



POLICY

EFFECTIVE DATE: 1/22/98

NO: PO-PUR-373.01

REVISION HISTORY: 11/30/07; 5/15/09; 10/8/12

SUBJECT: STATEMENT OF PROCUREMENT POLICY

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POLICY

1 GENERAL PROVISIONS

1.1 PURPOSE

The purpose of this Procurement Policy is to establish a broad framework of policies and guidelines to ensure that the SDHC's purchasing and contracting functions promote administrative flexibility and efficiency, while at the same time maintaining prudent internal controls and compliance with applicable statutes and regulations.

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.

1.2 COMPLIANCE WITH LAWS AND REGULATIONS

In adopting this Procurement Policy, the SDHC affirms that the Policy is in compliance with all applicable federal, state and local laws and regulations, which may include, but are not limited to, the following:

1.2.1 Federal Law:

- A. Section 85 of Title 24 of the Code of Federal Regulations
- B. Section 1 of Title 29 of the Code of Federal Regulations (Federal Prevailing Wage Regulations)
- C. ACC between SDHC and HUD
- D. Section 8 Administrative Plan
- E. Federal Statutes and Regulations, as applicable to funding source

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1.2.2 State Law:

- A. California Health & Safety Code §34200 et seq.¹ (Housing Authorities Law)
- B. California Public Contracts Code §20160 et seq. (as applicable)
- C. California Labor Code §1720 et seq. (Public Works)
- D. California Government Code §6250 et seq. (Public Records Act)

1.2.3 Change in Law: 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 apply and to the extent inconsistent with this Policy, shall automatically supersede the inconsistent provisions of this Policy.

1.3 APPLICATION

1.3.1 This Procurement Policy applies to all *procurement* actions of the SDHC, regardless of the source of funds, except as noted under the exclusions, below.

1.3.2 Exclusions: This Policy does not govern the following types of contracts or *procurement*:

- A. Execution of HAP contracts
- B. Administrative fees under Section 8 program
- C. Award of vouchers under Section 8 program
- D. Employment contracts
- E. Loan transactions
- F. *Procurement* actions related to Capital Fund Stimulus Grants or funds received under the CDBG-R program (ARRA funds)

¹ Cal. Health & Saf. C. §34311[“An authority may...make and execute contracts and other instruments necessary or convenient to the exercise of its powers.”]; §34313 [“An authority may arrange and contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project, or a project assisted pursuant to Section 34312.3, or the occupants thereof.”]

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- G. Real estate purchases, which can be accomplished through a licensed broker and/or pursuant to SDHC Policy PO300.103 "Real Estate Acquisition Policy".²
- H. Real estate sales transactions when sale will be conducted through a licensed broker at the discretion of the SDHC and/or pursuant to SDHC Policy PO300.104 "Real Estate Disposition Policy". However, the *competitive proposal* process set forth in this Policy shall apply to the sales of real estate pursuant to competitive process.³

These excluded areas remain subject to applicable state and local requirements. 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 law.

1.3.3 Funding Sources: The SDHC receives funds from federal, non-federal, and private funding sources. As such, in its *procurement* activities, the SDHC shall develop procedures designed to ensure compliance with applicable laws and regulations without imposing a higher standard than is necessary to ensure compliance.

- A. When the resulting contract implicates federal funds, federal *procurement* rules and regulations shall apply to the *procurement*.
- B. When the resulting contract implicates only non-federal funds, state law and local policy shall apply to the *procurement*.
- C. When both federal and non-federal funds are implicated in the resulting contract, the federal rules and regulations shall apply to the entire *procurement* unless the funds and *scope of work* can be separated. If the funds and *scope of work* can be separated, then the regulations applicable to the source of funding may be applied.

² See also, Cal. Health & Saf. C. §§34312.3 and 34315.7

³ See also, Cal. Health & Saf. C. §§34312.3 and 34315.7

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1.4 DELEGATION OF CONTRACTING AUTHORITY

The *Chief Executive Officer* may delegate authority under this Policy, as necessary, in accordance with Administrative Regulation AR000.003. The *Chief Executive Officer* may establish operational procedures and/or administrative regulations to implement this Procurement Policy, as needed.

2 DEFINITIONS

2.1 A/E CONSULTANT

An “*A/E Consultant*” is a *consultant* in one of the following disciplines: architecture, engineering, landscape architecture, and land surveying.

2.2 AGENCY

“*Agency*” refers to any federal or state agency, county, city, district, local agency, joint power authority, non-profit corporation wholly owned by a public agency, and any quasi-public entity designated an *agency* by resolution of the San Diego City Council.⁴

2.3 CHIEF EXECUTIVE OFFICER

“*Chief Executive Officer*” for purposes of this Procurement Policy refers to the President and Chief Executive Officer of the San Diego Housing Commission, and his/her designee.

2.4 COMPETITIVE PROPOSALS

“*Competitive proposals*” refers to the responses received to a formally advertised and competitive selection process used to obtain contracts where award is made on the basis of the proposal that represents the best overall value to the SDHC, considering price and other factors set forth in the solicitation. Award is not based solely on the lowest price. *Competitive proposals* are initiated by the SDHC’s issuance of a *Request for Proposals (RFP)*.

2.5 CONSULTANT(S)

A “*consultant*” is an individual who provides advice, recommendations, reports, analyses, evaluation, audits, surveys or other products of cognitive processes, or expert or professional

⁴ See SDMC §22.3003

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services. For purposes of this Procurement Policy, *consultants* providing architectural, engineering, landscape architectural or land surveying services are considered as *A/E Consultants*.

2.6 CONTRACTING OFFICER

The “*Contracting Officer*” is an employee of the SDHC, as designated by the Director of Contract Management, who is primarily responsible for the *procurement* and administration of a specific contract.

2.7 CONTRACTOR

A “*contractor*” is any firm, entity or individual with whom the SDHC contracts. As used in this Policy, *contractor* may also refer to a *consultant*, an *A/E Consultant*, a vendor or a service provider.

2.8 DESIGN-BUILD ENTITY

“*Design-build entity*” means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services, as needed, pursuant to a design-build contract.

2.9 HOUSING AUTHORITY

“*Housing Authority*” as used in this Policy shall refer to the Housing Authority of the City of San Diego.

2.10 HUD PROCUREMENT REGULATIONS

“*HUD Procurement Regulations*” refers to Section 85.36 of Title 24 of the Code of Federal Regulations and HUD’s Procurement Handbook for Public Housing Agencies dated 2/2007, Rev. 2, collectively and as each is amended from time to time. The HUD Procurement Handbook for Public Housing Agencies is advisory only.

2.11 INDEPENDENT COST ESTIMATE (ICE)

An “*Independent Cost Estimate*” or “*ICE*” is an estimate of the anticipated costs of a contract or contract modification prepared by SDHC staff or other independent party to assist the SDHC in evaluating the reasonableness of costs proposed by a *respondent*.

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2.12 INVITATION FOR BID (*IFB*)

An “*Invitation for Bid*” or “*IFB*” is a formally advertised competitive selection process used for obtaining goods, services and certain construction services that will cost more than \$100,000, where award of the contract is based on the lowest price submitted by a responsible *respondent* with a responsive bid.

2.13 LABOR SURPLUS AREA BUSINESS

A “*Labor Surplus Area Business*” is 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 Department of Labor in Part 654, Subpart A of Title 20 of the Code of Federal Regulations, and in the list of labor surplus areas published by the Employment and Training Administration.

2.14 MAINTENANCE

“*Maintenance*” means routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plat, building, structure, grounds, or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

2.15 MINOR INFORMALITIES

“*Minor informalities*” refers to insignificant mistakes in a response to a solicitation that can be waived or corrected without prejudice to the other *respondents* and have little or no effect on price, quantity, quality, delivery, or contractual conditions.

2.16 MINORITY-OWNED BUSINESS

A “*Minority-Owned Business*” is 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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2.17 PAYMENT BOND

A “*payment bond*” is a bond executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and materials in the execution of the work provided pursuant to a contract with the SDHC, typically for construction, facility improvements and *public works*.

2.18 PERFORMANCE BOND

A “*performance bond*” is a bond executed in connection with a contract with the SDHC to secure fulfillment of all of the *contractor’s* obligations under the contract, and is typically required in construction, facility improvements, and *public works* contracts.

2.19 PROCUREMENT

The term “*procurement*,” as used in this Policy, includes the procuring, purchasing, leasing, or renting of goods, supplies, equipment, materials, *maintenance*, construction, services of a *consultant* or *A/E Consultant*, social services, and other services.

2.20 PUBLIC WORKS (AND PUBLIC WORKS CONTRACT)

“*Public works*” and “*public works contract*” refers to *procurement* of or a contract for the construction, reconstruction, repair or improvements, and maintenance, of a building(s) or facility owned by the SDHC.

2.21 REQUEST FOR PROPOSALS (RFP)

A “*Request for Proposals*” or “*RFP*” is a formally advertised and competitive selection process used for obtaining a *consultant* or other services that will cost more than \$100,000, in which the evaluation and selection for award of a contract cannot be based on price alone, but is based on established criteria that include price and other factors.

2.22 REQUEST FOR QUALIFICATIONS (RFQ)

A “*Request for Qualifications*” or “*RFQ*” is a formally advertised and competitive selection process used for obtaining *A/E Consultant* services that will cost more than \$100,000, in which the evaluation and selection of *A/E Consultants* is based on the *A/E Consultants’* qualifications, and price is not used as an evaluation criterion. An *RFQ* may also be similarly used when procuring development partners.

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2.23 RESPONDENT

“*Respondent*” refers to a person or firm who submits a bid, proposal, qualifications, or other document to the SDHC in response to a solicitation issued by the SDHC, for the purposes of seeking award of a contract with the SDHC. A *respondent* does not include a subcontractor.

2.24 SDHC BOARD

“*SDHC Board*” as used herein, shall refer to the Board of Housing Commissioners of the San Diego Housing Commission.

2.25 SEALED BID (SEALED BIDDING)

“*Sealed bid*” refers to a formally advertised and competitive selection process used to obtain contracts awarded on the basis of lowest bid. *Sealed bidding* is initiated by the SDHC’s issuance of an *Invitation for Bids (IFB)*.

2.26 SECTION 3 BUSINESS CONCERN

“*Section 3 Business Concern*” has the same definition as provided by HUD in Part 135.5 of Title 24 of the Code of Federal Regulations.

2.27 SMALL BUSINESS

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 Part 121 of Title 13 of the Code of Federal Regulations should be used to determine business size.

2.28 SOLE SOURCE CONTRACT

A “*sole source contract*” refers to a contract awarded without a competitive process. A *sole source contract* results when the SDHC solicits an offer from only one source pursuant to Section 14 “Sole Source Contracts” of this Policy. A *sole source contract* may also result when the SDHC solicits offers from multiple sources but receives only one response or the competition is determined to be inadequate.

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2.29 SPECIFICATION(S)

A “*specification*” is a detailed description of materials, supplies, equipment, pre-cuts, or construction work that is used in the *procurement* process to tell prospective *contractors* precisely what the SDHC desires to procure.

2.30 STATEMENT OF WORK/SCOPE OF WORK

A “*statement of work*” or “*scope of work*” is a unique type of *specification* generally used for the *procurement* of professional or management services.

2.31 WOMEN’S BUSINESS ENTERPRISE

“*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.

3 AUTHORITY AND PROCUREMENT PLANNING

3.1 PROCUREMENT PLANNING

Planning is essential to managing the *procurement* function properly. 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, to maximize competition and competitive pricing among contracts and decrease the SDHC’s *procurement* costs, to reduce the SDHC’s administrative costs, to ensure that supplies and services are obtained without any need for re-procurement, and to 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. Before initiating any *procurement*, the SDHC shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or contract modification.

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3.2 EXPENDITURE AND APPROVAL AUTHORITY

Table 3.2 "Approval Authority"

	APPROVAL AUTHORITY		
	CHIEF EXECUTIVE OFFICER	SDHC BOARD	HOUSING AUTHORITY
GOODS AND SERVICES	\$100,000 or less	\$250,000 or less	More than \$250,000
CONSTRUCTION	\$100,000 or less	\$250,000 or less	More than \$250,000
MAINTENANCE AND CAPITAL IMPROVEMENTS	\$100,000 or less	\$500,000 or less ⁵	More than \$500,000
CONSULTANTS	\$100,000 or less	\$250,000 or less	More than \$250,000
A/E CONSULTANTS	\$100,000 or less	\$250,000 or less	More than \$250,000
SERVICES FROM NON-PROFIT OR AGENCY	\$100,000 or less	\$500,000 or less	More than \$500,000

3.3 PROCUREMENT RESPONSIBILITIES

3.3.1 Chief Executive Officer: The *Chief Executive Officer* is responsible for the supervision and management of all *procurement* for the SDHC, including but not limited to contract solicitation, selection, negotiation, execution, completion, final contract acceptance and contract administration. The *Chief Executive Officer* holds the SDHC staff accountable for complying with this Policy and any related *procurement* administrative regulations. The *Chief Executive Officer* shall ensure that all *procurement* activities of the SDHC are conducted consistently with the best interests of the SDHC and applicable laws and regulations.

3.3.2 Chief of Staff or Vice Presidents: The Chief of Staff or designated Vice Presidents, and their designees, are responsible for managing the *procurement*-related activities of their departments, to ensure compliance with this Policy, and the following, directly or through their designee(s):

⁵ The *SDHC Board* has been delegated authority to approve contracts for maintenance, modernization, and improvements at SDHC owned and/or managed properties pursuant to Resolution by the San Diego City Council on December 4, 2009, Resolution No. R-305431.

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- A. Making requests to the Procurement Department for solicitations, contracts, and contract modifications that are consistent with this Policy.
- B. Establishing a contract administration system in the department which ensures that *contractors* perform in accordance with the terms, conditions, and *specifications* of their contracts.
- C. Assigning a project manager to each *procurement* and ensuring that the project manager understands his/her responsibilities including those related to financial management and regulatory compliance, and is provided with sufficient training and ongoing supervision either directly from the Vice President or indirectly through another manager or supervisor.
- D. Providing clear policy direction to subordinates responsible for managing projects.
- E. Ensuring that a solicitation or contract is appropriately coordinated with others in the SDHC, and reviewing proposed solicitations and contracting actions to avoid unnecessary or duplicative *procurements*.
- F. Evaluating the most economical, equitable, and efficient approach to a *procurement*, including whether to consolidate or split a *procurement*; whether to lease or purchase items when appropriate based on sound and documented business reasons; and any other appropriate cost-benefit analyses. *Procurements* shall not be split in order to avoid various dollar thresholds related to the solicitation and selection process.
- G. Reviewing all solicitations initiated by the department.
- H. Determining the department's needs, and developing appropriate *specifications* or *scopes of work* and deliverables for solicitations and contracts that are clear, objective, and not restrictive of competition.
- I. Assisting the *Contracting Officer* with development of an *Independent Cost Estimate* prior to solicitation.
- J. Coordinating with the Finance Department to ensure there is sufficient funding available to accomplish work desired by the department.

