

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs (DCRA), pursuant to section 18(e) of A Regulation Governing Vending Businesses in Public Space, enacted December 13, 1974, Reg. 74-39, 21 DCR 1285, as amended by section 2(k) of the Vendors Regulation Amendments Act of 1978, effective June 30, 1978, D.C. Law 2-82, 24 DCR 9293, Reorganization Plan 1 of 1986, effective September 7, 1987, the Vending Regulation Emergency Act of 2008, effective March 19, 2008, D.C. Act 17-322, 55 DCR 3445, the Expanded Opportunities for Street Vending Around the Baseball Stadium Emergency Amendment Act of 2008 (Baseball Stadium Vending Act), effective April 17, 2008, D.C. Act 17-353, 55 DCR 5370, and Mayor's Order 2008-66, effective April 23, 2008, hereby gives notice of the adoption, on an emergency basis, of the following amendment to Chapter 5 of Title 24 of the *District of Columbia Municipal Regulations* to provide for the management of vending locations around Nationals Park. Emergency rulemaking action is necessary to comply with the Baseball Stadium Vending Act's requirement that vending locations be issued shortly after the effective date of that Act. This emergency rulemaking was adopted on May 14, 2008. It became effective on that date and will expire on September 10, 2008. The Director also gives notice of her intent to take final rulemaking action to adopt this amendment in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Title 24 DCMR, Chapter 5 is amended by adding a new Section 530 to read as follows:

530 NATIONALS PARK VENDING

- 530.1 The Nationals Ballpark Vending Site Plan designates the safe vending locations within the Capitol Riverfront Vending Development Zone (CRVDZ).
- 530.2 The Director of the Department of Consumer and Regulatory Affairs (DCRA) shall assign vending locations within the CRVDZ by lottery, to be held monthly, commencing the final week of May, 2008. Applicants may apply electronically, via designated computer kiosks, for each monthly lottery within the DCRA Business Licensing Center, Suite 1100, 941 North Capitol Street, N.E., which maintains information concerning qualifications and the application process. Winners shall be notified by phone, mail, and through a listing on the DCRA website.
- 530.3 Each vendor operating within the CRVDZ shall pay a Nationals Ballpark Vending administrative management fee of \$123.00 per month, per vending location.
- 530.4 Legally licensed vendors at Robert F. Kennedy Memorial Stadium shall receive a preference in the assignment of vending sites in the CRVDZ in the form of an additional entry in each lottery.

All persons desiring to comment on these proposed regulations should submit comments in writing to Paul Waters, Legislative Liaison, Department of Consumer and Regulatory Affairs, Suite 9400, 941 North Capitol Street, NE, Washington, D.C. 20002, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of the proposed rulemaking can be obtained from this address. A copy fee of one dollar (\$1.00) will be charged for each copy of the proposed rulemaking requested.

THE OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY RULEMAKING

The Chief Procurement Officer of the District of Columbia, pursuant to authority granted by section 204 of the District of Columbia Procurement Practices Act of 1985 ("PPA"), effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-302.04 (2001)), and Mayor's Order 2002-207 (dated December 18, 2002), hereby gives notice of the adoption of the following emergency rules to amend Chapter 16 of Title 27 of the District of Columbia Municipal Regulations (Contracts and Procurements). The rulemaking is intended to add a section of Chapter 16 concerning solicitations for design, development, construction and management of a District office building to be known as the Anacostia Gateway Government Center ("AGGC"). Similar rules previously authorized a two-step selection process in which the first step was to solicit statements of qualifications from firms or combinations of firms prior to the issuance of a request for proposals for development, construction, and management of the AGGC. The first step of the solicitation has been completed. The proposed rules allow the contracting officer the flexibility of soliciting only for design, development, and construction of the AGGC in the second step. The AGGC is planned to have not less than 150,000 gross square feet of usable space and to be constructed on a District-owned site in Ward 8. The purpose of this two-step process will be to select a developer whose offer will provide the best value to the District.

