



POLICY

EFFECTIVE DATE: 7/30/24 NO: PO-PUR-373.01
REVISION HISTORY: 11/30/07; 5/15/09; 10/8/12; 1/31/17; 7/30/24
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. (Housing Authorities Law)
- B. California Public Contracts Code §20160 et seq. (as applicable)
- C. California Labor Code §1720 et seq. (Prevailing Wages)
- D. California Government Code §7920.000 et seq. (Public Records Act)

1.2.3 Local Law: Certification for Public Disclosure is required for all contracts including sole source and non-competitive contracts.

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

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- G. Real estate purchases, which can be accomplished through a licensed broker and/or pursuant to SDHC Policy PO-“RED-374.02 “Real Estate Acquisition Policy”.
- 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”.
- I. Licenses and right of entry agreements.

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 for these excluded items.

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.

1.4 DELEGATION OF CONTRACTING AUTHORITY

The *Chief Executive Officer* may delegate authority under this Policy, as necessary. The *Chief Executive Officer* may establish operational procedures and/or administrative regulations to implement this Procurement Policy, as needed.

2 DEFINITIONS

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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.

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

2.6 CONTRACTING OFFICER

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

2.7 CONTRACTOR

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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 2 CFR Part 200, 24 CFR Part 200 and to Section 85.36 of Title 24 of the Code of Federal Regulations, to the extent still applicable, 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*.

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

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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.

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 guarantee the full performance of all of the *contractor’s* obligations under the contract, and is typically required in construction, facility improvements, and *public works* contracts.

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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 \$250,000, 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 \$250,000, 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. For *RFQs* for *A/E Consultant* services in the amount of \$250,000 or less, a formally advertised selection process need not be utilized as long as efforts are undertaken to assure that any procurement of such services is competitive and reasonable in cost.

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.

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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 9 “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.

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

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“*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.

3.2 EXPENDITURE AND APPROVAL AUTHORITY

The Approval Authority to award a contract shall not exceed five years and the annual limit on the contract price as set forth below:

Table 3.2 “Approval Authority”

	APPROVAL AUTHORITY		
	CHIEF EXECUTIVE OFFICER	SDHC BOARD	HOUSING AUTHORITY
GOODS AND SERVICES	\$250,000 or less	More than \$250,000	When required by SDMC Section 98.0301
MAINTENANCE AND PUBLIC WORKS CONTRACTS	\$250,000 or less	\$500,000 or less ¹	When required by SDMC Section 98.0301

¹ 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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CONSULTANTS	\$250,000 or less	More than \$250,000	When required by SDMC Section 98.0301
A/E CONSULTANTS	\$250,000 or less	More than \$250,000	When required by SDMC Section 98.0301
SERVICES FROM NON-PROFIT OR AGENCY	\$250,000 or less	More than \$250,000	When required by SDMC Section 98.0301

3.3 ADMINISTRATIVE REGULATIONS

The *Chief Executive Officer*, or designee, 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. The method and degree of analysis depends on the facts surrounding the particular *procurement* situation.

4.1 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.

5 ENSURING RESPONSIVE AND RESPONSIBLE CONTRACTORS

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5.1 RESPONSIVENESS

To be responsive to bid or proposal, 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. 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 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

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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 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.

6 ASSISTANCE TO SMALL AND OTHER BUSINESSES

6.1 DIVERSITY IN CONTRACTING

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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. 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. 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

7.1 FULL AND OPEN COMPETITION

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

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;

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- 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.

7.3 SOLICITATION REQUIREMENTS

The *Contracting Officer* shall solicit each contract as outlined in the table below based on the annual spending limit of the contract:

Table 7.3 “Procurement Methods”

	INFORMAL SOLICITATION		FORMAL SOLICITATION		NON-COMPETITIVE
PROCUREMENT OF:	SINGLE QUOTE	MULTIPLE QUOTES (NOT LESS THAN THREE (3) WRITTEN QUOTES)	SEALED BIDS (IFB)	COMPETITIVE PROPOSALS (RFP OR RFQ)	SOLE SOURCE
CONSULTANTS	\$50,000 or less	\$More than \$50,000 but not exceeding \$250,000	N/A	More than \$250,000	When permitted under any applicable law including without limitation. See Section 9.
A/E CONSULTANTS	\$50,000 or less	More than \$50,000 but not exceeding \$250,000	N/A	More than \$250,000	

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PUBLIC WORKS AND ROUTINE MAINTENANCE	\$50,000 or less	May be used for \$200,00 or less	More than \$200,000	More than \$250,000	
GOODS AND SERVICES	\$50,000 or less	More than \$50,000 but not exceeding \$250,000	More than \$250,000	More than \$250,000	

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”.