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- K. Inspecting goods and services provided prior to approving invoices for payment.
- L. Reviewing invoices received in a timely manner to ensure that: (i) the charges are consistent with the terms of the contract; (ii) the goods and services invoiced have been received in a manner consistent with the requirements of the contract; (iii) there is a sufficient amount of money available in the contract amount to pay for the goods or services; and (iv) payment is timely made on an approved invoice.
- M. Where appropriate and permitted by law, negotiating with *contractors*, *consultants*, and vendors to obtain the best prices for the SDHC, and for protecting the financial interests of the SDHC.
- N. Conducting a cost or price analysis with the *Contracting Officer* in accordance with Section 4 “Ensuring Reasonable Cost” of this Policy.
- O. Monitoring the expiration date of a contract and requesting exercise of options, where appropriate, prior to the expiration date.

3.3.3 Director of Contract Management: The Director of Contract Management, or designee, shall be responsible for ensuring the following:

- A. Compliance with this Policy in reviewing and approving solicitations and contracts for the SDHC, and for ensuring that there is adequate competition.
- B. That recommendations from departments are accompanied by signatures of employees with appropriate expenditure authority.
- C. That an *Independent Cost Estimate* is prepared prior to approval of the solicitation.
- D. That a cost or price analysis is performed prior to approval of any contract or contract modification consistent with Section 4 “Ensuring Reasonable Cost” of this Policy.
- E. That solicitations, contracts, and amendments are in writing, clearly specifying the desired goods or services.

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- F. That contracts are supported by sufficient documentation in accordance with Section 21 “Records and Documentation” of this Policy.
- G. That the dollar amount of a contract or contract modification, where appropriate, is encumbered in the SDHC’s financial management system.
- H. Coordinating, hearing, and deciding upon all bidding and selection related protests and appeals.
- I. Maintaining the official and original contract files for the SDHC.
- J. Monitoring the expiration date of a contract and requesting exercise of options, where appropriate, prior to the expiration date.
- K. Administering contracts awarded by the SDHC.

3.3.4 Review by General Counsel: Vice Presidents, the Director of Contract Management and *Contracting Officers* shall consult with the General Counsel’s office whenever *procurement*-related actions are unique, outside of the norm, are particularly large, costly, or complex or may have legal, political, or public relations implications. All contracts and contract modification documents shall be approved as to form by the General Counsel’s office prior to execution.

3.4 ADMINISTRATIVE REGULATIONS

The *Chief Executive Officer* may establish Administrative Regulations that will facilitate appropriate review of *procurement*-related actions. In developing any Administrative Regulations, the *Chief Executive Officer* shall promote accountability and expediency, while at the same time ensuring that *procurement*-related actions are in compliance with applicable statutory and regulatory requirements.

4 ENSURING REASONABLE COST

The SDHC shall require assurance before entering into a contract, that the price is reasonable based on competition in the market. The SDHC shall prepare an *Independent Cost Estimate* for every solicitation before publication. In evaluating responses to solicitations, the SDHC shall perform a price or cost analysis in connection with every *procurement* action, including contract modifications.⁶ The method and degree of analysis depends on the facts surrounding the particular *procurement* situation.

⁶24 CFR 85.36(f)(1); See also, HUD Handbook No. 7460.8 Rev. 2.

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4.1 INDEPENDENT COST ESTIMATE (ICE)

- 4.1.1 **Purpose:** The purpose of developing an *ICE* is to assist the SDHC in evaluating the reasonableness of prices obtained through competition where price was used as a selection criterion or evaluating the reasonableness of prices proposed through a selection process where price was not used as a selection criterion.
- 4.1.2 **When Required:** Development of an *ICE* is required before soliciting bids or proposals for *procurement* anticipated to be \$2,000 or more. Development of an *ICE* is also required prior to starting contract negotiations after making a selection based on the SDHC's issuance of a *Request for Qualifications* process.
- 4.1.3 **Contents:** The level of detail of the *ICE* shall be commensurate with the cost and complexity of the item to be purchased.
- 4.1.4 **Independence of Estimate:** The *ICE* may be prepared by qualified SDHC staff or by an independent *consultant* engaged for the purpose of preparing such an estimate.

4.2 COST AND PRICE ANALYSIS

For every *procurement*, the SDHC is required to perform a cost or price analysis to determine that the price is reasonable.

- 4.2.1 **Price Analysis:** In competitive *procurements*, the existence of competition is usually adequate to allow the SDHC to determine whether price is reasonable based simply on a comparison of the prices offered by the *respondents* (i.e. price analysis). A price analysis is performed when the SDHC staff compares all of the proposed prices submitted in response to the solicitation, as part of a competitive selection process.⁷
- 4.2.2 **Alternative Price Analysis:** If, after appropriate solicitation efforts, the SDHC does not receive an adequate number of responses, the SDHC staff may conduct a price analysis using one of the following alternative methods of establishing price reasonableness without having to conduct a formal cost analysis:

⁷ 24 CFR 85.36(f)(1).

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- A. Comparison to prior proposed prices and contract prices with current proposed prices for the same or similar items or services.
- B. Comparison to competitive price lists, published catalogs, or market prices of commodities and products, similar indices and discount or rebate arrangements.
- C. Professional estimate, either prepared by an outside party or by the SDHC.

4.2.3 When Cost Analysis is Required: If competition is insufficient to conduct a price analysis and price reasonableness cannot be otherwise established through alternative methods (as set forth in 4.2.1 and 4.2.2, above), a cost analysis shall be prepared. When required, a cost analysis shall be prepared prior to award of a contract or execution of a contract modification. The following situations require that a cost analysis be performed:

- A. *Sole source contracts* and noncompetitive selections
- B. Single response to a solicitation
- C. Under *sealed bidding* or *competitive proposals*, if a sufficient number of bids are not received and the SDHC cannot establish price reasonableness through alternative means
- D. If, under *competitive proposals*, the SDHC has requested that *respondents* provide separate elements of their costs
- E. Contract modifications that change the contract amount or scope of the contract
- F. When making contract termination payments and to negotiate the final amount of a termination settlement
- G. When awarding any construction contracts that were obtained through means other than *sealed bidding*.
- H. Emergency selections (The *Chief Executive Officer* may waive preparation of a cost analysis for an emergency.)

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4.2.4 Level of Specificity: In evaluating price reasonableness, SDHC staff with the necessary experience and knowledge should conduct the price or cost analysis. In documenting the analysis of price reasonableness, there must be a level of specificity and independence appropriate to the contract or contract modification under review that describes what was analyzed. See Appendix A for additional guidance on preparing price or cost analysis.

4.2.5 Breakdown of Costs: When the SDHC requires a *respondent* to submit a cost breakdown with the response to a solicitation, the *Contracting Officer* or SDHC staff conducting the price or cost analysis shall evaluate the separate elements that make up the total price to determine if the independent costs are allowable, directly related to the requirement, and reasonable.

4.3 DOCUMENTATION

With respect to price reasonableness, the contract file shall be documented to support the actions taken by the *Contracting Officer* and the SDHC. In the case of *sealed bids*, where there was adequate competition, no additional documentation is required in that the bid tabulation sheet, or equivalent, will generally serve as the test of price reasonableness. Similarly, in the case of *competitive proposals* where there was adequate competition, the *scope of work* was not complex (easy to evaluate competing proposals), and the SDHC did not ask the *respondent* to break out elements of costs separately, no additional documentation is required for price reasonableness other than the comparison of prices offered. However, documentation is required to demonstrate reasonableness of price when a cost analysis is required under this Section or the price obtained significantly varied from the *ICE*, in which case the *Contracting Officer* should note or explain the reasons for the difference.

4.4 BIDS DEEMED UNREASONABLE AFTER REVIEW FOR PRICE REASONABLENESS

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 *Independent Cost Estimate*. If the *specifications* and *ICE* are determined to be adequate and the price received from each *respondent* is unreasonable in comparison to the *ICE*, the *Contracting Officer* may cancel the solicitation and either (i) issue another solicitation using an *RFP*, or (ii) complete the *procurement* by using the *competitive proposal* method. The *Contracting Officer* must determine, in writing, that such action is appropriate, must inform all *respondents* of the SDHC's intent to negotiate, and must give each *respondent* a reasonable opportunity to negotiate. If a problem is found with the *specifications*, the *Contracting Officer* should cancel the solicitation, revise the *specifications* and issue a new *IFB*, pursuant to Section 16 "Amendment and Cancellation of Solicitations".

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5 ENSURING RESPONSIVE AND RESPONSIBLE CONTRACTORS

5.1 RESPONSIVENESS

To be responsive, a *contractor's* response to a solicitation must conform to the material requirements of the solicitation. Responses that do not conform to the solicitation shall be rejected as non-responsive.

5.2 RESPONSIBILITY

The SDHC shall not award any contract until the prospective *contractor* has been determined to be responsible.⁸ A responsible *contractor* must:

- A. Have adequate financial resources to perform the contract or ability to obtain them;
- B. Be able to comply with the required or proposed delivery or performance schedule, taking existing business commitments into consideration;
- C. Have a satisfactory performance record;
- D. Have a satisfactory record of integrity and business ethics;
- E. Have the necessary organization, experience, accounting and operational controls, and technical skills, or ability to obtain them;
- F. Have the necessary production, construction and technical equipment and facilities, or 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 limited denial of participation.

5.3 SUSPENSION AND DEBARMENT

5.3.1 No Award to Suspended or Debarred Respondents: No SDHC contract may be awarded to a debarred, suspended, or ineligible *contractor* or *respondent*.

5.3.2 Suspension and Temporary Debarment: A *contractor* or *respondent* may be suspended, debarred, or determined ineligible to contract by the SDHC, in

⁸ 24 CFR 85.36(b)(8).

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accordance with HUD regulations (24 CFR Part 24), when necessary to protect the SDHC in its business dealings. A *contractor* or *respondent* may be declared ineligible to bid on solicitations issued by the SDHC for a period not to exceed three years for any of the following grounds:

- A. Two or more claims of computational error in bid submission within a two-year period;
- B. Unjustified refusal to provide or execute contract documents;
- C. Unsatisfactory performance of contract;
- D. Unjustified refusal to perform or complete contract work or warranty performance;
- E. Unjustified failure to honor or observe contractual obligations or legal requirements pertaining to the contract;
- F. Conviction under State or Federal statutes for fraud, bribery, theft, falsification or destruction of records, receiving stolen property or of any other similar crime or offense indicating a lack of business integrity and which would directly affect the reliability and credibility of performance of future contracts with the SDHC; or
- G. Based on the limited debarment by another *agency*.

5.3.3 Permanent Debarment: The SDHC shall permanently debar any *contractor* or *respondent* for collusion and may permanently debar any *contractor* or *respondent* for a conviction under federal or state antitrust statutes involving public contracts or the submission of bid proposals, for any corrupt practices involving the administration or award of a contract with the SDHC or permanent debarment of the *contractor* or *respondent* by another *agency*.

5.4 DOCUMENTATION

A determination of the non-responsiveness and/or non-responsibility of a *contractor* or *respondent* shall be in writing and included in the official contract file. The *contractor* or *respondent* shall be advised of the reasons for such determination.

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6 ASSISTANCE TO SMALL AND OTHER BUSINESSES

6.1 DIVERSITY IN CONTRACTING

The SDHC will take affirmative steps and encourage the use of *Small Businesses, Minority-Owned Businesses, Women's Business Enterprises, Labor Surplus Area Businesses, Section 3 Business Concerns* and other individuals or firms located in or owned in substantial part by persons residing in the area of the SDHC project, when possible, and shall enact an administrative regulation setting forth the same.⁹ Affirmative steps include: placing qualified businesses on solicitation mailing lists; direct solicitation when such businesses are potential sources; dividing contracts or solicitations when feasible; establishing delivery schedules to encourage participation; and using outside resources offered by the Small Business Commerce, U.S. Small Business Administration, and the Minority Business Development Agency of the U.S. Department of Commerce. *Contractors* shall be required to take the affirmative steps enacted in the administrative regulation when subcontracting is anticipated. The administrative regulation may also set forth goals for participation by *Small Businesses, Minority-Owned Businesses, Women's Business Enterprises, Labor Surplus Area Businesses, and Section 3 Business Concerns* in SDHC contracts and subcontracting opportunities.

6.2 SECTION 3 REQUIREMENTS

The SDHC shall comply with Section 3 of the Housing Act of 1968, as amended, when applicable to its own operations and shall ensure compliance in the operations of its contractors and subcontractors, when applicable.¹⁰ The SDHC may develop additional efforts and goals for compliance with Section 3 of the Housing Act of 1968 in an administrative regulation addressing diversity in contracting.

7 PROCUREMENT METHODS GENERALLY

7.1 FULL AND OPEN COMPETITION

All *procurement* transactions will be conducted in a manner providing full and open competition.¹¹

⁹ See 24 CFR 85.36(e) requiring the SDHC to take affirmative steps to encourage the use of *Small Businesses, Minority-Owned Businesses, Women's Business Enterprises, Labor Surplus Area Businesses, Section 3 Business Concerns*.

¹⁰ Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with: (1) public and Indian housing assistance pursuant to Sections 5, 9 and 14 of the U.S. Housing Act of 1937; and (2) the expenditure of housing assistance and community development assistance that is used for housing rehabilitation, housing construction and other public construction. (24 CFR 135.3.)

¹¹ See 24 CFR 85.36(c)(1); see also Cal. Government Code §34328.2

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7.2 RESTRICTING COMPETITION PROHIBITED

Procurement practices that restrict competition are prohibited. Some of the situations considered to be restrictive of competition include, but are not limited to:

- A. Placing unreasonable requirements on firms in order for them to qualify to do business with the SDHC;
- B. Requiring unnecessary experience and/or excessive bonding;
- C. Noncompetitive pricing practices between firms or between affiliated companies;
- D. Noncompetitive awards to *consultants* that are on retainer contracts;
- 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 of other relevant requirements of the *procurement*; and
- G. Any arbitrary action in *procurement* process.

