

# RESOLUTION 23-13

## To Adopt DCHA Proposed Procurement and Contracting Policy

### Summary

The purpose of this resolution is to adopt the proposed Policy Regulations; grant permission to submit as proposed rulemaking to be published in the DC Register for not less than a 30 day comment period; and authorize submission of the Policy Regulations to the DC Council for approval in accordance with the DCHA enabling statute to adopt an updated proposed Procurement and Contracting Policy (Policy) for the District of Columbia Housing Authority (DCHA).

## **RESOLUTION 23-13**

### **TO ADOPT THE DCHA PROPOSED PROCUREMENT AND CONTRACTING POLICY**

WHEREAS, In accordance with requirements of the United States Department of Housing and Urban Development (HUD), DCHA has prepared a revised Procurement and Contracting Policy (Policy) to be adopted by the DCHA Board of Commissioners.

WHEREAS, DCHA has recently updated the Policy which was previously in use and followed by DCHA's Office of Administrative Service (OAS);

WHEREAS, DCHA counsel, outside counsel and OAS recently revised the Policy in order to ensure compliance with all HUD requirements and to address issues raised in the recent HUD report;

WHEREAS, the Policy applies to purchasing and contracting activities by DCHA with funds from the federal government. The Policy also confirms that for purchasing and contracting funded by the District of Columbia government, DCHA follows the requirements of the Procurement Practices Reform Act of 2010;

WHEREAS, the Policy is designed to do the following: (a) establish a system of quality and integrity; (b) provide for the fair and equitable treatment of all persons and firms involved in purchasing by DCHA; (c) assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available to DCHA, including reviewing the use of federal excess and surplus property, and use of value engineering clauses; (d) promote competition in contracting; (e) provide safeguards for maintaining a procurement system of quality and integrity; and (f) assure that DCHA purchasing and contracting actions using Federal Funds comply with all applicable Federal Standards (as defined herein), HUD regulations, and local laws;

WHEREAS, in order to comply with HUD requirements, the Board of Commissioners must adopt the Policy;

WHEREAS, in order for the Board of Commissioners to approve the Policy as final regulations, DCHA will submit the proposed regulations which make up the Policy (Policy Regulations) to the DC Office of Documents for publication in the DC Register for a thirty (30) day comment period on the proposed Policy Regulations;

WHEREAS, in addition, DCHA will submit the Policy Regulations to the Council of the District of Columbia (DC Council) for approval in accordance with the DCHA enabling statute; and

WHEREAS, after the comment period and approval by the DC Council, DCHA will obtain final approval by the Board of Commissioners of the Policy Regulations as final regulations;

**RESOLUTION 23-13**

**To Adopt the DCHA Proposed Procurement and Contracting Policy**

NOW THEREFORE, BE IT RESOLVED, that the Board of Commissioners of DCHA hereby 1) adopts the proposed Policy Regulations; 2) grants permission to submit the proposed Policy Regulations as a proposed rulemaking to be published in the DC Register for not less than a 30 day comment period; and 3) authorizes submission of the Policy Regulations to the DC Council for approval in accordance with the DCHA enabling statute.

ADOPTED, by the Board of Commissioners and signed in open session in authentication of its passage the 8<sup>th</sup> day of February 2023.

ATTEST:

APPROVED:

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Brenda Donald  
Executive Director/Secretary

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Raymond A. Skinner  
Chairperson

APPROVED TO FORM AND LEGAL SUFFICIENCY:

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Lorry B. Bonds  
Sr. Vice President & General Counsel

**DISTRICT OF COLUMBIA HOUSING AUTHORITY**

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**NOTICE OF PROPOSED RULEMAKING**

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## CHAPTER 72

### DISTRICT OF COLUMBIA HOUSING AUTHORITY: PROCUREMENT AND CONTRACTING FOR FEDERAL FUNDS

#### 7200 GENERAL PROVISIONS

7200.1 The District of Columbia Housing Authority (“DCHA”) Procurement and Contracting Policy (this “Regulation”) applies to purchasing and contracting activities by DCHA with funds from the federal government (“Federal Funds”). In light of the need for DCHA to conduct procurements with Federal Funds expeditiously and in accordance with rules issued by the United States Department of Housing and Urban Development (“HUD”), the District of Columbia Council (“DC Council”) has determined that DC Code 1-204.61 and 2-352.02, which require DC Council approval of contracts in excess of \$1 Million and of contracts that are multi-year, does not apply to DCHA procurements involving Federal Funds. For purchasing and contracting funded by the District of Columbia government (“DC Funds”), DCHA follows the requirements of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-351.01 et seq.)(2011 Repl.).<sup>1</sup> This Regulation is designed to:

- (a) Establish a system of quality and integrity;
- (b) Provide for the fair and equitable treatment of all persons and firms involved in purchasing by DCHA;
- (c) Assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available to DCHA, including reviewing the use of federal excess and surplus property, and use of value engineering clauses;<sup>2</sup>
- (d) Promote competition in contracting;<sup>3</sup>
- (e) Provide safeguards for maintaining a procurement system of quality and integrity; and
- (f) Assure that DCHA purchasing and contracting actions using Federal Funds comply with all applicable Federal Standards (as defined herein), HUD regulations, and local laws.

7200.2 Except as otherwise provided in this Regulation, DCHA shall have the authority and responsibility to promulgate policies, procedures, and guidelines consistent

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<sup>1</sup> See 2 C.F.R. § 200.318(a).

<sup>2</sup> See 2 C.F.R. § 200.318(f) and (g).

<sup>3</sup> See 2 C.F.R. § 200.319.

with federal and District of Columbia law, governing the procurement, management, control, and disposal of any and all supplies, services, and construction being procured by DCHA. This Regulation shall apply to contracts for the procurement of supplies, services, and construction funded Federal Funds entered into by DCHA after the effective date of this Regulation.

- 7200.3 Nothing in this Regulation shall prevent DCHA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with the law and this Regulation.
- 7200.4 When both Federal Funds and non-federal funds, such as DC Funds, are used for a project, the work to be accomplished with the funds should be separately identified before procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, these HUD-required procurement regulations shall be applied to the total project.<sup>4</sup>
- 7200.5 Procurement information shall be a matter of public record to the extent provided in the District of Columbia Freedom of Information Act and shall be available to the public as provided in that statute to the extent that such disclosure does not interfere with an active procurement.
- 7200.6 DCHA shall maintain records sufficient to detail the history of a procurement, including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.<sup>5</sup>
- 7200.7 DCHA shall conduct procurement activities in a manner providing for full and open competition. To ensure objective evaluation of contractor performance and eliminate an unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
- (a) Placing unreasonable requirements on firms for them to qualify to do business;
  - (b) Requiring unnecessary experience and excessive bonding;
  - (c) Noncompetitive pricing practices between firms or between affiliated companies;
  - (d) Noncompetitive contracts to consultants that are on retainer contracts;

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<sup>4</sup> HUD Sample Procurement Policy in Appendix 1 (“HUD Sample Procurement Policy” of HUD Handbook 7460.8 REV 2, Procurement Handbook for Public Housing Agencies, February 2007 (“HUD Procurement Handbook”).

<sup>5</sup> See 2 C.F.R. § 200.319 for all of 7200.6.

- (e) Organizational conflicts of interest;
- (f) Specifying only a “brand name” product instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement; and
- (g) Any arbitrary action in the procurement process.<sup>6</sup>

7200.8 Except as otherwise provided in Federal Standards, HUD regulations, or this Regulation, a contract which is entered into in violation of Federal Standards, HUD regulations, and this title is void *ab initio*.

7200.9 This Regulation does not govern administrative fees earned under the Section 8 voucher program, the award of vouchers under the Section 8 program, the execution of landlord Housing Assistance Payments contracts under that program, or non-program income, e.g., fee-for-service revenue under 24 CFR Part 990. These excluded areas are subject to applicable State and local requirements.<sup>7</sup>

7200.10 Before initiating any procurement, DCHA shall ensure that there are sufficient funds available to cover the anticipated cost of the procurement action.<sup>8</sup>

7200.11 If an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with this Regulation, automatically supersede this Regulation.<sup>9</sup>

7200.12 DCHA self-certifies that this Regulation and the DCHA’s procurement system complies with all applicable federal regulations and, as such, the DCHA is exempt from prior HUD review and approval of individual procurement actions.<sup>10</sup>

7200.13 Property no longer necessary for the DCHA’s purposes (non-real property) shall be transferred, sold, or disposed of following applicable HUD regulations and federal and District of Columbia laws.<sup>11</sup>

**7201 DEFINITIONS.**

7201.1 **Acceptance** – The act of an authorized representative of DCHA acknowledging that the supply of services conforms with the contract requirements.

7201.2 **Addendum** – Written material added to a solicitation while the solicitation is still open.

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<sup>6</sup> See 2 C.F.R. § 200.319.  
<sup>7</sup> HUD Procurement Handbook §1.2.  
<sup>8</sup> HUD Sample Procurement Policy.  
<sup>9</sup> HUD Sample Procurement Policy.  
<sup>10</sup> 2 C.F.R. §200.325 (c )(2).  
<sup>11</sup> HUD Sample Procurement Policy.

- 7201.3      **Amendment** – Written revision made to a solicitation or contract.
- 7201.4      **Bid** – The offer submitted by a bidder in the sealed bidding method of procurement.
- 7201.5      **Bid Guarantee** – A form of security assuring that the bidder (1) will not withdraw a bid within the period specified for acceptance and (2) will execute a written contract and furnish required bonds within the time specified in the bid.
- 7201.6      **Bidders List** – List of contractors that are interested in responding to DCHA invitations for bids, requests for proposals, or other solicitations for contractors.
- 7201.7      **Bid Protest** – A written objection, submitted by an actual or prospective contractor, protesting a solicitation, the cancellation of a solicitation, or the award or proposed award of a contract.
- 7201.8      **Board of Commissioners** – Shall mean the members of the Stabilization and Reform Board created pursuant to the District of Columbia Housing Authority Stabilization and Reform Emergency Amendment Act of 2022 and the board of commissioners appointed pursuant to the DCHA Act after the completion of the stabilization and reform of DCHA.
- 7201.9      **Change Order** – A modification made after the award of a contract, in any of the contract terms, including specifications, completion time, and description of the work, within the scope of the contract. A Change Order may be given unilaterally by the Contracting Officer or bilaterally by agreement between the contractor and the Contracting Officer.
- 7201.10     **Competitive Proposals** – The competitive method of procurement used when small purchases and sealed bidding are not appropriate.
- 7201.11     **Competitive Range** – In a competitive proposals procurement, those offerors whose proposals, after evaluation by DCHA, have a reasonable chance of receiving the award, both from a technical and cost standpoint.
- 7201.12     **Contract** – A promise or set of promises for breach of which the law gives a remedy or performance of which the law recognizes as a duty; a legal instrument providing for the purchase, lease, or barter of property or services for the direct benefit of DCHA.
- 7201.13     **Contracting Officer** – An official authorized by the Executive Director to enter into or administer procurement contracts and make related determinations and findings.

- 7201.14 **Contracting Officer's Technical Representative (COTR)** – An individual designated and authorized in writing by the Contracting Officer to perform specific technical or administrative functions related to the procurement process.
- 7201.15 **Contract Dispute** – A disagreement between the contractor and the DCHA regarding the rights of the parties under the contract.
- 7201.16 **Contract Modification** – Any written alteration in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provision of an existing contract.
- 7201.17 **Cost Analysis** – The review and evaluation of any separate cost elements and profit or fee in a proposal, as needed to determine a fair and reasonable price, and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.
- 7201.18 **Cost Reimbursement Contract** – A contract in which DCHA and the contractor agree on an estimate of contract costs. The buyer agrees to reimburse the seller for reasonable, allowable, and allocable costs necessary to complete the work.
- 7201.19 **DCHA Enabling Act** – The District of Columbia Housing Authority Act of 1999, as amended.
- 7201.20 **DCHA Affiliate** – An entity related to DCHA, other than a DCHA Instrumentality, in which DCHA has some measure of control over the assets, operations, and management, but such control does not rise to the level of control to qualify the entity as a DCHA Instrumentality.<sup>12</sup> DCHA Affiliates must be procured, and are subject to a conflict of interest review.
- 7201.21 **DCHA Instrumentality** – An entity related to DCHA whose assets, operations, and management are legally and effectively controlled by DCHA, through which DCHA<sup>13</sup> functions or policies are implemented and that utilizes DCHA funds or DCHA assets to carry out the DCHA mission.<sup>14</sup> DCHA Instrumentalities follow these procurement regulations, and DCHA does not procure for or on behalf of these instrumentalities. When a DCHA Instrumentality follows this Regulation, any reference to “DCHA” can be read to refer to DCHA Instrumentality.
- 7201.22 **Debarment** – Debarment is an exclusion from participation in all federal programs for a reasonable and specified time-period commensurate with the seriousness of the violation or failure to perform on other contracts. Debarment may be imposed for violation of contract clauses, including equal employment opportunity provisions, acceptance of contingent fees, and other serious contract violations. The

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<sup>12</sup> See 24 C.F.R. 905.604(b)(4).

<sup>13</sup> See 24 C.F.R. 905.604(b)(4)

<sup>14</sup> See 24 C.F.R. 905.604(b)(3).