7.5 INFORMAL SOLICITATION/SMALL PURCHASES

- 7.5.1 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”.
- 7.5.2 One Quote (\$50,000 or Less):** For the *procurement* of all contracts in excess of the petty cash amount but not more than \$50,000, 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*.
- 7.5.3 Multiple Quotes (All Contracts, except *Public Works & Maintenance* Contracts, that are more than \$50,000 but does not exceed \$250,000; *Public Works & Maintenance* Contracts over \$50,000 but does not exceed \$200,000):** Not less than three (3) written price or rate quotations must be obtained from qualified sources for the *procurement* costing more than \$50,000, but not exceeding \$250,000 and for *public works & maintenance* contracts more than \$50,000, but not exceeding \$200,000. The contract award shall be made to the *respondent* with the lowest acceptable quotation, unless the selection of another

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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*.

7.6 FORMAL SOLICITATION (REQUEST FOR INFORMATION)

A Request for Information (RFI) is a formal process for gathering information from potential suppliers of a good or service. It is a solicitation document used to obtain general information about products, services, or suppliers. Since a RFI is an information request, the advertisement will not lead to a binding agreement by amongst the parties and is often used prior to specific requisitions for items.

7.7 FORMAL SOLICITATION (INVITATION FOR BIDS)

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 procedure set forth in this Section 7.7 applies to the *procurement* of *public works contracts, maintenance* contracts and contracts for goods and services .

7.7.1 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 7.8. However, *public works & maintenance* contracts should be awarded using an *IFB* unless the project meets the criteria set forth in section 7.8_ below.

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- 7.7.2 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.
- 7.7.3 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*.
- 7.7.4 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.
- 7.7.5 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.
- 7.7.6 Award:** A firm fixed-price contract shall be made to the lowest responsive and responsible *respondent*, see Section 5 “Ensuring Responsive and Responsible *Contractors*”.
- 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.

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- 7.7.7 Modification of Bids before Bid Opening:** *Respondents* may withdraw or modify their bids by written notice to the *Contracting Officer* any time prior to bid opening.
- 7.7.8 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. 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.
- 7.7.9 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 either determined to be a non-responsible bidder or debarred bidder. Rejection of any bid during the evaluation process shall be fully documented, including all reasons for the rejection.

7.8 FORMAL SOLICITATION (REQUEST FOR PROPOSALS)

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 applies to *procurement of consultant* contracts of more than \$250,000. This procedure may also be appropriate for the *procurement of public works and maintenance contractors* when the SDHC desires to evaluate *respondents* on more than price for fully federally funded contracts.

- 7.8.1 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.

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- 7.8.2 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.
- 7.8.3 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.
- 7.8.4 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.
- 7.8.5 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.
- 7.8.6 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. 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.
- 7.8.7 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*

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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. 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.

7.8.8 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.

7.8.9 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".

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

7.9 FORMAL SOLICITATION (QUALIFICATIONS-BASED SELECTION)

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*.

7.9.1 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

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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.

- 7.9.2 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.
- 7.9.3 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.
- 7.9.4 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.
- 7.9.5 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. *Respondents* shall be evaluated and ranked based on their qualifications with respect to the project. Price shall not be used as a selection factor. 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*.
- 7.9.6 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.

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- 7.9.7 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.
- 7.9.8 Procurement of Construction Project Management Services:** The procedure set forth in this Section 7.9 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*.

7.10 FORMAL SOLICITATION (REQUEST FOR PROPOSALS 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*. The Commission may only utilize Design-Build contracting as expressly authorized by federal law or any revision to state law as advised by General Counsel.

7.10.1 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.

7.10.2 Contents of the Solicitation

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Based on the *specifications* prepared in Section 7.8.1, 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:

- 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*.