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7.3 METHOD OF PROCUREMENT

Table 7.3 "Procurement Methods"

PROCUREMENT OF:	INFORMAL SOLICITATION ¹²		FORMAL SOLICITATION		NON-COMPETITIVE
	SINGLE QUOTE ¹³	MULTIPLE QUOTES	SEALED BIDS (IFB)	COMPETITIVE PROPOSALS (RFP OR RFQ)	SOLE SOURCE
CONSULTANTS	\$10,000 or less	\$100,000 or less	N/A	More than \$100,000	Only available when award of a contract under informal or formal solicitation is not feasible and the requirements of Section 14 are met.
A/E CONSULTANTS	\$10,000 or less	\$100,000 or less	N/A	More than \$100,000	
CONSTRUCTION	\$10,000 or less	\$100,000 or less	More than \$100,000 ¹⁴	More than \$100,000	
GOODS AND SERVICES	\$10,000 or less	\$100,000 or less	More than \$100,000	More than \$100,000 ¹⁵	
ROUTINE MAINTENANCE	\$10,000 or less	\$100,000 or less	More than \$100,000	More than \$100,000	

7.4 ARTIFICIAL DIVISION OF PROCUREMENT PROHIBITED

Procurement shall not be artificially divided so as to constitute a small purchase under the informal solicitation procedures or to constitute purchases not requiring review by the *SDHC Board* and/or the *Housing Authority*, except as may be reasonably necessary to comply with Section 6 "Assistance to Small and Other Businesses".

¹² HUD specifies that purchases costing \$100,000 or less qualify as "small purchases" that are subject to a relatively simple and informal procurement process. Generally, price is the primary evaluation criteria. (24 CFR §85.36(d)(1).)

¹³ For any procurement under \$10,000 more than one quote may be obtained in the discretion of the *Contracting Officer*, but is not required under applicable law.

¹⁴ City procurement policy at SDMC §22.3203(d) requires *sealed bids* and publication for contracts over \$50,000. This section is not expressly applicable to SDHC.

¹⁵ When the SDHC desires to place significant weight on factors other than price when evaluating respondents, the *competitive proposals* process should be considered instead of *sealed bids*.

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8 SOLICITATION AND ADVERTISING

8.1 PREPARATION AND REVIEW OF SOLICITATION

The *Contracting Officer* shall develop a solicitation at the request of the Chief of Staff, a Vice President, or authorized designee. The Chief of Staff or the Vice President of the department requesting the *procurement*, or his/her designee, shall ensure that the *Contracting Officer* develops and provides a clear and accurate description of the SDHC's requirements for the solicitation. The Chief of Staff or Vice President shall further ensure that the *specifications* do not unduly restrict competition. The Chief of Staff or Vice President, in concert with the Director of Contract Management, shall ensure that an *ICE* is prepared prior to approval and publication of the solicitation.

8.2 PUBLICATION

8.2.1 Informal Solicitation (\$100,000 or less): For purchases made through Informal Solicitation processes, the SDHC may contact the required number of potential *contractors* orally, by fax, e-mail or any other reasonable method.

8.2.2 Formal Solicitation (More than \$100,000): For purchases requiring Formal Solicitation, the solicitation shall be published not less than once a week for two consecutive weeks; however, the *Chief Executive Officer* may shorten or lengthen the notice requirement under appropriate circumstances.

8.2.3 Method of Publication: The method of publication shall provide for meaningful competition. At least one of the following must be used: (i) advertising in newspapers or other print mediums of local and/or general circulation; (ii) advertising in trade journals and/or publications; (iii) direct notification to prospective suppliers; (iv) E-Procurement using an internet based system.

8.3 CONTENTS OF NOTICE OR ADVERTISEMENT

Notices and advertisements shall state, at a minimum:

- A. The place, date, and time that responses (bids or proposals) are due;
- B. The solicitation number;
- C. The *Contracting Officer's* contact information;

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- D. Information about the solicitation and a brief description of the needed goods, services, or consulting services;
- E. *Specifications* of items or services sufficient for the *respondent* to properly respond to the solicitation, if necessary;
- F. The location, time and date of availability of any applicable project documents; and
- G. The time, date and location of any pre-bid/proposal conference or site visit, if any, which may not be held fewer than five (5) calendar days after publication of the initial notice, except as otherwise permitted by the *Chief Executive Officer*.

8.4 TIME PERIOD FOR SUBMISSION OF RESPONSES

A minimum of thirty days shall generally be provided for the preparation and submission of *sealed bids* (in response to an *IFB*) and a minimum of fifteen (15) days for *competitive proposals* and qualifications (in response to an *RFP* or *RFQ*, respectively). However, the *Chief Executive Officer* may allow for a shorter period under extraordinary circumstances.

8.5 SPECIFICATIONS AND STATEMENTS OF WORK

- 8.5.1 **General:** All *specifications* and *statements of work* shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying the needs of the SDHC. The *specifications* or *statement of work* must be designed so as not to restrict competition to one supplier.
- 8.5.2 **Contents of Specifications:** Most *specifications* contain a combination of design and performance requirements and may include a brand name or equal descriptions of components. Performance *specifications* state the overall requirements so that each *respondent* may furnish its own item to meet the requirement performance. Design *specifications* contain a description of the item desired and may be as detailed as needed.
- 8.5.3 **Limitations in Specifications:** The following types of *specifications* do not encourage competition and should be avoided:

- A. Detailed product *specifications*;

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- B. Geographic restrictions not mandated or encouraged by applicable federal law (except when procuring *A/E Consultants*, which may include geographic location as a selection factor if adequate competition is available);
- C. Brand name *specifications* may be used only for establishing design and quality standards and only if there is no other reasonable method of designating the required quality of the item desired. When brand names or catalog numbers are used, the solicitation shall state that such references establish only design or quality standard and that any other products that clearly and demonstrably meet the standard are also acceptable.

8.5.4 Contents of *Statements of Work*: The *statement of work* will vary with the nature, purpose, size and complexity of the work procured. However, every *statement of work* should include: (i) detailed work and task requirements, (ii) end results and deliverables, including the criteria which a deliverable must meet to be considered acceptable, (iii) delivery schedules or period of performance, (iv) any reporting or compliance requirements, (v) a precise statement of the objectives, and (vi) other special considerations, including warranties, necessary classifications or licenses, procedural safeguards, testing procedures, etc.

8.5.5 Contractor-Developed *Specifications*: In order to ensure objective *contractor* performance, eliminate unfair competitive advantage and avoid organizational conflicts of interest, *contractors* retained by the SDHC to develop or draft *specifications* or *statements of work*, shall be excluded from competing in the *procurement*.

8.5.6 Review of *Specifications* and *Statements of Work*: All *specifications* and *statements of work* shall be reviewed by the *Contracting Officer* and Director of Contract Management prior to issuing any solicitation to ensure that it is not unduly restrictive and that it does not represent *procurement* of unnecessary or duplicative items. 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*.

8.5.7 Licensing: All State licensing laws shall apply to *procurement* conducted by the SDHC, regardless of funding source.

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8.6 PREQUALIFIED CONTRACTOR LISTS

All interested businesses shall be given the opportunity to be included on mailing lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services shall be kept current and include enough sources to ensure competition. Potential *contractors* may not be precluded from qualifying for a mailing list during a solicitation period.

9 PROCUREMENT OF GOODS AND SERVICES

This Section 9 addresses the methods for purchasing goods, supplies, equipment, materials, and services, but excluding consulting services, generally referred to as “goods and services”.

9.1 INFORMAL SOLICITATION/SMALL PURCHASES (FEDERAL & NON-FEDERAL FUNDS)

- 9.1.1 **Petty Cash (\$100 or Less):** Small, one time purchases \$100 or less may be handled through the use of a petty cash account. Only one source may be solicited if the price is considered reasonable. All petty cash accounts shall be used and managed in accordance with the SDHC’s Administrative Regulation AR-FS-303.08 “Petty Cash Accounts”.
- 9.1.2 **One Quote (\$10,000 or Less):** For the *procurement* of goods and services in excess of the petty cash amount but not more than \$10,000, the SDHC may award a contract after soliciting only one quotation if the price is considered reasonable based on recent research, experience, or purchases. The reasonableness of the price shall be documented in the file with a written price or cost analysis and *ICE*. Negotiation of price and contract terms is allowed.
- 9.1.3 **Multiple Quotes (\$100,000 or Less):** Not less than three (3) written price or rate quotations must be obtained from qualified sources for the *procurement* of goods and services costing more than \$10,000, but not exceeding \$100,000. The contract award shall be made to the *respondent* with the lowest acceptable quotation, unless the selection of another *respondent* is justified, in writing, based on price and other specified factors. If non-price factors are used for selection, these factors shall be disclosed to all prospective *respondents* solicited. The reasonableness of the price shall be documented in the file with a written price or cost analysis and *ICE*. Negotiation of price and contract terms is allowed.

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9.2 FORMAL SOLICITATION USING FEDERAL FUNDS (MORE THAN \$100,000)

Sealed bidding is a formally advertised and competitive selection process used to obtain contracts for goods and services awarded on the basis of lowest bid. *Sealed Bidding* is initiated by the SDHC's issuance of an *Invitation for Bids (IFB)*. The procedure set forth in this Section 9.2 applies to the *procurement* of goods and services that use or implicate federal funds.

9.2.1 When to Use an *Invitation for Bids (IFB)*: Generally, *contractors* providing goods, supplies, equipment, materials, and some services should be selected based on *sealed bidding* using an *IFB*. An *IFB* should be used if all four of the following criteria are met:

1. A complete, adequate and realistic *specification* or purchase description is available;
2. Two or more responsible *respondents* are willing and able to compete effectively for the business;
3. *Procurement* results in a firm fixed price contract; and
4. The selection of the successful *respondent* can be made principally on the basis of price.

If all four of the above criteria are not met, the *Contracting Officer* should consider using *competitive proposals* using an *RFP*, detailed in Section 11.2 "Consultants: Formal Solicitation Using Federal Funds".

9.2.2 Solicitation: *IFBs* should be solicited in a manner that provides fair and open competition and distributed to an adequate number of known suppliers with sufficient time prior to the date set for opening bids. Publication and advertising of an *IFB* shall comply with Section 8 "Solicitations and Advertising".

9.2.3 Contents of *IFB*: The *IFB* shall be in writing and include a description of the goods and/or services being procured, any *specifications* needed, the time and place of bid opening, the time and place of any site inspections or pre-bid conferences, a form for stating bid price, and any other required forms. The *IFB* shall contain a statement that the award will be made to the lowest responsible and responsive *respondent* meeting the requirements of the solicitation. The *IFB* shall also contain a statement addressing the method for random selection in the event the SDHC receives equal bids from responsive and responsible *respondents*.

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- 9.2.4 Receipt of Bids:** All bids received shall be date and time stamped immediately upon receipt and stored unopened in a secure place until the public bid opening. *Sealed bids* received after the time specified in the *IFB* should be recorded as a late bid and returned to the *respondent* unopened.
- 9.2.5 Bid Opening:** Bids shall be publicly opened on the scheduled date and time shown in the *IFB*. The *Contracting Officer* will read aloud the *respondents'* names and the bid prices. This information on all bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection.
- 9.2.6 Award:** A firm fixed-price contract shall be made to the lowest responsive and responsible *respondent*, see Section 5 "Ensuring Responsive and Responsible Contractors".¹⁶
- A. If specified in the *IFB*, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that the SDHC usually takes advantages of such discounts.
 - B. If equal low bids are received from responsible respondents, selection shall be made by drawing lots or other similar random method, as stated in the *IFB*.
 - C. If only one responsive bid is received from a responsible *respondent*, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis.
- 9.2.7 Modification of Bids before Bid Opening:** *Respondents* may withdraw or modify their bids by written or facsimile notice to the *Contracting Officer* any time prior to bid opening.
- 9.2.8 Mistakes in Bids After Bid Opening:** After bid opening the *Contracting Officer* may permit a change to or withdrawal of a bid only if the *respondent* is able to present clear and convincing evidence of: (i) an inadvertent computational error in the bid, and (ii) the intended bid price.¹⁷ The *respondent* shall provide the SDHC with as much evidence of the mistake as the SDHC deems necessary. Failure or refusal by a *respondent* to provide adequate evidence shall result in the original

¹⁶ 24 CFR 85.36(d)(2)(D).

¹⁷ See section 6.10 of HUD Procurement Handbook 7460.8 Rev. 2.

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bid remaining unchanged. If justified, a low *respondent* can be replaced with the next lowest *respondent*. In cases of alleged mistakes or requests for withdrawal after bid opening, the decision to allow a correction or withdrawal should only be made after consultation with the General Counsel's office. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination made by the *Contracting Officer*. The *Contracting Officer* may waive or allow correction of *minor informalities* in a bid.

- 9.2.9 Rejection of Bids:** The SDHC may reject any bid in its discretion, including, but not limited to, any of the following reasons: (i) the bid was received after the time or date for bid opening; (ii) the bid was incomplete; or (iii) the bid was received from a firm or individual that the SDHC has removed from the bid list for cause. Rejection of any bid during the evaluation process shall be fully documented, including all reasons for the rejection.

9.3 FORMAL SOLICITATION USING NON-FEDERAL FUNDS (MORE THAN \$100,000)

The procedure set forth in this Section 9.3 applies to *procurement* of goods and services that do not use or implicate federal funds.

- 9.3.1 When to Use an *Invitation for Bids (IFB)*:** An *IFB* should be used if adequate competition is believed to exist and the selection of the successful *respondents* can be made primarily on the basis of price. If price will not be the main consideration for awarding a contract, the *Contracting Officer* should consider using an *RFP* under the *competitive proposals procurement* methods, detailed in Section 11.3 "Consultants: Formal Solicitation Using Non-Federal Funds".
- 9.3.2 Solicitation:** *IFBs* should be solicited in a manner that provides fair and open competition. Publication and advertising of an *IFB* shall comply with Section 8 "Solicitations and Advertising".
- 9.3.3 Contents of *IFB*:** The *IFB* shall be in writing and include a description of the goods and/or services being procured, any *specifications* needed, the time and place of bid opening, the time and place of any site inspections or pre-bid conferences, a form for stating bid price, and any other required forms. The *IFB* shall contain a statement that the award will be made to the responsible and responsive *respondent* providing the best value to the SDHC.
- 9.3.4 Receipt of Bids:** All bids received shall be date and time stamped immediately upon receipt and stored unopened in a secure place until the public bid opening.

