomplished, terminated, or otherwise disposed of by contract modification. Authority contracts are physically complete only after all articles and services called for under the contract, including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by the Authority, including those articles, have been delivered to and accepted by the Authority, including those articles and services for which no specific compensation may have been stipulated. Authority contracts are administratively complete when all payments have been made and administrative actions accomplished. This includes a determination by the Contracting Officer that the Authority has recovered the cost incurred by the Authority for its review and consideration of, and action taken relating to, any Labor Violations (as defined in Section 23.28.6 of this Procurement Manual) determined by the Authority to have occurred during the course of and in connection with the contract.

The Contracting Officer is responsible for review of the contract file and obtaining all necessary documentation to ensure:

1. All deliverables and/or services (including any reports) required under the contract have been received and accepted;
2. The terms and conditions of the contract have been complied with;
3. The disposition of accountable property under the contract has been accomplished;
4. A final audit, when appropriate, has been performed and all questioned costs have been resolved;
5. The surety for the payment bond, if any, has consented to releasing final payment to the contractor;
6. All costs incurred by the Authority for its review and consideration of, and action taken relating to, any Labor Violations determined by the Authority to have occurred during the course of and in connection with the contract (and any related subcontracts) shall be paid by the contractor. "Labor Violation" is hereby defined as any violation of an applicable labor law including but not limited to any violation of the National Labor Relations Act, prevailing wage laws, wage and hour laws, anti-discrimination laws, and occupational safety and health laws. Such "Labor Violation" shall also include retaliation against an employee for exercising or attempting to exercise any right or interest under law arising from, in connection with, or related to a contract covered herein or intimidation of an employee to prevent the exercise of such right or interest. The contractor shall include a provision in any subcontract entered into during the course of and in connection with the contract stating the subcontractor shall not engage in any Labor Violations, and shall require that all subcontractors disclose to the contractor all Labor Violations by subcontractor or any affiliated person or entity, including subcontractor's owners, parent entity, predecessors and subsidiaries ("Affiliated Entities"), that have resulted in any adverse administrative determination, arbitral award or decision, or civil judgment on the merits, or in a settlement or consent decree resolving admitted or alleged violations in the three (3) year period preceding the proposed effective date of the contract, and any pending formal charges of Labor Violations that have not been settled or otherwise adjudicated and address to the satisfaction of the contractor, with such documentation and records as it may request, the details of any such violations and corrective measures, if any, taken; and
7. All necessary actions required to close the contract are completed and documented.

Small purchase files shall be considered closed when the Contracting Officer receives evidence of receipt of goods or services and final payment.

### **23.29 Quick Close of Cost Reimbursement Contracts**

Cost reimbursement contracts may be closed out in advance of the determination of final indirect cost rates if the contract is physically complete and the amount of unsettled indirect cost to be allocated to the contract is relatively insignificant.

Indirect cost amounts will be considered insignificant when the total unsettled indirect cost to be allocated to any one contract does not exceed \$1,000,000 and the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15 percent of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year.

The Contracting Officer may waive the 15 percent restriction based upon a risk assessment that considers the contractor's accounting, estimating, and purchasing systems; other concerns of the cognizant contract auditors; and any other pertinent information and agreement can be reached on a reasonable estimate of allocable dollars.

Indirect cost rates used in the quick closeout of a contract shall not be considered a binding precedent when establishing the final indirect cost rates for other contracts.

### **23.30 Evaluation of Contractors**

The Authority shall evaluate all contractors providing goods and services including construction in excess of \$100,000. Contractor evaluation occurs during and after contract performance and shall be used in evaluating contractor past performance during future solicitations.



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## CHAPTER 25. Contractor Responsibility

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## 25.1 Policy

Goods and services including construction services may be procured only from contractors that affirmatively demonstrate their responsibility including, when necessary, for any proposed subcontractors.