Secretary of Labor may also debar a contractor based on violations of the labor standards regulations.<sup>15</sup>

- 7201.23 **District Standards** – Refers to the standards of procurement outlined in the DC Procurement Practices Reform Act of 2010 effective April 8, 2011, as may be amended from time to time and as may apply to DCHA.
- 7201.24 **Equitable Adjustment** – A fair price adjustment under a contract clause for changed work, including an adjustment in profit, a change in the delivery schedule, or a change in any affected term of the contract.
- 7201.25 **Federal Standards** – The standards for procurement as described in 2 C.F.R. part 200.
- 7201.26 **Final Decision** – A written document signed by the Contracting Officer or Executive Director ruling on a claim by or against DCHA.
- 7201.27 **Firm Fixed Price Contract** – A contract that provides for a price that is not subject to any adjustment because of the cost experience of the contractor in the performance of the contract.
- 7201.28 **General Counsel** – The General Counsel of the District of Columbia Housing Authority.
- 7201.29 **Immediate Family Member** – Includes father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, life partner, significant other, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half- sister.<sup>16</sup>
- 7201.30 **Indefinite Delivery Indefinite Quantity Contract** – Contract used for procurements in which the exact number of deliverable items is not known at the time of contracting. The contract provides for a minimum and maximum amount of goods/services that may be ordered under the contract.
- 7201.31 **Independent Cost Estimate** – A written estimate developed by DCHA of the cost to complete the scope of work, also known as a price analysis.
- 7201.32 **Ineligible Contractor** – Contractors that have been debarred, suspended, or determined ineligible by HUD, or any other federal or local agency.
- 7201.33 **Inspection** – The examination and testing of supplies and services to determine whether they conform to contract requirements.

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<sup>15</sup> HUD Procurement Handbook §10.2.H.2.

<sup>16</sup> Section 19 of the HUD Annual Contributions Contract, HUD Form 53012A

- 7201.34 **Invitation for Bids (IFB)** – Under the sealed bidding method of procurement, the written solicitation document that explains what DCHA is buying and requests bids from potential contractors.
- 7201.35 **Labor Hour Contract** – Contract that provides for the procurement of property or services based on direct labor-hours as specified, fixed hourly rates that include direct and indirect labor, overhead, and profit.
- 7201.36 **Labor Surplus Area Concern** – A concern which, together with its first-tier subcontractors, will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if more than 50 percent of the dollar amount of the contract will be manufactured, produced, or performed in labor surplus areas.
- 7201.37 **Labor Surplus Area** – Areas with concentrated unemployment or underemployment or an area of labor surplus. These are geographical areas identified by the U.S. Department of Labor under 20 C.F.R. 654, Subpart A, and listed annually by Federal Register notice and on the Department of Labor website.
- 7201.38 **Letter of Solicitation** – Under the Simplified Acquisition method of procurement, a written request for proposals from potential contractors.
- 7201.39 **Limited Denial of Participation** – A Limited Denial of Participation (“LDP”) is an administrative sanction that HUD can impose on a contractor and is narrower in scope and effect than either suspension or debarment.<sup>17</sup>
- 7201.40 **Mixed-Finance Development** – A public housing development financed by a combination of private funding and public housing development funds under 24 C.F.R. § 905.604.
- 7201.41 **Minority-Owned Business** –
- (a) A business that is at least 51 percent owned by one or more minority group members; or
  - (b) In the case of a publicly-owned business, one in which at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals.
  - (c) Minority group members include the following groups: Black Americans; Hispanic Americans; Native Americans (Alaska Natives, Native Hawaiians, or enrolled members of a Federally or State recognized Indian Tribe); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including

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<sup>17</sup> HUD Procurement Handbook §10.2.H.1.

Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal); and members of other groups designated from time to time by the U.S. Small Business Administration.<sup>18</sup>

- 7201.42 **Negotiation** – Discussion regarding technical and price proposals with offerors in the competitive range for a contract being awarded using the competitive proposals or noncompetitive proposals method of procurement.
- 7201.43 **Noncompetitive Proposals** – The method of procurement in which DCHA solicits proposal(s) from only one source, as outlined in this Regulation.
- 7201.44 **Nonjudgmental Mistake** – A mistake evident on the face of a bid, quote, or proposal that is a minor informality or insignificant omission that is a matter of form rather than substance, with a negligible effect on the price, quantity, quality, delivery, or contractual conditions, that can be waived or corrected without prejudice to other bidders or offerors.
- 7201.45 **Notice to Proceed** – A written authorization to begin work.
- 7201.46 **Offeror** – An entity that has submitted a bid or proposal.
- 7201.47 **Payment Bond** – A promise of a surety payment to all persons supplying labor or materials in the work provided for in a contract.
- 7201.48 **Performance Bond** – A promise of surety assuring DCHA that once the contract is awarded, the contractor will perform its obligations under the contract.
- 7201.49 **Price Analysis** – An estimate of the total value of the services, based on the scope of work, also referred to as an Independent Cost Estimate.
- 7201.50 **Procurement** – Procurement includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials, (2) construction and maintenance; consultant services, (3) Architectural and Engineering (A/E) services, (4) Social Services, and (5) other services.<sup>19</sup>
- 7201.51 **Proposal** – In the competitive and noncompetitive proposals methods of procurement, the offer is submitted by a potential contractor.

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<sup>18</sup> See 13 C.F.R. 124.103(b).

<sup>19</sup> HUD Sample Procurement Policy.

- 7201.52 **Qualifications Based Procurement** – A form of procurement by competitive proposals in which price is not the main evaluation factor; instead, technical qualifications are reviewed and a fair and reasonable price is negotiated with the best-qualified firm.
- 7201.53 **Qualified Bidders' List** – A list of bidders who have satisfied all applicable qualification requirements of a solicitation.
- 7201.54 **Quotation** – In the small purchase method of procurement, the price or offer is submitted by a bidder.
- 7201.55 **Request for Proposals (RFP)** – Under the competitive proposals method of procurement, DCHA's written solicitation to prospective offerors to submit a proposal based on the terms and conditions set forth therein, including both technical and price factors.
- 7201.56 **Request for Qualifications** – Under the competitive proposals method of procurement, DCHA's written solicitation to prospective offerors to submit a proposal based on the terms and conditions set forth therein, including only technical factors.
- 7201.57 **Request for Quotations (RFQ)** – Under the simplified acquisition method of procurement, a brief, written request for a price quotation from potential contractors.
- 7201.58 **Responsible Bidder** – A bidder who has the technical and financial capacity to secure the necessary resources to deliver the goods and services.
- 7201.59 **Responsive Bid** – A bid that conforms to the requirements in the Invitation for Bids.
- 7201.60 **Scope of Work** – Written definition of work to be performed that establishes standards sought for the goods or services to be supplied.
- 7201.61 **Sealed Bidding** – The procurement method in which DCHA requests competitive sealed bids. This method of procurement requires specifications that describe the requirements of the government clearly, accurately, and completely; a public bid opening; and an evaluation of bids and an award of the contract based on the lowest bid submitted by a responsive and responsible contractor.
- 7201.62 **Section 3 Business Concern means–**
- (a) A business concern meeting at least one of the following criteria, documented within the last six-month period:

- (i) It is at least 51 percent owned and controlled by low- or very low-income persons;
  - (ii) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
  - (iii) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.
- (b) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.
  - (c) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

7201.63 **Section 3 Worker means-**

- (a) Any worker who currently fits or when hired within the past five years fits at least one of the following categories, as documented:
  - (i) The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
  - (ii) The worker is employed by a Section 3 business concern.
  - (iii) The worker is a YouthBuild participant.
- (b) The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.
- (c) Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

7201.64 **Targeted Section 3 worker - means a Section 3 worker who is:**

- (a) A worker employed by a Section 3 business concern; or
  - (i) A worker who currently fits or when hired fits at least one of the following categories, as documented within the past five years:
    - (ii) A resident of public housing or Section 8-assisted housing.
- (b) A resident of other public housing projects or Section 8-assisted housing.

- 7201.65 **Simplified Acquisition** – Purchases of supplies and services that do not exceed \$150,000 in the aggregate.
- 7201.66 **Small Business Concern** –Is a business that is
- (a) Independently owned and operated;
  - (b) Not dominant in its field of operation;
  - (c) Not an affiliate or subsidiary of a business dominant in its field of operation; and
  - (d) Meets the size standards in 13 C.F.R. Part 121.
- 7201.67 **Solicitation** – Any request to submit offers or quotations to DCHA. Solicitations under sealed bid procedures are called “invitations for bids.” Solicitations under negotiated procedures are called “requests for proposals.” Solicitations under simplified acquisition procedures may require the submission of either a quotation or an offer.
- 7201.68 **Specifications** – Clear and accurate description of the technical requirements of a service or supply contract.
- 7201.69 **Supplemental Agreement** – A contract modification that is accomplished by the mutual action of the parties.
- 7201.70 **Suspension** – Suspension means that a contractor is disqualified from all federal programs for a temporary period because of adequate evidence that the contractor engaged in criminal, fraudulent, or other very serious misconduct. A contractor is suspended pending investigation and appropriate action. All suspensions are temporary pending the completion of an investigation and such legal proceedings as may ensue.<sup>20</sup>
- 7201.71 **Termination for Cause or for Default** – Termination of a contract when the contractor fails to perform a contract term or fails to make progress as so to endanger performance.
- 7201.72 **Termination for Convenience** – DCHA’s unilateral termination of a contract, in whole or in part, when the product or service is no longer needed, DCHA can no longer fund the contract, or when it is in the best interest of DCHA.<sup>21</sup>

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<sup>20</sup> HUD Procurement Handbook §10.2.H.2.

<sup>21</sup> HUD Procurement Handbook 11.6.C and Glossary.

- 7201.73 **Termination for Cause** – Termination of a contract when the contractor fails to perform a contract term or fails to make progress as so to endanger performance.
- 7201.74 **Time and Materials Contracts** – Contract that provides for payment of supplies and services based on incurred direct labor hours at fixed rates that include direct costs, indirect costs, and profit.
- 7201.75 **Time Delay** – An interruption during which services, supplies, or work are not delivered under the performance schedule stated in the contract.
- 7201.76 **Unsolicited Proposal** – A written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror to obtain a contract with DCHA, and is not in response to a request for proposals.
- 7201.77 **Woman-Owned Business Enterprise** – A business at least 51% owned by a woman or women who are U.S. citizens and who also control or operate the business.

## **7202 PROCUREMENT AUTHORITY AND ADMINISTRATION**

- 7202.1 DCHA is authorized to:
- (a) Adopt and administer its own procurement and contracting policies and procedures;<sup>22</sup>
  - (b) Enter into contracts, joint ventures, or other cooperative arrangements with the District, the federal government, other public entities, or private entities in furtherance of its purposes.<sup>23</sup>
- 7202.2 The Board of Commissioners, among other things, must promulgate procurement regulations and review and approve all contracts for goods and services having a value of more than \$250,000 in an open session of the Board.<sup>24</sup> The Board of Commissioners provides general oversight of DCHA’s procurement activities through regular meetings and established procedures and is not directly involved in vendor or contractor selection or with administration of contracts.<sup>25</sup>
- 7202.3 The Executive Director may delegate certain procurement and contracting functions to the Director of the DCHA Office of Administrative Services:<sup>26</sup>

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<sup>22</sup> DC Code § 6-203(16).

<sup>23</sup> DC Code § 6-203(17).

<sup>24</sup> DC Code § 6-211 (v)(1).

<sup>25</sup> HUD Lead the Way: Procurement Practices at Public Housing Authorities page 2.

<sup>26</sup> HUD Procurement Handbook §2.3.

- (a) The Director of the Office of Administrative Services, or such other delegate as the Executive Director may appoint from time to time, shall be the Contracting Officer for DCHA.
- (b) All procurement transactions shall be administered by the Executive Director or the Contracting Officer.
- (c) A DCHA contract is not valid unless signed by the Executive Director or the Contracting Officer. Deeds, leases, notes, and bonds may only be executed by the Executive Director.<sup>27</sup>
- (d) The signature of the Executive Director or the Contracting Officer on a DCHA contract is a legal commitment and requires continuing performance by the Contracting Officer on behalf of DCHA or performance by DCHA through the Contracting Officer under the terms of the contract.

7202.4 Each delegation of contracting authority from the Executive Director to the Contracting Officer under this Section shall be in writing and shall include clear instructions on the limitations of the contracting authority being delegated, including:

- (a) The limitations on the scope of delegated authority to be exercised;
- (b) The limitations on the authority set forth in applicable laws and regulations; and;
- (c) The signature of the Executive Director.

7202.5 In no instance shall the individual being delegated contracting authority presume any greater contracting authority than what has been given.

7202.6 Termination of a Contracting Officer's appointment shall be in writing unless the written delegation or modification of authority contains a provision for automatic termination or expiration. No termination shall operate retroactively.

7202.7 The Contracting Officer is responsible for using sound judgement to accomplish the DCHA's procurement activity, ensuring that business and contractors are treated fairly, confirming that contract actions are compliant with this Regulation and applicable federal and District of Columbia law, complying with all ethical standards, and seeking the best value and greatest overall benefit to the DCHA.

**7203 PROCUREMENT METHODS**

7203.1 There are seven procurement methods used by DCHA. They are:

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<sup>27</sup> DC Code §6-213 ( c)(3).

- (a) Simplified Acquisition Methods;<sup>28</sup>
- (b) Sealed Bidding;<sup>29</sup>
- (c) Competitive Proposals;<sup>30</sup>
- (d) Noncompetitive Proposals, including Unsolicited Proposals;<sup>31</sup>
- (e) Cooperative Agreements;<sup>32</sup>
- (f) Qualifications Based Procurement;<sup>33</sup> and
- (g) Mixed Finance Procurement.<sup>34</sup>

7203.2 When DCHA directly purchases goods and services subject to this Regulation, the procurement method used shall be determined based on the nature and anticipated dollar value of the total requirement.

7203.3 Interested potential contractors shall be given an opportunity to be included on a Bidders List by submitting bidder information. Any Bidders List used in the procurement of supplies and services shall be kept current and shall include enough sources to ensure competition. Solicitation e-mail lists of potential contractors shall include, but not be limited to, the Bidders List.<sup>35</sup>

7203.4 DCHA may provide an opportunity to be included on a Qualified Bidders' List to responsible, responsive potential contractors within the competitive range. Potential contractors may remain on the Qualified Bidders' List for a period not exceeding two years.