7.10.3 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

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information on the revocation or suspension of any license, credential, or registration.

- 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 \$100,000.
 - (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

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

7.10.4 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*.

- 7.10.5 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 13.4 "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.

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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 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.

8 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 the sum of \$25,000.

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.

9 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.

9.1 PROCURING SERVICES FROM NON-PROFIT ORGANIZATIONS AND AGENCIES

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

9.1.2 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:

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- 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 \$1,000,000 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 22.3210, 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.

9.2 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, 2 CFR Part 200 and 24 CFR Part 200, to the extent applicable.

9.2.1 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:

- 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

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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.

9.2.2 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 bid or proposal may be negotiated.

9.2.3 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*.

9.2.4 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;

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*;

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

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G. Signature by the *Contracting Officer* and the Director of Contract Management.

9.2.5 Approval: The justification shall be approved in writing by the responsible *Contracting Officer*, an Executive Vice-President, or the Vice President, or designee, of the department requesting *procurement* through a noncompetitive process, and the Director of Procurement Operations. Such approvals shall be maintained in the contract file.

9.3 SOLE SOURCE CONTRACTS USING NON-FEDERAL FUNDS

9.3.1 Conditions for Use: A *sole source contract* and noncompetitive *procurement* may be used only when compliance with the competitive process would be unavailing or not produce an advantage (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.

9.3.2 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.

9.3.3 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*.

9.3.4 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. 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;

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- 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.

9.3.5 Approval: The justification shall be approved in writing by the responsible *Contracting Officer*, an Executive Vice President, or designee, of the department requesting *procurement* through non-competitive process, and the Director of Procurement Operations. Such approvals shall be maintained in the contract file.

10 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. 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. In addition, the SDHC is encouraged to utilize Job Order Contracts, as and when applicable and in the best interests of SDHC.

10.1 PROCUREMENT OF EXCESS AND SURPLUS PROPERTY

The SDHC may use Federal, State, or another public agencies' 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.

11 AMENDMENT AND CANCELLATION OF SOLICITATIONS

11.1 AMENDMENT OF SOLICITATIONS

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

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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.

11.2 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.

11.3 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.

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

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12 DISPUTES AND PROTESTS

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

12.1 FILING DEADLINES

- 12.1.1 Protest of Solicitation:** Any protest against a solicitation issued by the SDHC must be received before the response submittal deadline.
- 12.1.2 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.
- 12.1.3 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. The protest must clearly state the legal and factual arguments claimed for the protest.
- 12.1.4 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.
- 12.1.5 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.
- 12.1.6 Late Protests:** Protests that are not timely received in accordance with the applicable filing deadline set forth in this Section will not be considered.
- 12.1.7 Protest of Determination of Non-Responsibility:** Any protest of the Contracting Officer's determination that a respondent is not a responsible bidder shall be received within five (5) business days after the determination. The protest must state a basis of the protest and why the Contractor is a responsible bidder.

12.2 FORM AND MANNER OF FILING PROTESTS

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12.2.1 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 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.

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

12.3 SDHC REVIEW OF PROTESTS

12.3.1 Initial Review: An Executive Vice-President, or designee, 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.

12.3.2 Appeal: Any appeal of a formal decision by an Executive Vice President, or designee, must be received by the *Chief Executive Officer* within two business days of receipt of the written decision from an Executive Vice President, or designee, or the appeal will not be considered. Appeals of a formal decision by an Executive Vice President, or designee, will be reviewed and investigated by the *Chief Executive Officer* who shall issue the SDHC’s final decision.

12.3.2.1 Appeal of Non-Responsibility Determination. Upon receipt of an appeal of a Contractor’s appeal of a non-responsibility determination, the Director of Procurement Operation shall notify the contractor that a three-member panel will hear the contractor’s appeal and make a final determination as to whether the Contractor has the necessary quality, fitness and capacity to perform the work for the Commission. The panel’s decision shall be final and exhaust the Contractor’s administrative remedies.

12.3.3 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

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deposited in the mail. The effective date of all other means of notice is the date it is transmitted.

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

12.4 CONTRACTUAL CLAIMS AND DISPUTES

12.4.1 Manner and Form of Claim: All claims relating to performance of a contract shall be submitted in writing to an Executive Vice President, or designee, 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 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.).