## 25.2 Responsible Prospective Contractors

To be determined responsible, a prospective contractor must:

1. Have or have the ability to obtain adequate financial resources to perform the contract;
2. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
3. Have the integrity and reliability which will assure good faith performance;
4. Have a satisfactory performance record. A prospective contractor shall not be determined responsible or non-responsible solely on the basis of a lack of relevant performance history;
5. Disclose all Labor Violations (as defined in Section 23.28.6 of this Procurement Manual) by contractor or any affiliated person or entity, including contractor's owners, parent entity, predecessors and subsidiaries ("Affiliated Entities"), that have resulted in any adverse administrative determination, arbitral award or decision, or civil judgment on the merits, or, ~~unless precluded by law or contractual nondisclosure provisions, in a settlement or consent decree resolving admitted or alleged violations~~ in the three (3) year period preceding the proposed effective date of the contract, and any pending formal charges of Labor Violations against contractor, any Affiliated Entity, or subcontractor that have not yet been settled or otherwise adjudicated, and address to the satisfaction of the Contracting Officer, with such documentation and records as he/she may request, the details of any such violations and corrective measures, if any, taken;
6. Not have engaged in Labor Violations (as defined in Section 23.28.6 of this Manual) in the three (3) year period preceding the proposed effective date of the contract that the Contracting Officer determines constitute(s) an unsatisfactory record of integrity or business ethics, including any Labor Violations engaged in by any Affiliated person or eEntity, including contractor's owners, predecessors and subsidiaries; and
7. Not be the subject of debarment or suspension proceedings commenced by the General Manager pursuant to Chapter 26 of this Procurement Manual.
- ~~8. Include a provision in any subcontract entered into during the course of and in connection with the contract stating that the subcontractor shall not engage in any Labor Violations.~~

## 25.3 Subcontractor Responsibility

Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors regarding debarred, ineligible, or suspended firms. Determination of prospective subcontractor responsibility may affect the Authority's determination of the prospective prime contractor's responsibility.

The Authority may determine a prospective subcontractor's responsibility when the work to be performed by the subcontractor constitutes a significant part of the overall contract, or if it involves elements where a high level of risk of performance would be unacceptable.

## 25.4 Determination of Responsibility

The Contracting Officer will award contracts only to prospective contractors that are determined to be responsible with respect to the contract in accordance with the section entitled Responsible Prospective Contractors.

## 25.5 Pre-Award Surveys

Pre-award surveys may be required when the information on hand or readily available including from commercial sources is not sufficient to make a determination regarding responsibility.

## 25.6 List of Excluded Parties

In addition to reviewing the information provided by the General Services Administration ("GSA") and the United States Department of Labor ("DOL"), the General Manager or his designee shall search the DC Courts, and, to the extent available, courts in prospective contractor's principal place of business, the Federal Bid List, the National Labor Relations Board ("NLRB") and the Office of Federal Contract Compliance Programs regarding entities that, within the three (3) year period preceding the proposed effective date of the contract, have been: debarred, suspended, proposed for debarment, excluded or disqualified under the non-procurement common rule; adjudicated as having committed Labor Violations as defined in section 23.28.6; having admitted Labor Violations in a formal settlement, conciliation agreement, or consent decree; or otherwise declared ineligible from receiving federal contracts, certain subcontracts, and certain federal assistance and benefits. Such information shall be considered in determining a prospective contractor's responsibility under Section 25.2.

Bids or proposals from, awards or contracts to, or consent to subcontract with prospective contractors ~~so designated by GSA~~ identified by GSA as being debarred or suspended shall not be accepted unless the General Manager determines that there is a compelling reason for such action.

## 25.7 Certification Regarding Debarment or Ineligibility

The solicitations shall contain provisions requiring contractors and subcontractors at any level to verify that the entity (and its principals and affiliates) with which they propose to contract or subcontract is not debarred or ineligible.

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## **25.1 Policy**

Goods and services including construction services may be procured only from contractors that affirmatively demonstrate their responsibility including, when necessary, for any proposed subcontractors.

## **25.2 Responsible Prospective Contractors**

To be determined responsible, a prospective contractor must:

1. Have or have the ability to obtain adequate financial resources to perform the contract;
2. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
3. Have the integrity and reliability which will assure good faith performance;
4. Have a satisfactory performance record. A prospective contractor shall not be determined responsible or non-responsible solely on the basis of a lack of relevant performance history;
5. Disclose all Labor Violations (as defined in Section 23.28.6 of this Procurement Manual) by contractor or any affiliated person or entity, including contractor's owners, parent entity, predecessors and subsidiaries ("Affiliated Entities"), that have resulted in any adverse administrative determination, arbitral award or decision, or civil judgment on the merits, or in a settlement or consent decree resolving admitted or alleged violations in the three (3) year period preceding the proposed effective date of the contract, and any pending formal charges of Labor Violations against contractor, any Affiliated Entity, or subcontractor that have not yet been settled or otherwise adjudicated, and address to the satisfaction of the Contracting Officer, with such documentation and records as he/she may request, the details of any such violations and corrective measures, if any, taken;
6. Not have engaged in Labor Violations (as defined in Section 23.28.6 of this Manual) in the three (3) year period preceding the proposed effective date of the contract that the Contracting Officer determines constitute(s) an unsatisfactory record of integrity or business ethics, including any Labor Violations engaged in by any Affiliated Entity; and
7. Not be the subject of debarment or suspension proceedings commenced by the General Manager pursuant to Chapter 26 of this Procurement Manual.