In the first step, prospective contractors were evaluated based on statements of their qualifications to perform the development, construction and initial management work, in order to enable the District to determine whether or not they are qualified to respond to a request for competitive sealed proposals ("RFP") to be issued subsequently under Chapter 16. The District's request for qualifications ("RFQ") served to maximize competition and dialogue between the District and the private development community, as well as to facilitate determination of the scope and timing of AGGC site development and corresponding issuance of the RFP.

On October 19, 2005, the Chief Procurement Officer adopted emergency rules to enable the Office of Contracting and Procurement ("OCP") to commence procedures to solicit and evaluate information from potentially qualified prospective contractors for this project through publication and issuance of an RFQ. Those rules were published in a Notice of Emergency Rulemaking in the *D. C. Register* on November 25, 2005, at 52 DCR 10422. In reviewing the scope of work for the solicitation, OCP has determined that it would be in the

best interest of the District to allow no more than the five-top-ranked offerors to be selected in the first step as qualified to submit proposals in the second step. Accordingly, action was taken on December 8, 2005, to adopt amended rules on an emergency basis effective on that date, to revise sections 1611.2(b), 1611.5(e), 1611.7, 1611.8 and 1611.9(a) of the rules adopted on October 19, 2005, and superseded those rules. Those rules were published in a Notice of Emergency Rulemaking in the *D.C. Register* on February 3, 2006, at 52 DCR 683. Action was taken on April 7, 2006 to continue those rules on an emergency basis effective on that date, and those rules were published in a Notice of Emergency Rulemaking in the *D.C. Register* on May 12, 2006 at 52 DCR 4011. Action was taken on August 3, 2006 to further continue those rules on an emergency basis. The emergency rules expired on December 1, 2006. Action was therefore taken on January 11, 2007 to adopt the following rules on an emergency basis, effective on that date.

Upon further review of the scope of work for the solicitation, OCP determined that it would be in the best interest of the District to allow the contracting officer the flexibility of soliciting only for design, development, and construction of the AGGC in the second step. Accordingly, action was taken on January 26, 2007, to adopt amended rules on an emergency basis effective on that date, to revise section 1611.9 of the rules adopted on January 11, 2007, and which superseded those rules. These rules were published in a Notice of Emergency Rulemaking in the *D.C. Register* on February 23, 2007 at 53 DCR 1695, and expired on May 26, 2007. Action was taken on June 5, 2007 to continue these rules on an emergency basis and those rules expired October 3, 2007. Action was taken on October 10, 2007 to continue these rules on an emergency basis and the emergency rules expired on February 7, 2008.

The rules were adopted as emergency and proposed rules on February 4, 2008 and published in the *D.C. Register* on March 21, 2008, at 55 DCR 2944. The current emergency rules expire on June 3, 2008. No changes have been made to the text of the proposed rules as published.

These emergency rules will remain in effect up to one hundred twenty (120) days from date of adoption, unless earlier superseded by another rulemaking notice or by publication of a Notice of Final Rulemaking in the *D.C. Register*.

Adoption of these emergency rules to amend Chapter 16 is necessary for the immediate preservation of the public safety or welfare, in accordance with District law as codified at D.C. Official Code § 2-505(c) (2001). Without these emergency rules, OCP will not be able to complete the two-step process to select a developer for the AGGC.

CHAPTER 16

PROCUREMENT BY COMPETITIVE SEALED PROPOSALS

Chapter 16 is amended by adding a new section 1611 to read as follows:

**1611 SOLICITATIONS FOR DEVELOPMENT, CONSTRUCTION AND
MANAGEMENT OF THE ANACOSTIA GATEWAY GOVERNMENT
CENTER**

- 1611.1 Notwithstanding the provisions of § 1602, the purpose of this section is to adopt a two-step procurement method to be used for procurement of a contractor to develop, construct and initially manage the proposed Anacostia Gateway Government Center ("AGGC"). The first step will be a request for qualifications (RFQ) to enable the contracting officer to determine which prospective contractors are qualified to receive requests for proposals (RFP's) and submit responses to the RFP's, based on financial and professional responsibility criteria established by the contracting officer for pre-qualification of a prospective contractor to develop, construct and initially manage the AGGC.
- 1611.2 The District shall conduct the two-step selection process as follows:
- (a) The first step consists of a request issued by the Office of Contracting and Procurement (OCP) for qualifications from a firm or combination of firms that has expertise, ability and entrepreneurship (i) to assemble the land, labor and capital necessary for the completion of the design, construction and management of the AGGC (as described by the District), (ii) to manage all components of the design and construction of a project of this size, (iii) to construct and complete the proposed project in a timely manner while serving the District's stated policy objectives, and (iv) to manage the land and operate the building after the construction of the AGGC is completed; and
 - (b) The second step of the two-step process involves the submission of proposals in response to an RFP issued by OCP to up to five offerors determined to be the most qualified in the first step. The only offerors who may submit proposals in response to the RFP in the second step are those offerors that (i) responded to the RFQ, and (ii) were determined to be the most qualified by the contracting officer.
- 1611.3 The contracting officer shall give public notice of the RFQ for development, construction and management of the AGGC in accordance with Chapter 13.
- 1611.4 The contracting officer shall utilize the two-step process set forth in section 1611.2 above on forms prescribed by the Director.
- 1611.5 The first step of the process shall consist of an RFQ inviting interested prospective contractors to respond in writing with a statement of their qualifications to perform the required services, including financial and professional responsibility information. The RFQ shall provide, at a minimum:
- (a) A detailed description of the proposed AGGC site and the project;
 - (b) The District's intent of the project and the design;
 - (c) The selection process, schedule and criteria to be used by the District in determining which prospective contractors are qualified;
 - (d) Submission requirements and evaluation criteria that will be used to determine whether each prospective contractor is qualified; and
 - (e) A statement that only proposals from up to five offerors determined most qualified in the first step pursuant to subparagraphs (c) and (d) above will be selected to submit proposals in the second step.

- 1611.6 The contracting officer may conduct oral or written discussions with all prospective contractors who submitted responses to the RFQ.
- 1611.7 The contracting officer may provide the information submitted by all prospective contractors in response to the RFQ to an evaluation panel who may recommend to the contracting officer, based upon their analysis of the information according to the criteria set forth in the RFQ, whether or not the prospective contractor is among the up to five most qualified to proceed to the second step.
- 1611.8 The contracting officer shall determine the financial and professional responsibility of each prospective contractor that responds to the RFQ, and whether the prospective contractor is among the up to five most qualified to proceed to the second step.
- 1611.9 The second step of the selection process shall follow the competitive sealed proposal procedures consistent with the requirements of this chapter, except as follows:
- (a) The contracting officer shall issue an RFP only to up to five of the top-ranked offerors who have been determined most qualified in the first step;
 - (b) The contracting officer shall ensure that an independent cost/benefit analysis of each proposal be completed;
 - (c) The RFP shall not be advertised in newspapers or publicly posted; and
 - (d) The contracting officer may issue an RFP that includes only design, development, and construction of the AGGC.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Homeland Security and Emergency Management Agency (HSEMA), pursuant to the duty to develop a Homeland Security Program to identify and mitigate threats, risks, and vulnerabilities within the District of Columbia assigned to him by section 203 of An Act To authorize the District of Columbia government to establish an Office of Civil Defense, and for other purposes (Act), effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 7-2231.03)(2007 Supp.); the duties described in paragraphs (1) and (8) of section 3 of the Act (D.C. Official Code § 7-2205(1) and (8)); and pursuant to the authority and obligations established in Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), gives notice of the adoption, on an emergency basis, of a new Chapter 38 of Title 24 of the District of Columbia Municipal Regulations (DCMR), entitled "Homeland Security and Emergency Management Agency Use of Closed Circuit Television". The purpose of this emergency rulemaking is to enable HSEMA to utilize and coordinate closed circuit television resources of existing departments, offices, and agencies of the District to improve its ability to rapidly identify and respond to emergency circumstances that occur within the District. Emergency action is necessary to provide HSEMA with the immediate ability to utilize these resources to protect the citizens of the District from harm due to natural or man-made emergencies. The Director adopted the emergency rule on June 12, 2008, and it became effective immediately.

The Director also gives notice of intent to take final rulemaking action to adopt Chapter 38 of Title 24 in not less than thirty days following the publication date of this emergency and proposed rule amendment in the *D.C. Register*. The emergency rule will expire 120 days from the effective date, or upon publication of the Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Title 24 DCMR is amended by adding the following new Chapter 38.

