



District of Columbia Housing Authority

1133 North Capitol Street N.E.,
Washington, DC 20002-7599
(202) 535-1000 | dchousing.org

Brenda Donald, Executive Director

March 7, 2023

Via Electronic Delivery

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue NW, Suite 504
Washington, D.C. 20004

Re: Proposed Resolution to Approve Procurement Regulations of the District of Columbia Housing Authority-- "District of Columbia Housing Authority Procurement Regulations Approval Resolution of 2023"

Dear Chairman Mendelson:

On behalf of the District of Columbia Housing Authority (DCHA), enclosed please find the proposed Procurement Regulations for the District of Columbia Housing Authority as required by District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105), D.C. Code 6-219.

The proposed regulations are being forwarded for a 45-day period of review. If the Council of the District of Columbia does not approve or disapprove the proposed regulations, in whole or in part, by resolution within the 45-day review period, the regulations shall be deemed approved.

Please feel free to contact my Chief of Staff, Jenna Cevasco at jcevasco@dchousing.org or (202) 384-0385 if anything further is needed to introduce the resolution for approval by the Council.

Sincerely,

A handwritten signature in blue ink that reads "Brenda Donald".

Brenda Donald
Executive Director

Enclosures

cc: Councilmember Robert White
Nyasha Smith
Jenna Cevasco
Rachel Molly Joseph



Chairman Mendelson at the request of
the District of Columbia Housing
Authority

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To obtain approval of the proposed procurement regulations submitted by the District of Columbia Housing Authority.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this resolution may be cited as the "District of Columbia Housing Authority Procurement Regulations Approval Resolution of 2023."

Sec. 2. Pursuant to Section 20 of the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105) and D.C. Code 6-219, the Council of the District of Columbia has reviewed and approved the proposed Procurement Regulations submitted by the District of Columbia Housing Authority.

Sec. 3. The Secretary of the Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to both the District of Columbia Housing Authority and the Mayor of the District of Columbia.

Sec. 4. This resolution shall take effect immediately.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

Procurement and Contracting for Federal Funds

The Board of Commissioners of the District of Columbia Housing Authority (DCHA), pursuant to the authority set forth in the District of Columbia Housing Act of 1999 (the “Act”), effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code §§ 6-203 (12), and (16) hereby gives notice of its intent to adopt a proposed rulemaking set forth in a new Chapter 72 (Procurement and Contracting for Federal Funds), of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the proposed rulemaking is to formally establish the District of Columbia Housing Authority Procurement and Contracting Policy governing procurement and contracting for federal funds.

The Board of Commissioners of DCHA gives notice of intent to take rulemaking action to adopt these proposed regulations as final in not less than thirty (30) days from the date of publication of this notice in the *District of Columbia Register*.

Chapter 72 (Procurement and Contracting for Federal Funds) of Title 14 (Housing) is added and shall read as follows:

CHAPTER 72 PROCUREMENT AND CONTRACTING FOR FEDERAL FUNDS

7200 GENERAL PROVISIONS

7200.1 The District of Columbia Housing Authority (DCHA) Procurement and Contracting Policy applies to purchasing and contracting activities by DCHA with funds from the federal government (Federal Funds). In light of the need for DCHA to conduct procurements with Federal Funds expeditiously and in accordance with rules issued by the United States Department of Housing and Urban Development (HUD), the District of Columbia Council (D.C. Council) has determined that D.C. Code, §1-204.61 and §2-352.02, which require D.C. Council approval of contracts in excess of one million dollars (\$1,000,000) and of contracts that are multi-year, does not apply to DCHA procurements involving Federal Funds. For purchasing and contracting funded by the District of Columbia government (D.C. Funds), DCHA follows the requirements of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-351.01 et seq.).

7200.2 The provisions of this chapter are designed to:

- (a) Establish a procurement and contracting system of quality and integrity;

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

7200.3 Except as otherwise provided in this chapter, DCHA has the authority and responsibility to promulgate policies, procedures, and guidelines consistent with federal and D.C. law, governing the procurement, management, control, and disposal of any and all supplies, services, and construction being procured by DCHA.