## **25.3 Subcontractor Responsibility**

Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors regarding debarred, ineligible, or suspended firms. Determination of prospective subcontractor responsibility may affect the Authority's determination of the prospective prime contractor's responsibility.

The Authority may determine a prospective subcontractor's responsibility when the work to be performed by the subcontractor constitutes a significant part of the overall contract, or if it involves elements where a high level of risk of performance would be unacceptable.

## **25.4 Determination of Responsibility**

The Contracting Officer will award contracts only to prospective contractors that are determined to be responsible with respect to the contract in accordance with the section entitled Responsible Prospective Contractors.

## **25.5 Pre-Award Surveys**

Pre-award surveys may be required when the information on hand or readily available including from commercial sources is not sufficient to make a determination regarding responsibility.

## **25.6 List of Excluded Parties**

In addition to reviewing the information provided by the General Services Administration ("GSA") and the United States Department of Labor ("DOL"), the General Manager or his designee shall search the DC Courts, and, to the extent available, courts in prospective contractor's principal place of business, the Federal Bid List, the National Labor Relations Board ("NLRB") and the Office of Federal Contract Compliance Programs

regarding entities that, within the three (3) year period preceding the proposed effective date of the contract, have been: debarred, suspended, proposed for debarment, excluded or disqualified under the non-procurement common rule; adjudicated as having committed Labor Violations as defined in section 23.28.6; having admitted Labor Violations in a formal settlement, conciliation agreement, or consent decree; or otherwise declared ineligible from receiving federal contracts, certain subcontracts, and certain federal assistance and benefits. Such information shall be considered in determining a prospective contractor's responsibility under Section 25.2.

■ Bids or proposals from, awards or contracts to, or consent to subcontract with contractors so designated by GSA shall not be accepted unless the General Manager determines that there is a compelling reason for such action. ■

### **25.7 Certification Regarding Debarment or Ineligibility**

The solicitations shall contain provisions requiring contractors and subcontractors at any level to verify that the entity (and its principals and affiliates) with which they propose to contract or subcontract is not debarred or ineligible.

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## CHAPTER 26. Debarment and Suspension

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## 26.1 Policy

Offers shall be solicited from, contracts awarded to, and consent given to subcontracts with responsible Contractors only. Contractors may be debarred or suspended when necessary and appropriate.

## 26.2 Debarment

### 26.2.1 Authority to Debar

The General Manager has the authority to debar for cause a person or business entity from consideration for award of contracts. The General Manager may appoint in writing one or more debarment officials (*hereinafter referred to as designees*). The authority to debar may be delegated to the Contracting Officer (*as defined in Section 5399.1 of the Procurement Regulations and further discussed in Section 1.4 of this Procurement Manual*) who shall also follow the procedures set out herein.

### 26.2.2 Causes for Debarment

A contractor may be debarred for a conviction of or a civil judgment for, or *an administrative finding of*:

1. Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;
2. Violation of federal, state, or District of Columbia antitrust statutes relating to the submission of offers;
3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; *and/or*
4. Commission of any other offense indicating a lack of integrity or business *ethics* that seriously and directly affects the present responsibility of an Authority contractor or subcontractor.

### 26.2.3 Additional Causes for Debarment

A contractor may be debarred based upon a preponderance of the evidence for serious violation of the terms of an Authority, federal, District of Columbia, state or local jurisdiction contract or subcontract including by way of example but not limitation:

1. Willful failure to perform in accordance with the terms of one or more contracts;
2. A failure to perform or unsatisfactory performance of one or more Authority contracts;
3. Willful failure to pay subcontractors for work performed on any Authority contract;
4. Willful failure to implement MBE, WBE, and LSDBE participation goals; *and/or*
5. *Labor Violations (as defined in Section 23.28.6 of this Procurement Manual) adjudicated or admitted in a formal settlement, conciliation agreement, or consent decree during the contract term or* in the three (3) year period preceding the proposed effective date of the contract that the Authority determines constitute an unsatisfactory record of integrity or business ethics.