**CHAPTER 38 HOMELAND SECURITY AND EMERGENCY
MANAGEMENT AGENCY USE OF CLOSED CIRCUIT
TELEVISION**

3800 PURPOSE

- 3800.1 The Homeland Security and Emergency Management Agency (HSEMA) has employed a network of closed circuit televisions (CCTV) within the Unified Communication Center (UCC) that are highly secured and protected against unauthorized access.
- 3800.2 HSEMA's CCTV system is generally intended to be used: (1) to provide a common framework to enable a single and shared CCTV system among existing disparate CCTV networks; (2) to improve monitoring efficiency, to reduce response time, and enhance public safety; and (3) to provide the District with an advanced video monitoring capability.

3801 POLICY

- 3801.1 HSEMA shall comply with all federal and District law applicable to the use of CCTV cameras in public space.
- 3801.2 Under no circumstances shall the CCTV systems be used for the purpose of infringing upon First Amendment rights.
- 3801.3 Operators of the CCTV systems shall not target/observe individuals solely because of their race, gender, ethnicity, sexual orientation, disability or other classifications protected by law.
- 3801.4 CCTV systems in public space shall be used to observe locations that are in public view and where there is no reasonable expectation of privacy.
- 3801.5 HSEMA shall not use audio in conjunction with the CCTV unless appropriate court orders are obtained.
- 3801.6 HSEMA is authorized to enter into agreements with public entities to access their external video feeds for the purposes established in section 3800 of this chapter.
- 3801.7 HSEMA is authorized to enter into agreements with private entities to access their external video feeds for discrete periods and only in exigent circumstances.
- 3801.8 HSEMA shall abide by these regulations if it receives CCTV feeds from another agency, jurisdiction, or entity.
- 3801.9 Additional permanent cameras in public space will only be deployed after public notification has been provided and only in locations that will advance the purposes defined in section 3800 of this chapter.

3802 PUBLIC NOTIFICATION

- 3802.1 Except under exigent circumstances and/or when the CCTV systems are deployed pursuant to a court order, the Director shall provide public notice of HSEMA's intention to deploy an additional permanent camera in public space.
- 3802.2 Public notice shall include the general capabilities of CCTV systems, their use in operations, and the duration of the deployment. Public notice will also identify the viewing area, but not necessarily the precise location of the camera. The precise location of a camera may be disclosed if the HSEMA Director determines that disclosure will not undermine the security of the camera and the efficacy of the deployment.
- 3802.3 The public shall have thirty (30) days to submit comments regarding a proposed deployment to the HSEMA Director. The public may submit comments to the

HSEMA Director at any time regarding a particular existing camera deployment or the CCTV system in general.

- 3802.4 The HSEMA Director shall consider the comments submitted by the public in determining whether to go forward with deployment of the camera. The HSEMA Director will provide public notice of his/her decision and provide an explanation.
- 3802.5 In exigent circumstances, the HSEMA Director is authorized to deploy cameras without first consulting or soliciting comments from the public. After the conclusion of the exigent circumstance, the camera shall be turned off immediately, except where the public notice process required by subsection 3802.01 of this chapter has been initiated by the Director. As soon as feasible after the conclusion of the exigent circumstance, the HSEMA Director shall have the camera removed. The HSEMA Director will provide post-deployment public notification of any camera deployed under this provision.
- 3802.6 When cameras are deployed pursuant to a court order, neither pre nor post-deployment notification is required.
- 3802.7 The HSEMA Director will post on the HSEMA website, and supply a copy to all District Public Libraries, the areas of the District monitored by the CCTV systems.
- 3802.8 On a semi-annual basis, HSEMA will provide updates on the CCTV system at community meetings to be announced to the public.
- 3802.9 HSEMA will provide information about the CCTV system and its usage in its Annual Report to Council. The information shall include the viewing area of cameras, disposition of any recordings, and an evaluation of whether the camera achieved the purposes stated in section 3800 of this chapter. HSEMA shall not include any information pertaining to cameras deployed pursuant to a court order or deployed as part of an on-going criminal investigation.