7203.5 In addition to the other requirements of this Regulation, the following apply:

- (a) For construction contracts exceeding \$150,000 bidders shall be required to submit the following:
  - (i) A bid guarantee equivalent to 5% of the bid price;<sup>36</sup>

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<sup>28</sup> 2 C.F.R. §200.320 (a); Chapter 5 HUD Procurement Handbook; DC Code § 2-354.07

<sup>29</sup> 2 C.F.R. §200.320 (b)(1); Chapter 6 HUD Procurement Handbook; DC Code § 2-354.02.

<sup>30</sup> 2 C.F.R. §200.320 (b)(2); Chapter 7 HUD Procurement Handbook; DC Code § 2-354.03.

<sup>31</sup> 2 C.F.R. §200.320 (c); Chapter 8 HUD Procurement Handbook; DC Code § 2-354.04; DC Code § 2-354.05 (emergency procurement).

<sup>32</sup> 2 C.F.R. §200.318 (e); Chapter 14 HUD Procurement Handbook; DC Code § 2-354.11

<sup>33</sup> 2 C.F.R. §200.320 (2)(iv); Chapter 7 HUD Procurement Handbook.

<sup>34</sup> 24 C.F.R. 905 Subpart F.

<sup>35</sup> See 2 C.F.R. § 200.319(e).

<sup>36</sup> 2 C.F.R. § 200.326(a).

- (ii) A performance bond for 100% of the contract price; and<sup>37</sup>
  - (iii) A payment bond for 100% of the contract price.<sup>38</sup>
- (b) More flexible bonding requirements may be used if permitted or approved by HUD.

## **7204 SIMPLIFIED ACQUISITION METHODS**

7204.1 Any purchase of goods or services not expected to exceed \$150,000 may be made in accordance with the simplified acquisition methods described in this Section.

- (a) DCHA conducts four levels of simplified acquisition: \$100 and under (“Petty Cash Purchases”); between \$101 and \$3,000 (“Micro-Purchase Level 1”); and between \$3,001 and \$10,000 (“Micro-Purchase Level 2”), and between \$10,001 and \$150,000 (“Small Purchase”).
- (b) Contract requirements shall not be artificially divided so as to constitute a simplified acquisition under this Regulation.

7204.2 DCHA maintains a petty cash account that may be utilized to meet the immediate and unplanned need for minor and/or emergency expenditures that do not exceed \$100.00. The petty cash account may not be used to pay a vendor invoice or payroll expenses. Whenever possible, other methods of disbursement, such as a check, should be used in lieu of the use of petty cash. Only one quote is required, as long as that quote is considered reasonable.

- (a) The Contracting Officer shall ensure that:
  - (i) The account is established in an account sufficient to cover very small purchase made during a reasonable period (e.g. one month);
  - (ii) Security is maintained and only authorized individuals have access to the account;
  - (iii) The account is periodically reconciled and replenished by submission of a voucher to the Office of Financial Management.

7204.3 Micro-Purchase Level 1 are those over \$100, and not exceeding \$3,000 that shall require one price quote if the price received is considered reasonable. These purchases shall be distributed equitably among qualified sources. Before placing a

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<sup>37</sup> 2 C.F.R. § 200.326(b).

<sup>38</sup> 2 C.F.R. § 200.326(c).

repeat order with the prior contractor, if practicable, a quotation shall be solicited from another qualified source.<sup>39</sup>

7204.4 Micro-purchase Level 2 applies to purchases or contracts that are at least \$3,000, and no more than \$10,000, in which case DCHA shall solicit no less than three offerors to submit price quotations, which may be obtained orally or in writing.

7204.5 For micro-purchases, information regarding the acquisition must be provided to the Contracting Officer before soliciting quotes.<sup>40</sup> Solicitations do not need to be advertised on the DCHA website.

- (a) For oral quotations, the requestor must document the names, addresses and telephone numbers of the offerors, the persons contacted, and the date and amount of each quotation.
- (b) Written quotations must be on the offeror's letterhead and signed by an individual with authority to bind the offeror.
- (c) Solicitation is not required to be advertised on the DCHA website.
- (d) Award shall be made to the offeror providing the lowest acceptable quotation, unless justified in writing based on another specified factor.
- (e) If non-price factors are used, these factors shall be disclosed to all those solicited.
- (f) The Contracting Officer must determine that the price is reasonable based on research, experience, purchase history, and other relevant information.<sup>41</sup>
- (g) The Contracting Officer's staff will maintain the quotations as a public record.
- (h) The record supporting simplified acquisition shall be maintained for a minimum of three (3) years.

7204.6 For simplified acquisitions over \$10,000, and under \$150,000, no less than three offerors shall be solicited to submit price quotations, which must be obtained in writing using a Request for Quotation or a Letter Solicitation from the DCHA Office of Administrative Services.

- (a) Solicitation must be made in writing, but is not required to be advertised on the DCHA website.

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<sup>39</sup> See 2 C.F.R. § 200.320(a).

<sup>40</sup> See 2 C.F.R. § 200.320(a) (1).

<sup>41</sup> 2 C.F.R. § 200.320 (a)(1)(ii).

- (b) The Contracting Officer shall determine that price or rate quotations have been obtained by an adequate number of qualified sources.<sup>42</sup>
- (c) Written quotations must be on the offeror's letterhead and signed by an individual with authority to bind the offeror in conformance with the requirements of the Request for Quotations or the Letter Solicitation.
- (d) Award shall be made to the offeror providing the lowest acceptable quotation, unless justified in writing based on another specified factor.
- (e) If non-price factors are used, they shall be disclosed to all those solicited.
- (f) The Contracting Officer's staff will maintain the quotations as a public record.
- (g) The record supporting simplified acquisition shall be maintained for a minimum of three (3) years.

7204.7 Simplified Acquisitions are subject to Bid Protests, Section 7229, and Contract Disputes, Section 7230.

**7205 SEALED BIDDING**

7205.1 Contracts in excess of \$150,000 shall be awarded based on competitive sealed bidding if the following conditions are present:<sup>43</sup>

- (a) A complete, adequate, and realistic specification or purchase description is available;<sup>44</sup>
- (b) Two or more responsible bidders are willing and able to compete effectively for the work;<sup>45</sup>
- (c) The procurement lends itself to a firm fixed price contract;<sup>46</sup> and
- (d) The selection of the successful bidder can be made principally on the basis of price.<sup>47</sup>

7205.2 Sealed bidding is the preferred method for construction.<sup>48</sup>

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<sup>42</sup> 2 C.F.R. §200.320(a)(2).

<sup>43</sup> See 2 C.F.R. § 200.320(b)

<sup>44</sup> 2 C.F.R. § 200.320(b)(1)(i)(A).

<sup>45</sup> 2 C.F.R. § 200.320(b)(1)(i)(B).

<sup>46</sup> 2 C.F.R. § 200.320(b)(1)(i)(C).

<sup>47</sup> Id.

<sup>48</sup> 2 C.F.R. § 200.320(b)(1).

- (a) Sealed bidding shall be used for all construction and equipment contracts exceeding the simplified acquisition limitation.
- (b) For professional services contracts, sealed bidding should not be used.

7205.3 An IFB must be publicly advertised.<sup>49</sup> An IFB shall include specifications and all contractual terms and conditions applicable to the procurement.<sup>50</sup> IFBs should be solicited from an adequate number of sources and provide sufficient time to respond.<sup>51</sup> IFBs must define relevant terms, include any specific conditions or attachments with IFB.<sup>52</sup> The following terms shall be included in an IFB:

- (a) A firm fixed price contract award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the IFB.<sup>53</sup>
- (b) The time and place for both the receipt of bids and the public bid opening.<sup>54</sup>
- (c) Upon receipt at DCHA, bid packages shall be time-stamped but not opened, and shall be stored in a secure place until bid opening.<sup>55</sup>
- (d) A bidder may withdraw its bid at any time prior to bid opening.<sup>56</sup>
- (e) That if equal low bids are received from responsible bidders, the Contracting Officer shall draw lots or use a similar random method to make the award.<sup>57</sup>

7205.4 DCHA may make multiple awards from a single procurement action, in which case the decision to make multiple awards and supporting rationale must be documented and kept in DCHA's records. In determining whether multiple awards are appropriate the Contracting Officer should consider the following factors:<sup>58</sup>

- (a) The scope and complexity of the required good or service;
- (b) The anticipated duration and frequency of task or delivery order;
- (c) The mix of resources a contractor must have to perform; and

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<sup>49</sup> 2 C.F.R. § 200.320(b)(2)(i).

<sup>50</sup> 2 C.F.R. § 200.320(c)(2)(ii).

<sup>51</sup> 2 C.F.R. § 200.320(b)(1)(i)(A)

<sup>52</sup> 2 C.F.R. § 200.320(b)(1)(i)(B)

<sup>53</sup> 2 C.F.R. § 200.320(b)(1)(ii).

<sup>54</sup> 2 C.F.R. § 200.320(b)(1)(ii)(C).

<sup>55</sup> HUD Procurement Handbook § 6.9.A.

<sup>56</sup> HUD Procurement Handbook § 6.10.B.

<sup>57</sup> HUD Procurement Handbook 6-12.C

<sup>58</sup> Federal Acquisition Regulation Part 16.504(c)(ii)

- (d) The ability to maintain competition among the awardees throughout the contracts' period of performance.

7205.5 The Contracting Officer must not use the multiple award approach if:

- (a) Only one (1) contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;
- (b) Based on the Contracting Officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;
- (c) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;
- (d) The projected task orders are so integrally related that only a single contractor can reasonably perform the work;
- (e) The total estimated value of the contract is at or below the simplified acquisition threshold; or
- (f) Multiple awards would not be in the best interest of DCHA.

7205.6 To ensure transparency and trust in the result of the IFB process, bids shall be opened publicly and in the presence of at least one witness.<sup>59</sup>

- (a) A tabulation of bids, including bidder's name, price, and any alternate pricing shall be recorded and this tabulation shall be available for public inspection.<sup>60</sup>
- (b) Award shall be made as provided in the IFB by written notice to the successful bidder.<sup>61</sup>
- (c) If equal low bids are received from responsible bidders, the Contracting Officer shall draw lots or use a similar random method to make the award.<sup>62</sup>
- (d) If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost analysis verifies the reasonableness of the price.

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<sup>59</sup> 2 C.F.R. § 200.320(b)(1)(ii)(C).

<sup>60</sup> HUD Procurement Handbook § 6.9.C.

<sup>61</sup> HUD Procurement Handbook § 6.12.F.

<sup>62</sup> HUD Procurement Handbook § 6.12C.

7205.7 After the bids have been opened and read in public, the Contracting Officer shall determine if there is any reason why the lowest bid should not be accepted.<sup>63</sup> If there is a proper justification, it should be documented.<sup>64</sup> Where specified in the bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.<sup>65</sup>

7205.8 Justification for awarding to other than the lowest bidder include:

- (a) Delivery date;<sup>66</sup>
- (b) DCHA determines that the bidder is not responsible in accordance with this Regulation;<sup>67</sup>
- (c) The bid is not responsive to the material requirements of the IFB;<sup>68</sup> or
- (d) A sound, documented reason.<sup>69</sup>
  - (i) The nature of the mistake warrants correction; and
  - (ii) The bid price actually intended is incorrect.
- (e) A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if:
  - (i) The mistake is clearly evident on the face of the bid document;<sup>70</sup> and
  - (ii) The intended bid is unclear or the bidder submits clear and convincing evidence that a mistake was made.<sup>71</sup>
  - (iii) All decisions to allow correction or withdrawal of bids shall be supported by a written determination signed by the Contracting Officer.<sup>72</sup>
  - (iv) After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of DCHA or fair competition shall be permitted.

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<sup>63</sup> 2 C.F.R. § 200.320(b)(2)(iii).

<sup>64</sup> Id.

<sup>65</sup> Id.

<sup>66</sup> HUD Procurement Handbook §6.12(B)(1).

<sup>67</sup> 2 C.F.R. § 200.320(b)(2)(iii) and HUD Procurement Handbook § 6.12(B)(2).

<sup>68</sup> 2 C.F.R. § 200.320(b)(2)(iii) and HUD Procurement Handbook § 6.12(B)(1).

<sup>69</sup> 2 C.F.R. § 200.320(b)(1)(ii)(E)

<sup>70</sup> HUD Procurement Handbook § 6.10E.

<sup>71</sup> HUD Procurement Handbook § 6.10E.

<sup>72</sup> HUD Procurement Handbook § 6.10E.

7205.9 DCHA may use two-step or multi-step sealed bidding procedures where appropriate. The two-step or multi-step sealed bidding procedure is designed to obtain the benefit of sealed bidding by awarding a contract to the lowest responsive and responsible bidder. At the same time, the two-step procedure is designed to obtain the benefits of the competitive proposal method by soliciting technical offers and conducting discussions that evaluate and determine the acceptability of technical offers. Under the two-step sealed bidding process, technical proposals alone are requested first. Then proposals are evaluated for acceptability and negotiations or discussions are held, if necessary. In the second step, the normal sealed bid process is followed except that only bidders with acceptable technical proposals may bid, and each bidder's price is based on its own technical proposal.<sup>73</sup>

7205.10 DCHA may reject any or all bids if there is a sound, documented reason.<sup>74</sup> Notwithstanding anything to the contrary contained in this Regulation, DCHA reserves the right to make multiple awards based on a single procurement action.

## **7206 COMPETITIVE PROPOSALS**

7206.1 Competitive proposals may be used if there is an adequate method of evaluating technical proposals and where DCHA determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources, normally at least three, shall be solicited.