### 26.2.4 Effect of Other Debarment

A contractor currently debarred by the District of Columbia or any federal, state, or the Authority's participating jurisdiction may be debarred.

### 26.2.5 Reasonable Notice

The General Manager or his designee(s) shall initiate debarment proceedings by notifying the contractor and any specifically-named affiliates by certified mail, return receipt requested, of the following:

1. The factual basis for the proposed debarment, in sufficient detail to put the contractor on notice of the conduct or transaction(s) upon which the proposed debarment is based;
2. That within fifteen (15) calendar days after receipt of the notice, the contractor may submit in writing information and argument in opposition to the proposed debarment, including any genuine dispute of material fact;



3. The potential effect of the proposed debarment; and

4. That DC Water shall not solicit offers from, award contracts to, renew, extend contracts with, or consent to subcontracts with the contractor pending a debarment decision.

#### **26.2.5.1 Opportunity to be Heard**

If the contractor fails to make a submission within fifteen (15) calendar days of receipt of the notice of proposed debarment, the General Manager or his designees(s) shall notify the contractor that it has waived the right to a hearing and a final decision shall be made based upon the facts available.

If a submission is timely received in debarment actions not based upon a conviction or civil judgment and the General Manager or his designee(s) find that the contractor's submission raises a genuine dispute of material fact, the General Manager shall:

1. Provide the contractor with written notice by certified mail, return receipt requested, that (i) informs the contractor that it shall be given an opportunity for a hearing, and (ii) includes the time, place, date, and purpose of the hearing; and

2. Appoint a DC Water employee to act as Hearing Examiner. The General Manager shall have the option, if he determines it is in the Authority's best interest, to select an independent third party to act as Hearing Examiner.

#### **26.2.5.2 Hearing, Proposed Order, Final Order and Right to Appeal**

The hearing may be conducted informally, with all parties given an opportunity to be heard, be represented by counsel, present evidence, cross-examine witnesses and argue in support of their respective positions. The Hearing Examiner's standard of proof shall be a preponderance of the evidence. Within sixty (60) calendar days of the conclusion of the proceedings, the Hearing Examiner shall issue a proposed decision and order, in writing, to the General Manager or the General Manager's designee(s) and to the contractor. The General Manager or the General Manager's designee(s) shall review the proposed decision and order and may affirm, reverse, or modify the proposed decision and order, or remand the case to the Hearing Examiner for further proceedings. The General Manager shall provide a copy of the final decision and order to the contractor and inform the contractor by certified mail, return receipt requested, of the right to appeal the final decision or order in a court of competent jurisdiction within the District of Columbia.

#### **26.2.6 Effective Date of Debarment**

A debarment shall take effect when the **General Manager's** final decision and order is issued. The contractor shall then be debarred from consideration for the award of contracts until the debarment period specified in the **General Manager's final** decision and order expires, such time period to be consistent with Section 26.2.7 herein.

#### **26.2.7 Period of Debarment**

A contractor may be debarred for a period commensurate with the seriousness of the cause(s). The period of debarment should not exceed **three (3)** years. Any **prior** suspension period shall be considered in determining the debarment period. The debarment period may be extended for an additional period not to exceed **three (3)** years if an extension is deemed necessary to protect the Authority's interests, **as determined by the General Manager, the General Manager's designee(s), or the Contracting Officer.** However, a period of debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based.

#### **26.2.8 Reduction of Period of Debarment**

The period of debarment may be reduced upon the contractor's request, supported by documentation, for reasons such as:

1. Newly discovered material evidence;

2. Reversal of the conviction or civil judgment upon which the debarment was based;

3. Bona fide change in ownership or management;
4. Elimination of other causes for which the debarment was imposed; or
5. Other reasons deemed appropriate by the General Manager or the General Manager's designee(s). ~~or the Contracting Officer.~~

### **26.3 Suspensions**

#### **26.3.1 Authority to Suspend**

The General Manager has the authority to suspend a contractor pending the completion of an investigation or legal proceedings when it has been determined that immediate action is necessary to protect the Authority's interests. The General Manager may appoint in writing one or more suspension official(s) (~~herein after referred to as designees~~). The authority to suspend may be delegated to the Contracting Officer.