3803 OPERATOR CERTIFICATION

- 3803.1 Only operators certified by the HSEMA Director shall operate the CCTV system.
- 3803.2 All operators of the CCTV systems shall sign a certification that they have read and understand the CCTV regulations and acknowledge the potential criminal and/or administrative sanctions for unauthorized use or misuse of the CCTV systems.
- 3803.3 Anyone who engages in the unauthorized use or misuse of CCTV systems shall be subject to criminal prosecution and/or administrative sanctions, including termination. The administrative sanctions will depend on the severity of the infraction and shall be taken in accordance with the adverse and corrective action procedures as provided in the District Personnel Manual.

3804 ACTIVATION AND USAGE

- 3804.1 Operators of CCTV systems shall not focus on hand bills, fliers, etc., being distributed or carried pursuant to First Amendment rights.
- 3804.2 A supervisor will conduct random spot checks during operational periods.

3805 AUTHORIZATION TO RECORD AND RETAIN RECORDINGS

- 3805.1 All recorded CCTV footage shall be maintained and secured by the official in command of the HSEMA monitoring center.
- 3805.2 Access to the video center and image storage location is restricted and any access granted is recorded in a control log.
- 3805.3 Video recordings shall be indexed, stored, and maintained for 10 business days after which time they will be recorded over or destroyed.
- 3805.4 Recordings may be retained beyond 10 business days because the recordings contain evidence of criminal activity, because the recordings capture an occurrence that may subject HSEMA to civil liability, or because the recording will be used for training purposes. Recordings that contain evidence of criminal activity or recordings that capture an occurrence that may subject HSEMA to civil liability shall be maintained until final case disposition.
- 3805.5 The HSEMA Director must prepare, in writing, a rationale for any decision to retain any recording beyond 10 business days.
- 3805.6 Decisions to retain recordings beyond 10 business days must include the purpose of the retention, the nature of the recording, and length of time for the retention. Retention of recordings for training purposes must additionally include a written description of the training purpose to be served by the recording as well as a description of the recording's unique suitability for the training purpose.
- 3805.7 Recordings retained for training purposes may only be retained as long as they are actively used for training purposes.
- 3805.8 Recordings retained for criminal or civil purposes, special event, or an emergency shall be secured as evidence, and access to the recordings shall be appropriately limited and documented.
- 3805.9 Monitoring center staff shall maintain a video catalog of all tapes held beyond 10 days.

3807 AUDITS

- 3807.1 HSEMA will have independent, periodic audits conducted annually to ensure compliance with these regulations.
- 3807.2 The audits conducted pursuant to section 3807.1 of this chapter shall be provided to the Mayor and the Council of the District of Columbia.

3899 DEFINITIONS

- 3899.1 When used in this chapter, the following words and phrases shall have the meanings ascribed:

Closed-Circuit Television -- Any live video link that is electronically received into the HSEMA monitoring center.

Demonstration -- A temporary presentation of the capacity of the Monitoring Center to visitors of the HSEMA.

Exigent Circumstances -- Unanticipated situations that threaten the immediate safety of individuals or property within the District of Columbia.

External Video Feeds -- Any video link received in the HSEMA monitoring center on a live basis from a source other than HSEMA.

Public Entities -- District of Columbia or Federal agencies.

Public notice -- Shall at a minimum include, but is not limited to, publication in the D.C. Register, posting on the HSEMA website, written notice to the relevant Councilmember, written notice to the relevant Advisory Neighborhood Commissioner, and issuance of a press release.

"Public space" -- All the publicly owned property between the property lines on a street, as such property lines are shown on the records of the District, and includes any roadway, tree space, sidewalk, or parking between such property lines.

Persons wishing to comment on this proposed rule should submit their comments in writing to Steven Kral, Senior Policy Analyst, Homeland Security and Emergency Management Agency, 2720 Martin Luther King Jr. Avenue, SE, Suite 200, Washington, DC 20032. All comments must be received by the Homeland Security and Emergency Management Agency not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of this rulemaking amendment and related information may be obtained by writing to the above address, or by calling (202) 727-6161.