

REPORT

DATE ISSUED: December 5, 2007 REPORT NO: HCR 07-81  
ATTENTION: Chair and Members of the Housing Commission  
For the Agenda of December 14, 2007  
SUBJECT: San Diego Housing Commission Procurement Policy

REQUESTED ACTION:

Approve the proposed rewrite of the Housing Commission's Procurement Policy (PO203.100) that reflects recent changes in HUD regulations and aligns the Housing Commission's procurement methods with the City of San Diego

STAFF RECOMMENDATION:

Approve the proposed rewrite of the Housing Commission's Procurement Policy inclusive of changes in HUD's Procurement Handbook 7460.8 Revision 2, and applicable State and Local Laws. The proposed changes do not affect the current expenditure thresholds. However, the value of contracts for services by Consultants and Architects/Engineers that require formal solicitation has been changed to align the Housing Commission procurement methods with those of the City of San Diego. The proposed policy has been reviewed and approved by General Counsel, Charles Christensen.

BACKGROUND:

In February 2007, HUD issued the Handbook 7460.8 REV 2, Procurement Handbook for Public Housing Authorities. The Handbook has been updated to clarify, simplify, and update procurement requirements. Housing Commission staff used a template from the Handbook to rewrite the Procurement Policy (Attachment 1) to ensure all changes have been incorporated. This proposed policy has been completely rewritten and is not analogous to the existing policy.

The proposed policy provides for fair and consistent treatment of all persons or firms involved in purchasing by the Housing Commission and ensures that purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State and local laws. The term "procurement," as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials; (2) construction and maintenance; (3) consultant services; (4) architectural and engineering (A/E) services; (5) social services; and (6) other services.

Highlights of the written policy include:

- Establishment of a micro-purchase threshold of \$2,000, requiring only one reasonable quote (consistent with the Federal Acquisition Regulations);

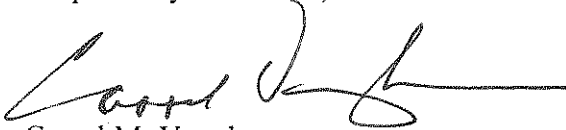
- Any procurement not exceeding \$50,000 (\$25,000 for Consultants and Architect/Engineers) may be made in accordance with the Housing Commission's Small Purchase procedures, including petty cash, micro purchases and purchase orders;
- Mandatory preparation of an Independent Cost Estimate for all purchases above the micro purchase threshold;
- Self-certification that the Housing Commission procurement system satisfies the requirements of 24 CFR 85.36, thereby eliminating the need for prior HUD approval for most change orders and non-competitive purchases;
- Procurements expected to exceed \$50,000 (\$25,000 for Consultants and Architects/Engineers) will be conducted through a formal multi-step solicitation process, e.g., request for proposals, and sealed bids.

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A legal opinion concerning procurement (Exhibit 2) is included in the Procurement Policy clarifying and creating limits of authority on an annual basis, on a project by project and upon a scope of services basis. The annual limits are set forth in Exhibit "1" to the Procurement Policy and is part of such Policy. The Delegation of Authority (AR000.003) accompanies the Procurement Policy and is attached for informational purposes only. (Attachment 2)

Since the Housing Commission often procures goods or services using multiple funding sources, including Federal funds, all procurements will be conducted in accordance with the proposed Policy to ensure full compliance with required laws or regulations.

Respectfully submitted,



Carrol M. Vaughan  
Executive Vice President &  
Chief Operating Officer

Attachment 1: Proposed San Diego Housing Commission Procurement Policy  
Attachment 2: Delegation of Authority Administrative Regulation

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This Procurement Policy complies with the Annual Contributions Contract (ACC) between San Diego Housing Commission (SDHC) and the HUD, Federal Regulations at **24 CFR 85.36**, the procurement standards of the Procurement Handbook for PHAs, HUD Handbook 7460.8, Rev 2, and applicable State and Local laws.

**General**

The SDHC shall: provide for a procurement system of quality and integrity; provide for the fair and equitable treatment of all persons or firms involved in purchasing by the SDHC; ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to the SDHC; promote competition in contracting; and assure that SDHC purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws.

**Application**

This Procurement Policy applies to all procurement actions of the Authority, regardless of the source of funds, except as noted under "exclusions," below. However, nothing in this Policy shall prevent the SDHC from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. When both HUD and non-Federal grant funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, HUD procurement regulations shall be applied to the total project. If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the source of funding may be followed.

**Definition**

The term "procurement," as used in this Policy, 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.

**Exclusions**

This policy does not govern the award of vouchers under the Section 8 program, or the execution of landlord Housing Assistance Payments contracts under that program. These excluded areas are subject to applicable State and/or Federal requirements.

**Changes in Laws and Regulations**

In the event 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 these Policies, automatically supersede these Policies.

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### **Public Access to Procurement Information**

Most procurement information that is not proprietary is a matter of public record and shall be available to the public extent provided in the State Public Records Act.

### **ETHICS IN PUBLIC CONTRACTING**

#### **General**

The SDHC hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct, etc., is consistent with applicable Federal, State, or local law.

#### **Conflicts of Interest**

No employee, officer, Board member, or agent of the SDHC shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. This type of conflict would be when one of the persons listed below has a financial or any other type of interest in a firm competing for the award:

An employee, officer, Board member, or agent involved in making the award;

- A. His/her relative (including dependent son, dependent daughter, husband, wife, dependent stepson, dependent stepdaughter, and any other category of relative required by applicable law);
- B. His/her partner; or
- C. An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

#### **Gratuities, Kickbacks, and Use of Confidential Information**

No officer, employee, Board member, or agent shall ask for or accept gratuities, favors, or items of more than \$25 in value from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

#### **Prohibition Against Contingent Fees**

Contractors wanting to do business with the SDHC must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

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## **PROCUREMENT PLANNING**

Planning is essential to managing the procurement function properly. Hence, the SDHC will periodically review its record of prior purchases, as well as future needs, to: find patterns of procurement actions that could be performed more efficiently or economically; maximize competition and competitive pricing among contracts and decrease the SDHC's procurement costs; reduce SDHC administrative costs; ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and minimize errors that occur when there is inadequate lead time. Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

## **PURCHASING METHODS**

### **Petty Cash Purchases**

Purchases under \$100 may be handled through the use of a petty cash account. Petty Cash Accounts may be established in an amount sufficient to cover small purchases made during a reasonable period, e.g., one month. For all Petty Cash Accounts, the SDHC shall ensure that security is maintained and only authorized individuals have access to the account. These accounts will be reconciled and replenished periodically.