#### **26.3.2 Causes for Suspensions**

A contractor may be suspended based upon ~~substantial evidence a preponderance of the evidence offer:~~

1. Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;
2. Indictment for any of the causes stated in the section above on Causes for Debarment, including when a cause results from an administrative hearing finding;
3. Being placed on a debarment list by any public body;
4. Commencement of debarment proceedings by the Authority;
5. Labor Violations (as defined in Section 23.28.6 of this Procurement Manual) adjudicated or admitted in a formal settlement, conciliation agreement, or consent decree during the contract term or in the three (3) year period preceding the proposed effective date of the contract that the Authority may determine constitute an unsatisfactory record of integrity or business ethics; or
6. Any other cause of such a serious or compelling nature that it affects the present responsibility of an Authority contractor.

#### **26.3.3 Reasonable Notice**

The General Manager or his designee(s) shall initiate suspension proceedings by notifying the contractor and any specifically named affiliates by certified mail, return receipt requested, of the following:

1. The factual basis for the proposed suspension in sufficient detail to put the contractor on notice of the conduct or transaction(s) upon which the proposed suspension is based;
2. That within fifteen (15) calendar days after receipt of the notice, the contractor may submit in writing, information and argument in opposition to the proposed suspension, including any specific information that raises a genuine issue of material fact;
3. The potential effect of the proposed suspension; and
4. That DC Water shall not solicit offers from, award contracts to, renew, extend contracts with, or consent to subcontracts with the contractor pending a suspension decision.

##### **26.3.3.1 Opportunity to be Heard**

If the contractor fails to make a submission within fifteen (15) calendar days of receipt of the notice of proposed suspension, the General Manager or his designee(s) shall timely notify the contractor that it has waived the right to a hearing and a final decision shall be made based upon the facts available.

If a submission is timely received in a suspension action not based upon a conviction or civil judgment and the

General Manager or his designees(s) find that the contractor's submission raises a genuine dispute of material fact, the General Manager shall do the following within fifteen (15) calendar days of receipt of the contractor's submission:

1. Provide the contractor with written notice by certified mail, return receipt requested, that (i) informs the contractor that it shall be given an opportunity for a hearing, and (ii) includes the time, place, date, and purpose of the hearing; and
2. Appoint a DC Water employee to act as Hearing Examiner. The General Manager shall have the option, if he determines it is in the Authority's best interest, to select an independent third party to act as Hearing Examiner.

#### 26.3.3.2 Hearing, Proposed Order, Final Order and Right to Appeal

The hearing may be conducted informally, with all parties given an opportunity to be heard, be represented by counsel, present evidence, cross-examine witnesses and argue in support of their respective positions. Within sixty (60) calendar days of the conclusion of the proceedings, the Hearing Examiner shall issue a proposed decision and order in writing to the General Manager or the General Manager's designee(s) and to the contractor. The General Manager or the General Manager's designee(s) shall review the proposed decision and order and may affirm, reverse, or modify the proposed decision and order, or remand the case to the Hearing Examiner. The General Manager shall provide a written copy of the final decision and order to the contractor, and inform it in writing by certified mail return receipt requested of the right to appeal the final decision and order in a court of competent jurisdiction in the District of Columbia.

#### 26.3.4 Effective Date of Suspension

A suspension shall take effect when the **General Manager's** final decision and order is issued. The contractor shall then be suspended from the consideration for award of contracts until the suspension period specified in the **General Manager's final** decision and order expires.

Date Issued: June 12, 2009  
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## CHAPTER 26. Debarment and Suspension

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## **26.1 Policy**

Offers shall be solicited from, contracts awarded to, and consent given to subcontracts with responsible Contractors only. Contractors may be debarred or suspended when necessary and appropriate.

## **26.2 Debarment**

### **26.2.1 Authority to Debar**

The General Manager has the authority to debar for cause a person or business entity from consideration for award of contracts. The General Manager may appoint in writing one or more debarment officials (hereinafter referred to as designees). The authority to debar may be delegated to the Contracting Officer (as defined in Section 5399.1 of the Procurement Regulations and further discussed in Section 1.4 of this Procurement Manual) who shall also follow the procedures set out herein.