7200.4 This chapter applies to contracts for the procurement of supplies, services, and construction funded by Federal Funds entered into by DCHA after the effective date of this chapter.

7200.5 This chapter applies to contracts for the procurement of supplies, services, and construction funded by Federal Funds entered into after the effective date of this chapter.

7200.6 Nothing in this chapter shall prevent DCHA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with the law and this chapter.

7200.7 When both Federal Funds and non-Federal Funds, such as D.C. Funds, are used for a project, the work to be accomplished with the funds shall be separately identified before procurement so that appropriate requirements can be applied, if necessary.

7200.8 If it is not possible to separate the Federal Funds and non-Federal Funds for the work to be identified as Federal Funds or non-Federal Funds, then this chapter shall be applied to the total project.

7200.9 Procurement information is a matter of public record to the extent provided in the District of Columbia Freedom of Information Act and is available to the public as

provided in that statute to the extent that such disclosure does not interfere with an active procurement.

- 7200.10 DCHA shall maintain records sufficient to detail the history of procurement, including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- 7200.11 DCHA shall conduct procurement activities in a manner providing for full and open competition.
- 7200.12 To ensure objective evaluation of contractor performance and eliminate an unfair competitive advantage, any contractor that develops or drafts specifications, requirements, statements of work, or invitations for bids or requests for proposals for a procurement shall be excluded from competing for that specific procurement.
- 7200.13 DCHA shall not engage in the following actions that are considered to be restrictive of competition:
- (a) Placing unreasonable requirements on firms for them to qualify to do business;
 - (b) Requiring unnecessary experience and excessive bonding;
 - (c) Allowing noncompetitive pricing practices between firms or between affiliated companies;
 - (d) Allowing noncompetitive contracts to consultants that are on retainer contracts;
 - (e) Allowing organizational conflicts of interest;
 - (f) Specifying only a “brand name” product instead of allowing an equal product to be offered;
 - (g) Describing the performance or other relevant requirements of the procurement; and
 - (h) Any arbitrary action in the procurement process.
- 7200.14 Except as otherwise provided in Federal Standards, HUD regulations, or this chapter, a contract which is entered into in violation of Federal Standards, HUD regulations, and this chapter is void.
- 7200.15 This chapter does not govern administrative fees earned under the Section 8 voucher program, the award of vouchers under the Section 8 program, the

execution of landlord Housing Assistance Payments (HAP) contracts under that program, or non-program income (such as fee-for-service revenue under 24 CFR Part 990).

- 7200.16 The excluded areas in §7200.15 are subject to applicable D.C. local law.
- 7200.17 DCHA shall ensure there are sufficient funds available to cover the anticipated cost of a procurement action (as well as the awarded contract and any subsequent modification) before initiating any procurement.
- 7200.18 If an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent it is inconsistent with this chapter, supersede this chapter.
- 7200.19 DCHA self-certifies that this chapter and the DCHA's procurement system complies with all applicable federal regulations and, as such, DCHA is exempt from prior HUD review and approval of individual procurement actions.
- 7200.20 Property no longer necessary for the DCHA's purposes (non-real property) shall be transferred, sold, or disposed of following applicable HUD regulations and federal and D.C. laws.

7201 PROCUREMENT AUTHORITY AND ADMINISTRATION

- 7201.1 DCHA is authorized to:
- (a) Adopt and administer its own procurement and contracting policies and procedures; and
 - (b) Enter into contracts, joint ventures, or other cooperative arrangements with D.C., the federal government, other public entities, or private entities in furtherance of its purposes.
- 7201.2 The Board of Commissioners shall promulgate procurement regulations and review and approve all contracts for goods and services having a value of more than two hundred fifty thousand dollars (\$250,000) in an open session of the Board of Commissioners.
- 7201.3 The Board of Commissioners shall not be directly involved in vendor or contractor selection or with the administration of contracts.
- 7201.4 The Executive Director may delegate procurement and contracting functions to the Director of the DCHA Office of Administrative Services.
- 7201.5 The Director of the DCHA Office of Administrative Services, or such other delegate as the Executive Director may appoint from time to time, shall be the Contracting Officer for DCHA.