12.4.2 Review of Claim: An Executive Vice President, or designee, shall review and investigate all properly and timely filed claims and issue a written decision to the *contractor*.

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

12.4.4 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.

12.4.5 Documentation: Documentation of the claim process and resolution shall be maintained as part of the contract file.

12.4.6 Construction Claims. All claims relating to the performance of a Construction Contract, shall follow the dispute resolution process set forth in contract in accordance with California Public Contract Code section 9204.

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12.5 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.

13 CONTRACTING

The SDHC shall not use cost-plus-a-percentage-of-cost or percentage- of-construction-cost methods of contracting.

13.1 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 13.3 are satisfied.

13.2 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

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

13.3 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.

13.3.1 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.
- 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.
- P.** Any and all other provisions required by 2 CFR Part 200 and 24 CFR Part 200, as amended from time to time.

13.3.2 State Contract Provisions: All contracts shall contain contract language required by the State, when applicable, including but not limited to:

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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.

13.4 BONDING

- 13.4.1 Applicability:** The bond requirements set forth in this Section apply to construction, *public works*, and facility improvement contracts . The bond requirements set forth in this Section 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.
- 13.4.2 Publication of Bonding Requirements:** If bonds are required, the *specifications* shall indicate the bonding and bid guarantee requirements applicable to the specific *procurement*.
- 13.4.3 Contracts Using Federal Funds:** When bonds are required under this Section 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 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

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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 contracts in excess of \$100,000, the successful *respondent* shall be required to provide a *performance bond* for 100% of the contract price.
- C. Subcontractors, Laborers, & Material Suppliers Guarantee:** For all construction, public works and facility improvement contracts in excess of \$25,000, the successful respondent shall be required to provide a payment bond for 100% of the contract price.

- 13.4.4 Form of Bonds:** Bonds required under this Section shall be obtained from guarantee or surety companies acceptable to the U. S. Government, listed on U.S. Treasury Circular No. 570, and authorized to do business in the State of California. Individual sureties shall not be considered.

14 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.

15 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.

15.1 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.

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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 *HUD Procurement Regulations* listed in A. above, shall not apply to the *procurement*. The San Diego Ethics Ordinance only applies to those employees, officers and consultants 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 may result in an SDHC employee, officer or consultant being subject to disciplinary actions, consistent with the SDHC’s policies and procedures.

15.2 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 apparent, would be involved. Such conflict would arise when a financial interest or other prohibited 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.

15.3 STATEMENT OF ECONOMIC INTEREST

Certain *A/E Consultants* and *Non-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. Such *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.

15.3.1 Consultants Required to Make Disclosures: A *Consultant* who is required to make disclosures is an individual who, pursuant to a contract with the SDHC makes a governmental decision, assists staff in making 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).

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15.3.2 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. 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. In addition, the *Consultant* shall complete all ethics training as required by City of San Diego Council Policy No. 000-04.

15.4 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 sub agreement with the SDHC, unless authorized by applicable law.

15.5 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.

15.6 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.

15.7 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*.

15.8 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*.

16 RECORDS AND DOCUMENTATION

POLICY

EFFECTIVE DATE: 7/30/24

NO: PO- PUR-373.01

REVISION HISTORY: 11/30/07; 5/15/09; 10/8/12; 1/31/17; 7/30/24

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.

16.1 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.

16.2 RETENTION PERIOD

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

16.3 PUBLIC RECORDS

POLICY

EFFECTIVE DATE:7/30/24NO: PO- PUR-373.01

REVISION HISTORY:11/30/07; 5/15/09; 10/8/12; 1/31/17; 7/30/24

SUBJECT:STATEMENT OF PROCUREMENT POLICY

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. 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.

17 DISPOSITION OF SURPLUS PROPERTY

Disposition of surplus property shall be made pursuant to Housing Commission Policy on the “Disposition of Excess, Lost, Stolen and Abandoned Property”, and as authorized by applicable federal and state law.

18 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 200, 2 CFR Part 200, and, to the extent applicable 24 CFR Section 85.6) 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:

signed by:

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Jeff Davis

Jeff Davis

Deputy Chief Executive Officer

8/13/2024

Date