### **26.2.2 Causes for Debarment**

A contractor may be debarred for a conviction of or a civil judgment for, or an administrative finding of:

1. Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;
2. Violation of federal, state, or District of Columbia antitrust statutes relating to the submission of offers;
3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
4. Commission of any other offense indicating a lack of integrity or business ethics that seriously and directly affects the present responsibility of an Authority contractor or subcontractor.

### **26.2.3 Additional Causes for Debarment**

A contractor may be debarred based upon a preponderance of the evidence for serious violation of the terms of an Authority, federal, District of Columbia, state or local jurisdiction contract or subcontract including by way of example but not limitation:

1. Willful failure to perform in accordance with the terms of one or more contracts;
2. A failure to perform or unsatisfactory performance of one or more Authority contracts;
3. Willful failure to pay subcontractors for work performed on any Authority contract;
4. Willful failure to implement MBE, WBE, and LSDBE participation goals; or
5. Labor Violations (as defined in Section 23.28.6 of this Procurement Manual) adjudicated or admitted in a formal settlement, conciliation agreement, or consent decree during the contract term or in the three (3) year period preceding the proposed effective date of the contract that the Authority determines constitute an unsatisfactory record of integrity or business ethics.

### **26.2.4 Effect of Other Debarment**

A contractor currently debarred by the District of Columbia or any federal, state, or the Authority's participating jurisdiction may be debarred.

### **26.2.5 Reasonable Notice**

The General Manager or his designee(s) shall initiate debarment proceedings by notifying the contractor and any specifically-named affiliates by certified mail, return receipt requested, of the following

1. The factual basis for the proposed debarment, in sufficient detail to put the contractor on notice of the conduct or transaction(s) upon which the proposed debarment is based;
2. That within fifteen (15) calendar days after receipt of the notice, the contractor may submit in writing information and argument in opposition to the proposed debarment, including any genuine dispute of material fact;

3. The potential effect of the proposed debarment; and
4. That DC Water shall not solicit offers from, award contracts to, renew, extend contracts with, or consent to subcontracts with the contractor pending a debarment decision.

#### **26.2.5.1 Opportunity to be Heard**

If the contractor fails to make a submission within fifteen (15) calendar days of receipt of the notice of proposed debarment, the General Manager or his designees(s) shall notify the contractor that it has waived the right to a hearing and a final decision shall be made based upon the facts available.

If a submission is timely received in debarment actions not based upon a conviction or civil judgment and the General Manager or his designee(s) find that the contractor's submission raises a genuine dispute of material fact, the General Manager shall:

1. Provide the contractor with written notice by certified mail, return receipt requested, that (i) informs the contractor that it shall be given an opportunity for a hearing, and (ii) includes the time, place, date, and purpose of the hearing; and
2. Appoint a DC Water employee to act as Hearing Examiner. The General Manager shall have the option, if he determines it is in the Authority's best interest, to select an independent third party to act as Hearing Examiner.

#### **26.2.5.2 Hearing, Proposed Order, Final Order and Right to Appeal**

The hearing may be conducted informally, with all parties given an opportunity to be heard, be represented by counsel, present evidence, cross-examine witnesses and argue in support of their respective positions. The Hearing Examiner's standard of proof shall be a preponderance of the evidence. Within sixty (60) calendar days of the conclusion of the proceedings, the Hearing Examiner shall issue a proposed decision and order, in writing, to the General Manager or the General Manager's designee(s) and to the contractor. The General Manager or the General Manager's designee(s) shall review the proposed decision and order and may affirm, reverse, or modify the proposed decision and order, or remand the case to the Hearing Examiner for further proceedings. The General Manager shall provide a copy of the final decision and order to the contractor and inform the contractor by certified mail, return receipt requested, of the right to appeal the final decision or order in a court of competent jurisdiction within the District of Columbia.

#### **26.2.6 Effective Date of Debarment**

A debarment shall take effect when the General Manager's final decision and order is issued. The contractor shall then be debarred from consideration for the award of contracts until the debarment period specified in the General Manager's final decision and order expires, such time period to be consistent with Section 26.2.7 herein.

#### **26.2.7 Period of Debarment**

A contractor may be debarred for a period commensurate with the seriousness of the cause(s). The period of debarment should not exceed three (3) years. Any prior suspension period shall be considered in determining the debarment period. The debarment period may be extended for an additional period not to exceed three (3) years if an extension is deemed necessary to protect the Authority's interests, as determined by the General Manager, the General Manager's designee(s), or the Contracting Officer. However, a period of debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based.