### **Small Purchase Procedures**

Any procurement not exceeding \$50,000 (\$25,000 for Consultants and Architects/Engineers) may be made in accordance with SDHC's Small Purchase procedures and as authorized in this section. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Assistance to Small and Other Businesses) or to constitute purchases not requiring Commission review.

1. Petty Cash Purchases: Small purchases under \$100 which can be satisfied by local sources may be processed through the use of a Petty Cash Account (Petty Cash Account not to exceed \$500, and \$400 Petty Cash Account for each Asset Management Project).
2. Purchases of \$2,000 or less: For small purchases below \$2,000 (known as micro purchases) only one quotation (Exhibit 1) or bid need be solicited if the price received is considered reasonable and documented in the file.
3. Purchases over \$2,000: For small purchases in excess of \$2,000 but not exceeding \$50,000 no less than three offerors shall be solicited to submit a price quotation, bid or proposal depending on the complexity of the procurement.

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**Sealed Bids**

Sealed bidding shall be used for all contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this document. Under sealed bids, the SDHC publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions of the Invitation for Bids (IFB), is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$50,000.

- A. Conditions for Using Sealed Bids.** SDHC shall use the sealed bid method if the following conditions are present: a complete, adequate, and realistic statement of work, specification, or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.
- B. Solicitation and Receipt of Bids.** An IFB is issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids received will be date and time-stamped and stored **unopened** in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.
- C. Bid Opening and Award.** Bids shall be opened publicly. All bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The method for doing this shall be stated in the IFB. If only one responsive bid is received from a responsible bidder, award shall **not** be made unless the price can be determined to be reasonable, based on a cost or price analysis.
- D. Mistakes in Bids.** Correction or withdrawal of bids may be received in the office designated in the IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the SDHC or fair competition shall not be permitted.

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### **Competitive Proposals**

Unlike sealed bidding, the competitive proposal method permits: consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the SDHC, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

- A. Conditions for Use.** Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed \$15,000.
- B. Form of Solicitation.** Other than A/E services, competitive proposals shall be solicited through the issuance of a RFP. The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any subfactors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established **before** the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. The SDHC may assign price a specific weight in the evaluation criteria or the SDHC may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.
- C. Evaluation.** The proposals shall be evaluated only on the criteria stated in the RFP. Where not apparent from the evaluation criteria, the SDHC shall establish an Evaluation Plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.
- D. Negotiations.** Negotiations shall be conducted with all offerors award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any 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. A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between the SDHC and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions

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are tailored to each offeror's proposal, and shall be conducted by the contracting officer with each offeror within the competitive range. The primary object of discussions is to maximize the SDHC's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The contracting officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the contracting officer's judgment. The contracting officer may inform an offeror that its price is considered by the SDHC to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that the SDHC's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.

- E. Award.** After evaluation of the revised proposals, if any, the contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the SDHC provided that the price is within the maximum total project budgeted amount established for the specific property or activity.
- F. A/E Services.** The SDHC will contract for A/E services using Qualification Based Selection (QBS) procedures, utilizing a RFQ. Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures **shall not** be used to purchase other types of services, though architectural/engineering firms are potential sources.

### **Noncompetitive Proposals**

- A. Conditions for Use.** Procurement by noncompetitive proposals (sole-source) may be used **only** when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, **and** if one of the following applies:
  - 1. The item is available only from a single source, based on a good faith review of available sources;
  - 2. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the SDHC, as may arise by reason of a flood, earthquake, epidemic, 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 simply to meet the emergency;

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3. HUD authorizes the use of noncompetitive proposals; or
4. After solicitation of a number of sources, competition is determined inadequate.

**B. Justification.** Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:

1. Description of the requirement;
2. Statement as to the unique circumstances that require award by noncompetitive proposals;
3. Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
4. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

### **Cooperative Purchasing/Intergovernmental Agreements**

The SDHC may enter into State and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency 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 SDHC may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs.

### **INDEPENDENT COST ESTIMATE (ICE)**

For all purchases above the Micro Purchase threshold, the SDHC shall prepare an ICE prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

### **COST AND PRICE ANALYSIS**

The SDHC shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions.

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### **Petty Cash and Micro Purchases**

No formal cost or price analysis is required. Rather, the execution of a contract by the Contracting Officer (through a Purchase Order or other means) shall serve as the Contracting Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.

### **Small Purchases**

A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes is not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.

### **Sealed Bids**

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the ICE, and where the SDHC cannot reasonably determine price reasonableness, the SDHC must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

### **Competitive Proposals**

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, the SDHC must compare the price with the ICE. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, the SDHC must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

### **Contract Modifications**

A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for goods/services that were procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals, or for goods/services originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of \$50,000.

## **SOLICITATION AND ADVERTISING**

### **Method of Solicitation**

- A. Petty Cash and Micro Purchases.** The SDHC may contact only one source if the price is considered reasonable.
- B. Small Purchases.** Quotes may be solicited orally, through fax, or by any other reasonable method.

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**C. Sealed Bids and Competitive Proposals.** Solicitation must be done publicly. The SDHC must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.

1. Advertising in newspapers or other print mediums of local or general circulations.
2. Advertising in various trade journals or publications (for construction).
3. E-Procurement. The SDHC may conduct its public procurements through the Internet using e-procurement systems, provided that all e-procurements are in compliance with State and local requirements, and the SDHC's procurement policy.

**Time Frame**

For purchases of more than \$50,000, the public notice should run not less than once each week for two consecutive weeks. This time frame may be modified by the CEO of the Commission, or designee, in appropriate circumstances.

**Form**

Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact who can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s).

**Time Period for Submission of Bids**

A minimum of 30 days shall generally be provided for preparation and submission of sealed bids and 15 days for competitive proposals. However, the President and CEO may allow for a shorter period under extraordinary circumstances.