- 7201.6 All procurement transactions shall be administered by the Executive Director or the Contracting Officer.
- 7201.7 A DCHA contract is not valid unless signed by the Executive Director or the Contracting Officer.
- 7201.8 Deeds, leases, notes, and bonds shall only be executed by the Executive Director.
- 7201.9 The signature of the Executive Director, or the Contracting Officer, on a DCHA contract is a legal commitment of DCHA which requires continuing performance by the Contracting Officer on behalf of DCHA, or performance by DCHA through the Contracting Officer, under the terms of the contract.
- 7201.10 Each delegation of contracting authority from the Executive Director to the Contracting Officer under §7201 shall be in writing and shall include the following instructions:
- (a) The limitations on the scope of delegated authority to be exercised;
 - (b) The limitations on the authority set forth in applicable laws and regulations; and
 - (c) The signature of the Executive Director.
- 7201.11 The individual being delegated contracting authority shall not presume any greater contracting authority than the authority provided.
- 7201.12 Termination of a Contracting Officer's appointment shall be in writing unless the written delegation or modification of authority contains a provision for automatic termination or expiration.
- 7201.13 The termination of a Contracting Officer's appointment shall not operate retroactively.
- 7201.14 The Contracting Officer is responsible for the following actions:
- (a) Using sound judgment to accomplish DCHA's procurement activity;
 - (b) Ensuring businesses and contractors are treated fairly;
 - (c) Confirming contract actions are compliant with this chapter and applicable federal and D.C. law;
 - (d) Complying with all ethical standards; and
 - (e) Seeking the best value and greatest overall benefit to DCHA.

7202 PROCUREMENT METHODS

7202.1 DCHA may use any of the following procurement methods:

- (a) Simplified Acquisition Methods;
- (b) Sealed Bidding;
- (c) Competitive Proposals;
- (d) Noncompetitive Proposals (such as Unsolicited Proposals);
- (e) Cooperative Agreements;
- (f) Qualifications Based Procurement; and
- (g) Mixed Finance Procurement.

7202.2 The procurement method used by DCHA shall be determined based on the nature and anticipated dollar value of the total requirement.

7202.3 DCHA shall provide interested potential contractors an opportunity to be included on a Bidders List.

7202.4 Any Bidders List used in the procurement of supplies and services shall be kept current and include a sufficient amount of bidders to ensure competition.

7202.5 Any DCHA solicitation e-mail list of potential contractors shall include the Bidders List.

7202.6 DCHA may provide an opportunity to be included on a Qualified Bidders' List to responsible, responsive potential contractors within the competitive range.

7202.7 Potential contractors may remain on the Qualified Bidders' List for a period not exceeding two (2) years.

7202.8 Bidders are required to submit the following documents for any construction contract exceeding one hundred fifty thousand dollars (\$150,000):

- (a) A bid guarantee equivalent to five percent (5%) of the bid price;
- (b) A performance bond for one hundred percent (100%) of the contract price; and
- (c) A payment bond for one hundred percent (100%) of the contract price.

7202.9 More flexible bonding requirements than the requirements in §7202.8 may be used if permitted or approved by HUD.

7203 SIMPLIFIED ACQUISITION METHODS

7203.1 DCHA may use the simplified acquisition methods in §7203 for the purchase of goods or services that do not exceed one hundred fifty thousand dollars (\$150,000).

7203.2 DCHA has the following four (4) types of simplified acquisition methods:

- (a) Purchases equal to or less than one hundred dollars (\$100) (Petty Cash Purchases);
- (b) Purchases between one hundred one dollars (\$101) and three thousand dollars (\$3,000) (Micro-Purchase Level 1);
- (c) Purchases between three thousand one dollars (\$3,001) and ten thousand dollars (\$10,000) (Micro-Purchase Level 2);
- (d) Purchases between ten thousand one dollars (\$10,001) and one hundred fifty thousand dollars (\$150,000) (Small Purchase).