#### **26.2.8 Reduction of Period of Debarment**

The period of debarment may be reduced upon the contractor's request, supported by documentation, for reasons such as:

1. Newly discovered material evidence;
2. Reversal of the conviction or civil judgment upon which the debarment was based;

3. Bona fide change in ownership or management;
4. Elimination of other causes for which the debarment was imposed; or
5. Other reasons deemed appropriate by the General Manager or the General Manager's designee(s).

### **26.3 Suspensions**

#### **26.3.1 Authority to Suspend**

The General Manager has the authority to suspend a contractor pending the completion of an investigation or legal proceedings when it has been determined that immediate action is necessary to protect the Authority's interests. The General Manager may appoint in writing one or more suspension official(s) (herein after referred to as designees). The authority to suspend may be delegated to the Contracting Officer.

#### **26.3.2 Causes for Suspensions**

A contractor may be suspended based upon substantial evidence of:

1. Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;
2. Indictment for any of the causes stated in the section above on Causes for Debarment, including when a cause results from an administrative hearing finding;
3. Being placed on a debarment list by any public body;
4. Commencement of debarment proceedings by the Authority;
5. Labor Violations (as defined in Section 23.28.6 of this Procurement Manual) adjudicated or admitted in a formal settlement, conciliation agreement, or consent decree during the contract term or in the three (3) year period preceding the proposed effective date of the contract that the Authority may determine constitute an unsatisfactory record of integrity or business ethics; or
6. Any other cause of such a serious or compelling nature that it affects the present responsibility of an Authority contractor.

#### **26.3.3 Reasonable Notice**

The General Manager or his designee(s) shall initiate suspension proceedings by notifying the contractor and any specifically named affiliates by certified mail, return receipt requested, of the following:

1. The factual basis for the proposed suspension in sufficient detail to put the contractor on notice of the conduct or transaction(s) upon which the proposed suspension is based;
2. That within fifteen (15) calendar days after receipt of the notice, the contractor may submit in writing, information and argument in opposition to the proposed suspension, including any specific information that raises a genuine issue of material fact;
3. The potential effect of the proposed suspension; and
4. That DC Water shall not solicit offers from, award contracts to, renew, extend contracts with, or consent to subcontracts with the contractor pending a suspension decision.

##### **26.3.3.1 Opportunity to be Heard**

If the contractor fails to make a submission within fifteen (15) calendar days of receipt of the notice of proposed suspension, the General Manager or his designee(s) shall timely notify the contractor that it has waived the right to a hearing and a final decision shall be made based upon the facts available.

If a submission is timely received in a suspension action not based upon a conviction or civil judgment and the General Manager or his designees(s) find that the contractor's submission raises a genuine dispute of material

fact, the General Manager shall do the following within fifteen (15) calendar days of receipt of the contractor's submission:

1. Provide the contractor with written notice by certified mail, return receipt requested, that (i) informs the contractor that it shall be given an opportunity for a hearing, and (ii) includes the time, place, date, and purpose of the hearing; and
2. Appoint a DC Water employee to act as Hearing Examiner. The General Manager shall have the option, if he determines it is in the Authority's best interest, to select an independent third party to act as Hearing Examiner.

#### 26.3.3.2 Hearing, Proposed Order, Final Order and Right to Appeal

The hearing may be conducted informally, with all parties given an opportunity to be heard, be represented by counsel, present evidence, cross-examine witnesses and argue in support of their respective positions. Within sixty (60) calendar days of the conclusion of the proceedings, the Hearing Examiner shall issue a proposed decision and order in writing to the General Manager or the General Manager's designee(s) and to the contractor. The General Manager or the General Manager's designee(s) shall review the proposed decision and order and may affirm, reverse, or modify the proposed decision and order, or remand the case to the Hearing Examiner. The General Manager shall provide a written copy of the final decision and order to the contractor, and inform it in writing by certified mail return receipt requested of the right to appeal the final decision and order in a court of competent jurisdiction in the District of Columbia.

#### 26.3.4 Effective Date of Suspension

A suspension shall take effect when the General Manager's final decision and order is issued. The contractor shall then be suspended from the consideration for award of contracts until the suspension period specified in the General Manager's final decision and order expires.