**Cancellation of Solicitations**

- A.** An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:
1. The supplies, services or construction is no longer required;
  2. The funds are no longer available;
  3. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
  4. Other similar reasons.
- B.** A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
1. The supplies or services (including construction) are no longer required;

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2. Ambiguous or otherwise inadequate specifications were part of the solicitation;
  3. All factors of significance to the SDHC were not considered;
  4. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
  5. There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
  6. For good cause of a similar nature when it is in the best interest of the SDHC.
  7. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.
- C.** A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any resolicitation or future procurement of similar items.
- D.** If all otherwise acceptable bids received in response to an IFB are at unreasonable prices an analysis should be conducted to see if there is a problem in either the specifications or the SDHC's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Contracting Officer may cancel the solicitation and either
1. Re-solicit using an RFP; or
  2. Complete the procurement by using the competitive proposal method. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of the SDHC's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.
- E.** If problems are found with the specifications, SDHC should cancel the solicitation, revise the specifications and resolicit using an IFB.

### **Credit (or Purchasing) Cards**

Credit card usage should follow the rules for all other small purchases. For example, the Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Contracting Officer would generally need to have obtained a reasonable number of quotes before purchasing via a credit card.

When using credit cards, the SDHC will use reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

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## **BONDING REQUIREMENTS**

The standards under this section apply to construction contracts that exceed \$100,000. There are no bonding requirements for small purchases or for competitive proposals. The SDHC may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

- A. Bid Bonds.** For construction contracts exceeding \$100,000, offerors shall be required to submit bid guarantee from each bidder equivalent to 5% of the bid price.
- B. Payment Bonds.** For construction contracts exceeding \$100,000, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four:
  - 1. A performance and payment bond in a penal sum of 100% of the contract price; or
  - 2. Separate performance and payment bonds, each for 50 % or more of the contract price; or
  - 3. A 20 % cash escrow; or
  - 4. 25 % irrevocable letter of credit.
- C.** These bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State where the work is to be performed. Individual sureties shall not be considered. U. S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory.

## **CONTRACTOR QUALIFICATIONS AND DUTIES**

### **Contractor Responsibility**

SDHC shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

- A.** Have adequate financial resources to perform the contract, or the ability to obtain them;
- B.** Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;
- C.** Have a satisfactory performance record;
- D.** Have a satisfactory record of integrity and business ethics;

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- E. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- F. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- G. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed LDP.

If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

### **Suspension and Debarment**

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (**24 CFR Part 24**) or by other Federal agencies, e.g., Dept of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings.

### **Vendor Lists**

All interested businesses shall be given the opportunity to be included on vendor mailing lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough sources to ensure competition.

## **CONTRACT PRICING ARRANGEMENTS**

### **Contract Types**

Any type of contract which is appropriate to the procurement and which will promote the best interests of the SDHC may be used. The cost -plus-a-percentage-of-cost and percentage-of-construction-cost methods of contracting will not be used. All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and SDHC.

For all cost reimbursement contracts, SDHC must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.

### **Options**

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

- A. The option is contained in the solicitation;
- B. The option is a unilateral right of the SDHC;
- C. The contract states a limit on the additional quantities and the overall term of the contract;

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- D.** The options are evaluated as part of the initial competition;
- E.** The contract states the period within which the options may be exercised;
- F.** The options may be exercised only at the price specified in or reasonably determinable from the contract; and
- G.** The options may be exercised only if determined to be more advantageous to SDHC than conducting a new procurement.

### **CONTRACT CLAUSES**

All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the SDHC.

Additionally, the forms HUD-5369, 5369-A, 5369-B, 5369, 5370, 5370-C, and 51915-A, which contain all HUD-required clauses and certifications for contracts of more than \$100,000, as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by SDHC. In the alternative, the SDHC may create contracts that incorporate the required provisions without utilization of the forms referenced above.

### **CONTRACT ADMINISTRATION**

The SDHC shall maintain a system of contract administration designed to ensure that contractors perform in accordance with their contracts. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters. For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in HUD Handbook 2210.18.

### **SPECIFICATIONS**

#### **General**

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying SDHC needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Function or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

#### **Limitation**

The following types of specifications shall be avoided:

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- A. Geographic restrictions not mandated or encouraged by applicable Federal law (except for A/E contracts, which may include geographic location as a selection factor if adequate competition is available);
- B. Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).

Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be reviewed to ensure that organizational conflicts of interest do not occur.

## **APPEALS AND REMEDIES**

### **General**

It is SDHC policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to HUD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

### **Informal Appeals Procedure**

The SDHC shall adopt an informal bid protest/appeal procedure for contracts of \$100,000 or less. Under these procedures, the bidder/contractor may request to meet with the appropriate Contract Officer.

### **Formal Appeals Procedure**

A formal appeals procedure shall be established for solicitations/contracts of more than \$100,000.

- A. **Bid Protest.** Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contract receives notice of the contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.
- B. **Contractor Claims.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in SDHC. Contractor claims shall be governed by the Changes clause in the form HUD-5370.

## **ASSISTANCE TO SMALL AND OTHER BUSINESSES**

### **Required Efforts**

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Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, all feasible efforts shall be made to ensure that small and minority-owned businesses, women's business enterprises, and other individuals or firms located in or owned in substantial part by persons residing in the area of the SDHC project are used when possible. Such efforts shall include, but shall not be limited to:

- A. Including such firms, when qualified, on solicitation mailing lists;
- B. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- E. Using the services and assistance of the Small Business Commerce;
- F. Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in **24 CFR Part 135** (so-called Section 3 businesses); and
- G. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.

Goals shall be established periodically for participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in SDHC prime contracts and subcontracting opportunities.

### **Definitions**

1. A **small business** is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in **13 CFR Part 121** should be used to determine business size.
2. A **minority-owned business** is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% 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. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

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3. A **women's business enterprise** is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.
4. A "**Section 3 business concern**" is as defined under **24 CFR Part 135**.
5. A **labor surplus area business** is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the DOL in **20 CFR Part 654**, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration, Delegation of Contracting Authority

While the President and CEO is responsible for ensuring that the SDHC's procurements comply with this Policy, the President and CEO may delegate all procurement authority as is necessary and appropriate to conduct the business of the Agency.

Further, and in accordance with this Delegation of Authority, the President and CEO shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The President and CEO shall also establish a system of sanctions for violations of the ethical standards described in Section III below, consistent with Federal, State, or local law.