7206.2 Under this method DCHA issues a Request for Proposals (RFP) to solicit price and technical proposals from potential sources; evaluates the proposals and establishes a competitive range; determines whether to negotiate with offerors in the competitive range; receives and evaluates best and final offers, if requested, from offerors in the competitive range; and makes an award to the contractor offering the most advantageous proposal, considering price and the technical factors stated in the RFP.<sup>75</sup> DCHA may use RFPs to solicit development partners other than mixed finance public housing development partners, which are procured pursuant to Section 7210 herein.

7206.3 Contracts will be awarded to the responsible firm whose proposal is most advantageous to DCHA, including consideration of both price and technical factors.<sup>76</sup>

- (a) A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. The RFP shall identify all evaluation factors and their relative importance.<sup>77</sup>

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<sup>73</sup> HUD Procurement Handbook §6-14.

<sup>74</sup> 2 C.F.R. § 200.320(b)(2)(ii)(E) and HUD Procurement Handbook § 6.12.E.

<sup>75</sup> 2 C.F.R. § 200.320(b)(2).

<sup>76</sup> 2 C.F.R. § 200.320(b)(2)(i).

<sup>77</sup> 2 C.F.R. § 200.320(b)(2).

- (b) Until final award, proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals.<sup>78</sup>
- (c) The proposal shall be evaluated only on the criteria stated in the RFP.<sup>79</sup>

7206.4 Announcements for RFP's will be publicized by one or more methods, including but not limited to, advertising in in local publications.<sup>80</sup> The number of publications will depend upon the size, scope and type of solicitation. The Contracting Officer determines the number of days of publication, and based on matters of economy, chooses between printed and electronic means of publication. Any solicitation projected to solicit offers above the simplified acquisition threshold will be available on the DCHA website.

7206.5 DCHA may use evaluation committees to evaluate proposals in accordance with the requirements of this Section. The evaluation committee shall consist of people who have knowledge of the subject matter of the solicitation or industry. Evaluations shall be based on the evaluation factors set forth in the RFP. Initially, the proposals should be evaluated on an individual basis against the requirements of the RFP and not against each other. Similarly, the evaluation committee evaluates only the content of the proposals. No personal knowledge of the offeror not based on the contractor's written submission is or should be part of the reviewers' initial evaluation. However, the contractor's prior performance with the DCHA should be included as part of the standard review of contractor responsibility.<sup>81</sup>

- (a) Each member of an evaluation committee shall be required to sign a conflict of interest certification, must disclose conflicts of interest, and cannot participate in the committee if there is a conflict of interest. Similarly, evaluation committee members must not disclose any information concerning the procurement and shall sign a certification of non-disclosure. An evaluation report summarizing the results of the evaluation shall be prepared before the award of a contract.<sup>82</sup>
- (b) The Contracting Officer shall instruct the evaluators to be especially careful to make the evaluations as thorough, objective, and well documented as possible. The Contracting Officer is responsible for ensuring that the evaluation results are sufficiently documented and included in the procurement file.<sup>83</sup>
- (c) DCHA shall prepare an evaluation report to document the ranking of proposals by technical merit using point scores or similar methodology. If price is

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<sup>78</sup> 2 C.F.R. § 200.320(b)(2)(i).

<sup>79</sup> HUD Procurement Handbook §7.2K.1

<sup>80</sup> 2 C.F.R. § 200.320(b)(2)(i).

<sup>81</sup> HUD Procurement Handbook §7.2 (K).

<sup>82</sup> HUD Procurement Guidebook page 43.

<sup>83</sup> HUD Procurement Handbook §7.2 (K) (2).

included in the point scoring, the evaluation report will also include the price or cost analysis, as appropriate. In addition, the report shall include a narrative to explain how the scores were derived, detailing significant strengths, weaknesses, and deficiencies in the proposal. The level of detail in the report will depend on the complexity of the procurement with more complex procurements requiring more detailed reports.<sup>84</sup>

7206.6 In some instances, the quality of the initial proposals received may be such that no purpose would be served by conducting negotiations. In these cases, an award may be made without discussions, but only if the RFP advised all offerors that this procedure might be used and the contract file is documented as to the rationale for such action.<sup>85</sup>

7206.7 When negotiations are conducted with offerors determined to be included in the competitive range, they are called “discussions”.<sup>86</sup> Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals.<sup>87</sup>

- (a) The purpose of discussions shall be to seek clarification from offerors and to advise offerors of the deficiencies in both the technical and price aspects of their proposals to assure full understanding of and conformance to the solicitation requirements.
- (b) No offeror shall be provided information about any other offeror’s proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal.<sup>88</sup>
- (c) Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for an award.
- (d) A common deadline shall be established for receipt of proposal revisions based on discussions.<sup>89</sup>

7206.8 Even if the Contracting Officer determines that there is no need for discussions in regard to contracting terms or price, DCHA reserves the right to interview offerors in regard to the contract. The interview is not a discussion.

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<sup>84</sup> HUD Procurement Handbook §7.2 (L).

<sup>85</sup> HUD Procurement Handbook §7.2(R).

<sup>86</sup> HUD Procurement Handbook §7.2(P)(3).

<sup>87</sup> HUD Procurement Handbook §7.2(P).

<sup>88</sup> HUD Procurement Handbook §7.2(P)(6).

<sup>89</sup> HUD Procurement Handbook, §7.2(Q)(4).

7206.9 Even if the Contracting Officer determines that there is no need for discussions in regard to contracting terms or price, DCHA reserves the right to interview offerors in regard to the contract. The interview is not a discussion.<sup>90</sup>

7206.10 After discussions are complete, the Contracting Officer shall invite the offerors in the competitive range to submit their best and final offers, allowing offerors to make changes in the technical proposal and/or the price. All offerors in the competitive range should be provided an opportunity to present best and final offers.<sup>91</sup>

7206.11 After evaluation of best and final offers, if any, the contract shall be awarded to the responsible firm whose qualifications as established by the RFP, price and other factors considered, are the most advantageous to DCHA.

## **7207 QUALIFICATIONS BASED PROCUREMENTS**

7207.1 DCHA may use qualifications based procurement methods where permitted by HUD for the procurement of Architect/Engineer (A/E) services or for a development partner pursuant to the public housing mixed finance development program.<sup>92</sup> See Section 7210 for requirements applicable to mixed finance development procurements.

7207.2 DCHA may obtain A/E services in excess of the Simplified Acquisition limitation through the use of qualifications-based procurements.<sup>93</sup>

- (a) Sealed bidding shall not be used to obtain A/E services.
- (b) Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected subject to the negotiation of fair and reasonable compensation.<sup>94</sup>
- (c) Price is not the determining factor under this method.<sup>95</sup>
- (d) Qualifications based methods shall not be used to purchase other types of services even though A/E firms are potential sources.<sup>96</sup>

## **7208 NONCOMPETITIVE PROCUREMENTS**

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<sup>90</sup> HUD Procurement Handbook §7.2(S)(1).

<sup>91</sup> HUD Procurement Handbook §7.2(S)(1).

<sup>92</sup> 24 C.F.R. § 905.604 (h).

<sup>93</sup> See 2 C.F.R. § 200.320(b)(2)(iv).

<sup>94</sup> Id.

<sup>95</sup> Id.

<sup>96</sup> Id.

7208.1

Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used when HUD authorizes the use of the noncompetitive procurement or the Contracting Officer determines that the award of a contract is infeasible using simplified acquisitions procedures, sealed bids, or competitive proposals and one of the following circumstances applies:

- (a) The item is available only from a single source, based on a good faith review of available sources;<sup>97</sup>
- (b) A public emergency or exigency exists.<sup>98</sup> These are events that seriously threaten the public health, welfare, or safety, or endanger property, or would otherwise cause serious injury to the DCHA, by reason of a flood, earthquake, epidemic, pandemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency;
- (c) HUD authorizes the use of noncompetitive proposals in a response to a written request from DCHA;<sup>99</sup> or
- (d) After solicitation of a number of sources, competition is determined inadequate.<sup>100</sup>

7208.2

A written justification, approved by the Executive Director or the Contracting Officer, shall support each award based on a noncompetitive procurement and be kept in the DCHA's records.<sup>101</sup> The justification should include the following information:

- (a) Description of the requirement,<sup>102</sup>
- (b) History of prior purchases and their nature (competitive or noncompetitive);<sup>103</sup>
- (c) The specific exemption in 2 C.F.R. § 200.320(f)(1) through (4) which applies, including

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<sup>97</sup> 2 C.F.R. § 200.320(c)(2).

<sup>98</sup> 2 C.F.R. § 200.320(c)(3).

<sup>99</sup> 2 C.F.R. § 200.320(c)(iv).

<sup>100</sup> 2 C.F.R. § 200.320(c)(v).

<sup>101</sup> HUD Procurement Handbook § 8.5(A).

<sup>102</sup> HUD Procurement Handbook § 8.5(A)(1).

<sup>103</sup> HUD Procurement Handbook § 8.5(A)(2).

- (i) The item is available only from a single source;<sup>104</sup>
  - (ii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;<sup>105</sup>
  - (iii) The federal funding agency expressly authorizes noncompetitive proposals in response to a request from DCHA;<sup>106</sup> or
  - (iv) After solicitation of a number of sources, competition is determined inadequate.<sup>107</sup>
- (d) Statement as to the unique circumstances that require award by noncompetitive procurement;<sup>108</sup>
  - (e) Description of the efforts made to find competitive sources, e.g. advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.;<sup>109</sup>
  - (f) Statement as to efforts that will be taken in the future to promise competition for the requirement;<sup>110</sup> and
  - (g) Signature of the Contracting Officer and the Executive Director.<sup>111</sup>

7208.3 A cost analysis shall be performed to evaluate the reasonableness of the price for contract awards based on noncompetitive procurements.<sup>112</sup>

7208.4 Unsolicited proposals allow unique ideas or approaches that have been developed outside the government to be made available for use in accomplishment of the DCHA mission.<sup>113</sup> An unsolicited proposal is a written proposal that is submitted to DCHA on the initiative of the submitter for the purpose of obtaining a contract with DCHA and which is not in response to a formal or informal request or solicitation (other than a DCHA request constituting a publicized general statement of needs). To be considered as a valid unsolicited proposal, a submission must:

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<sup>104</sup> 2 C.F.R. § 200.320(c)(2).

<sup>105</sup> 2 C.F.R. § 200.320(c)(3).

<sup>106</sup> 2 C.F.R. § 200.320(c)(4).

<sup>107</sup> 2 C.F.R. § 200.320(c)(5).

<sup>108</sup> HUD Procurement Handbook § 8.5(A)(4).

<sup>109</sup> HUD Procurement Handbook § 8.5(A)(5).

<sup>110</sup> HUD Procurement Handbook § 8.5(A)(6).

<sup>111</sup> HUD Procurement Handbook § 8.5(A)(7).

<sup>112</sup> HUD Procurement Handbook, § 8.4(B).

<sup>113</sup> FAR § 15.603(a).

- (a) Be innovative and unique;<sup>114</sup>
- (b) Be independently originated and developed by the offeror;<sup>115</sup>
- (c) Be prepared without DCHA supervision, endorsement, direction, or direct DCHA involvement, either from staff, the Executive Director or Commissioners;<sup>116</sup> and
- (d) Include sufficient technical and cost detail to permit a determination that DCHA support could be worthwhile and the proposed work could benefit DCHA's mission.<sup>117</sup>

7208.5 If DCHA rejects the unsolicited proposal as submitted, it may decide to use any other procurement method in order to award a contract for the same project. In such case, the submitter of the unsolicited proposal shall be able to resubmit its proposal pursuant to the requirements of the chosen procurement method.

7208.6 An unsolicited proposal shall be evaluated under the criteria of a noncompetitive proposal. It must meet the requirements of 7208.2(c). If it cannot, then DCHA should issue the appropriate form of competitive solicitation to confirm that the unsolicited proposal serves the best interests of the DCHA.

## **7209 COOPERATIVE AGREEMENTS**

7209.1 DCHA may enter into contracts or other cooperative arrangements with the District of Columbia government, the federal government, or other public entities to purchase or use common or shared goods and services that are routine in nature.<sup>118</sup>

7209.2 The decision to use a cooperative agreement or conduct a direct procurement shall be based on economy and efficiency.<sup>119</sup>

7209.3 If used, the cooperative agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The goods and services obtained pursuant to a cooperative purchasing agreement must have been procured in accordance with general competitive procurement procedures as described by 2 C.F.R. 200.317 through 200.326. Accordingly, DCHA cannot rely on a procurement or purchasing action if the selection process did not comply with 2 CFR 200.317 through 200.326 by including geographic preferences and DCHA intends to use Federal Funds for the contract or purchase.

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<sup>114</sup> FAR § 15.603(c)(1).

<sup>115</sup> FAR § 15.603(c)(2).

<sup>116</sup> FAR § 15.603(c)(3).

<sup>117</sup> FAR § 15.603(c)(4).

<sup>118</sup> See 2 C.F.R. § 200.318(e).

<sup>119</sup> Id.

7209.4 DCHA may procure services or supplies from an entity that was originally retained by another governmental agency pursuant to a competitive solicitation. In such instances, DCHA shall maintain a file with copies of the original competitive solicitation documents used by the other agency, documents showing the extent of competition, the awarded entity's original offer to the other governmental entity, the contract with the other governmental agency and the awarded entity, along with other documentation required by DCHA for procurement actions as applicable such as an independent cost estimate, a cost and price analysis, documentation of contractor responsibility and eligibility, the rationale for the award, and the DCHA's contract with the awarded entity.