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Sealed bids received after the time specified in the *IFB* should be recorded as a late bid and returned to the *respondent* unopened.

- 9.3.5 Bid Opening:** Bids shall be publicly opened on the scheduled date and time shown in the *IFB*. The *Contracting Officer* will read aloud the *respondents'* names and the bid prices. This information on all bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection.
- 9.3.6 Award:** The *Contracting Officer* may consider the following factors in evaluating which response offers the best value to the SDHC: unit cost, life cycle cost, economic cost analysis, operating efficiency, warranty and quality, compatibility with existing equipment, maintenance costs, experience, and any additional factors the SDHC deems relevant. The *Contracting Officer* may award a contract to the lowest responsible and responsive *respondent* if the *Contracting Officer* determines that the quality of goods or services will be substantially equal and that the primary difference between bids is price. If only one responsive bid is received from a responsible *respondent*, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis.
- 9.3.7 Modification of Bids Before Bid Opening:** *Respondents* may withdraw or modify their bids by written or facsimile notice to the *Contracting Officer* any time prior to bid opening.
- 9.3.8 Mistakes in Bids:** After bid opening, a *respondent* may modify or withdraw a bid only when the *respondent* demonstrates an inadvertent computational error affecting the price. The *respondent* shall provide documentation and such other information as may be required by the SDHC to substantiate the claim of inadvertent error. Failure or refusal by a *respondent* to provide adequate evidence shall result in the original bid remaining unchanged.¹⁸ In cases of alleged mistakes or requests for withdrawal after bid opening, the decision to allow a correction or withdrawal should only be made after consultation with the General Counsel's office. The *Contracting Officer* may waive or allow correction of *minor informalities* in a bid.
- 9.3.9 Rejection of Bids:** The SDHC may reject any bid in its reasonable discretion. Rejection of any bid during the evaluation process shall be fully documented, including all reasons for the rejection.

¹⁸ See Cal. Public Contract C. §5101 et seq.

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9.4 PROCURING SERVICES FROM NON-PROFIT ORGANIZATIONS AND AGENCIES

9.4.1 No Competitive Process Required: Contracts for services with *agencies* or non-profit organizations which comply with this Section 9.4 may be awarded by the SDHC without advertisement or a competitive process.¹⁹

9.4.2 Requirements for Award to Non-Profit Organization or Agency: The SDHC may award a contract to any *agency* or to any non-profit organization qualified under Section 501(c)(3) of the Internal Revenue Code for services to the SDHC without approval by the *Housing Authority*, provided that:

- A. The *Chief Executive Officer* has certified in writing that the contract furthers a specific public policy; and
- B. The *Chief Executive Officer* has certified in writing that the contract is in the public interest; and
- C. The contract does not exceed \$500,000 per year, which amount shall be indexed annually to the cost of living or as amended by the City in San Diego Municipal Code section 22.3208, whichever is greater; and
- D. The *Chief Executive Officer* has considered all of the following, which are documented in the contract file: (i) whether the non-profit organization or *agency* agrees to direct supervision of the workers; (ii) whether the non-profit organization or *agency* agrees to provide workers' compensation insurance for the workers; and (iii) whether the *agency* or non-profit organization agrees to indemnify, protect, defend, and hold the SDHC, the *Housing Authority*, and the City harmless against any and all claims alleged to be caused or caused by any act or omission of the worker or *agency* employee.

10 PROCUREMENT OF CONTRACTORS FOR CONSTRUCTION, FACILITY IMPROVEMENTS AND PUBLIC WORKS

This Section 10 generally addresses the *procurement* of *contractors* for construction projects, including *public works* contracts and facility improvements of SDHC-owned properties and *design-build* contracts.

¹⁹ See San Diego Municipal Code §22.3208

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10.1 INFORMAL SOLICITATION/SMALL PURCHASES (FEDERAL & NON-FEDERAL FUNDS)

- 10.1.1 **Petty Cash (\$100 or Less):** Small, one time purchases \$100 or less may be handled through the use of a petty cash account. Only one source may be solicited if the price is considered reasonable. All petty cash accounts shall be used and managed in accordance with SDHC's Administrative Regulation AR-FS-303.08 "Petty Cash Accounts".
- 10.1.2 **One Quote (\$10,000 or Less):** For the *procurement* of construction contracts in excess of the petty cash amount but not exceeding \$10,000, the SDHC may award a contract after soliciting only one quotation if the price is considered reasonable based on recent research, experience, or purchases. The reasonableness of the price shall be documented in the file with a written price or cost analysis and an *ICE*. Negotiation of price and contract terms is allowed.
- 10.1.3 **Multiple Quotes (\$100,000 or Less):** Not less than three (3) written price or rate quotations must be obtained from qualified sources for the *procurement* of a construction contract costing more than \$10,000, but not exceeding \$100,000. The contract award shall be made to the *respondent* of the lowest acceptable quotation, unless the selection of another *respondent* is justified, in writing, based on price and other specified factors. If non-price factors are used for selection, these factors shall be disclosed to all prospective *respondents* solicited. The reasonableness of the price shall be documented in the file with a written price or cost analysis and an *ICE*. Negotiation of price and contract terms is allowed.

10.2 FORMAL SOLICITATION USING FEDERAL FUNDS (MORE THAN \$100,000)

Sealed bidding is a formally advertised and competitive selection process used to obtain contracts awarded on the basis of lowest bid. *Sealed Bidding* is initiated by the SDHC's issuance of an *Invitation for Bids (IFB)*. The process set forth here assumes selection based primarily on lowest cost. If the SDHC desires to place significant weight on factors other than price when evaluating respondents, the *competitive proposals* process utilizing an *RFP* should be considered.

The procedure set forth in this Section 10.2 generally applies to construction contracts using or implicating federal funds.

- 10.2.1 **When to Use an *Invitation for Bids (IFB)*:** Generally, *sealed bidding* is the preferred method for procuring construction services, using an *IFB*. An *IFB* should be used if all four of the following criteria are met:

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1. A complete, adequate and realistic *specification* or purchase description is available;
2. Two or more responsible *respondents* are willing and able to compete effectively for the business;
3. *Procurement* results in a firm fixed price contract; and
4. The selection of the successful *respondent* can be made principally on the basis of price.

If all four of the above criteria are not met, the *Contracting Officer* should consider soliciting *competitive proposals* by issuing an *RFP*, detailed in Section 11.2 "Consultants: Formal Solicitation Using Federal Funds".

10.2.2 Solicitation: *IFBs* should be solicited in a manner that provides fair and open competition and be distributed to an adequate number of known individuals or entities providing the type of construction services needed, with sufficient time prior to the date set for opening bids. The notice inviting bids for a construction project shall specify the classification of any license which the SDHC will require a successful *respondent* possess at the time the contract is awarded.²⁰ Publication and advertising of an *IFB* shall comply with Section 8 "Solicitations and Advertising".

10.2.3 Contents of *IFB*

The *IFB* shall be in writing and include the following:

- A. A description of the construction services being procured, any *specifications* needed, the time and place of bid opening, the time and place of any site inspections or pre-bid conferences, a form for stating bid price, and any other required forms.
- B. The classification of any license(s) which the SDHC will require a successful *respondent* possess at the time the contract is awarded.²¹

²⁰ Cal. Public Contract C. §3300

²¹ Cal. Public Contract C. §3300

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- C. A statement that all bids must contain the name and business location of each subcontractor who will perform work or labor or render services to the *contractor* in an amount in excess of one-half of one percent of the *contractor's* total bid.²²
 - D. A statement that the award will be made to the lowest responsible and responsive *respondent* meeting the requirements of the solicitation and a statement addressing the method for random selection in the event the SDHC receives equal bids from responsive and responsible *respondents*.
 - E. Any applicable bonding and/or bid guarantee requirements, as further discussed in Section 18.7 "Bonding".
 - F. For *public works* projects only, solicitations shall contain a Non-Collusion Declaration substantially in the same form as set forth in Appendix B, which *respondents* to the solicitation shall complete and return with their bids.
- 10.2.4 **Extension of Bid Due Date:** For *public works* solicitations, the date and time for receiving bids shall be extended by at least 72 hours if the *Contracting Officer* issues any material changes, additions or deletions to the *IFB* later than 72 hours prior to the date on which bids are due.²³
- 10.2.5 **Receipt of Bids:** All bids received shall be date and time stamped immediately upon receipt and stored unopened in a secure place until the public bid opening. *Sealed bids* received after the time specified in the *IFB* should be recorded as a late bid and returned to the *respondent* unopened.
- 10.2.6 **Bid Opening:** Bids shall be publicly opened on the scheduled date and time shown in the *IFB*. The *Contracting Officer* will read aloud the *respondents'* names and the bid prices. This information on all bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection.

²² Cal. Public Contract C. §4104, applicable to construction contracts for public works and public improvements.

²³ Cal. Public Contract C. §4104.5 applicable to construction contracts for public works and public improvements. "Public works contract" is an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. (Pub. Contract C. §1101.)

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10.2.7 Award: A firm fixed-price contract shall be made to the lowest responsive and responsible *respondent*, see Section 5 “Ensuring Responsive and Responsible Contractors”.²⁴

- A. If specified in the *IFB*, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that the SDHC usually takes advantage of such discounts.
- B. If equal low bids are received from responsible *respondents*, selection shall be made by drawing lots or other similar random method, as stated in the *IFB*.
- C. If only one responsive bid is received from a responsible *respondent*, award shall not be made unless the price can be determined to be reasonable, based on a price or cost analysis.

10.2.8 Modification of Bids Before Bid Opening: *Respondents* may withdraw or modify their bids by written or facsimile notice to the *Contracting Officer* any time prior to bid opening.

10.2.9 Mistakes in Bids After Bid Opening: After bid opening the *Contracting Officer* may permit a change to or withdrawal of a bid only if the *respondent* is able to present clear and convincing evidence of: (i) an inadvertent computational error in the bid, and (ii) the intended bid price.²⁵ The *respondent* shall provide the SDHC with as much evidence of the mistake as the SDHC deems necessary. Failure or refusal by a *respondent* to provide adequate evidence shall result in the original bid remaining unchanged. If justified, a low *respondent* can be replaced with the next lowest *respondent*. In cases of alleged mistakes or requests for withdrawal after bid opening, the decision to allow a correction or withdrawal should only be made after consultation with the General Counsel’s office. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination made by the *Contracting Officer*. The *Contracting Officer* may waive or allow correction of *minor informalities* in a bid.

10.2.10 Rejection of Bids: The SDHC may reject any bid in its discretion, including, but not limited to, any of the following reasons: (i) the bid was received after the time or date for bid opening; (ii) the bid was incomplete; or (iii) the bid was received

²⁴ 24 CFR 85.36(d)(2)(D).

²⁵ See section 6.10 of HUD Procurement Handbook 7460.8 Rev. 2.

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from a firm or individual that the SDHC has removed from the bid list for cause. Rejection of any bid during the evaluation process shall be fully documented, including all reasons for the rejection.

10.3 FORMAL SOLICITATION USING NON-FEDERAL FUNDS (MORE THAN \$100,000)

The procedure set forth in this Section 10.3 applies to the *procurement* of construction contracts that do not use or implicate federal funds.

10.3.1 When to Use an *Invitation for Bids (IFB)*: An *IFB* should be used if adequate competition is believed to exist and the selection of the successful *respondent* can be made primarily on the basis of price. If price will not be the main consideration for awarding a contract, the *Contracting Officer* should consider soliciting *competitive proposals* using an *RFP*, detailed in Section 11.3 “Consultants: Formal Solicitation Using Non-Federal Funds”.

10.3.2 Solicitation: *IFBs* should be solicited in a manner that provides fair and open competition. The notice inviting bids for a construction project shall specify the classification of any license which the SDHC will require a successful *respondent* possess at the time the contract is awarded.²⁶ Publication and advertising of an *IFB* shall comply with Section 8 “Solicitations and Advertising”.

10.3.3 Contents of *IFB*: The *IFB* shall be in writing and include a description of the construction services being procured, any *specifications* needed, the time and place of bid opening, the time and place of any site inspections or pre-bid conferences, a form for stating bid price, and any other required forms. For an *IFB* for *public works*, the *IFB* shall also contain a statement that all bids must contain the name and business location of each subcontractor who will perform work or labor or render services to the *contractor* in an amount in excess of one-half of one percent of the *contractor*’s total bid²⁷ and the classification of any license(s) which the SDHC will require at the time the contract is awarded.²⁸ The *IFB* shall also contain applicable bonding and/or bid guarantee requirements, as further discussed in Section 18.7 “Bonding”.

10.3.4 Extension of Bid Due Date: For solicitations for *public works*, the date and time for receiving bids shall be extended by at least 72 hours if the *Contracting Officer*

²⁶ Cal. Public Contract C. §3300

²⁷ Cal. Public Contract C. §4104, applicable to construction contracts for public works and public improvements.

²⁸ Cal. Public Contract C. §3300

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issues any material changes, additions or deletions to the *IFB* later than 72 hours prior to the date on which bids are due.²⁹

- 10.3.5 Receipt of Bids:** All bids received shall be date and time stamped immediately upon receipt and stored unopened in a secure place until the public bid opening. *Sealed bids* received after the time specified in the *IFB* should be recorded as a late bid and returned to the *respondent* unopened.
- 10.3.6 Bid Opening:** Bids shall be publicly opened on the scheduled date and time shown in the *IFB*. The *Contracting Officer* will read aloud the *respondents'* names and the bid prices. This information on all bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection.
- 10.3.7 Award:** The award shall be made to the responsible and responsive *respondent* with the lowest per unit cost. If only one responsive bid is received from a responsible *respondent*, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis.
- 10.3.8 Modification of Bids Before Bid Opening:** *Respondents* may withdraw or modify their bids by written or facsimile notice to the *Contracting Officer* any time prior to bid opening.
- 10.3.9 Mistakes in Bids:** After bid opening, a *respondent* may modify or withdraw a bid only when the *respondent* demonstrates an inadvertent computational error affecting the price. The *respondent* shall provide documentation and such other information as may be required by the SDHC to substantiate the claim of inadvertent error. Failure or refusal by a *respondent* to provide adequate evidence shall result in the original bid remaining unchanged.³⁰ In cases of alleged mistakes or requests for withdrawal after bid opening, the decision to allow a correction or withdrawal should only be made after consultation with the General Counsel's office. The *Contracting Officer* may waive or allow correction of *minor informalities* in a bid.