## **DOCUMENTATION**

The SDHC must maintain records sufficient to detail the significant history of each procurement action. These records **shall** include, but **shall not** necessarily be limited to, the following:

- A. Rationale for the method of procurement (if not self-evident);
- B. Rationale of contract pricing arrangement (also if not self-evident);
- C. Reason for accepting or rejecting the bids or offers;
- D. Basis for the contract price (as prescribed in this policy);
- E. A copy of the contract documents awarded or issued and signed by a Contracting Officer;
- F. Basis for contract modifications; and
- G. Related contract administration actions.

The level of documentation should be commensurate with the value of the procurement.

Records are to be retained for a period of three years after final payment and all matters pertaining to the contract are closed.

## **DISPOSITION OF SURPLUS PROPERTY**

Property no longer necessary for the SDHC's purposes (non-real property) shall be transferred, sold, or disposed of in accordance with applicable Federal, state, and local laws and regulations.

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**FUNDING AVAILABILITY**

Before initiating any contract, the SDHC shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or modification.

**SELF-CERTIFICATION**

The SDHC self-certifies that this Procurement Policy, and the SDHC's procurement system, complies with all applicable Federal regulations and, as such, the SDHC is exempt from prior HUD review and approval of individual procurement action.

[Supersedes Policy 203.100, Issued 1/22/98, Effective 1/20/98, 11/30/07]

Approved:

\_\_\_\_\_  
Carrol Vaughan  
Vice President & COO

\_\_\_\_\_  
Elizabeth C. Morris  
President & CEO

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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**Exhibit 1**

	Procurement Methods			Approval Authority	
	One Quote If Reasonable	Multiple Quotes	Formally Advertised Bids	Chief Executive Officer	Housing Commission
<b>Goods &amp; Services</b>	Up to \$2,000	\$2,001 - \$50,000	\$50,001 or more	Up to \$100,000	Up to \$250,000
<b>Constructions</b>	Up to \$2,000	\$2,001 - \$50,000	\$50,001 or more	\$50,000 or up to \$100,000 on previous approved projects	Up to \$250,000
<b>Consultants</b>	Up to \$2,000	\$2,001 - \$25,000	\$25,001 or more	\$50,000	Up to \$250,000
<b>Architects &amp; Engineers</b>	Up to \$2,000	\$2,001 - \$25,000	\$25,001 or more	\$50,000	Up to \$250,000

Adopted: 9/21/87  
 Revised: 11/2/87  
 Revised: 2/4/91  
 Revised: 8/16/93  
 Revised: 8/22/94  
 Revised: 6/27/95  
 Revised: 1/20/98  
 Revised: 07/01/00  
 Revised: 11/30/07

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The purpose of this regulation is to formally document and summarize the designation and delegation of authority to affect actions on behalf of the Housing Commission.

For purposes of implementing this delegation of authority, following are the positions/employees hereby delegated authority within the organizational area(s) specified, and within existing policies that govern such authority. Every incumbent appointed to these positions shall be so authorized. In each case, a higher-level supervisor can always authorize the actions of subordinates in their absence. In no case may an individual authorize payments to themselves.

Individuals delegated with authority herein may temporarily delegate their authority, to appropriate classification, by e-mail. Standards for Delegation of Authority are: The e-mail must come from the person delegating the authority. In cases of emergencies, the delegate's immediate supervisor is authorized to delegate authority for the delegate. The e-mail must be sent to Financial Services, Directors, Assistant Directors, Officers, Supervisors, Human Resources, Procurement, and Administrative Professionals (APT), specifying the person to whom the authority is delegated and the time frame of the delegated authority (specific start and end dates must be included in the e-mail). For this purpose, a group named "Delegation" has been set up in the e-mail system, encompassing all above-referenced groups. The subject must state, "Delegation of Authority to (designee)." Various designees must be identified by the Organizational Area. The Designees must be within the definitions listed below:

- A. Executive Vice President & Chief Operating Officer
- B. Designated Director
- C. Designated Assistant Director
- D. Designated Officer
- E. Designated Supervisor
- F. Designee for above

Directors may delegate authority to Assistant Directors, Officers, Supervisors as they determine appropriate, e.g., initiation of recruitment for budgeted positions.

The document will be reviewed annually by the Executive Vice President & Chief Operating Officer's office. Mid-year changes, if any, will be announced by e-mail from the Executive Vice President & Chief Operating Officer and incorporated into the AR at the next annual update.

History: Issued 12/1/06; Rev. 9/9/98; 7/1/00; 7/1/02; 12/17/04, 10/20/06; 11/1/07

**Authorized by:**

\_\_\_\_\_  
 Carrol M. Vaughan, Executive Vice President &  
 Chief Operating Officer

\_\_\_\_\_  
 Date

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**AUTHORITY LEVEL**

**ORGANIZATIONAL AREA**

1. President & Chief Executive Officer as used on Pages 5-13 includes:

President & Chief Executive Officer

Agency wide

2. Executive Vice President & Chief Operating Officer as used on Pages 5-13 includes:

Executive Vice President & Chief Operating Officer

Agency wide

3. Designated Director as used on Pages 5-13 includes:

Director of Housing Finance & Development

HF&D - Rental Housing Production  
HF&D - Homeownership  
HF&D - Rehab Rental Housing  
HF&D - Rehab Owner Occupied  
HF&D - Portfolio Servicing  
HF&D - Portfolio Servicing – RTF  
HF&D - Special Purpose Housing  
HF&D - Occupancy Monitoring

Director of Rental Assistance

RA - Rental Assistance  
RA - Property Management Eligibility  
RA – Reception

Director of Business Services

BS - Org. Development & Training  
BS - Human Resources  
BS - Information Technology  
BS – Purchasing

Director of Facilities

AM - PM Management  
AM - PM Routine Maintenance  
AM - PM Asset Management  
(Construction Services)  
AM - PM Asset Management  
(Construction Defects)  
AM - PM Asset Management (Capital Fund)  
AM - Resident Services  
AM - Facilities Management (Smart Corner)

Director of Financial Services

FS - Financial Services

Director of Policy & Public Affairs

P&PA - Policy & Public Affairs  
P&PA - Communications

4. Designated Supervisor as used on Pages 5 -13 includes:

Ombudsperson (P&PA)  
Communications Officer (P&PA)

P&PA – Communications  
P&PA - Communications  
Policy & Public Affairs

Housing Construction Officer (AM)