7209.7 Section 211 of the E-Government Act of 2002 states that state and local governments may purchase information technology from GSA Schedule 70, Information Technology, and Consolidated, and may not purchase information technology from any other GSA Schedules. No other schedule contracts are available to DCHA. In addition, DCHA may not purchase items from GSA schedule contractors on a noncompetitive basis. DCHA may solicit GSA schedule contractors for prices for supplies and services when conducting competitive procurements, but they shall be considered only another potential source.<sup>120</sup>

## **7210 MIXED FINANCE DEVELOPMENT PROCUREMENTS**

7210.1. Procurement that arises out of development using both private and public housing development funds shall be governed by the requirements of 24 CFR Part 905 and this Regulation, subject to the following:

- (a) DCHA may select a development entity using competitive proposals for qualifications-based procurement, subject to negotiation of fair and reasonable compensation, compliance with HUD total development cost requirements and other applicable cost limitations, and a written justification included in the memorandum supporting the procurement attached to the resolution approved by the Board of Commissioners;<sup>121</sup>
- (b) In cases where the development is entirely owned by a private entity that has been procured through an open and competitive process, the private entity is not bound by 2 C.F.R. Part 200;<sup>122</sup>
- (c) A private entity that would not normally be subject to 2 C.F.R. Part 200 will be required to comply with those regulations if HUD determines that DCHA or a DCHA Instrumentality, or either of their members or employees, exercises significant decision making functions with respect to managing

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<sup>120</sup> See HUD Procurement Handbook § 14.2F.

<sup>121</sup> 24 C.F.R. § 905.604(h)(1).

<sup>122</sup> See 24 C.F.R. § 905.604(h)(2).

the development. Significant decision making functions with respect to managing the development have been found when DCHA or a DCHA Instrumentality is the sole or managing general partner or managing member of the owner entity.<sup>123</sup> The following do not constitute significant management functions:<sup>124</sup>

- (i) Monitoring units receiving operating subsidy to ensure compliance with federal and local requirements or government loan and regulatory documents;
  - (ii) Coordinating communications with government agencies regarding financing and operations of the project;
  - (iii) Providing a list of eligible potential tenants;
  - (iv) Providing social, educational, and other services offered through its own program to tenants;
  - (v) Attending construction progress meetings and reviewing and approving any draw of funds;
  - (vi) Reviewing and approving operating and capital budgets.
  - (vii) Approving substantial modifications to the improvements;
  - (viii) Approving changes of the general partner or investors;
  - (ix) Approving the sale of the property; and
  - (x) Approving the modification of the partnership agreement.
- (d) HUD may, on a case-by-case basis, exempt the private entity if it determines that the private entity has developed an acceptable alternative procurement plan.

## **7211 COST AND PRICE ANALYSIS**

7211.1 A cost or price analysis shall be performed before solicitation for procurement actions in excess of the Simplified Acquisition threshold, including contract

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<sup>123</sup> 24 C.F.R. § 905.604(h)(2).

<sup>124</sup> Items one through six are included in the HUD Procurement Handbook and HUD Handbook and Mixed Finance Procurement Commonly Asked Questions, available at [https://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_10124.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10124.pdf) (accessed July 5, 2016) as examples of activities that do not rise to the level of “significant control.” Items seven through ten are typical examples of major decisions that a limited partner would be permitted to make, and would not normally be considered a significant management function.

modifications.<sup>125</sup> The degree of analysis shall depend on the facts surrounding each procurement action.<sup>126</sup> A price analysis is an estimate<sup>127</sup> of the total value of the services, based on the scope of work. A price analysis is also known as an independent cost estimate, which is sometimes referred to as an ICE. A cost analysis includes both a price analysis and an estimate of the individual cost components, such as labor, overhead, and profit, and an analysis of whether each of these components is allowable, directly related to the requirement, and reasonable.<sup>128</sup>

7211.2 If the procurement is based on a noncompetitive procurement,<sup>129</sup> when only one offer was received,<sup>130</sup> or for other procurements as deemed necessary by DCHA, the offeror shall be required to submit:

- (a) a cost breakdown showing projected costs or discounts;
- (b) commercial cost information, sufficient to enable DCHA to verify the reasonableness of the proposed cost; or
- (c) documentation showing that the cost offered is set by law or regulation.

7211.3 Cost analysis shall be performed if an offeror is required to submit a cost breakdown under Subsection 7211.2. When a cost breakdown is submitted:

- (a) a cost analysis shall be performed on the individual cost elements;
- (b) DCHA shall have a right to audit the offeror's books and records pertinent to such proposed costs; and
- (c) profit or discount shall be analyzed separately.

7211.4 DCHA must negotiate profit as a separate element of the price for each contract in which there is no price competition and where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk to be borne by the contractor, the contractor's proposed investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.<sup>131</sup>

7211.5 DCHA has the right to audit a potential contractor's books and records.

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<sup>125</sup> 2 CFR §200.324 (a)

<sup>126</sup> 2 C.F.R. §200.324 (a); HUD Procurement Handbook § 10.3.D.2.

<sup>127</sup> HUD Procurement Handbook § 10.3.A.1.

<sup>128</sup> HUD Procurement Handbook § 10.3.A.2.

<sup>129</sup> HUD Procurement Handbook § 10.3.C.1.

<sup>130</sup> HUD Procurement Handbook § 10.3.C.1.

<sup>131</sup> 23 CFR 200.324 (b).

- (a) In the case of substantial contracts, an audit may be considered whenever the Contracting Officer lacks sufficient information in-house with which to make a realistic cost analysis.<sup>132</sup>
- (b) DCHA may rely upon its own staff to conduct the audit, obtain the services of other governmental agencies to perform the audit, or contract with a private entity for audit services.<sup>133</sup>

7211.6 An offeror shall be required to certify the accuracy of its pricing and cost information. In the event that DCHA confirms that false cost information has been submitted, the Contracting Officer may award the contract to another offeror, or if the award has been given, immediately terminate the contract.

## **7212 CANCELLATION OF SOLICITATIONS**

7212.2 A solicitation may be cancelled before offers are due if:

- (a) DCHA no longer requires the supplies, services, or construction;
- (b) DCHA can no longer reasonably expect to fund the procurement;
- (c) Proposed amendments or addendums to the solicitation would be of such magnitude that a new solicitation would be desirable; or
- (d) For good cause of a similar nature when it is in the best interest of DCHA, as approved by the Executive Director or Contracting Officer.

7212.3 A solicitation may be cancelled and all offers that have already been received may be rejected if:

- (a) The supplies, services, or construction are no longer required;
- (b) Ambiguous or otherwise inadequate specifications were part of the solicitation;
- (c) The solicitation did not provide for consideration of all factors of significance to DCHA;
- (d) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (e) There is reason to believe that offers may not have been independently arrived at in open competition, may have been collusive, or may have been

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<sup>132</sup> HUD Procurement Handbook § 10.3.F.1.

<sup>133</sup> HUD Procurement Handbook § 10.3.F.1.

submitted in bad faith; or

- (f) For good cause of a similar nature when it is in the best interest of DCHA, as approved by the Executive Director.

7212.4 A notice of cancellation shall be sent to all offerors solicited and shall explain that they will be given an opportunity to compete on any revised solicitation or future procurement of similar items.

7212.5 The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.

7212.6 If all otherwise acceptable offers received in response to a solicitation are at an unreasonable price, DCHA shall either:

- (a) Cancel the solicitation; or
- (b) Cancel and re-solicit; or
- (c) Complete the procurement by use of negotiation; provided that,
  - (i) All bidders are informed of DCHA's intent to negotiate; and
  - (ii) Each responsible offeror is given a reasonable opportunity to negotiate.

## **7213 CONTRACTOR RESPONSIBILITY**

7213.1 DCHA will award contracts only to responsible contractors that possess the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.<sup>134</sup> Moreover, DCHA will not contract with any contractor that is (or has a subcontract that is) debarred, suspended, or otherwise excluded from participation in federal or District of Columbia assistance programs or activities.<sup>135</sup> Contractors must ensure that their subcontractors meet responsibility standards.

7213.2 To be determined responsible, a contractor must warrant, and the Contracting Officer must determine, that the contractor:

- (a) Maintains adequate financial resources to perform the contract or has the ability to obtain such adequate financial resources;<sup>136</sup>

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<sup>134</sup> 2 C.F.R. 200.318 (h).

<sup>135</sup> 2 C.F.R. 200.214.

<sup>136</sup> HUD Procurement Handbook § 10.2.A.1.

- (b) Can comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;<sup>137</sup>
- (c) Has a satisfactory performance record;<sup>138</sup>
- (d) Has a satisfactory record of integrity and business ethics<sup>139</sup> including satisfactory compliance with federal laws and District of Columbia Law including tax laws, labor and employment laws, environmental laws, antitrust laws, and consumer protection laws;
- (e) Has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;<sup>140</sup>
- (f) Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them;<sup>141</sup> and
- (g) Is otherwise qualified and eligible to receive an award under applicable laws and regulations.<sup>142</sup>

7213.3

Contracts shall only be awarded to responsible contractors.<sup>143</sup>

- (a) No purchase or award shall be made until the Contracting Officer makes an affirmative determination of contractor responsibility.
- (b) A determination that a bidder or offeror is suspended or debarred by a federal agency, or under a HUD limited denial of participation will result in a finding that that bidder or offeror is not responsible.<sup>144</sup> DCHA may also review and consider debarments by agencies of the District of Columbia in its responsibility determination.
- (c) A determination of non-responsibility will be a matter of judgement on the part of DCHA, given the preponderance of the evidence. If the facts indicate that the bidder/offeror fails to meet the requirements for responsibility, the Contracting Officer shall document the findings of fact

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<sup>137</sup> HUD Procurement Handbook § 10.2.A.4.

<sup>138</sup> HUD Procurement Handbook § 10.2.A.5.

<sup>139</sup> HUD Procurement Handbook § 10.2.A.6.

<sup>140</sup> HUD Procurement Handbook § 10.2.A.2.

<sup>141</sup> HUD Procurement Handbook § 10.2.A.3.

<sup>142</sup> HUD Procurement Handbook § 10.2.A.7.

<sup>143</sup> See 2 C.F.R. § 200.318(h).

<sup>144</sup> HUD Procurement Handbook § 10.2.A.7.

supporting the determination.<sup>145</sup>

- (d) If the DCHA determines that the bidder falsified information during the bidding process, DCHA may disqualify the bidder or cancel the contract if it has been awarded.

7213.4 If DCHA determines that a contractor is not responsible, a written determination shall be prepared and signed by the Contracting Officer and included in the contract file, and such contractor shall be advised in writing of the reasons for the determination.<sup>146</sup>

## **7214 TYPES OF CONTRACTS**

7214.1 The Contracting Officer may use any type of contract that is appropriate to the procurement and that will promote the best interests of DCHA, within certain limitations.

7214.2 Fixed Price Contracts provide for a price that is not subject to adjustment. Fixed Price Contracts are the preferred type of contract.<sup>147</sup>

7214.3 Incentive Contracts are designed to encourage a contractor to manage the contract to meet targeted goals set by DCHA. All Incentive Contracts operate under an incentive penalty structure.

- (a) Cost incentives take the form of a profit or fee adjustment for effective management of the contract costs.
- (b) Performance incentives are considered in connection with specific product characteristics or other specific elements of the contractor's performance.
- (c) Delivery incentives are used when improvement from required delivery schedule is a significant DCHA objective.

7214.4 Indefinite Delivery Indefinite Quantity Contracts are used where the exact requirements of DCHA are not known at the time of contracting. Indefinite Delivery Indefinite Quantity Contracts provide for flexibility in both quantities of goods and services that may be ordered, and in delivery scheduling. The contract will include a minimum and a maximum of supplies or services for a specified contract term.<sup>148</sup>

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<sup>145</sup> HUD Procurement Handbook § 10.2,E.

<sup>146</sup> HUD Procurement Handbook § 10.2.F and G.

<sup>147</sup> HUD Procurement Handbook § 10.1.C.1.

<sup>148</sup> HUD Procurement Handbook § 10.1.C.3.iii

7214.5 Time and Materials Contracts provide for payment for supplies or services on the basis of actual cost of materials and direct labor hours charged at hourly rates that reflect wages, overhead, and profit. Time and Materials Contracts may be used only if a written determination is made that no other contract type is suitable, and the contract included a ceiling price that the contractor exceeds at its own risk. The Contracting Officer must provide for effective monitoring of the contractor's performance under a Time and Materials Contract to ensure efficient methods and cost controls are being utilized.<sup>149</sup>

7214.6 Labor Hour Contracts provide for the procurement of services on the basis of direct labor at specified, fixed hourly rates that include direct and indirect labor, overhead, and profit.<sup>150</sup>

7214.7 The following types of contracts are prohibited:

- (a) Cost Plus a Percentage of Cost Contracts; and
- (b) Percentage of Construction Cost Contracts.<sup>151</sup>

## **7215 OPTIONS**

7215.1 Options for additional quantities or performance periods may be included in procurements, provided that:

- (a) The use of options is mentioned in the solicitation;
- (b) The option is unilateral right of DCHA;<sup>152</sup>
- (c) The options are evaluated as part of the solicitation;<sup>153</sup>
- (d) The contract states a limit on the additional quantities and the overall term of the contract;<sup>154</sup>
- (e) The contract states the period within which the options may be exercised;<sup>155</sup>
- (f) The options may be exercised only at the price specified in or reasonably determined from the contract;<sup>156</sup> and

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<sup>149</sup> See 2 C.F.R. 200.318(j) and HUD Procurement Handbook § 10.2.C.4.a and 4.b.

<sup>150</sup> HUD Procurement Handbook § 10.2.C.4.d.

<sup>151</sup> 2 C.F.R. § 200.324(d).

<sup>152</sup> HUD Procurement Handbook § 10.8.B.

<sup>153</sup> HUD Procurement Handbook § 10.8.C.3.b.

<sup>154</sup> HUD Procurement Handbook § 10.8.C.2.

<sup>155</sup> HUD Procurement Handbook § 10.8.C.3.a.