7203.3 Contract requirements shall not be artificially divided to constitute a Simplified Acquisition method under §7203.

7203.4 DCHA's petty cash account may be utilized to meet the immediate and unplanned need for minor or emergency expenditures not exceeding one hundred dollars (\$100).

7203.5 DCHA's petty cash account shall not be used to pay a vendor invoice or payroll expenses.

7203.6 Whenever possible, other methods of disbursement, such as a check, should be used instead of the DCHA petty cash account.

7203.7 Only one (1) price quote is required if the price quote is considered reasonable.

7203.8 The Contracting Officer shall ensure that:

- (a) The petty cash account is established with sufficient funds to cover very small purchase made during a reasonable period (such as one (1) month);
- (b) Security is maintained for the petty cash account with only authorized individuals have access to the petty cash account; and
- (c) The petty cash account is periodically reconciled and replenished by submission of a voucher to the DCHA Office of Financial Management.

- 7203.9 DCHA shall require only one (1) price quote if the price is considered reasonable for Micro-Purchase Level 1 (as defined in § 7203.2(b)) purchases.
- 7203.10 Micro-Purchase Level 1 purchases shall be distributed equitably among qualified sources.
- 7203.11 If practicable, DCHA shall solicit a price quotation from another qualified source for a Micro-Purchase Level 1 purchase before DCHA places a repeat order with a prior contractor.
- 7203.12 DCHA shall solicit, orally or in writing, no less than three (3) offerors to submit a price quotation for a Micro-Purchase Level 2 (as defined in §7203.2(c)) purchase.
- 7203.13 The Contracting Officer shall receive information regarding a Micro-Purchase Level 1 or Micro-Purchase Level 2 purchase prior to soliciting quotes.
- 7203.14 DCHA shall take the following steps for a proposed Micro-Purchase Level 1 and Micro-Purchase Level 2 purchase:
- (a) For oral quotations, DCHA shall document the names, addresses and telephone numbers of each offeror, the persons contacted, and the date and amount of each quotation;
 - (b) Written quotations must be on the offeror's letterhead and signed by an individual with authority to bind the offeror;
 - (c) The solicitation is not required to be advertised on the DCHA website;
 - (d) The award shall be made to the offeror providing the lowest acceptable quotation, unless justified in writing based on another specified factor;
 - (e) DCHA shall disclose all non-price factors to all offerors DCHA solicited if non-price factors are used in the award;
 - (f) The Contracting Officer shall determine the price is reasonable based on research, experience, purchase history, and other relevant information;
 - (g) The Contracting Officer's staff will maintain the quotations as a public record; and
 - (h) The record supporting the purchase shall be maintained for a minimum of three (3) years.
- 7203.15 DCHA shall solicit no less than three (3) offerors to submit price quotations for a Small Purchase (as defined in §7203.2(d)).

7203.16 DCHA shall use a Request for Quotation or a Letter of Solicitation from the DCHA Office of Administrative Services to solicit an offeror to submit a price quotation for a Small Purchase.

7203.17 DCHA shall take the following steps for a Small Purchase:

- (a) The solicitation must be in writing, but is not required to be advertised on the DCHA website;
- (b) The Contracting Officer shall determine an adequate number of qualified offerors have provided price or rate quotations to DCHA;
- (c) The Contracting Officer shall confirm the following:
 - (1) The offeror's quotation is on the offeror's letterhead;
 - (2) The offeror's quotation is signed by an individual with authority to bind the offeror; and
 - (3) The offeror's quotation is in conformance with the requirements of the Request for Quotations or the Letter of Solicitation;
- (d) The award shall be made to the offeror providing the lowest acceptable quotation, unless justified in writing based on another specified factor;
- (e) DCHA shall disclose all non-price factors to all offerors DCHA solicited if non-price factors are used in the award;
- (f) The Contracting Officer's staff will maintain the quotations as a public record; and
- (g) The record supporting the purchase shall be maintained for a minimum of three (3) years.