AM - PM Management  
AM - PM Routine Maintenance  
AM - PM Asset Management

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	(Construction Services) AM - PM Asset Management (Construction Defects) AM - PM Asset Management (Capital Fund) AM - Resident Services AM - Facilities Management (Smart Corner)
Purchasing Supervisor (FS)	BS - Purchasing
Loan Management Supervisor (HF&D)	HF&D - Rehab Owner Occupied HF&D - Portfolio Servicing HF&D - Rental Housing Production HF&D - Homeownership
Housing Construction Officer (HF&D)	HF&D - Rehab Rental Housing HF&D - Rehab Owner Occupied
Supervising Project Managers (HF&D)	HF&D - Rental Housing Production HF&D - Homeownership HF&D - Rehab Rental Housing HF&D - Rehab Owner Occupied HF&D - Portfolio Servicing HF&D - Portfolio Servicing – RTF HF&D - Special Purpose Housing HF&D - Occupancy Monitoring
Housing Supervisor (AM)	AM - PM Management AM - PM Routine Maintenance
Assistant Program Director for Housing Programs (AM)	AM - PM Management AM - PM Routine Maintenance AM - Resident Services AM - Facilities Management (Smart Corner)
Assistant Program Director for Housing Programs (RA)	RA - Rental Assistance RA - Property Management Eligibility RA – Reception
Supervising Resident Initiatives Coordinators (RS)	AM - Resident Services
Housing Supervisor (RA)	RA - Rental Assistance RA - Property Management Eligibility RA - Reception
Information Technology Officer (BS)	BS - Information Technology
Maintenance Supervisor (AM)	AM - PM Routine Maintenance AM - Facilities Management (Smart Corner)
Accounting Supervisor (FS)	FS - Financial Services
Budget Officer (FS)	FS - Financial Services

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Secretary to the President & CEO (B&EF)	B&EF - Board & Executive Functions
Sr. Program Analyst (B&EF)	B&EF - Board & Executive Functions BS - Human Resources
Sr. Program Analyst (P&PA)	P&PA – Policy & Public Affairs
Sr. Administrative Assistant (OD&T)	BS - Org. Development & Training
Sr. Administrative Assistant (BS)	BS - Org. Development & Training BS - Human Resources BS - Information Technology
Sr. Budget Analyst (FS)	FS - Financial Services
Sr. Administrative Assistant (FS)	FS - Financial Services
Sr. Administrative Assistant (HF&D & Loan Mgmt)	HF&D - Rental Housing Production HF&D - Homeownership HF&D - Portfolio Servicing
Sr. Administrative Assistant (AM)	AM - PM Management AM - PM Routine Maintenance AM - PM Asset Management (Construction Services) AM - PM Asset Management (Construction Defects) AM - PM Asset Management (Capital Fund) AM - Resident Services AM - Facilities Management (Smart Corner)
Sr. Program Analyst (HF&D)	HF&D - Rental Housing Production HF&D - Homeownership HF&D - Rehab Rental Housing HF&D - Rehab Owner Occupied HF&D - Portfolio Servicing HF&D - Portfolio Servicing – RTF HF&D - Special Purpose Housing HF&D – Occupancy Monitoring
Docket Coordinator	P&PA - Communications
Administrative Assistant (RS)	AM - Resident Services

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ACTION	PRESIDENT & CEO EVP & COO	DESIGNATED DIRECTOR	DESIGNATED SUPERVISOR/ OTHER (as noted)
<b>A. ADMINISTRATIVE</b>			
1. Time Sheets (102,302/303 MOU 18/20/24)			X Sr. Administrative Assistant (RAP)
2. Changes in Work Schedules (102.312/MOU 18/24)		X	Up to 3 months (HR Review, if employee benefits are impacted)
3. Parking/Mileage Reimbursements (In-Town) (1110)			X
4. In-Town Reimbursable (108.0)		X	X
5. In-Town Meal Reimbursements		X	X
6. Cash Advances (\$100 limit) (108.3.4)		X	X
7. Petty Cash Reimbursement <b>NOTE:</b> President & CEO, EVP & COO, Directors and Secretary to the President & CEO may sign for each other.	X	X	X (Directors/Secretary to the President & CEO)
8. Training/Travel Reimbursement Budgeted (107./108/102.311) a. Authorization b. Reimbursements	X (Authorization Only) EVP & COO (until further notice)	X X	X X
9. Tuition a. Reimbursement Requests b. Reimbursement Payments		X X Director of Business Services	X X Business Services Sr. Program Analyst
10. Publications Budgeted			X
11. Publications Non-Budgeted		X	
12. Memberships Budgeted			X
13. Memberships Non-Budgeted	X		
14. Custom IT Requests		X	
15. Accident/Incident Report Sign Off (207/208)			X With Safety Officer/HR if workers compensation

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ACTION	PRESIDENT & CEO EVP & COO	DESIGNATED DIRECTOR	DESIGNATED SUPERVISOR/ OTHER (as noted)
16. Standards of Conduct Disclosure -- Sign Off of Any Conditions Imposed by SDHC	EMS	Review X	
17. Request for Donation of Annual Leave (Catastrophic Leave)			X
18. Custom IT Requests		X	
19. Network Logon and Email Access			X With HR as part of the New Hire Process
20.. Software System Logon and Access (ECS, Peoplesoft)			X With Annual Review by Functional Lead
<b>B. PERSONNEL</b>			
1. EMS Personnel Actions	X		
2. Recruitment for Non-EMS Permanent/Budgeted Positions. a. Initiate recruitment subject to position control. b. Job announcement, testing material, Interview panel. c. Authorization to hire d. Job Offer e. Letter	EVP & COO (until further notice)	X  X or a delegate X X  To Director of Business Services for EO tracking	
3. Transfers and Laterals a. Within department and in same job class (transfer) b. Within department to lateral class (lateral) c. Cross department (either)		X  X  X (All Directors Reviews)	
4. Authorize Eligibility Lists	X EMS	X HR Officer	
5. Hire Temporary Employees a. For vacant permanent/budgeted positions from 1 to 180 days		X	