<sup>156</sup> HUD Procurement Handbook § 10.8.C.1.

- (g) The Contracting Officer determines that the use of the option is more advantageous to DCHA than conducting a new procurement.

## **7216 CHANGE ORDERS**

7216.1 A Change Order is a modification to a contract, in any of the contract terms, including specifications, completion time, and description of the work, within the scope of the contract. Change Orders are made after the award of a contract. A Change Order may be given unilaterally by the Contracting Officer or bilaterally by agreement between the contractor and the Contracting Officer.

7216.2 Change Orders shall include at least the following:

- (a) A detailed description of the proposed change in work;
- (b) A reference to the applicable working drawings and specifications;
- (c) A fixed price (credit, debit, or no change) for the change in contract work;
- (d) Estimate of any additional time, if any, required to complete the work;
- (e) The contractor's itemized breakdown of the cost of materials and labor and an itemized breakdown for any applicable subcontractors; and
- (f) The change indicated on the architectural or engineering drawings, if applicable.

7216.3 A contractor is entitled to submit a proposal to identify any changes in cost or schedules as a result of a unilateral Change Order, and the parties may negotiate an Equitable Adjustment. Once the Equitable Adjustment has been negotiated, the Contracting Officer will issue a Supplemental Agreement to the contract and shall document the Change Order in the files.

7216.4 There are limitations on the use of Change Orders.

- (a) A changes clause (if any) in a contract prescribes the specific circumstances in which a Change Order may be issued.
- (b) Changes that are outside the scope of the contract or outside the scope of authority of a changes clause (if any).

7216.5 The following Change Orders require approval by the Board of Commissioners:

- (a) For contracts whose dollar value is below \$250,000 that did not previously receive approval by the Board of Commissioners, any series of Change Orders regardless of their dollar value, which causes the original dollar

value of the contract to exceed \$250,000.

**7217 CONTRACT DOCUMENTS**

7217.1 Each contract shall state which documents (e.g., addenda, attachments, exhibits, schedules and riders) are part of the contract and the order of precedence for interpreting the contract in case of conflicting provisions.

7217.2 Any provision, clause, qualification, and/or limitation in any proposal submitted by an offeror that purports to change, alter, limit, and/or expand the requirements set forth in any solicitation shall have no effect unless approved in writing by the Contracting Officer.

**7218 CONTRACT CLAUSES**

7218.1 All procurement documents shall include the clauses, forms, and provisions necessary or desirable to define the rights and responsibilities of the parties.

7218.2 All HUD-funded contracts shall include the following provisions:<sup>157</sup>

- (a) Administrative, contractual, or legal remedies in case of breach by the contractor, and provide for such sanctions and penalties as may be appropriate;<sup>158</sup>
- (b) Termination of the contract at DCHA’s convenience and termination for the contractor’s default;<sup>159</sup>
- (c) Compliance with Executive Order 11246, as amended, and Department of Labor regulations regarding Equal Employment Opportunity (41 CFR Part 60);<sup>160</sup>
- (d) Compliance with the Davis-Bacon Act, as amended (40 U.S.C. 3141-3148), as supplemented by Department of Labor regulations (29 C.F.R. Part 5), and the Davis Bacon related acts, including but not limited to 42 U.S.C. 1437j(a);<sup>161</sup>
- (e) Compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as

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<sup>157</sup> See Appendix II to 2 C.F.R. Part 200 – Contract Provisions for Non-Federal Entity Contracts under Federal Awards.

<sup>158</sup> Id. at (A).

<sup>159</sup> Id. at (B).

<sup>160</sup> Id. at (C).

<sup>161</sup> Id. at (D).

supplemented by Department of Labor regulations (29 C.F.R. Part 3);<sup>162</sup>

- (f) Compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), as supplemented by Department of Labor Regulations (29 C.F.R. Part 5);<sup>163</sup>
- (g) Rights to inventions made under the contract or agreement (37 C.F.R. Part 401);<sup>164</sup>
- (h) Compliance with Clean Air Act (42 U.S.C. 7401-7671q.) and Federal Water Pollution Control Act ((33 U.S.C 1251-1387), as amended);<sup>165</sup>
- (i) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201);
- (j) Compliance with federal debarment and suspension requirements (Executive Orders 12549 and 12689). A contract award must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180;<sup>166</sup>
- (k) Compliance with Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);<sup>167</sup>
- (l) Compliance with requirements related to procurement of recovered materials in accordance with Section 6002 of the Solid Waste Disposal Act, as amended (2 C.F.R. 200.322).<sup>168</sup>
- (m) Compliance with Section 3 of the Housing and Urban Development Act of 1968;
- (n) Compliance with Drug-Free Workplace Act of 1988 requirements;

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<sup>162</sup> Id. at (D).

<sup>163</sup> Id. at (E).

<sup>164</sup> Id. at (F).

<sup>165</sup> Id. at (G).

<sup>166</sup> Id. at (H).

<sup>167</sup> Id. at (I).

<sup>168</sup> Id. at (J).

- (o) Compliance with the McNamara-O’Hara Service Contract Act of 1965;<sup>169</sup>
- (p) Notice that DCHA, HUD, the Comptroller General of the United States, or any other duly authorized representatives, shall have access to any records of the contractor pertinent to the project in order to conduct an adequate audit or examination;<sup>170</sup> and
- (q) Requirement that contractor retain required records for a minimum of three (3) years following contract closeout.<sup>171</sup>

**7219 CONTRACT MODIFICATIONS**

7219.1 Contract and purchase order modifications shall in writing and be issued in one of the following forms;

- (a) Bilateral modification that is signed by both the Executive Director or the Contracting Officer and the contractor, such as a Supplemental Agreement, in which both parties mutually agree on contract changes; or<sup>172</sup>
- (b) Unilateral modification that is signed only by the Executive Director or the Contracting Officer.<sup>173</sup>

7219.2 Bilateral modifications are the preferred method of modifying contracts.

7219.3 Only the Executive Director or the Contracting Officer has authority to modify any term or condition of a contract. Any Contract Modification shall be authorized in writing.

7219.4 The Executive Director or the Contracting Officer may modify the contract unilaterally:

- (a) pursuant to specific authorization stated in a contract clause; or
- (b) for administrative matters which do not change the rights or responsibilities of the parties.

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<sup>169</sup> 41 U.S.C. §§ 351–358, implemented at 29 C.F.R. part 4.

<sup>170</sup> 2 C.F.R §200.337

<sup>171</sup> Id.

<sup>172</sup> HUD Procurement Handbook § 11.4.A.2.

<sup>173</sup> HUD Procurement Handbook § 11.4.A.1

- 7219.5 Notwithstanding the exceptions stated in 7220.4, all other Contract Modifications shall be in the form of Supplemental Agreements signed by the contractor and Executive Director or the Contracting Officer.
- 7219.6 When a proposed modification requires the approval of HUD prior to its issuance, such modification shall not be effective until the required approval is received by DCHA.<sup>174</sup>
- 7219.7 DCHA shall maintain accurate documentation regarding Contract Modifications.
- 7219.8 DCHA has standard form Contract Modifications for certain types of contracts.
- 7219.9 Contract Modifications require approval by the Board of Commissioners for contracts when any Contract Modification or series of Contract Modifications will cause a contract that was awarded without Board of Commissioner approval because the dollar value was below \$250,000 to exceed \$250,000.

## **7220 CONTRACT ADMINISTRATION SYSTEM**

- 7220.1 DCHA shall maintain a contract administration system designed to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts.<sup>175</sup>
- 7220.2 DCHA's contract administration system may include procedures for inspection of supplies, services, or construction, as well as monitoring contractor performance, status or progress reporting on construction contracts, and similar matters.

## **7221 SUSPENSION OF WORK**

- 7221.1 Situations may occur that result in an order to suspend or stop work. A suspension of work may be ordered by the Contracting Officer for a reasonable period of time. If the suspension is unreasonable, the contractor may submit a written claim for increases in the cost of performance, excluding profit.<sup>176</sup>

## **7222 CONTRACT TERMINATIONS**

- 7222.1 The Contracting Officer may completely or partially terminate a contract for the contractor's actual or anticipated failure to perform its contractual obligations. Reasons for Termination for Default include, but are not limited to:
- (a) Failure to deliver the supplies, services, or construction as specified;
  - (b) Failure to perform work in a timely manner;

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<sup>174</sup> HUD Procurement Handbook § 11.4.E.

<sup>175</sup> 2 C.F.R. § 200.318(b).

<sup>176</sup> See 48 C.F.R. 42.1301, 1302.

- (c) Failure to make sufficient progress;
- (d) Violation of a contract clause, such as the prohibition against gratuities;
- (e) Repeated violations of labor standards;
- (f) Any other reason necessary to protect the best interests of DCHA.

7222.2 DCHA reserves the right to terminate, or cancel work, under any contract, in whole or in part, for the convenience of DCHA.

7222.3 The Contracting Officer shall terminate a contract for convenience or default by giving written notice to the contractor. The notice shall be hand-delivered; sent by certified mail, return receipt requested; or by a nationally recognized overnight delivery service.<sup>177</sup>

7222.4 The termination notice shall state the following:

- (a) The contract number and date;
- (b) The contract is being terminated, either for the convenience of DCHA or for default under the contract clause authorizing the termination. If termination is for default then the contractor's purported errors and omissions giving rise to the default must be identified. In addition, DCHA's right to charge excess costs of re-procurement to the contractor along with specification of the contractor's right to appeal should be included in the termination notice;<sup>178</sup>
- (c) The effective date of termination;<sup>179</sup>
- (d) If the termination is only partial, the extent of termination;<sup>180</sup>
- (e) Any special instructions.<sup>181</sup>

7222.5 The Contracting Officer may amend a termination notice to accomplish any of the following:

- (a) Correct non-substantive mistakes in the notice;
- (b) Add supplemental data or instructions; or

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<sup>177</sup> HUD Procurement Handbook § 11.6.B.

<sup>178</sup> HUD Procurement Handbook § 11.6.B.1.

<sup>179</sup> HUD Procurement Handbook § 11.6.B.4.

<sup>180</sup> HUD Procurement Handbook § 11.6.B.2.

<sup>181</sup> HUD Procurement Handbook § 11.6.B.6.

- (c) Rescind or modify the notice if it is determined that the basis for termination was cured before the contractor's receipt of the notice.

7222.6 An amendment to a termination notice shall be in writing and shall be delivered or sent to the contractor in the manner set forth in this Section

## **7223 SECTION 3 COMPLIANCE**

7223.1 Section 3 of the Housing and Urban Development Act of 1968 (codified as amended at 12 U.S.C. 1701u) (Section 3) was enacted to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the federal assistance is spent.<sup>182</sup>

7223.2 There are no thresholds under Section 3 for public housing financial assistance programs. Therefore, contracts funded by the public housing financial assistance programs listed below are covered by Section 3 regardless of the amount of the contract. For purposes of this Regulation, public housing financial assistance means:

- (a) Development assistance provided pursuant to Section 5 of the Housing Act of 1937 ("1937 Act");
- (b) Operations and management assistance provided pursuant to Section 9 (e) of the 1937 Act;
- (c) Development, modernization, and management assistance provided pursuant to Section 9 (d) of the 1937 Act; and
- (d) The entirety of a mixed finance development project as described in 24 CFR 905.604 regardless of whether the project is fully or partially assisted by public housing financial assistance.

7223.3 Section 3 does not apply to projects that are solely funded by the Housing Choice Voucher program including the Project Based Voucher program. In addition, Section 3 does not apply to material supply contracts.<sup>183</sup> Section 3 compliance and Workforce Development for Section 3 Residents is administered through DCHA's Office of Resident Services.

7223.4 DCHA and its contractors and subcontractors must make best efforts to provide employment and training opportunities generated by public housing financial assistance to Section 3 workers in the following order of priority:<sup>184</sup>

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<sup>182</sup> Also see 24 C.F.R. § 75.1.

<sup>183</sup> 24 C.F.R. 75.3(b).

<sup>184</sup> 24 C.F.R. 75.9.

- (a) Residents to the public housing projects for which the public housing financial assistance is expended;
- (b) Residents of other public housing projects managed by DCHA, or residents of Section 8-assisted housing managed by DCHA;
- (c) Participants in YouthBuild programs; and
- (d) Low and very low income persons residing in the DC Metropolitan Area.

7223.5 DCHA and its contractors and subcontractors must make best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers in the following order of priority:

- (a) Section 3 business concerns that provide economic opportunities for residents of the public housing projects where the assistance is being provided;
- (b) Section 3 business concerns that provide economic opportunities for residents of other public housing projects or Section 8-assisted housing managed by DCHA
- (c) YouthBuild programs; and
- (d) Section 3 business concerns that provide economic opportunities to Section 3 workers residing in the DC Metropolitan Area.

7223.6 It is DCHA policy to meet or exceed the safe harbor benchmarks for employment and established by HUD, which is updated regularly in the Federal Register and to follow the prioritization of effort described in this Section.<sup>185</sup> The current benchmarks for public housing assistance are:

- (a) Twenty-five (25) percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the DCHA's fiscal year are Section 3 workers; and
- (b) Five (5) percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the DCHA's fiscal year are Targeted Section 3 workers, as defined at 24 CFR Part 75.11.

7223.7 DCHA will regularly update this Section to include any applicable HUD revisions to the benchmarks. However, for ease of compliance, any revisions to the applicable

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<sup>185</sup> 2 C.F.R. § 75.13 (b).

benchmarks published by HUD are immediately incorporated into this Regulation as if fully set forth.