7203.18 The Simplified Acquisitions in §7203 are subject to Bid Protests, contract disputes, §7229, and §7230.

7204 SEALED BIDDING

7204.1 Contracts in excess of one hundred fifty thousand dollars (\$150,000) shall be awarded based on competitive sealed bidding provided the following conditions are present:

- (a) A complete, adequate, and realistic specification or purchase description is available;

- (b) Two (2) or more responsible bidders are willing and able to compete effectively for the work;
- (c) A Firm Fixed Price Contract may be awarded for the procurement;
- (d) The selection of the successful bidder may be awarded principally on the basis of price; and
- (e) The contract is not for professional services.

7204.2 Sealed bidding is the preferred method for a construction contract.

7204.3 Sealed bidding shall be used for all construction and equipment contracts that exceed one hundred fifty thousand dollars (\$150,000).

7204.4 DCHA shall publicly advertise an IFB containing the specifications and all contractual terms and conditions applicable to the procurement.

7204.5 DCHA shall solicit IFBs from an adequate number of sources and provide the sources with sufficient time to respond.

7204.6 An IFB shall define relevant terms and include any specific conditions or attachments.

7204.7 An IFB shall include the following terms:

- (a) A statement that a Firm Fixed Price Contract award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the IFB;
- (b) The time and place for both the receipt of bids and the public bid opening;
- (c) Upon DCHA's receipt, bid packages shall be time-stamped, but not opened, and shall be stored in a secure place until bid opening;
- (d) A bidder may withdraw its bid at any time prior to bid opening; and
- (e) If equal low bids are received from responsible bidders, the Contracting Officer shall draw lots or use a similar random method to make the award.

7204.8 DCHA may make multiple awards from a single procurement action.

7204.9 The DCHA rationale for making multiple awards from a single procurement shall be documented and maintained in DCHA's records.

- 7204.10 The Contracting Officer shall consider the following factors in determining whether multiple awards are appropriate:
- (a) The scope and complexity of the required good or service;
 - (b) The anticipated duration and frequency of the task or delivery order;
 - (c) The mix of resources a contractor must have to perform; and
 - (d) The ability to maintain competition among the awardees throughout the contracts' period of performance.
- 7204.11 The Contracting Officer shall not use the multiple award approach in the following situations:
- (a) Only one (1) contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;
 - (b) Based on the Contracting Officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;
 - (c) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;
 - (d) The projected task orders are so integrally related that only a single contractor can reasonably perform the work;
 - (e) The total estimated value of the contract is at or below one hundred fifty thousand dollars (\$150,000); or
 - (f) Multiple awards would not be in the best interest of DCHA.
- 7204.12 To ensure transparency and trust in the result of the IFB process, bids shall be opened publicly in the presence of at least one (1) witness.
- 7204.13 A tabulation of bids, including bidder's name, price, and any alternate pricing shall be recorded and available for public inspection.
- 7204.14 DCHA shall provide written notice of the award to the successful bidder consistent with the notice provisions in the IFB.
- 7204.15 If DCHA receives equal low bids from responsible bidders, the Contracting Officer shall draw lots or use a similar random method to make the award.

- 7204.16 If there is only one responsive bid from one responsible bidder, DCHA shall undertake a cost analysis verifying the reasonableness of the bid before making the award.
- 7204.17 After the bids have been opened and read in public, the Contracting Officer shall determine if there is any reason why the lowest bid should not be accepted.
- 7204.18 DCHA shall consider discounts, transportation cost, and life cycle costs in determining which bid is lowest.
- 7204.19 DCHA shall provide a justification for accepting a bid other than the lowest bid.
- 7204.20 An acceptable justification for DCHA awarding a bid which is not the lowest bid may be based on any of the following factors:
- (a) Delivery date;
 - (b) The bidder is not responsible;
 - (c) The bid is not responsive to the material requirements of the IFB; or
 - (d) A sound, documented reason such as
 - (1) The nature of the mistake warrants correction; and
 - (2) The bid price actually intended is incorrect.
- 7204.21 A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if:
- (a) The mistake is clearly evident on the face of the bid document;
 - (b) The intended bid is unclear; or
 - (c) The bidder submits clear and convincing evidence that a mistake was made.
- 7204.22 DCHA's decision to allow correction or withdrawal of bids shall be supported by a written determination signed by the Contracting Officer.
- 7204.23 No changes in bid prices, or other provisions of bids prejudicial to the interest of DCHA or fair competition, shall be permitted after bid opening.
- 7204.24 DCHA may use two-step or multi-step sealed bidding procedures where appropriate.