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ACTION	PRESIDENT & CEO EVP & COO	DESIGNATED DIRECTOR	DESIGNATED SUPERVISOR/ OTHER (as noted)
b. For non-budgeted positions (e.g., temporary positions) or any over 180 days	X		
6. Temporary Agency Workers	X EVP & COO		
7. Bilingual a. Position designations b. Skill certifications c. Pay implementation		X X X HR	
8. Performance Evaluations (prior to employee meeting) a. All EMS b. All Unsatisfactory* c. All Outstanding* d. All Others  * Only outstanding or unsatisfactory evaluations for direct reports to a Director must be reviewed by the EVP&COO. Other outstanding or unsatisfactory evaluations must be reviewed by Directors.	X X X	X	
9. Disciplinary Actions (PP 102.5, MOU 40) a. Reprimand b. Suspension, salary reduction, demotion, dismissal c. Appeal of Notice of Intent  d. Appeal of Final Notice	X  X Director of Business Services X	X	X X
10. Personnel Action Forms a. Implementing previously authorized actions b. Release during probation		X	X
11. Leaves of Absence (MOU 32,33, 34,35/102.4) a. 1 – 30 days b. Up to 100 days (plus up to 10 day extension)	EMS only	X	

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ACTION	PRESIDENT & CEO EVP & COO	DESIGNATED DIRECTOR	DESIGNATED SUPERVISOR/ OTHER (as noted)
c. 101 days to one year d. Discretionary days off (AR)			
12. Administrative Leave	X EMS only	X	X
13. Letters Acknowledging Resignations	X EMS only	X	X
14. Volunteer Program Requests		X	X
15. Personnel Employee/ Discriminatory Investigations	X	X With Director of Business Services	X
16. Waivers or Reduction in Probationary Periods	X EMS Only	X	
17. Exceptions to Policies	X		

ACTION	HOUSING COMMISSION BOARD	PRESIDENT & CEO EXECUTIVE VICE PRESIDENT & COO
<b>C. CLAIMS/LITIGATION</b>		
1. Authority to Negotiate and Settle Claims Against the Housing Commission and Settlements on Behalf of the Housing Commission (208.0/Govt. Code 935)	more than \$15,000/ occurrence  more than \$25,000/ aggregate	up to and including \$15,000/ occurrence  up to and including \$25,000/ aggregate
2. Authority to Initiate Claims/Litigation on Behalf of the Housing Commission	All Others	Small Claims Action Only

ACTION	PRESIDENT & CEO EVP & COO	DESIGNATED DIRECTOR	DESIGNATED SUPERVISOR
<b>D. PROCUREMENT/ CONTRACTS (203.0)</b>			

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ACTION	PRESIDENT & CEO EVP & COO	DESIGNATED DIRECTOR	DESIGNATED SUPERVISOR
1. Authorize/Sign Formal Solicitations a. Goods, services and construction Professional and architect/engineer services		more than \$50,000	up to \$50,000
2. Authorize Procurement of Goods, Services and Construction (except professional and architect/ engineer services) within respective programs and within approved budget categories via: a. Standard Supplies Requests* b. Procurement Requests c. Purchase Orders/Move Request, etc. d. Service Agreement e. Formal Contracts  <b>See Exhibit 1 attached</b>	up to \$100,000  <b>Reference: Attachment A, Authority from HA to San Diego Housing Commission</b>	up to \$50,000  <b>Reference: Attachment A, Authority from HA to San Diego Housing Commission</b>	up to \$25,000 Supervisor  up to \$2,000 *Secretary to the President & CEO, Sr. Admin. Asst. (all OUSAs), Admin. Asst. (All OUSAs), and Resident Managers, Maintenance Technicians and Supervisors, Ombudsman *Sr. Program Analyst (All OUSAs) *Program Analyst (All OUSA's) Sr. Program Analyst for 301, up to \$25,000 *Sr. Admin. Asst., for (BS) 302, 360 up to \$2,000 and up to \$10,000 for 304 * Includes food service for meetings with appropriate billing.
3. Payments of Health Benefits Invoices		up to \$75,000	up to \$65,000 Sr. Program Analyst to COO
4. Payments on Loans & Grants			Up to \$20,000 + up to \$5,500 for lead-based paint mitigation)
5. Grant for Mobile Home Repair			Up to \$20,000 + up to \$15,000 for lead-based paint

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ACTION	PRESIDENT & CEO EVP & COO	DESIGNATED DIRECTOR	DESIGNATED SUPERVISOR
			mitigation)
6. Loan and Grant Funding			Loan Management Supervisor Level 1 in accordance with Housing Commission Policy no. 600.101
7. Rehab Deferred Payment Loans			Up to \$10,000 (plus up to \$5,000 for lead-based paint mitigation)
8. Lead Remediation Grants			Up to \$40,000 (Sr. Program Analyst)
9. Redevelopment Area Loans/Grant			Up to \$25,000 (Sr. Program Analyst)
10. Execute Contracts Awarded by Board Action After Attorney Sign-Off (some may require CEO sign-off)		more than \$25,000	Up to \$25,000
11. Hire Outside Professional Consultants and Architect/Engineers (206.0/203.1) See Exhibit 1 attached	up to \$50,000 Annual aggregate per consultant	Up to \$25,000 Annual aggregate per consultant	
12. Substitution of Equipment -- Purchase Equipment Not Specifically Budgeted, by Deleting a Budgeted Item, or from Savings from Equipment Line Item		More than \$10,000	Up to \$10,000
13. Disposition of Excess, Lost, Stolen or Abandoned Property a. Real Property b. Personal Property	Housing Authority & Funding Source more than \$1,000	Up to \$1,000	
14. Building Service Requests (Work Order)			X
16. Office Moves or Improvements		*Up to \$50,000 (must consult with the Director of AM)	
<b>E. FINANCIAL</b>			

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ACTION	PRESIDENT & CEO EVP & COO	DESIGNATED DIRECTOR	DESIGNATED SUPERVISOR
1. Sign/Endorse Checks: (HC Resolution 121) Requires Two Signatures	X	Director of FS (or applicable Director)	
2. Authorize Wire or Telephone Interfund Transfers		Director of FS or Budget Officer	Accounting Supervisor (Section 8 Only)
3. Requisitions, Budgets and Periodic Fiscal Reports to Funding Agencies		Director of FS or Budget Officer	
4. Request Certificate of Funding Availability			X
5. Cancel Certificate of Funding Availability			X
6. Execute Contracts or Amendments with Funding Source Agencies after Board Approval	As required by funding source	As required by funding source	
7. Authorize Payment of Invoices Pursuant to Contracts, Agreements, Purchase Orders, etc. Previously Authorized in Accordance with D. (2) "Procurement/ Contracts" above		Full contract amount	up to \$25,000
<b>F. SECTION 8</b>			
1. Initiate, Change or Stop HAP Contracts			X (Housing Supervisor or designee)
2. Authorize Landlord Claim Payments			Housing Assistants
3. Authorize Policy Changes to Administrative Plan (Housing Commission only)	X		
4. Authorize Exceptions to Administrative Plan	X		