²⁹ Cal. Public Contract C. §4104.5 applicable to construction contracts for public works and public improvements. "Public works contract" is an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. (Pub. Contract C. §1101.)

³⁰ See Cal. Public Contract C. §5101 et seq.

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10.3.10 Rejection of Bids: The SDHC may reject any bid in its reasonable discretion. Rejection of any bid during the evaluation process shall be fully documented, including all reasons for the rejection.

10.4 DESIGN-BUILD (FEDERAL & NON-FEDERAL FUNDS)

Design-Build refers to the *procurement* process where both the design and the construction of a building or improvements directly related to the construction of a building are procured from a single entity through a single *procurement*.³¹

10.4.1 Drafting Design-Build Specifications

- A. Prior to procuring a *design-build entity*, the SDHC shall prepare *specifications* setting forth the scope of the project including, but not limited to, the size, type, and desired design character of the buildings and site, and performance *specifications*. The performance *specifications* shall describe the quality of materials, equipment, workmanship, preliminary plans or building layouts, and/or any other information deemed necessary to describe adequately the SDHC's needs. The performance *specifications* and any plans shall be prepared by a design professional that is duly licensed and registered in the State of California.
- B. Any architectural firm, engineering firm, specialty *consultants*, or individuals retained by the SDHC to assist in the development of project criteria or the *RFP* shall not be eligible to participate in the preparation of a bid with any *design-build entity* for that project.

10.4.2 Contents of the Solicitation

Based on the *specifications* prepared in Section 10.4.1, the SDHC shall prepare a *RFP* or *IFB* that invites interested parties to submit competitive sealed proposals. The *RFP* or *IFB* shall include, but is not limited to, the following:

³¹ Under the Housing Authorities Law, the SDHC is authorized to contract for services and facilities in connection with housing projects, financing of housing projects or occupants of housing projects. (Health & Saf. C. §34314.) The design-build procedure in this Policy is based on the San Diego Municipal Code §22.3301 et seq. concerning design-build contracts and the design-build statute applicable to cities in Public Contract Code §20175.2.

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- A. Identification of the basic scope and needs of the project, the expected cost range, and other information deemed necessary by the SDHC to inform interested parties of the contracting opportunity;
- B. The methodology that will be used to evaluate proposals, and specifically whether the contract will be awarded to the lowest responsible *respondent*;
- C. Significant objective factors which the SDHC reasonably expects to consider in evaluating proposals, including cost or price and all non-price related factors;
- D. The relative importance or weight assigned to each of the factors identified in the *RFP* or *IFB*; and
- E. If the SDHC reserves the right to hold discussions or negotiations with responsive *respondents*.

10.4.3 Competitive Prequalification: The SDHC may issue an *RFQ* to establish a competitive prequalification and selection process to determine which *design-build entities* are the most qualified and eligible to respond to the solicitation for design-build proposals or bids. The SDHC may consider all or any combination of the following in prequalifying *design-build entities*:

- A. A listing of all of the partners, general partners, or association members of a *design-build entity* who intend to participate in the design-build contract.
- B. Documentation that the members of the *design-build entity* have completed, or demonstrated the capability to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.
- C. Submission of a proposed project management plan establishing that the *design-build entity* has the experience, competence, and capacity needed to effectively complete the project, including all required licenses, registration, and credentials required to design and construct the project, and any information on the revocation or suspension of any license, credential, or registration.

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- D. Evidence that establishes that the *design-build entity* has the capacity to obtain all required *payment bonds* and *performance bonds*, liability insurance, and errors and omissions insurance, as well as a financial statement assuring the SDHC that the *design-build entity* has the capacity to complete the project.
- E. Provision of a declaration that the applying members of the *design-build entity* have not had a surety company finish work on any project within the past five years.
- F. Provision of a declaration providing detail for the past five years concerning all of the following:
 - (i) Any prior serious or willful violation of the California Occupational Safety and Health Act against any member of the *design-build entity*.
 - (ii) Any debarment, disqualification, or removal from a federal, state, or local government *public works* project.
 - (iii) Any instance where the *design-build entity*, its owners, officers, or managing employees defaulted on a construction contract.
 - (iv) Any violations of the Contractors State License Law against any member of the *design-build entity*.
 - (v) Any settled adverse claims, disputes, or lawsuits between the owner of a *public works* project and any member of the *design-build entity* in which the claim, settlement, or judgment exceeds \$50,000.
 - (vi) Any civil or criminal violations of federal or state law governing the payment of wages, benefits, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA) withholding requirements, state disability insurance withholding, or unemployment insurance payments requirements against any member of the *design-build entity*.
 - (vii) Any civil or criminal violations of federal or state law against any member of the *design-build entity* governing equal opportunity employment, contracting, or subcontracting.
- G. Provision of a declaration that the *design-build entity* will comply with all other provisions of law applicable to the project. The declaration shall state

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that reasonable diligence has been used in its preparation and that it is true and complete to the best of the signer's knowledge.

10.4.4 Selection of *Design-Build Entity*

The SDHC shall select one of the following methods as the process to be used for the selection of a *design-build entity*:

- A. A design-build competition where award is made to the *design-build entity* whose proposal offers the best value to the SDHC considering price and the evaluation criteria in the *RFP*. The *RFP* shall establish evaluation criteria and methodology that the SDHC will use to evaluate proposals. Evaluation criteria may include, but are not limited to, experience of the *design-build entity* and its members, cost, financing, project features, capacity, quality, schedule and operational and functional performance of the facility. Any criteria and methods used to evaluate proposals shall be limited to those contained in the *RFP*.
- B. A design-build competition based on program requirements and a detailed *scope of work*, including any preliminary design drawing and design-build *specifications* set forth in the *IFB*. Award shall be made to the lowest responsible *respondent*.

10.4.5 Contract Requirements: At a minimum, a *design-build entity* entering into a design-build contract with the SDHC shall possess or obtain bonding in at least the minimum amounts set forth in Section 18.7 "Bonding". A *design-build entity* shall also obtain errors and omissions insurance coverage sufficient to cover all design and architectural services provided in the contract, at a minimum. The bonding and insurance requirements may be increased by the SDHC in its discretion, as justified by the project. For all construction contracts entered into by the SDHC valued at more than \$25,000, the *Contracting Officer* shall have the executed contract posted on the SDHC's website.³²

10.4.6 Subcontractors on Design-Build Project: Each design-build proposal shall specify the construction trades or types of subcontractors that may be named as members of the *design-build entity* at the time of award. In selecting the trades that may be identified as members of the *design-build entity*, the *design-build entity* shall identify the trades deemed essential in the design considerations of the

³² See SDMC §22.4401 et seq.

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project. All subcontractors that are listed at the time of award shall be afforded the protection of all applicable laws. Any work that was not listed by the *design-build entity* at the time of award shall be performed by the *design-build entity* with its own employees, or awarded by the *design-build entity*, in accordance with a bidding process set forth in the request for design-build proposals.

11 PROCUREMENT OF CONSULTANTS (NOT INCLUDING A/E CONSULTANTS)

This Section 11 addresses *procurement of consultants* when the award is made in consideration of multiple factors, only one of which is price. This Section 11 does not apply to the *procurement of A/E Consultants*, see Section 12.

11.1 INFORMAL SOLICITATION/SMALL PURCHASES (FEDERAL & NON-FEDERAL FUNDS)

- 11.1.1 **Petty Cash (\$100 or Less):** Small, one time purchases \$100 or less may be handled through the use of a petty cash account. Only one source may be solicited if the price is considered reasonable. All petty cash accounts shall be used and managed in accordance with SDHC's Administrative Regulation AR-FS-303.08 "Petty Cash Accounts".
- 11.1.2 **One Quote (\$10,000 or Less):** For the *procurement of consultant* contracts in excess of the petty cash amount but not exceeding \$10,000, the SDHC may award a contract after soliciting only one quotation if the price is considered reasonable based on recent research, experience, or purchases. The reasonableness of the price shall be documented in the file with a written price or cost analysis and an *ICE*. Negotiation of price and contract terms is allowed.
- 11.1.3 **Multiple Quotes (\$100,000 or Less):** Not less than three (3) written price or rate quotations must be obtained from qualified sources for the *procurement of consultant* contracts costing more than \$10,000, but not exceeding \$100,000. The contract award shall be made to the best qualified *respondent* that represents the best value for the SDHC. All factors used for selection shall be disclosed to all prospective *consultants* solicited. The reasonableness of the price shall be documented in the file with a written price or cost analysis and an *ICE*. Negotiation of price and contract terms is allowed.

11.2 FORMAL SOLICITATION USING FEDERAL FUNDS (MORE THAN \$100,000)

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Solicitation of *competitive proposals* contemplates a formally advertised and competitive selection process used to obtain contracts where award is made on the basis of the proposal that represents the best overall value to the SDHC, considering price and other factors set forth in the solicitation. Award is not based solely on the lowest price. *Competitive proposals* are initiated by the SDHC's issuance of a *Request for Proposals (RFP)*.

The procedure set forth in this Section 11.2 applies to *procurement of consultant* contracts of more than \$100,000 that use or implicate federal funds. This procedure may also be appropriate for the *procurement of construction and maintenance contractors* when the SDHC desires to evaluate *respondents* on more than price.

- 11.2.1 **Conditions of Use:** The SDHC should use *competitive proposals* when evaluation and selection cannot be based on price alone, but is based on established criteria that include price and other factors.
- 11.2.2 **Solicitation:** *RFPs* should be solicited in a manner that provides fair and open competition. *RFPs* shall be distributed to an adequate number of known individuals or entities providing the services needed, with sufficient time prior to the date set for receiving proposals. Publication and advertising of an *RFP* shall comply with Section 8 "Solicitations and Advertising".
- 11.2.3 **Contents of *RFP*:** The *RFP* shall be in writing and include a *statement of work*, submission requirements, pricing instructions, time and place of any pre-proposal conference, and any required forms. The *RFP* shall clearly identify all evaluation factors and their relative importance. The SDHC may assign price with a specific weight in the evaluation criteria or may consider price in conjunction with technical factors.
- 11.2.4 **Receipt of Proposals:** Proposals shall be date-time stamped when they are received and held unopened in a secure place until the established date for receipt of proposals has passed. After the closing date, all proposals received are opened and evaluated in confidence. Any proposal received after the specified time should not be considered unless it is the only proposal received.
- 11.2.5 **Confidentiality:** Proposals shall be handled so as to prevent disclosure of the number of *respondents*, identity of the *respondents*, and the contents of their proposals until after award. No information regarding any of the proposals, including the names of the *respondents* or the number of proposals received, should be provided to anyone without the *Contracting Officer's* permission.

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11.2.6 Evaluation of Proposals: Evaluation shall be based on the evaluation factors set forth in the *RFP*. Factors not specified in the *RFP* shall not be considered. Typical criteria for evaluation include: (i) demonstrated understanding of the requirements; (ii) appropriateness of the technical approach in the proposal; (iii) quality of work plan; (iv) technical capabilities; (v) demonstrated experience in performing similar work; (vi) demonstrated successful past performance. Price shall be used as an evaluation criterion. The *Contracting Officer* shall establish an evaluation plan for a *RFP* before the solicitation is issued. 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 certification of non-disclosure concerning the contents and evaluation of proposals. Prior to award, the evaluation committee and the *Contracting Officer* shall prepare an evaluation report summarizing the results of the evaluation.

11.2.7 Negotiations: Negotiations are exchanges between the SDHC and *respondents* that are undertaken with the intent of allowing the *respondent* to revise its proposal. The primary object of negotiations is to maximize the SDHC's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. Negotiations take place after the *Contracting Officer* and evaluation committee has established a competitive range. The *Contracting Officer* then engages in negotiations with all *respondents* falling within the competitive range.

- A. The scope and extent of discussions are a matter of the *Contracting Officer's* judgment. The *Contracting Officer* shall indicate to, or discuss with, each *respondent* falling within the competitive range, the *respondent's* 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 materially enhance the *respondent's* potential for award.
- B. The *Contracting Officer* may inform a *respondent* 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 *respondents* the cost or price that the SDHC's price or cost analysis, market research, and other reviews have identified as reasonable.
- C. Negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to

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price, schedule, technical requirements, type of contract or other terms of a proposed contract.

- D. Auctioning by revealing one *respondent's* price in an attempt to get another *respondent* to lower their price is prohibited. No *respondent* shall be given any information about any other *respondent's* proposal, and no *respondent* shall be assisted in bringing its proposal up to the level of any other proposal.

11.2.8 Best and Final Offers: After negotiations are complete, the *Contracting Officer* shall invite all *respondents* in the competitive range to submit their best and final offers, making any changes they wish in their technical proposals and their price. The *Contracting Officer* shall establish a common date and time for submission of best and final offers. Late responses should be treated the same as late initial offers. The best and final offers shall be evaluated in essentially the same manner as the initial offers. When requesting best and final offers, the *Contracting Officer* shall clearly inform *respondents* that should they fail to submit a best and final offer, or fail to submit one by the due date, their initial offer will be deemed to be their best and final offer.

11.2.9 Award: Contracts shall be awarded in accordance with the terms of the solicitation. After evaluation of the best and final offers, if any, the contract shall be awarded to the responsible *respondent* 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. Awards shall only be made to *respondents* who have been determined to be responsible, see Section 5 "Ensuring Responsive and Responsible Contractors".

11.2.10 Award Without Negotiation: If, after the initial evaluation of proposals, there is a clear winner, and there is no need to negotiate or obtain further clarification or information from that *respondent* (e.g., the price is reasonable), the *Contracting Officer* may proceed directly to award, provided that the *RFP* clearly stated that award could be made without negotiations

11.2.11 Notifying Unsuccessful Respondents: The *Contracting Officer* should notify each unsuccessful *respondent* in writing.

11.3 FORMAL SOLICITATION USING NON-FEDERAL FUNDS (MORE THAN \$100,000)

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The procedure set forth in this Section 11.3 applies to *procurement of consultant* contracts of more than \$100,000 that do not use or implicate federal funds. This procedure may also be appropriate for the *procurement* of construction and *maintenance* when the SDHC desires to evaluate *respondents* on more than price.