- 7204.25 DCHA shall take the following actions in the first step of the two-step sealed bidding process:
- (a) Request technical proposals;
 - (b) Evaluate technical proposals for acceptability; and
 - (c) Conduct negotiations or discussions concerning the technical proposals.

7204.26 In the second step of the two-step sealed bidding process, DCHA shall follow the requirements of §7204.4-7204.7 and §7204.12-7204.16; provided that only bidders with acceptable technical proposals may bid and each bidder's price is based on its own technical proposal.

7204.27 DCHA may reject any or all bids for a sound, documented reason.

7205 COMPETITIVE PROPOSALS

7205.1 Competitive proposals may be used if there is an adequate method of evaluating technical proposals and DCHA determines conditions are not appropriate for the use of sealed bids.

7205.2 DCHA shall solicit no less than three (3) offerors to submit a quotation for a competitive proposal.

7205.3 DCHA shall establish a mechanism for fairly and thoroughly evaluating the technical and price proposals prior to the issuance of a RFP.

7205.4 The RFP shall identify all evaluation factors and their relative importance.

7205.5 Until final award, competitive proposals shall be handled by DCHA to prevent disclosure of the number of offerors, identity of the offerors, and the contents of the offerors' proposals.

7205.6 DCHA shall evaluate the competitive proposal only on the criteria stated in the RFP.

7205.7 DCHA shall take the following actions for a competitive proposal:

- (a) Issue a RFP to solicit price and technical proposals from potential sources;
- (b) Evaluate the proposals and establish a competitive range;
- (c) Determine whether to negotiate with offerors in the competitive range;
- (d) Receive and evaluate best and final offers, if requested, from offerors in the competitive range; and

- (e) Make an award to the responsible contractor offering the most advantageous proposal based on the considering price and technical factors stated in the RFP.

- 7205.8 DCHA may use RFPs to solicit development partners other than mixed finance public housing development partners.
- 7205.9 DCHA shall publicize, by one (1) or more methods, DCHA's announcements for RFPs.
- 7205.10 The number of publications where DCHA will publicize its RFPs will depend upon the size, scope, and type of solicitation.
- 7205.11 The Contracting Officer determines the number of days of publication, and, based on matters of economy, chooses between printed and electronic means of publication.
- 7205.12 Any RFP projected to solicit offers above the one hundred fifty thousand dollars (\$150,000) will be available on the DCHA website.
- 7205.13 DCHA may use evaluation committees to evaluate proposals in accordance with the requirements of §7205.
- 7205.14 DCHA's evaluation committee shall consist of people who have knowledge of the subject matter of the RFP or industry.
- 7205.15 Evaluations by DCHA's evaluation committee shall be based on the evaluation factors set forth in the RFP.
- 7205.16 The RFP proposals shall be evaluated on an individual basis against the requirements of the RFP and not against each other.
- 7205.17 The DCHA evaluation committee evaluates only the content of the RFPs.
- 7205.18 No personal knowledge of the offeror not based on the contractor's written submission shall be part of the initial evaluation; Provided, that, the contractor's prior performance with the DCHA should be included as part of the standard review of contractor responsibility.
- 7205.19 Each member of a DCHA evaluation committee shall be required to sign a conflict of interest certification, disclose conflicts of interest, and not participate in the committee if there is a conflict of interest.