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ACTION	PRESIDENT & CEO EVP & COO	DESIGNATED DIRECTOR	DESIGNATED SUPERVISOR
<b>G. PROPERTY MANAGEMENT</b>			
1. Execute Resident Leases			X Assistant Director of Housing Programs - or designee
2. Authorize Resident Refunds			X Assistant Director of Housing Programs - or designee
3. Initiate Unlawful Detainers			X Assistant Director of Housing Programs - or designee
4. Authorize Policy Changes to ACOP (Housing Commission only)			X
5. Authorize Exceptions to ACOP	X		
Note: The President & CEO /Executive Vice President & COO or Department Director has the authority to authorize payments on behalf of actions previously approved by the Housing Commission up to \$250,000 and the Housing Authority for \$250,000 or more.			
<b>H. HF&amp;D</b>			
1. NOFA's		X	
2. Authorize President & CEO or designee the authority to approve/deny HTF variance applications		X Up to \$15,000	
Advertising needed in connection with SDHC work			X Up to \$1,000, includes Project Managers, Financial Specialist, Program Analysts in HF&D
Coastal Overlay Zone Affordable Housing	X	Director of HF&D	

San Diego Housing Commission  
**ADMINISTRATIVE REGULATION**

**Subject:** DELEGATION OF AUTHORITY – REQUIRED APPROVAL LEVEL

Number: AR000.003

Effective: 12/1/96

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ACTION	PRESIDENT & CEO EVP & COO	DESIGNATED DIRECTOR	DESIGNATED SUPERVISOR
Letter of Determination			
Coastal Affordable Housing Compliance Agreement & Related Documents	X	Director of HF&D	
Density Bonus Agreement & Related Documents	X	Director of HF&D	
Inclusionary Housing Agreement and Related Documents	X	Director of HF&D	

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Anna R. Salusky  
Heather M. Ferbert

**To:** Carrol Vaughan

**From:** Charles B. Christensen  
Christensen Schwerdtfeger & Spath LLP

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**Date:** July 2, 2007

**Subject:** Legal Opinion Concerning Procurement

## Background

On or about April 25, 1994 the San Diego Municipal Code, Section 98.0301 was amended. The amendment fundamentally changed the way that the Commission did business. Whereas, before the amendment there was plenary power for the Commission to act upon measures regardless of the sum of money involved, subject to Housing Authority review, as and when it chose, after the amendment, the final authority of the Commission to act upon measures was limited by monetary thresholds. These thresholds and/or regulations were again changed in 1995, 1998, 2000 and 2001, by Housing Authority actions.

Currently, the CEO of the Commission or her designee is given authority to contract annually for services up to \$100,000. The Board of Commissioners of the San Diego Housing Commission is given service annual contract authority up to \$250,000. The Housing Authority of the City of San Diego is granted annual authority in excess of \$250,000 for service contracts.

Shortly after the passage of the amendment to Section 98.0301 in April of 1994, the CEO of the Commission had requested a memo concerning the contracting limits and they were to be implemented. The law firm of Detisch, Christensen & Wood and the undersigned issued an opinion, substantially as is set forth below concerning various limits of contracting. The issue has been revisited based upon the changes in the procurement limits and various other changes in the applicable rules and regulations.

## Limits of Contracting

### Annual Limits

The limits for contract must be analyzed on an annual basis. Each year a budget is approved on this annual budget basis and the contracts entered into must also be authorized on an annual basis. It was and is the opinion of the undersigned that the limits for contracting referenced in the San Diego Municipal Code, the Procurement Policy, the Administrative Regulations and the Resolutions of the Housing Authority operate on an annual basis. The limits apply for each fiscal year. Therefore, in the case of a multi-year contract that is for less than an applicable limit in each year of the multi-year contract, may be approved by the appropriate authority level for each year of the contract. Accordingly, if a consultant contract was for three (3) years and was for \$50,000 or less in each year of the contract, then the CEO of the Commission could approve and execute such a contract without further approval of the Board of Commissioners or the Housing Authority of the City of San Diego. Since the level of contracting in each year is less than that imposed by ordinance, policy, regulation and directive from the Housing Authority for actions by the CEO of the San Diego Housing Commission. In addition, options for additional years, provided, that they meet the CEO's limit of authority may also be included within the consulting services contract. San Diego Housing Commission Policy, PO 203.100, Section 3.2 A. provides, in part:

"3.2 The Chief Executive Officer or his/her designee shall ensure that:

- A. **Procurement requirements are subject to an annual planning process** to assure efficient and economical purchasing. Items which are purchased frequently will be stocked in Commission facilities, space permitting, and bulk purchases will be utilized whenever possible."

In addition, Administrative Regulation, AR 203.100, references a one year period for aggregation purposes. Subsection 3.2 A provides, in part:

**"Contract requirements shall not be artificially divided so as to constitute a small purchase under this section. If procurements of one type of product or contracts for one type of service can reasonably be expected to exceed those thresholds when aggregated over a 12 month budget period, competition shall be assured through a sealed bid competitive proposal process."**

For these, and other reasons, the limit provided in the procurement policy for actions by the CEO, the Board of Commissioners and the Housing Authority apply on an annual basis.

### **Limit by Contractor by Scope of Work performed at the Contractor's Business**

In addition to the annual limit referenced above, it is the undersigned's opinion that the limit is also applicable by Contractor for separate scopes of work. In other

words, a contract for a set scope of services for the Commission that can be performed by the contractor at that contractor's place of business is subject to aggregation annually. So for purposes of example, a lawyer that received a contract for \$50,000 approved by the CEO to provide legal services, may not receive an increase in that contract above the \$50,000 threshold, in the same fiscal year, without the approval of the San Diego Housing Commission, unless prior authority had been given to the CEO by either the Commission Board or the Housing Authority.