7223.8 It is the responsibility of contractors to implement efforts to achieve Section 3 compliance. Any contractor that does not meet the Section 3 benchmarks must demonstrate why meeting the benchmarks were not feasible. All contractors submitting bids or proposals to DCHA (other than those for Professional Services) are required to certify that they will comply with the requirements of Section 3. Prior to the beginning of work, contractors and subcontractors will be required to certify that they will follow the required prioritization of effort for Section 3 workers, Targeted Section 3 workers, and Section 3 business concerns as outlined below in this Regulation. After completion of the project, contractors and subcontractors will be required to certify that they followed the prioritization of effort requirements.

7223.9 If any contractor and subcontractor does not meet the safe harbor requirements, they must provide evidence to DCHA that they have made qualitative efforts to assist low and very low-income persons with employment and training opportunities. Such qualitative efforts may, for example, include but are not limited to the following:

- (a) Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- (b) Provided training or apprenticeship opportunities.
- (c) Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- (d) Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- (e) Held one or more job fairs.
- (f) Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
- (g) Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
- (h) Assisted Section 3 workers to obtain financial literacy training and/or coaching.
- (i) Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.

- (j) Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
- (k) Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- (l) Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- (m) Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.
- (n) Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

7223.10 Individuals and businesses that meet Section 3 criteria may seek Section 3 preference from DCHA or its contractors/subcontractors for training, employment, or contracting opportunities generated by public housing financial assistance. To qualify as a Section 3 worker, Targeted Section 3 worker or a Section 3 business concern, each must self-certify that they meet the applicable criteria. Businesses who misrepresent themselves as Section 3 business concerns and report false information to DCHA may have their contracts terminated as default and be barred from ongoing and future considerations for contracting opportunities.

7223.11 A Section 3 worker seeking certification shall submit self-certification documentation to the recipient contractor or subcontractor, that the person is a Section 3 worker or Targeted Section 3 worker as defined in 24 CFR Part 75. For the purposes of Section 3 worker eligibility, DCHA will use individual income rather than family/household income to determine eligibility. The income limits will be determined annually using the guidelines published at <https://www.huduser.org/portal/datasets/il.html>. Persons seeking the Section 3 worker preference shall demonstrate that it meets one or more of the following criteria currently or when hired within the past five years, as documented:

- (a) A low or very low-income resident (the worker's income for the previous or annualized calendar year is below the income limit established by HUD); or
- (b) Employed by a Section 3 business concern; or
- (c) A YouthBuild participant.

Persons seeking the Targeted Section 3 worker preference shall demonstrate that it meets one or more of the following criteria:

- (a) Employed by a Section 3 business concern or

- (b) Currently meets or when hired met at least one of the following categories as documented within the past five years:
  - (i) A resident of public housing; or
  - (ii) A resident of other public housing projects or Section 8-assisted housing; or
  - (iii) A YouthBuild participant.

7223.12 DCHA will include standard Section 3 language in all of its contracts to ensure compliance with regulations in 24 CFR Part 75. DCHA will take appropriate actions upon finding that a contractor is in violation of 24 CFR Part 75 and does not knowingly contract with any contractor that has been found in violation of the Section 3 regulations. On a periodic basis DCHA will audit contractors and subcontractors for compliance with the minimum Section 3 requirements outlined in the Section 3 Plan. In addition, contractors and subrecipients are required to include language in all Section 3 covered contracts or agreements for subcontractors to meet the requirements of 24 CFR Part 75.9. For Section 3 covered contracts, contractors must report on Section 3 compliance to DCHA on a monthly and an annual basis. Upon the completion of a project, DCHA will conduct a final review of the project's overall performance and compliance. DCHA will submit the Section 3 data into to HUD as required. For Section 3 projects that include public housing financial assistance and housing and community development financial assistance, DCHA and DCHA will report on the project as a whole and will identify the multiple associated recipients. For projects assisted with funding from multiple sources of housing and community development assistance that exceed the thresholds of \$200,000 and \$100,000 for Lead Hazard Control and Healthy Homes Programs (LHCHH), DCHA will follow subpart C of Part 75 and will report to the applicable HUD program office, as prescribed by HUD. Note: LHCHH assistance is not included in calculating whether the assistance exceeds the \$200,000 threshold. HUD public housing financial assistance and HUD housing and community development financial assistance is not included in calculating whether the assistance exceeds the LHCHH \$100,000 threshold.

7223.13 In an effort to resolve complaints generated due to non-compliance through an internal process, DCHA encourages submittal of such complaints [to its Section 3 Coordinator] as follows:

- (a) Complaints of non-compliance should be filed in writing and must contain the name of the complainant and brief description of the alleged violation of 24 CFR Part 75.
- (b) Complaints must be filed within thirty (30) calendar days after the complainant becomes aware of the alleged violation.

- (c) An investigation will be conducted if complaint is found to be valid. DCHA will conduct an informal, but thorough investigation affording all interested parties, if any, an opportunity to submit testimony and/or evidence pertinent to the complaint.
- (d) The DCHA will provide written documentation detailing the findings of the investigation. DCHA will review the findings for accuracy and completeness before it is released to complainants. The findings will be made available no later than one hundred and eighty days (180) days after the filing of complaint. If complainants wish to have their concerns considered outside of the DCHA a complaint may be filed with the HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office. These offices can be found through the HUD website, [www.hud.gov/](http://www.hud.gov/).

7223.14 In an effort to resolve complaints generated due to non-compliance through an internal process, DCHA encourages submittal of such complaints [to its Section 3 Coordinator] as follows:

- (a) Complaints of non-compliance should be filed in writing and must contain the name of the complainant and brief description of the alleged violation of 24 CFR Part 75.
- (b) Complaints must be filed within thirty (30) calendar days after the complainant becomes aware of the alleged violation.
- (c) An investigation will be conducted if complaint is found to be valid. DCHA will conduct an informal, but thorough investigation affording all interested parties, if any, an opportunity to submit testimony and/or evidence pertinent to the complaint.
- (d) The DCHA will provide written documentation detailing the findings of the investigation. DCHA will review the findings for accuracy and completeness before it is released to complainants. The findings will be made available no later than one hundred and eighty days (180) days after the filing of complaint. If complainants wish to have their concerns considered outside of the DCHA a complaint may be filed with the HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office. These offices can be found through the HUD website, [www.hud.gov/](http://www.hud.gov/).

7223.15 DCHA may impose sanctions (or refer a contractor to HUD for sanctions) if a contractor fails to meet the requirements of Section 3 and fails to provide adequate written justification.

## 7224 OTHER COMPLIANCE MATTERS

7224.1 All laborers and mechanics involved in construction contracts in excess of \$2,000 of federal funding or other funding, or any other construction contract that requires Davis- Bacon wages as determined by DCHA's Office of Administrative Services, must be paid wages in accordance with federal labor standards issued pursuant to the Davis-Bacon Act by the Department of Labor.<sup>186</sup>

7224.2 Contractors to construction contracts must affirm that:

- (a) The contractor is responsible for paying not less than the applicable wage rates to all employees engaged in work under the contract and ensuring that any subcontractors also pay not less than the applicable wage rates;<sup>187</sup> and
- (b) The contractor shall submit a certified payroll and compliance statement to DCHA each week during the contract period. A separate payroll report shall be submitted for the contractor and each subcontractor.<sup>188</sup>

7224.3 DCHA shall ensure that all other compliance requirements for recruitment, referral and placement are fulfilled by the contractor. Specific goals or requirements will be included in each contract.

- (a) For construction contracts, the Contracting Officer will conduct a pre-construction conference to explain the foregoing requirements.
- (b) Construction contractors will be required to execute a written affirmation of their compliance with all compliance matters.
- (c) Construction contractors will be required to submit periodic reports to the Contracting Officer detailing their compliance.
- (d) DCHA staff may conduct periodic site visits and meetings with the contractor to ensure compliance.
- (e) Construction contractors are required to ensure that all subcontractors comply with the foregoing requirements.

## 7225 CONTRACTING WITH SMALL, AND MINORITY OWNED BUSINESSES

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<sup>186</sup> See 40 U.S.C. § 3141 et seq., 42 U.S.C. § 1437j(a).

<sup>187</sup> See HUD Procurement Handbook § 10.9(B).

<sup>188</sup> See HUD Procurement Handbook § 10.9(C).

7225.1 DCHA shall make all necessary and affirmative efforts to assure that Small, Minority, Woman Owned Business Enterprises, and Labor Surplus Area Concerns are used when possible.<sup>189</sup> Such efforts may include, but shall not be limited to:

- (a) Including such businesses, when qualified, on Bidders Lists;<sup>190</sup>
- (b) Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;<sup>191</sup>
- (c) Dividing total requirements when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses;<sup>192</sup>
- (d) Establishing delivery schedules, where the requirements permit, which encourage participation by such businesses;<sup>193</sup>
- (e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, the District of Columbia Department of Small and Local Business Development, local Chamber of Commerce, and Section 3 business concerns;<sup>194</sup> and
- (f) Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above in this subsection.<sup>195</sup>

7225.2 Goals may be established by the DCHA Board of Commissioners periodically for participation in DCHA's prime contracts and for subcontracting opportunities by Small, Minority, Woman Owned Business Enterprises, and Labor Surplus Area Concerns. Such goals do not establish a preference for these businesses. Additional goals or requirements will be listed in the contract documents.

7225.3 DCHA will undertake efforts to encourage participation by Small, Minority, Woman Owned Business Enterprises, and Labor Surplus Area Concerns. DCHA does not use geographic or local preferences, other than Section 3, to award or administer contracts funded with Federal Funds because such clauses are prohibited by 2 CFR Part 200. When conducting procurement with DC Funds, DCHA follows District of Columbia requirements concerning local business enterprises.

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<sup>189</sup> See Presidential Orders 11625, 12138, and 12432 and HUD Procurement Handbook § 15.5.

<sup>190</sup> See 2 C.F.R. § 200.321(b)(1).

<sup>191</sup> See 2 C.F.R. § 200.321(b)(2).

<sup>192</sup> See 2 C.F.R. § 200.321(b)(3).

<sup>193</sup> See 2 C.F.R. § 200.321(b)(4).

<sup>194</sup> See 2 C.F.R. § 200.321(b)(5).

<sup>195</sup> See 2 C.F.R. § 200.321(b)(6).

7226

**CONTRACTING WITH RESIDENT OWNED BUSINESS**

7226.1

Where appropriate, DCHA shall consider employing an alternate procurement process for resident-owned businesses in accordance with 24 CFR Part 963. The policies and procedures contained in this Section apply solely to public housing developments that are owned by DCHA and that are covered by Annual Contributions Contracts (ACC) with HUD. Public housing contracts eligible to be awarded under the alternative procurement process provided by this part are limited to individual contracts that do not exceed \$1,000,000.<sup>196</sup>

7226.2

To be eligible for the alternative procurement process provided by this Section, a business must meet the following requirements, and must submit evidence to the DCHA, in the form described below, or as the DCHA may require, that shows how each requirement has been met.

- (a) **Legally formed business.** The business shall submit certified copies of any licenses that may be required of the business to engage in the type of business activity for which it was formed. Where applicable (as for example, in the case of corporations), the business also shall submit a certified copy of its corporate charter or other organizational document that verifies that the business was properly formed in accordance with District or State law.
- (b) **Resident-owned business.** The business shall submit a certification that it is a resident-owned business as defined by this Section. The business shall disclose to the DCHA all owners of the business, and each owner's percentage of ownership interest in the business. The business also shall disclose all individuals who possess the power to make the day-to-day, as well as major, decisions on matters of management, policy, and operations (management officials). The business shall identify all owners and management officials who are not public housing residents, and shall disclose any relationship that these owners and officials may have to a business (resident- or non-resident-owned) engaged in the type of business activity with which the resident-owned business is engaged. For purposes of this part, "relationship" means employment by, or having an ownership interest in, a business. The business also shall submit such evidence as the DCHA may require to verify that the owner or owners identified as public housing residents reside within public housing of the DCHA.
- (c) **Responsibility to complete contract.** The business shall submit evidence sufficient to demonstrate to the satisfaction of the DCHA that the business has the ability to perform successfully under the terms and conditions of the proposed contract. Consideration will be given to various factors, including but not limited to those identified in this Regulation, 2 CFR 200, and also to such matters as proof of completion of courses in business administration

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<sup>196</sup> 24 C.F.R. 963.3

or financial management, and proof of job training or apprenticeship in the particular trade, business, profession, or occupation.

- (d) **Limitation on alternative procurement contract awards.** The business shall submit a certification as to the number of contracts awarded, and the dollar amount of each contract award received, under the alternative procurement process provided by this Section. A resident-owned business is not eligible to participate in the alternative procurement process provided by this part if the resident-owned business has received under this process one or more contracts with a total combined dollar value of \$1,000,000.<sup>197</sup>

7226.3

Method of procurement. In contracting with resident-owned businesses, the DCHA shall follow the applicable method of procurement as set forth in this Section, with solicitation limited to resident-owned businesses. Additionally, the DCHA shall ensure that the method of procurement conforms to the procurement standards set forth herein and in 24 CFR 200.

- (a) **Contract awards.** Contracts awarded under this part shall be made only to resident-owned businesses that meet the requirements of this Section and 24 CFR §963.10, and that comply with such other requirements as may be required of a contractor under the particular procurement and DCHA and HUD regulations. An award shall not be made to the resident-owned business if the contract award exceeds the independent cost estimate required by 2 CFR 200, and the price normally paid for comparable supplies, services, or construction in the project area.
- (b) **Contract requirements.** Any contract entered into between DCHA and a resident-owned business under this part shall comply with: the contract provisions required by this Regulation and 2 CFR 200; the provisions of 2 CFR 200 and 24 CFR 905 governing bonding requirements, where applicable; and such other contract terms that may be applicable to the particular procurement under DCHA and HUD regulations. In addition to the recordkeeping requirements imposed by 24 CFR 75, the PHA also shall maintain records sufficient to detail the significant history of the procurement made under this part. These records will include, but are not necessarily limited to the following: The independent cost estimate and comparable price analysis; the basis for contractor selection, including documentation concerning the eligibility of the selected resident-owned business; and the basis for determining the reasonableness of the proposed contract price.<sup>198</sup>

7226.4

For purposes of this Section, *Resident-owned business*. Any business concern which is owned and controlled by public housing residents. (The term “resident-owned business” includes sole proprietorships.) For purposes of this section, “owned and controlled” means a business:

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<sup>197</sup> 24 C.F.R. 963.10

<sup>198</sup> 24 C.F.R. 963.12

- (a) Which is at least 51 percent owned by one or more public housing residents; and
- (b) Whose management and daily business operations are controlled by one or more such individuals.