- 11.3.1 Conditions of Use:** The SDHC should use *competitive proposals* when evaluation and selection cannot be based on price alone, but is based on established criteria that include price and other factors.
- 11.3.2 Solicitation:** *RFPs* should be solicited in a manner that provides fair and open competition and distributed to an adequate number of known individuals or entities providing the services needed, with sufficient time prior to the date set for receiving proposals. Publication and advertising of an *RFP* shall comply with Section 8 "Solicitations and Advertising".
- 11.3.3 Contents of *RFP*:** The *RFP* shall be in writing and include a *statement of work*, submission requirements, along with pricing instructions, time and place of any pre-proposal conference, and any required forms. The *RFP* shall clearly identify all evaluation factors and their relative importance. The SDHC may assign price with a specific weight in the evaluation criteria or may consider price in conjunction with technical factors.
- 11.3.4 Receipt of Proposals:** Proposals shall be date-time stamped when they are received and held unopened in a secure place until the established date for receipt of proposals has passed. After the closing date, all proposals received are opened and evaluated in confidence. Any proposal received at the designated place after the specified time should not be considered unless it is the only proposal received.
- 11.3.5 Confidentiality:** Proposals shall be handled so as to prevent disclosure of the number of *respondents*, identity of the *respondents*, and the contents of their proposals until after award. No information regarding any of the proposals, including the names of the *respondents* or the number of proposals received, should be provided to anyone without the *Contracting Officer's* permission.
- 11.3.6 Evaluation of Proposals:** Evaluation shall be based on the evaluation factors set forth in the *RFP*. Factors not specified in the *RFP* shall not be considered. Typical criteria for evaluation include: (i) demonstrated understanding of the requirements; (ii) appropriateness of the technical approach in the proposal; (iii) quality of work plan; (iv) technical capabilities; (v) demonstrated experience in performing similar work; and (vi) demonstrated successful past performance.

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Price shall be used as an evaluation criterion. The *Contracting Officer* shall establish an evaluation plan for each *RFP* before the solicitation is issued. 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 certification of non-disclosure concerning the contents and evaluation of proposals. Prior to award, the evaluation committee and the *Contracting Officer* shall prepare an evaluation report summarizing the results of the evaluation.

- 11.3.7 Negotiations:** The *Contracting Officer* may negotiate the terms of the contract with the highest ranked *respondent* or may award the contract without further negotiation. If the SDHC and the highest-ranked *respondent* fail to agree on a contract terms, the SDHC may reject the proposal and enter into negotiations with the next highest-ranked *respondent*.
- 11.3.8 Award:** Contracts shall be awarded in accordance with the terms of the solicitation. Awards shall only be made to *respondents* who have been determined to be responsible, see Section 5 “Ensuring Responsive and Responsible Contractors”.
- 11.3.9 Notifying Unsuccessful Respondents:** The *Contracting Officer* should notify each unsuccessful *respondent* in writing.

11.4 STATEMENT OF ECONOMIC INTEREST (POLITICAL REFORM ACT)

Certain *consultants* of the SDHC who are given influence or authority with regard to official decisions as a result of a contract with the SDHC may be considered “public officials” for purposes of state and local conflict of interest law.³³ Such *consultants* are subject to conflict of interest laws and financial disclosure requirements to ensure that their governmental actions do not improperly benefit their personal financial interests.

- 11.4.1 Consultants Required to Make Disclosures:** A *consultant* who is required to make disclosures pursuant to this Section 11.4 is an individual who, pursuant to a contract with the SDHC, makes a governmental decision or serves in a staff capacity with the SDHC and in that capacity participates in making a governmental decision or performs substantially all the same duties for the SDHC that would otherwise be performed by an individual holding a position specified in the SDHC Conflict of Interest Code (PO101.000).

³³ See Political Reform Act (Cal. Gov. C. §87100 et seq.); San Diego Ethics Ordinance SDMC §27.3501 et seq.

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11.4.2 Disclosure Requirement: *Consultants*, who are required to make disclosures, are required to file a Statement of Economic Interest (Form 700) with the San Diego City Clerk upon taking office and annually during the term of the contract with the SDHC.³⁴ The initial Form 700 shall be filed within 30 days of executing a contract with the SDHC. Upon termination of the contract, the *consultant* shall file a leaving office Form 700.

11.4.3 Determination: The *Contracting Officer* and General Counsel shall make a determination as to whether a *consultant* is required to make disclosures under this Section 11.4. The *Contracting Officer* shall complete and file a "Disclosure Determination for Consultant" form with the City Clerk for all *consultants* procured under this Section 11 regardless of whether the *consultant* is required to make disclosures.

12 PROCUREMENT OF ARCHITECTS AND ENGINEERING SERVICES

This Section 12 sets forth the procedures for *procurement* of *A/E Consultants* where award is made on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.³⁵

12.1 INFORMAL SOLICITATION/SMALL PURCHASES

12.1.1 One Quote (\$10,000 or Less): For the *procurement* of *A/E Consultant* contracts of \$10,000 or less, the SDHC may award a contract after soliciting only one quotation from an *A/E Consultant* if the price is considered fair and reasonable and the *A/E Consultant* is well qualified and capable for the project. The reasonableness of price and qualifications of the selected *A/E Consultant* shall be documented in the contract file with a written price or cost analysis (for contracts \$2,000) and *ICE*. Negotiation of price and contract terms is allowed.

12.1.2 Multiple Quotes (\$100,000 or Less): Not less than three (3) written price or rate quotations must be obtained from qualified sources for the *procurement* of *A/E Consultant* contracts anticipated to be more than \$10,000, but not exceeding \$100,000. The contract award shall be made to the best qualified *respondent* capable of providing services at a fair and reasonable price. The reasonableness

³⁴ Cal. Gov. C. §81000 et seq., see also Appendix C to SDHC Conflict of Interest Code PO101.000 and City Form CC-1671.

³⁵ Cal. Gov. C. §4526

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of the price shall be documented in the file with a written price or cost analysis and *ICE*. Negotiation of price and contract terms is allowed.

12.2 FORMAL SOLICITATION USING FEDERAL FUNDS (MORE THAN \$100,000)

The *competitive proposal* process for procuring *A/E Consultants* does not use price as a selection factor, rather *respondents*' qualifications are evaluated and the most qualified *respondent* is selected, subject to negotiation of fair and reasonable compensation. This process is referred to as Qualifications-Based Selection (QBS) and shall be used by the SDHC for *procurement* of all *A/E Consultants* when the contract implicates any federal funds.

- 12.2.1 **Conditions for Use:** QBS is used when price is not used as a selection factor. QBS is used to select *A/E Consultants* and may also be used to select development partners for mixed-finance projects. QBS procedures **shall not** be used to procure other types of services, even though *A/E Consultants* are potential sources of such services.
- 12.2.2 **Solicitation:** The SDHC shall solicit *A/E Consultants* by requesting technical qualifications statements through the issuance of a *Request for Qualifications (RFQ)*. The *RFQ* should be solicited in a manner that provides fair and open competition. The *RFQ* shall be distributed to an adequate number of known *A/E Consultant* firms. Publication and advertising of an *RFQ* shall comply with Section 8 "Solicitations and Advertising".
- 12.2.3 **Contents of *RFQ*:** The *RFQ* shall be in writing and include a statement of the project, submission requirements, technical qualifications, and any required forms. The *RFQ* shall clearly identify all evaluation factors and their relative importance.
- 12.2.4 **Receipt of Qualifications:** Qualifications shall be handled so as to prevent disclosure of the number of responses received, identity of *respondents*, and the contents of their qualifications.
- 12.2.5 **Evaluation:** Selection for the professional services of an *A/E Consultant* shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.³⁶ *Respondents* shall be evaluated and ranked based on their qualifications with respect to the project. Price shall not be used as a selection factor. Evaluation factors may

³⁶ Cal. Gov. C. §4526

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include: (i) evidence of the *respondent's* ability to perform work as indicated by the profiles of principals and staff; (ii) capability to provide professional services in a timely manner; (iii) past performance in terms of cost control, quality of work and compliance with performance schedules; and (iv) demonstrated knowledge of local building codes and federal requirements. If design work is involved, the *respondent* shall also provide evidence of current registration with the State of California and current errors and omissions insurance. Failure to be registered or to carry errors and omissions coverage shall disqualify the *respondent*.

12.2.6 Negotiation and Award: After ranking *respondents*, the *Contracting Officer* shall open negotiations with the top-ranked *respondent* to reach an agreement on a fair and reasonable price. If an agreement cannot be reached, the *Contracting Officer* may terminate negotiations with the top-ranked *respondent* and proceed to the next-highest ranked *respondent* until a price determined to be fair and reasonable to both parties is obtained. Once negotiations have been terminated with a *respondent*, the *Contracting Officer* may not go back to that *respondent* for additional negotiations, even if the next lower ranked *respondent* is higher in price. A *respondent* may withdraw qualifications at any time prior to award of a contract.

12.2.7 Notifying Unsuccessful Respondents: The *Contracting Officer* shall notify the unsuccessful *respondents* in writing; however, the *Contracting Officer* is not required to notify any *respondents* with whom he/she terminated negotiations.

12.3 FORMAL SOLICITATION USING NON-FEDERAL FUNDS (MORE THAN \$100,000)

12.3.1 Solicitation: The SDHC shall solicit *A/E Consultants* by requesting technical qualifications statements through the issuance of a *RFQ*. The *RFQ* should be solicited in a manner that provides fair and open competition and distributed to an adequate number of known *A/E Consultant* firms and through publication of the appropriate professional society or societies. Publication and advertising of an *RFQ* shall comply with Section 8 "Solicitations and Advertising".

12.3.2 Contents of RFQ: The *RFQ* shall be in writing and include a statement of the project, submission requirements, technical qualifications, and any required forms. The *RFQ* shall clearly identify all evaluation factors and criteria.

12.3.3 Receipt of Qualifications: Qualifications shall be handled so as to prevent disclosure of the number of responses received, identity of *respondents*, and the contents of their qualifications.

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- 12.3.4 Evaluation:** Selection for the professional services of an *A/E Consultant* shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.³⁷ The *Contracting Officer* shall evaluate current qualifications and performance data on file with the SDHC, together with any qualifications received in response to the *RFQ*. The *Contracting Officer* will select at least three (3) *A/E Consultants* from those reviewed and discuss the project with them and any alternative methods or approaches to the project proposed by the *A/E Consultant*. These discussions are not negotiations of price. The *Contracting Officer* shall then rank the *A/E Consultants* from most highly qualified to least highly qualified for the project.
- 12.3.5 Negotiation and Award:** After ranking and discussions, the *Contracting Officer* shall open negotiations for a contract with the most highly qualified *A/E Consultant* to reach an agreement on a fair and reasonable price for the project and contract terms. If an agreement cannot be reached, the *Contracting Officer* shall terminate negotiations with the most highly qualified *A/E Consultant* and proceed with negotiations with the next-highest ranked *A/E Consultant* until a price determined to be fair and reasonable to both parties is obtained. Once negotiations have been terminated with an *A/E Consultant*, the *Contracting Officer* may not go back to that *A/E Consultant* for additional negotiations, even if the next lower ranked *A/E Consultant* is higher in price. An *A/E Consultant* may withdraw qualifications at any time prior to award of a contract.
- 12.3.6 Notifying Unsuccessful Respondents:** The *Contracting Officer* shall notify unsuccessful *A/E Consultants* responding to the *RFQ* in writing; however, the *Contracting Officer* is not required to notify any *A/E Consultant* with whom he/she has terminated negotiations.
- 12.3.7 Procurement of Construction Project Management Services:** The procedure set forth in this Section 12.3 shall not be applicable to the *procurement* of an *A/E Consultant* when the services needed are more technical, involve little professional judgment, and where a competitive bidding process would be in the best interest of the SDHC. In such situations, the *A/E Consultant* should be procured using competitive bidding process by issuing an *RFP*.³⁸

12.4 STATEMENT OF ECONOMIC INTEREST

³⁷ Cal. Gov. C. §4526

³⁸ Cal. Gov. C. §4529

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Certain *A/E Consultants* of the SDHC who are given influence or authority with regard to official decisions as a result of their contract with the SDHC are generally considered a “public official” for purposes of state and local conflict of interest law.³⁹ Such *A/E Consultants* are subject to conflict of interest laws and financial disclosure requirements to ensure that their governmental actions do not improperly benefit their financial interests.

12.4.1 *A/E Consultants Required to Make Disclosures:* An *A/E Consultant* who is required to make disclosures pursuant to this Section 12.4 is an individual who, pursuant to a contract with the SDHC makes a governmental decision or serves in a staff capacity with the SDHC and in that capacity participates in making a governmental decision or performs substantially all the same duties for the SDHC that would otherwise be performed by an individual holding a position specified in the SDHC Conflict of Interest Code (PO101.000).

12.4.2 *Disclosure Requirement:* *A/E Consultants*, who are required to make disclosures, are required to file a Statement of Economic Interest (Form 700) with the San Diego City Clerk upon taking office and annually during the term of the contract with the SDHC.⁴⁰ The initial Form 700 shall be filed within 30 days of executing a contract with the SDHC. Upon termination of the contract, the *A/E Consultant* shall file a leaving office Form 700.

12.4.3 *Determination:* The *Contracting Officer* and General Counsel shall make a determination as to whether an *A/E Consultant* is required to make disclosures under this Section 12.4. The *Contracting Officer* shall complete and file a “Disclosure Determination for Consultant” form with the City Clerk for all *A/E Consultants* procured under this Section 12 regardless of whether the *A/E Consultant* is required to make disclosures.

12.5 A/E CONSULTANT CONTRACT REQUIREMENTS

A contract with an *A/E Consultant* shall be executed prior to the *A/E Consultant* commencing work on the project. All contracts with an *A/E Consultant* shall contain the following, in addition to the applicable contract provisions set forth in Section 18.5 of this Policy: (i) a description of services to be provided by the *A/E Consultant*; (ii) a description of any basis of compensation applicable to the contract and method of payment agreed upon by both parties; (iii) the name, address, and license number of the *A/E Consultant*; (iv) a description of the procedure that the *A/E Consultant*

³⁹ See Political Reform Act (Cal. Gov. C. §87100 et seq.); San Diego Ethics Ordinance SDMC §27.3501 et seq.

⁴⁰ Cal. Gov. C. §81000 et seq., see also Appendix C to SDHC Conflict of Interest Code PO101.000 and City Form CC-1671.