On the other hand, the same contractor may perform additional work with a different scope within the same year without aggregation of amounts. For purposes of example, if a contractor enters into a contract with the Commission to construct a retaining wall at the Fulton project, for the sum of \$50,000 which is approved by the CEO, that contractor may also enter into a different contract for the removal of a roof at the Golfcrest project for \$30,000 in the same year and that contract may be approved by the CEO without action of the Board of Commissioners. The contracts are at different projects and a for a different scope of work. Rules of aggregation do not apply to separate contracts.

Importantly, each construction contract would also each be the subject of separate procurements by multiple quotes under the provisions of PO 203.100, as referenced within Exhibit "1" of such Procurement Policy.

#### **Limit by Contractor by Scope of Work at various Projects**

In addition a contract with a contractor that is site specific should be treated separately by site during an annual period. Any change orders or extras to each contract, however, must be aggregated annually by site. It is important to note that AR 203.100, Section 8.1 A. requires the dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority owned business and women owned businesses. For example, when a contract for painting at the Golfcrest project is procured under one bid proposal and that contract is awarded by the Board for the sum of \$150,000, that same contractor may respond to a separate bid for \$200,000 on Saranac project and the Board of Commissioners may still approve that contract, even though the total of the two contracts exceeds the sum of \$250,000, the limit of authority of the Board of Commissioners for a services contract. This is also true because each project is a separate and distinct scope of work with separate specifications to be performed potentially by separate contractors. The Commission has no way of knowing before it embarks upon the procurement bid process who will be the responsible low bidder. It stands to reason that the procurement approval process should not change by virtue of who is ultimately determined to be the responsible low bidder. Nothing contained in this opinion shall serve to condone, either expressly or impliedly, the artificial creation of two (2) bids where there is no legitimate business reason for two (2) such bid packages.

## Limit by Contractor for Different Scopes of Work

In addition, each contract with a different scope of work with the same contractor shall be treated separately for each scope of work. As stated above:

*On the other hand, the same contractor may perform additional work with a different scope within the same year without aggregation of amounts. For purposes of example, if a contractor enters into a contract with the Commission to construct a retaining wall at the Fulton project, for the sum of \$50,000 which is approved by the CEO, that contractor may also enter into a different contract for the removal of a roof at the Golfcrest project for \$30,000 in the same year and that contract may be approved by the CEO without action of the Board of Commissioners. The contracts are at different projects and a for a different scope of work. Rules of aggregation do not apply to separate contracts.*

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## Artificial Creation of Contract Scopes

Nothing contained in this opinion shall allow any Commission staff to create artificial "scopes of work" or "projects" for the purposes of avoiding aggregation limits under the procurement policy. See AR 203.100, Section 3.2 A. See HUD Handbook, Section 5.3.

## Contracting Limits

The procurement authority is referenced in PO 203.100, Section 2.4, which provides that the method of procurement and authority to procure shall be vested in the Chief Executive Officer (or designee), Housing Commission and Housing Authority, as specified in Exhibit "1". The Chief Executive Officer may delegate authority through appropriate administrative regulations or memorandums. The limits are per contract or per purchase limits.

The limits are as follows:

(It is important to note that the Chief Executive Officer's \$100,000 limit of authority is equivalent to the Federal Small Purchase Threshold. See HUD Handbook 7460.8 REV 2, dated 2/2007 (All references to HUD Handbook are to the 2/2007 edition. **These limits are "per purchase" limits.** See HUD Handbook, definition of "Small Purchase Threshold. See Section 5.2 of the HUD Handbook. )

### Chief Executive Officer

Goods and Services	\$100,000
Construction	\$100,000 (where project was previously approved)
Consultants	\$50,000

Architects and Engineers	\$50,000
Housing Commission Board	\$250,000 for all matters
Housing Authority	Above \$250,000

### Discussion and Application of Policy and Regulations

San Diego Municipal Code Section 98.0301 (d)(1) provides that the administrative functions of the Commission shall include contracting activities. Section 98.0301(d)(8)(C) provides limits on the authority as follows:

***(C) Approval of any contract for acquisition of goods or services (other than a construction contract for development project) involving the expenditure of more than \$100,000 by the Housing Commission;***

San Diego Municipal Code Section 98.0301(d)(7) provides that the authority of the Commission shall include:

***(7) Act upon such other matters as the Housing Authority may from time to time delegate by resolution to the Commission.***

In 1998, 2000 and 2001 the procurement policy of the Commission was revised and is currently set forth in the attached Exhibit "1" by resolution of the Housing Authority of the City of San Diego. As referenced in the exhibit, the authority of the Commission has been increased as previously referenced.

The Commission is also tasked with annually recommending budgets which are forwarded to the Housing Authority for approval. (San Diego Municipal Code Section 98.0301(c)(1).

Further, the Commission has the authority under the provisions of San Diego Municipal Code Section 98.0301(d)(1) to enter into contracts when expenditures have been previously approved by the Housing Authority, or the expenditures have been included within budgets previously approved by the Housing Authority.

Accordingly, in the case of multi year contracts, it is clear that the Commission may enter into contracts of up to \$250,000 in any one year, provided that the money is included within a budget approved by the Housing Authority. The Commission can enter into multiple year contracts provided that the amount for any one year does not exceed this threshold. This is true because the Commission has the power to enter into a separate contract each year for that amount. There is no difference in entering into multiple one year contracts and entering into a single multi-year contract. All contracts

have a provision allowing for the cancellation of the contract for a failure to appropriate funds. Further, virtually all contracts have a 30 day notice of cancellation provision inuring to the benefit of the Commission.

Further the language of the Municipal Code provides the Commission with the authority to enter into contracts up to the limits allowed under the procurement policy approved by the Housing Authority in 1998, 2000 and 2001.

Accordingly, the HUD Handbook, the San Diego Municipal Code, the Procurement Policy, the Administrative Regulations and the resolutions of the Housing Authority of the City of San Diego, jointly, provide the authority for the Chief Executive Officer of the Commission, the Board of Commissioners and the Housing Authority to enter into and approve contracts within their respective authorities, as discussed in the opinion.

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#### CONCLUSION

The procurement policy operates to create limits of authority on an annual basis, on a project by project basis and upon a scope of services basis. The annual limits are set forth in Exhibit "1" to the procurement policy as attached hereto.