- 7205.20 Each member of a DCHA evaluation committee shall not disclose any information concerning the procurement and shall sign a certification of non-disclosure.
- 7205.21 DCHA shall prepare an evaluation report summarizing the results of DCHA's evaluation of the RFP before the award of a contract.
- 7205.22 The Contracting Officer shall instruct the evaluators to be especially careful to make the evaluations as thorough, objective, and well documented as possible.
- 7205.23 The Contracting Officer is responsible for ensuring the evaluation results are sufficiently documented and included in DCHA's procurement file.
- 7205.24 DCHA shall prepare an evaluation report to document the ranking of proposals by technical merit using point scores or a similar methodology.
- 7205.25 DCHA's evaluation report shall include the following:
- (a) The price or cost analysis, as appropriate, if price is included in the point scoring; and
 - (b) A narrative to explain how the scores were derived, detailing significant strengths, weaknesses, and deficiencies in the proposal consistent with the complexity of the procurement.
- 7205.26 DCHA may make an award without conducting negotiations if the quality of the received proposals results in DCHA not conducting any negotiations with the offerors; provided, that, this possible scenario was stated in the RFP.
- 7205.27 DCHA's rationale to not conduct negotiations shall be documented and maintained in DCHA's files for the RFP.
- 7205.28 DCHA shall accord offerors in Discussions with fair and equal treatment to any opportunity for negotiation and revision of RFP proposals.
- 7205.29 DCHA shall not provide an offeror with information concerning any other offeror's proposal.
- 7205.30 DCHA shall not assist an offeror in bringing the offeror's proposal up to the level of any other proposal.
- 7205.31 DCHA shall not direct an offeror to reduce the offeror's proposed prices to a specific amount to enable the offeror to be considered for an award.
- 7205.32 DCHA shall establish a common deadline for DCHA's receipt of proposal revisions based on DCHA's discussions with offerors.

7205.33 DCHA reserves the right to interview offerors in the absence of Discussions with DCHA.

7205.34 The Contracting Officer shall invite all offerors in the competitive range to submit their best and final offers and allow offerors to make changes in the technical proposal and price.

7205.35 After evaluation of best and final offers, DCHA shall award the contract to the responsible firm whose qualifications are the most advantageous to DCHA.

7206 QUALIFICATIONS BASED PROCUREMENTS

7206.1 DCHA may use qualifications based procurement methods, where permitted by HUD, for the procurement of Architect/Engineer (A/E) services or for a development partner pursuant to the public housing mixed finance development program.

7206.2 DCHA shall not use Sealed Bidding to obtain A/E services.

7206.3 Under qualifications based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected subject to the negotiation of fair and reasonable compensation.

7206.4 Price is not the determining factor under the qualification based selection procedures.

7206.5 Qualifications based methods shall not be used to purchase services other than A/E services.

7207 NONCOMPETITIVE PROCUREMENTS

7207.1 DCHA shall conduct procurements in a competitive manner to the maximum extent possible.

7207.2 DCHA may use noncompetitive procurement proposals when HUD authorizes the use of the noncompetitive procurement.

7207.3 DCHA may use noncompetitive procurement proposals when the Contracting Officer determines the award of a contract is infeasible using Simplified Acquisitions procedures, Sealed Bidding, or competitive proposals and one of the following circumstances applies:

- (a) The item is available only from a single source;
- (b) A Public Emergency exists;

- (c) HUD authorizes the use of noncompetitive proposals in a response to a written request from DCHA; or
- (d) After solicitation of a number of sources, competition is determined inadequate.

7207.4 A written justification, approved by the Executive Director or the Contracting Officer, shall support each award based on a noncompetitive procurement and be maintained in the DCHA's procurement files.