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and the client will use to accommodate additional services; and (v) a description of the procedure to be used by either party to terminate the contract.⁴¹

13 PURCHASING CARDS

The SDHC has authorized that certain employees be issued credit cards and gas cards (Purchasing Cards) in the SDHC's name, in order to expedite the purchasing and payment process and to reduce administrative costs of small purchase transactions. Authorized use of Purchasing Cards shall not exceed \$1,000 without advanced written authorization from the *Chief Executive Officer*, who may authorize purchases by Purchasing Card, up to but not exceeding his/her purchase approval authority as set forth in Table 3.2 of this Policy.

Purchasing Card usage shall follow the rules for all other small purchases set forth in this Policy and shall be subject to the requirements of the SDHC Administrative Regulation 109.001, "Credit Card Usage" and Administrative Regulation 109.000 "Gasoline Credit Cards". Purchasing Card holders are responsible for ensuring that the prices paid for their purchases are reasonable, and that price comparisons are obtained when appropriate. When using Purchasing Cards, the SDHC will use reasonable safeguards to assure that they are used only for intended purposes.

14 SOLE SOURCE CONTRACTS (NON-COMPETITIVE PROCUREMENT)

Generally, the SDHC shall conduct *procurement* in a manner that is not restrictive of competition and that provides the best value to the SDHC. In certain instances and situations, *procurement* without adequate competition is permissible or necessary.

14.1 SOLE SOURCE CONTRACTS USING FEDERAL FUNDS

Any *sole source contract* awarded by the SDHC using federal funds must comply with the provisions of Section 85.36(d) of Title 24 of the Code of Federal Regulations.

14.1.1 Conditions for Use: A *sole source contract* and noncompetitive *procurement* may be used only when the award of a contract is not feasible using a competitive *procurement* method (i.e. informal or formal solicitation), and one of the following applies:

⁴¹ Cal. Bus. & Prof. C. §5536.22 [architects] & §6749 [for engineers it is not applicable to contracts with a public agency, suggest requiring it anyways for clarity]

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- A. The item is available only from a single source, based on a good faith review of available sources;
 - B. 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;
 - C. HUD authorizes the use of noncompetitive proposals; or
 - D. After solicitation of a number of sources, competition is determined inadequate.
- 14.1.2 **Process:** Award of *sole source contracts* follows a process similar to that used for competitive *procurement* where the SDHC solicits a proposal from the sole source and negotiates a fair and reasonable price and other contract terms. Technical and cost aspects of the bid or proposal may be negotiated.
- 14.1.3 **Price Reasonableness:** The reasonableness of the price for all *procurements* based on noncompetitive bids or proposals shall be determined by performing a cost analysis, as described in Section 4 of this Policy, prior to the award of any *sole source contract*.
- 14.1.4 **Justification Required:** Every *sole source contract* shall be supported with written justification. Poor planning or lack of planning is not justification for a *sole source contract*. The justification shall include the following information:
- A. Description of the goods or services needed;
 - B. History of prior purchases and their nature (competitive vs. noncompetitive);
 - C. The condition(s) for use set forth in 14.1.1, above, applicable to the *sole source contract*;
 - D. A statement of the unique circumstances that require award of a *sole source contract*;

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- E. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
- F. A statement of the efforts that will be taken in the future to promote competition for the goods or services; and
- G. Signature by the *Contracting Officer* and the Director of Contract Management.

14.1.5 Approval: The justification shall be approved in writing by the responsible *Contracting Officer*, the Chief of Staff, or the Vice President, or designee, of the department requesting *procurement* through a noncompetitive process, and the Director of Contract Management. Such approvals shall be maintained in the contract file.

14.2 SOLE SOURCE CONTRACTS USING NON-FEDERAL FUNDS

14.2.1 Conditions for Use: A *sole source contract* and noncompetitive *procurement* may be used only when compliance with the competitive process would fail to achieve the desired result (due to lack of competition, emergency, only one provider, etc.) and soliciting bids or proposals through a competitive *procurement* would therefore be undesirable, impractical or impossible.

14.2.2 Process: Award of *sole source contracts* follows a process similar to that used for competitive *procurement* where the SDHC solicits a proposal from the sole source and negotiates a fair and reasonable price and other contract terms. Technical and cost aspects of the proposal may be negotiated.

14.2.3 Price Reasonableness: The reasonableness of the price for all *procurements* based on noncompetitive proposals shall be determined by performing a cost analysis, as described in Section 4 of this Policy, prior to the award of any *sole source contract*.

14.2.4 Justification Required: Every *sole source contract* shall be supported with written justification. Poor planning or lack of planning is not justification for a *sole source contract*. The justification shall include the following information:

- A. Description of the goods or services needed;

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- B. History of prior purchases and their nature (competitive vs. noncompetitive);
- C. A statement memorializing why compliance with the competitive process would fail to achieve the desired result and why soliciting bids or proposals would therefore be undesirable, impractical or impossible;
- D. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
- E. A statement of the efforts that will be taken in the future to promote competition for the goods or services; and
- F. Signature by the *Contracting Officer* and the Director of Contract Management.

14.2.5 Approval: The justification shall be approved in writing by the responsible *Contracting Officer*, the Chief of Staff or Vice President, or designee, of the department requesting *procurement* through non-competitive process, and the Director of Contract Management. Such approvals shall be maintained in the contract file.

15 COOPERATIVE PURCHASING AGREEMENTS

In order to foster greater economy and efficiency, the SDHC is encouraged to enter into state and local cooperative purchasing agreements with another *agency* for the *procurement* or use of common goods and services and to use Federal excess and surplus property when feasible.⁴² The purpose of cooperative purchasing is to take advantage of a competitive selection process already conducted by another *agency* and thus save the SDHC the time and expense of conducting its own selection process.

15.1 REQUIREMENTS

The SDHC may enter into a cooperative purchasing agreement with another *agency* to procure goods and services when the *agency* provides goods or services not available from the private sector. In the event the private sector also offers such goods or services, the *Chief Executive Officer* shall evaluate on a case-by-case basis what would be in the best interests of the SDHC, and

⁴² HUD Procurement Regulations, 24 CFR §85.36(b)(5) and (b)(6). Note: Cooperative purchasing agreements are also referred to as intergovernmental agreements by HUD.

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whether to contract directly with the *agency* or to conduct a competitive selection process. The SDHC may enter into a cooperative purchasing agreement with another *agency* without competitive *procurement*, provided that:

- A. The *Contracting Officer* certifies in writing that the cooperative purchasing agreement provides for greater economy and efficiency and results in cost savings to the SDHC; and
- B. The cooperative purchasing agreement is used for common supplies and services that are of a routine nature only; and
- C. The *agency's* competitive process to procure the goods or services was reasonable and, if federal funds are implicated, was procured in compliance with the *HUD Procurement Regulations*.

15.2 DOCUMENTATION

The *Contracting Officer* shall maintain a copy of the cooperative purchasing agreement and the certification required in Section 15.1 above in the contract file. The cooperative purchasing 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.

15.3 ANNUAL EVALUATION OF COOPERATIVE PURCHASING AGREEMENTS

After entering into a cooperative purchasing agreement, the SDHC shall compare cost and availability annually to determine if the terms of the cooperative purchasing agreement continue to provide greater economy and efficiency and result in cost savings to the SDHC than a competitively procured contract.

15.4 PROCUREMENT OF EXCESS AND SURPLUS PROPERTY

The SDHC may use Federal or State excess and surplus property instead of purchasing new equipment and property if it is both (i) feasible, and (ii) will result in a reduction of cost to the SDHC.

16 AMENDMENT AND CANCELLATION OF SOLICITATIONS

16.1 AMENDMENT OF SOLICITATIONS

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A solicitation may be amended by the *Contracting Officer* when necessary any time before responses are due by issuing a written addenda. The *Contracting Officer* shall notify all potential *respondents* who were furnished a copy of the solicitation and include the addenda in all future copies of the solicitation distributed to potential *respondents*. If an amendment needs to be issued shortly before the scheduled due date for responses, the *Contracting Officer* and Director of Contract Management should consider postponing the due date to allow potential *respondents* to fully analyze the change and submit timely responses. Amendments to solicitations for *public works contracts* must be postponed in certain circumstances, (see Section 10.)

16.2 CANCELLATION OF SOLICITATION BEFORE RESPONSES ARE DUE

The SDHC may cancel a solicitation any time before responses are due if the SDHC determines cancellation is necessary or is in the best interest of the SDHC. The SDHC may also re-issue the solicitation when in its best interests.

16.3 CANCELLATION OF SOLICITATION AFTER RESPONSES

The SDHC may cancel a solicitation after the date responses are due and reject all responses received if any of the following exist:

- A. The goods or services (including construction and consulting) are no longer required;
- B. Ambiguous or otherwise inadequate *specifications* were part of the solicitation;
- C. All factors of significance to the SDHC were not considered;
- 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 responses may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
- F. For good cause of a similar nature when it is in the best interest of the SDHC.

16.4 METHOD OF CANCELLATION

A notice of cancellation shall be sent to all *respondents* that were given notice of the solicitation and those potential *respondents* who received a copy of the solicitation. If appropriate, the notice of cancellation shall explain whether potential *respondents* will be given an opportunity to compete on any resolicitation or future *procurement* of similar items. The *Contracting Officer*

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shall prepare written documentation of the reasons for the cancelation which shall be maintained in the contract file. The reasons for cancellation and/or rejection shall be provided to any potential *respondent* upon request.

17 DISPUTES AND PROTESTS

The SDHC is responsible for settling all contractual and administrative disputes arising out of *procurement* conducted by the SDHC.

17.1 FILING DEADLINES

- 17.1.1 **Protest of Solicitation:** Any protest against a solicitation issued by the SDHC must be received before the response submittal deadline.
- 17.1.2 **Protest of Award Based on Informal Solicitation:** Any protest against the award of a contract based on an informal solicitation must be received prior to award. It shall be the responsibility of *respondents* to contact the SDHC regarding the status of a contract award.
- 17.1.3 **Protest of Award Based on IFB:** Any protest arising out of the award of a contract resulting from an *IFB* must be received no later than five (5) business days after the bid submittal deadline.
- 17.1.4 **Protest of Award Based on RFP or RFQ:** Any protest arising out of the award of a contract from an *RFP* or *RFQ*, must be received no later than five (5) business days after notification to an unsuccessful *respondent* that they were not selected.
- 17.1.5 **Protest of SDHC's Rejection of Response:** Any protest of a decision by the SDHC to reject a response to formal solicitations (i.e. bid, proposal or qualifications) in response to a solicitation must be received no later than two (2) business days after being notified in writing of the SDHC's decision.
- 17.1.6 **Late Protests:** Protests that are not timely received in accordance with the applicable filing deadline set forth in this Section will not be considered.

17.2 FORM AND MANNER OF FILING PROTESTS

- 17.2.1 **Form:** All protests shall be in writing, be clearly identified as a "procurement protest" and be signed by the protesting party. Protests shall identify the

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solicitation at issue, contain a detailed statement of the basis for the protest and include any supporting evidence. Protests lacking signatures or detailed statements of the basis of the protest shall not be considered.

17.2.2 Manner of Filing: All protests shall be filed with the SDHC's Procurement Department located at 1122 Broadway, Suite 300, San Diego, CA 92101.

17.3 SDHC REVIEW OF PROTESTS

17.3.1 Initial Review: The Director of Contract Management shall review and investigate all properly and timely filed protests and issue a written decision to the protestor. The Director of Contract Management may, at his/her discretion, suspend the *procurement* pending resolution of the protest if the facts presented so warrant. The Director of Contract Management may request reasonable documentation from the protestor to support the protest. If the protestor fails or refuses to provide such documentation, the protest will be deemed waived.

17.3.2 Appeal: Any appeal of a formal decision by the Director of Contract Management must be received by the *Chief Executive Officer* within two business days of receipt of the written decision from the Director of Contract Management, or the appeal will not be considered. Appeals of a formal decision by the Director of Contract Management will be reviewed and investigated by the *Chief Executive Officer* who shall issue the SDHC's final decision.

17.3.3 SDHC Notifications: The SDHC's notification may be by any reasonable means, including but not limited to U.S. mail, electronic mail (e-mail), internet posting or facsimile. The effective date of notice by mail is the date that the notice is deposited in the mail. The effective date of all other means of notice is the date it is transmitted.

17.3.4 Documentation: Documentation of the protest process and resolution shall be maintained as part of the contract file.

17.4 CONTRACTUAL CLAIMS AND DISPUTES

17.4.1 Manner and Form of Claim: All claims relating to performance of a contract shall be submitted in writing to the Director of Contract Management for written determination. Claims shall clearly identify the contract at issue, contain a detailed statement of the legal basis for the claim and include any supporting

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evidence. Claims lacking signatures or detailed statements of the basis of the claim shall not be considered. Nothing in this Policy is intended to or shall modify any rights or obligations of the SDHC or a contractor under the California Government Claims Act (California Government Code section 810 et seq.).

- 17.4.2 Review of Claim:** The Director of Contract Management shall review and investigate all properly and timely filed claims and issue a written decision to the *contractor*.
- 17.4.3 Appeal:** Any appeal of a formal decision by the Director of Contract Management must be received by the *Chief Executive Officer* within two business days of receipt of the written decision from the Director of Contract Management, or the appeal will not be considered. Appeals of a formal decision by the Director of Contract Management will be reviewed and investigated by the *Chief Executive Officer* who shall issue the SDHC's final decision.
- 17.4.4 SDHC Notifications:** The SDHC's notification may be by any reasonable means, including but not limited to U.S. mail, electronic mail (e-mail), internet posting or facsimile. The effective date of notice by mail is the date that the notice is deposited in the mail. The effective date of all other means of notice is the date it is transmitted.
- 17.4.5 Documentation:** Documentation of the claim process and resolution shall be maintained as part of the contract file.

17.5 NOTIFICATION AND REVIEW BY HUD

The SDHC will notify HUD of disputes arising out of *procurement* implicating federal funds, but only when required by the HUD Regulations. Consistent with the HUD Regulations, HUD will not review any disputes unless they arise out of violations of federal law or regulations, or violations of this protest and dispute procedure.⁴³

18 CONTRACTING

18.1 DRAFTING AND EXECUTION OF CONTRACTS

The *Contracting Officer* shall draft the contract on the appropriate form provided by General Counsel and shall route the contract for approval by the Chief of Staff or his/her designee, the

⁴³ HUD Procurement Regulations, 24 CFR 85.36(b)(12).