All securities which constitute ownership or control of a corporation for purposes of establishing the business as a resident-owned business shall be held directly by the public housing residents. No securities held in trust, or by any guardian for a minor, shall be considered as held by the public housing resident in determining the ownership or control of a corporation.<sup>199</sup>

## **7227 TAX EXEMPT STATUS**

- 7227.1 Pursuant to D.C. Code, §47-2005(1), DCHA is exempt from D.C. sales taxes.
- 7227.2 Pursuant to a sales tax exemption certificate issued by the Maryland Revenue Administration Division, DCHA is exempt from Maryland sales taxes.
- 7227.3 Exemption from Virginia sales taxes is considered on a case-by-case basis.

## **7228 APPEALS AND ACTIONS**

- 7228.1 It is the policy of DCHA to encourage the informal resolution of contractual issues.
- 7228.2 Violations of law will be referred to the local or federal authority having proper jurisdiction. No party may refer a dispute to a local or federal authority until all administrative remedies have been exhausted at DCHA.

## **7229 BID PROTESTS**

- 7229.1 Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles contained in this Regulation. The Contracting Officer will attempt to resolve the protest informally, if possible.<sup>200</sup>
- 7229.2 Any protest against a solicitation must be received before the due date for receipt of bids or proposals, and any against the award of a contract must be received within ten (10) calendar days after contract award, or the protest will not be considered. All Bid Protests shall be in writing, submitted to the Contracting Officer. Bid protests should include, at a minimum, the following information:
  - (a) Name, address, and phone number(s) of the protestor;
  - (b) Solicitation number and project title;
  - (c) A detailed statement of the basis for the Bid Protest;

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<sup>199</sup> 24 C.F.R. 963.963.5

<sup>200</sup> See 2 C.F.R. § 200.318(k)

- (d) Supporting evidence or documents to substantiate any arguments; and
- (e) The form of relief requested.

7229.3 The Contracting Officer may suspend the procurement pending resolution of the Bid Protest, if warranted by the facts presented.

7229.4 The Contracting Officer shall issue a written decision within ninety (90) days of receipt of the Bid Protest, by certified mail with receipt requested, which shall include:

- (a) A description of the claim;
- (b) A reference to the pertinent contract clause;
- (c) A statement of the factual areas of agreement or disagreement;
- (d) A statement of the Contracting Officer's decision with supporting rationale;
- (e) A statement referencing appeal rights.

7229.5 The Contracting Officer's Final Decision may be appealed to the Executive Director. Any such appeal must be filed within ten (10) days of receipt of the Contracting Officer's decision.

7229.6 The Executive Director's decision may be appealed to the District of Columbia Contract Appeals Board or other court of competent jurisdiction as determined and agreed to by the parties. The appeal must be filed within thirty (30) days of receipt of the Executive Director's decision, or other time period required by the selected court of competent jurisdiction, as applicable.

7229.7 The DCHA Board of Commissioners has no jurisdiction over Bid Protests.

## **7230 CONTRACT DISPUTES**

7230.1 All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision. Contract disputes should include, at a minimum, the following information:

- (a) Name, address, and phone number(s) of the protestor;
- (b) Contract number and project title;
- (c) A detailed statement of the basis for the Contract Dispute;

- (d) Supporting evidence or documents to substantiate any arguments; and
- (e) The form of relief requested.

7230.2 Within 90 days after receipt of the claim, the Contracting Officer shall issue a written decision, by certified mail with return receipt requested, which should include:

- (a) A description of the claim;
- (b) A reference to the pertinent contract clause;
- (c) A statement of the factual areas of agreement or disagreement;
- (d) A statement of the Contracting Officer's decision with supporting rationale;
- (e) A statement referencing appeal rights.

7230.3 The Contracting Officer's Decision may be appealed to the Executive Director. Any such appeal must be filed within ten (10) days of receipt of the Contracting Officer's decision. The Executive Director's Final Decision shall be issued within twenty (20) days.

7230.4 Any failure by the Executive Director to issue a Final Decision on a contract claim within the required time period shall be deemed to be a denial of the claim and shall authorize the commencement of the appeal on the claim as otherwise provided in 7230.5.

7230.5 The Executive Director's decision pursuant to 7230.3 or 7230.4 may be appealed to the District of Columbia Contract Appeals Board or other court of competent jurisdiction as determined and agreed to by the parties. The appeal must be filed within thirty (30) days of receipt of the Executive Director's decision, or other time period required by the selected court of competent jurisdiction, as applicable.

7230.6 The contractor shall proceed diligently with performance of the contract, pending final resolution of any request for relief, claim, appeal, or action under or relating to the contract, and comply with any decision of the Contracting Officer.

7230.7 The DCHA Board of Commissioners has no jurisdiction over Contract Disputes.

## **7231 ETHICS IN PUBLIC CONTRACTING**

7231.1 DCHA shall adhere to the following code of conduct and shall comply with all ethics requirements imposed by HUD (through contract and regulation), the federal government, and applicable laws of the District of Columbia.<sup>201</sup> Violations of the

code of conduct may result in suspension, termination, referral to HUD or the District of Columbia for debarment or criminal investigation, referral to the District of Columbia Board of Ethics and Governmental Accountability (“BEGA”), and/or other enforcement agencies.

7231.2 DCHA Enabling Act – Conflict of Interest. A conflict of interest shall include any financial interest, either directly or indirectly:

- (a) In any contract to which the Authority is a party for the purchase of supplies, materials, equipment, or services; or
- (b) In any entity involved directly or indirectly in any transaction with the Authority, including construction companies, real estate development firms, property management companies, and service providers.

7231.3 DC Ethics Act – Conflict of Interest. Under the DC Ethics Act, DCHA employees, including Commissioners for the purposes of this section) are required to comply with the DC Code of Conduct and to refrain from conflicts of interest related to the performance of their official duties. The DC Code of Conduct specifically prohibits an employee (including Commissioners) from capitalizing on an official title or position, disseminating non-public or confidential information, acting in a representative manner to non-governmental entities, or violating federal or District of Columbia law providing that no employee shall use his or her official position or title, or personally and substantially participate, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, or attempt to influence the outcome of a particular matter, in a manner that the employee knows is likely to have a direct and predictable effect on the employee’s financial interests or the financial interests of a person closely affiliated with the employee.

7231.4 The DC Code of Conduct is enforced by the District of Columbia Board of Ethics and Government Accountability (“BEGA”), which has substantial authority to conduct investigations into allegations of ethical misconduct and to impose sanctions, including fines, where violations occur. DCHA will refer suspected violations of this Section to BEGA.

7231.5 Federal “Common Rule” – Conflict of Interest. Under the Common Rule, the Executive Director, Commissioners, and DCHA employees may not participate in the selection, award, or administration of a contract supported by Federal Funds if they have a real or apparent conflict of interest. A conflict of interest exists if the Executive Director, Commissioner, DCHA employee, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of those parties, has a financial or other interest in or a tangible

personal benefit from a firm considered for a contract with DCHA or that has a contract with DCHA. 2 CFR § 200.318( c)(1). Immediate family includes spouse, domestic partner, household member, parents, sibling, child, or the spouse or domestic partner of your parent, sibling, or child.

7231.6 Conflict of Interest – Annual Contributions Contract with HUD. DCHA may not hire an employee or contractor or subcontractor in connection with a project under the ACC if the prospective employee is an immediate family member of any person belonging to one of the following classes:

- (a) Any present or former member or officer of the governing body of the DCHA. There shall be excepted from this prohibition any former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the HA.
- (b) Any employee of the DCHA who formulates policy or who influences decisions with respect to the project(s).
- (c) Any public official, member of the local governing body, or DC City Councilmember, who exercises functions or responsibilities with respect to the project(s) or the DCHA.
- (d) This prohibition shall remain in effect throughout the class member's tenure and for one year thereafter.
- (e) The class member shall disclose to the DCHA and HUD the member's familial relationship to the prospective employee, contractor or subcontractor.
- (f) These requirements may be waived by the DCHA Board of Commissioners for good cause, provided that such waiver is permitted by District law.

For purposes of this section, the term 'immediate family member' means the spouse, mother, father, brother, sister, or child of a covered class member (whether related as a full blood relative, or as a 'half' or 'step' relative, e.g., a half-brother or stepchild).

7231.7 Conflict of Interest – Housing Choice Voucher ("HCV") Program. Neither DCHA nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with the HCV Program in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- (a) Any present or former member or officer of the DCHA (except a commissioner who is also a recipient of under the HCV Program);
- (b) Any employee of the DCHA, or any contractor, subcontractor or agent of the DCHA, who formulates policy or who influences decisions with respect to the programs;
- (c) Any public official, member of a governing body, or DC Councilmember, who exercises functions or responsibilities with respect to the programs; or
- (d) Any member of the Congress of the United States.

Any member of the classes described above must disclose their interest or prospective interest to the DCHA and HUD. This conflict-of-interest prohibition may be waived by the HUD Field Office for good cause. DCHA may not pay funds derived from Section 8 subsidies to any “covered individual,” including any landlord who was an officer or occupied a policy-making role with the PHA

7231.8 All parties bidding or seeking to provide goods or services to DCHA shall be required disclose any potential conflicts of interest during the procurement process and throughout the contract administration process should a contract be awarded. Failure to disclose a conflict of interest may be cause for disqualification from an award or for termination for cause of a contract that has been awarded.

7231.9 Under the DCHA Enabling Act, for a period of one year after termination or expiration of his or her term of employment, no Officer shall appear before any court or government department or agency as agent or attorney for anyone other than the Authority in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the Authority is substantially interested, whether or not he or she took any action or made any decision as officer in connection with such matter. This provision does not preclude compliance with a subpoena duly issued to any former Officer.<sup>202</sup>

7231.10 DCHA has created several affiliated organizations. Some are DCHA Affiliates, while others are DCHA Instrumentalities, as defined in this Regulation. DCHA Instrumentalities follow these procurement regulations, and DCHA does not procure these instrumentalities. DCHA Affiliates must be procured, and are subject to a conflict of interest review.<sup>203</sup>

7231.11 If a proposal indicates that situations or relationships that could represent a conflict of interest are involved, or the Contracting Officer believes that potential conflicts

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<sup>202</sup>D.C. Code §6-221).

<sup>203</sup>See 2 C.F.R. § 200.318(c)(2).

of interest exist during the procurement process, the Contracting Officer shall refer the matter to the General Counsel or DCHA Ethics Officer for a determination of actual conflicts of interest.

7231.12 Questions involving conflicts of interest should be referred to the General Counsel. Decisions of the General Counsel are final.

7231.13 The Executive Director, Board of Commissioners, and employees have an ongoing duty to disclose and avoid any interest or contact in violation of conflict of interest rules imposed by HUD, the District of Columbia, and this Regulation.

7231.14 The DCHA is subject to the Government Ethics Act of 2011 and the associated Code of Conduct as referenced at Section 1-1162.01 of the D.C. Code.

**7232 GRATUITIES, KICKBACKS, AND USE CONFIDENTIAL INFORMATION**

7232.1 DCHA Board of Commissioners members, employees and agents shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value as an inducement or intended inducement, in the procurement of goods or services from contractors, potential contractors, or parties to subcontracts. DCHA Board of Commissioners members, employees, and agents shall not knowingly use or share confidential information with a contractor for actual anticipated personal gain.<sup>204</sup>

7232.2 Violation of this Section 7232 may subject an employee to disciplinary action up to and including removal, subject an agent to termination of the agency agreement, and subject a Commissioner to removal in accordance with the Bylaws of the Board of Commissioners.

7232.3 Any person, firm, or corporation offering to make, or pay or give any rebate, percentage of contract, money, or any other thing of value as an inducement, in the procurement of business, to any DCHA Board of Commissioners member, employee, or agent may subject the person, firm, or corporation to suspension or debarment by HUD or to ineligibility to contract with the DCHA.<sup>205</sup>

7232.4 It is a breach of ethical conduct and prohibited for any payment, gratuity, or offer of employment to be made by, or on behalf of, a contractor or subcontractor under contract to the prime contractor, higher tier subcontractor, or any person associated therewith as an inducement for the award of a subcontractor order. The Contracting Officer shall report to the Executive Director, the HUD, and the appropriate District of Columbia officials any suspected anticompetitive practices by contractors.

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<sup>204</sup> HUD Procurement Handbook 4.5.C.

<sup>205</sup> HUD Procurement Handbook 4.5.A.

7232.5 Other than DCHA staff specifically designated by the Executive Director or the Contracting Officer, no DCHA employee, agent, or Commissioner may discuss an active procurement with any bidder or other party who is not a DCHA employee, agent, or Commissioner.

7232.6 This Section 7232 is further implemented by the Code of Conduct as referenced at Section 1-1162.01 of the D.C. Code, as required by the Government Ethics Act of 2011.

### **7233 PROHIBITION AGAINST CONTINGENT FEES**

7233.1 Contractors shall not retain a person to solicit or secure a DCHA contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial selling agencies, or as may be provided in any invitation for bids or request for proposals or other solicitation for business issued by DCHA.<sup>206</sup>

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<sup>206</sup> HUD Procurement Handbook § 4.6.