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Director of Contract Management, Fiscal Department, and the General Counsel's office. After approval, the *Contracting Officer* shall route the original contract for execution by the *contractor*. For all construction contracts entered into by the SDHC valued at more than \$25,000, the *Contracting Officer* shall have the executed contract posted on the SDHC's website.⁴⁴

18.2 SELECTING A CONTRACT TYPE

The *Contracting Officer* shall determine the appropriate contract type, and when appropriate negotiate the appropriate contract type. Generally, contracts resulting from an informal solicitation shall be based either on a fixed price contract or cost reimbursement contract. Contracts resulting from *sealed bidding* shall be fixed price contracts, with either a firm price or an economic price adjustment. Contracts resulting from *competitive proposals* may be of any type or combination of types. In selecting a contract type, the *Contracting Officer* should consider fairness of competition, type and complexity of the contract, urgency and need of the SDHC, period of performance, the contractor's technical capability, financial responsibility and accounting systems, any subcontracting and the *procurement* history.

18.3 CONTRACT TYPES

18.3.1 Fixed Price Contracts: Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both.

18.3.2 Cost-reimbursement Contracts: Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the *contractor* may not exceed (except at its own risk) without the approval of the *Contracting Officer*. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

18.3.3 Indefinite Delivery Contracts: Indefinite delivery types of contracts provide for delivery of goods or services where the SDHC cannot determine either the quantity needs or the duration needed. The contract generally will provide for an indefinite quantity of goods or services to be provided to the SDHC for a fixed period of time, as needed by the SDHC.

⁴⁴ See SDMC §22.4401 et seq.

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18.3.4 Time and Materials Contracts: A time-and-materials contract provides for acquiring supplies and services on the basis of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and, materials at cost, including, if appropriate, material handling costs as part of material costs. A time-and-materials contract may be used only when the *Contracting Officer* has determined that no other type of contract is suitable and the contract includes a ceiling price that the *contractor* exceeds at his/her own risk.

18.3.5 Prohibited Contract Types: The SDHC shall not use cost-plus-a-percentage-of-cost or percentage-of-construction-cost methods of contracting.⁴⁵

18.4 CONTRACT DURATION

The length of any contract shall be limited to the time specified in the solicitation. The SDHC shall not extend a contract beyond the advertised period, except when good and sufficient reasons exist and such extension is approved by the Director of Contract Management. Generally, a supply or service contract shall be established for one to three years, with options to extend the contract for up to five total years, if the provisions of Section 18.4 are satisfied.

18.5 OPTIONS

Options for additional quantities or performance periods may be included in contracts, provided that all of the following are true:

- 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;
- 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

⁴⁵ See HUD Procurement Regulations, 24 CFR 85.36(f)(4); HUD Procurement Handbook §10.1

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G. The options may be exercised only if determined to be more advantageous to SDHC than conducting a new *procurement*.

18.6 CONTRACT PROVISIONS

All contracts shall identify the pricing arrangements as well as other pertinent terms and conditions and shall be in a form approved by General Counsel.

18.6.1 Federal Contract Provisions: Federally funded contracts shall contain contract language required by the *HUD Procurement Regulations*, when applicable, including but not limited to:

- A. Breach of Contract:** Administrative, contractual, or legal remedies for breach or violation of contract terms, sanctions and penalties, as appropriate.
- B. Termination:** Termination for cause and for convenience by the SDHC and basis of settlement.
- C. Equal Opportunity:** Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations, Chapter 60 of title 41 of the Code of Federal Regulations; applicable to construction contracts of \$10,000 or more.
- D. Copeland "Anti-Kickback" Act:** Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented by Department of Labor regulations (29 CFR part 3); applicable to all construction and repair contracts.
- E. Davis-Bacon Act:** Compliance with the Davis-Bacon Act as supplemented by Department of Labor regulations (29 CFR part 5); applicable to construction contracts in excess of \$2,000.
- F. Contract Work Hours and Safety Standards Act:** Compliance with Sections 103 and 107 of Contract Work Hours and Safety Standards Act (40 U.S.C. as supplemented by Department of Labor regulations (29 CFR part 5); applicable to construction contracts in excess of \$2,000 and other contracts in excess of \$2,500 which involve the employment of mechanics or laborers.

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- G. Reporting:** Notice of HUD's reporting requirements and regulations pertaining to reporting.
 - H. Patent Rights:** Notice of HUD's and the SDHC's rights to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
 - I. Copyright:** Notice of HUD's and the SDHC's rights and requirements pertaining to copyrights and rights in data.
 - J. Audit:** Authorizing access by the City of San Diego, the *Housing Authority*, the SDHC, HUD, and U.S. Comptroller General to records of the *contractor* which are directly related to the contract.
 - K. Records Retention:** Requires records be retained for 3 years from final payment.
 - L. Environmental Regulations:** Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and Environmental Protection Agency regulations.
 - M. Energy Efficiency:** Mandatory standards and policies related to energy efficiency.
 - N. Section 3:** Compliance with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) to ensure that employment and economic opportunities generated by HUD assistance are, to the greatest extent feasible, directed to low- and very-low-income persons.⁴⁶
 - O. Byrd Anti-Lobbying Amendment:** Compliance with the provisions of 31 U.S.C. 1352 and the Byrd Anti-Lobbying Amendment concerning the use of federal funds to influence or attempt to influence governmental behavior.
- 18.6.2 State Contract Provisions:** All contracts shall contain contract language required by the State, when applicable, including but not limited to:

⁴⁶ 24 CFR 135.32(b) requires recipients of funds subject to Section 3 to insert the Section 3 Clause at 24 CFR 135.38 in all solicitations and contracts for Section 3 covered projects.

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- A. **Preference for Domestic Materials:** Compliance with California Government Code sections 4303 and 4304 concerning the use of materials manufactured in United States.
- B. **Non-discrimination:** Compliance with non-discrimination requirements of state law, including California Government Code section 12990.
- C. **Drug-Free Workplace Act:** Certification that the *contractor* will provide a drug-free workplace in compliance with the California Drug-Free Workplace Act (California Government Code section 8350 et seq.).
- D. **Documents and Written Reports:** Compliance with Government Code section 7550 concerning *contractor's* preparation of documents and written reports for the SDHC.

18.7 BONDING

- 18.7.1 **Applicability:** The bond requirements set forth in this Section 18.7 apply to construction, *public works*, and facility improvement contracts anticipated to be more than \$100,000.⁴⁷ The bond requirements set forth in this Section 18.7 may be applied to construction, *public works* and facility improvement contracts of a lesser amount in the sole discretion of the SDHC. Generally, non-construction contracts do not require bonds; however, the SDHC may require bonds for *procurement* of a non-construction contract in its discretion when appropriate.
- 18.7.2 **Publication of Bonding Requirements:** If bonds are required, the *specifications* shall indicate the bonding and bid guarantee requirements applicable to the specific *procurement*.
- 18.7.3 **Contracts Using Federal Funds:** When bonds are required under this Section 18.7 for construction, *public works* and/or facility improvement contract, and the contract uses federal funds, the following bonds are required:
 - A. **Bid Guarantee:** A bid guarantee shall be required for all responses to solicitations for construction, facility improvements and *public works* contracts and when required by the solicitation. A bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable

⁴⁷ See 24 CFR 85.36(h) and section 6.11 of HUD Procurement Handbook 7460.8 Rev. 2, requiring bonding for construction contracts exceeding the simplified acquisition threshold (\$100,000).

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instrument accompanying a bid as assurance that the *respondent* will, upon the SDHC's acceptance of the bid, execute such contractual documents as may be required within the time specified. Each *respondent* shall be required to submit a bid guarantee equivalent to 5% of the bid price.

B. Contract Guarantee: For all construction, *public works* and facility improvement contract, the successful *respondent* shall be required to provide one of the following in addition to the bid guarantee:

- A *performance bond* and *payment bond* for 100% of the contract price;
- Separate *performance bond* and *payment bond*, each for 50% or more of the contract price;
- A 20% cash escrow; or
- A 25% irrevocable letter of credit.

The *Contracting Officer* shall select any one of the above contract guarantees and shall include the requirement in the solicitation. The requirements of this section are the minimum requirements and may be increased in the discretion of the SDHC.

18.7.4 Form of Bonds: Bonds required under this Section 18.7 shall be obtained from guarantee or surety companies acceptable to the U. S. Government, listed on U.S. Treasury Circular No. 570⁴⁸, and authorized to do business in the State of California. Individual sureties shall not be considered.

19 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.

⁴⁸ 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.

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20 ETHICS IN PUBLIC CONTRACTING

The SDHC hereby establishes this code of conduct regarding *procurement* issues and actions and may implement a system of sanctions for violations. This code of conduct is consistent with applicable federal, state and local law.

20.1 APPLICABLE ETHICS LAWS AND REGULATIONS

In the conduct of *procurement* on behalf of the SDHC, SDHC employees, officers and agents shall be aware of, and comply with when applicable, the following non-exclusive list of laws, regulations and advice, which are hereby incorporated by reference as part of these policies:

A. *HUD Procurement Regulations*

B. California Political Reform Act, Government Code section 87100 et seq.

C. California Government Code section 1090 et seq.

D. San Diego City Council Policy 000-04, "Code of Ethics and Ethics Training"

E. San Diego Ethics Ordinance – San Diego Municipal Code section 27.3501 et seq.

F. SDHC's Conflict of Interest Code, PO101.00

When procuring contracts not funded with federal funds, the federal requirements, noted in A above, shall not apply to the *procurement*. The San Diego Ethics Ordinance only applies to those employees, officers and agents required to file a Statement of Economic Interest (Form 700) under the SDHC's Conflict of Interest Code (PO101.000). Breaches of the ethical standards in this Section 20 may result in an SDHC employee, officer or agent being subject to disciplinary actions, consistent with the SDHC's policies and procedures.

20.2 CONFLICTS OF INTEREST

No employee, officer or agent of the SDHC or of the *Housing Authority* shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or

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apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by an employee, officer or agent involved in making the award or his/her spouse and/or dependent children.

20.3 GIFTS AND GRATUITIES

No officer, employee, or agent of the SDHC shall solicit or accept any gratuities, gifts, favors, rebates, kickbacks or anything of value from *contractors*, *respondents* or parties to any subcontract or subagreement with the SDHC, unless authorized by applicable law.

20.4 USE OF CONFIDENTIAL INFORMATION

No employee, officer or agent of the SDHC or of the *Housing Authority* shall knowingly use confidential information for his/her own or another's actual or anticipated personal gain.

20.5 FEES CONTINGENT ON SECURING SDHC CONTRACT

It is a breach of ethical conduct for a person to be retained to solicit or secure a contract with the SDHC upon an agreement or understanding that the person will receive a commission, percentage, brokerage, or contingent fee. This does not apply to bona fide employees or bona fide agencies established for the purpose of securing business.

20.6 EMPLOYMENT OF FORMER SDHC EMPLOYEES

A *contractor* shall not employ a former SDHC employee or official if during the twelve months immediately preceding such employment, the former SDHC employee or official, in his/her capacity as a SDHC employee or official, participated in negotiations with or otherwise had an influence on the selection or award of the contract between the SDHC and the *contractor*.

20.7 ORGANIZATIONAL CONFLICTS OF INTEREST

Any contractor retained by the SDHC, or voluntarily assisting the SDHC, to prepare or assisting the SDHC in preparing *specifications* or a *scope of work* for a formal or informal solicitation, shall be excluded from competing in the resulting *procurement*.

21 RECORDS AND DOCUMENTATION

POLICY

EFFECTIVE DATE: 1/22/98

NO: PO- PUR-373.01

REVISION HISTORY: 11/30/07; 5/15/09; 10/8/12

SUBJECT: STATEMENT OF PROCUREMENT POLICY

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The SDHC shall maintain sufficient records to detail the significant history of each *procurement*, including, but not limited to, the rationale for the method of *procurement*, selection of contract type and pricing arrangement, contract selection or rejection and reasonableness of price.

21.1 PROCUREMENT AND CONTRACT FILES

Procurement and contract files shall include, but shall not necessarily be limited to, the following:

- A. The rationale for the method of *procurement* selected, unless self evident from other documentation.
- B. The rationale of the contract pricing arrangement, unless self evident from other documentation.
- C. The reasons for accepting or rejecting any bids or offers.
- D. Basis for the contract price as prescribed in this policy, including the *ICE* and any price or cost analysis prepared.
- E. A copy of the contract documents awarded or issued by the *Contracting Officer*.
- F. A copy of the executed contract documents.
- G. If any contract modifications occur, the basis for such modifications and the price or cost analysis prepared justifying the modification.
- H. Documentation related contract administration actions.
- I. Copies of protests received, determinations issued by the SDHC, and appeals, if any.

21.2 RETENTION PERIOD

Records shall be retained for a period of three years after final payment and all matters pertaining to the contract are closed.⁴⁹ If any claims or litigation are involved, the records shall be retained until all issues are satisfactorily resolved.

21.3 PUBLIC RECORDS

⁴⁹ 24 CFR 85.36(b)(9); see also section 3.3 of HUD Handbook No. 7460.8 Rev. 2.

POLICY

EFFECTIVE DATE: 1/22/98

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Procurement information shall be a matter of public record to the extent required by the California Public Records Act, and will be made available upon request and as provided in that statute.⁵⁰ The SDHC may charge 15 cents per page for each photocopy of public records requested (25 cents per double-sided page). Public records requests should be submitted and processed through the SDHC's Community Relations and Communications Department.

22 DISPOSITION OF SURPLUS PROPERTY

Disposition of surplus property shall be made pursuant to Housing Commission Policy 202.000 "Disposition of Excess, Lost, Stolen and Abandoned Property", and as authorized by applicable federal and state law.⁵¹

23 SELF-CERTIFICATION

The SDHC self-certifies that this Procurement Policy and the SDHC's *procurement* system meets the standards under the *HUD Procurement Regulations* (24 CFR 85.36) and the essential requirements of the HUD Procurement Handbook, as applicable, and as such, the SDHC is exempt from prior HUD review and approval of individual *procurement* actions.

Approved:

Jennifer Adams-Brooks
Executive Vice President & Chief of Staff

Date

⁵⁰ Cal. Government Code §6250 et seq.

⁵¹ See also, Health & Saf. C. §34315