7207.5 The written justification in §7207.4 should include the following information:

- (a) Description of the requirement;
- (b) History of prior purchases and their nature (such as competitive or noncompetitive);
- (c) The specific exemption in 2 CFR §200.320(f)(1)-(4) which applies, including:
 - (1) The item is available only from a single source;
 - (2) The Public Emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (3) The federal funding agency expressly authorizes noncompetitive proposals in response to a request from DCHA; or
 - (4) After solicitation of a number of sources, competition is determined inadequate.
- (d) Statement as to the unique circumstances that require award by noncompetitive procurement;
- (e) Description of the efforts made to find competitive sources (such as advertisement in trade journals or local publications, phone calls to local suppliers, or issuance of a written solicitation);
- (f) Statement as to efforts that will be taken in the future to promise competition for the requirement; and
- (g) Signature of the Contracting Officer and the Executive Director.

7207.6 DCHA shall perform a cost analysis to evaluate the reasonableness of the price for contract awards based on noncompetitive procurements.

7207.7 DCHA may consider an unsolicited proposal for a noncompetitive procurement.

7207.8 To be deemed a valid unsolicited proposal, a submission must:

- (a) Be innovative and unique;
- (b) Be independently originated and developed by the offeror;
- (c) Be prepared without DCHA supervision, endorsement, direction, or direct DCHA involvement, either from staff, the Executive Director or Board of Commissioners; and
- (d) Include sufficient technical and cost detail for DCHA to determine DCHA's support is worthwhile and the proposed work could benefit DCHA's mission.

7207.9 DCHA shall evaluate an unsolicited proposal under the criteria of §7207.5(c).

7207.10 DCHA may use another procurement method to award a contract for the project that was the subject of the unsolicited proposal.

7207.11 The submitter of an unsolicited proposal rejected by DCHA may resubmit its proposal using a different procurement method in this chapter.

7208 COOPERATIVE AGREEMENTS

7208.1 DCHA may enter into contracts or other cooperative arrangements with the D.C. government, the federal government, or other public entities to purchase or use common or shared goods and services that are routine in nature.

7208.2 DCHA's decision to use a cooperative agreement, or conduct a direct procurement, shall be based on economy and efficiency factors.

7208.3 A cooperative agreement shall stipulate who is authorized to purchase on behalf of the participating parties and specify the inspection, acceptance, termination, payment, and other relevant terms and conditions.

7208.4 The goods and services obtained pursuant to a cooperative purchasing agreement shall be procured in accordance with the competitive procurement procedures of 2 CFR §200.317 to 200.326.

7208.5 DCHA may, under a competitive solicitation, procure services or supplies from an entity originally retained by another governmental agency.

7208.6 DCHA shall maintain a procurement file with copies of the following documents for all cooperative purchasing agreements:

- (a) Original competitive solicitation documents used by the other government agency;
- (b) Documents showing the extent of competition;
- (c) The awarded entity's original offer to the other governmental entity;
- (d) The contract with the other governmental agency;
- (e) The following documentation required by DCHA for procurement actions:
 - (1) An independent cost estimate;
 - (2) A cost and price analysis;
 - (3) Documentation of contractor responsibility and eligibility;
 - (4) The rationale for the award; and
 - (5) DCHA's contract with the awarded entity.

7208.7 DCHA shall not purchase items from a General Services Administration (GSA) schedule contractors on a noncompetitive basis.

7208.8 DCHA may solicit GSA schedule contractors for prices for supplies and services when conducting competitive procurements.

7209 MIXED FINANCE DEVELOPMENT PROCUREMENTS

7209.1 Procurements for developments using both private and public housing development funds shall be governed by the requirements of §7209 and 24 CFR §7905.

7209.2 DCHA may select a development entity using competitive proposals for qualifications based procurement.

7209.3 DCHA's competitive proposals for qualifications based procurement for the selection of a development entity shall include the following:

- (a) Negotiation of fair and reasonable compensation;
- (b) Compliance with HUD total development cost requirements and other applicable cost limitations; and
- (c) A written justification for the selection of the development entity.

- 7209.4 A private entity is not bound by 2 CFR Part 200 when the private entity procured a development through an open and competitive process;
- 7209.5 A private entity is required to comply with 2 CFR Part 200 if HUD determines DCHA, or a DCHA Instrumentality, or either of their members or employees, exercise significant decision making functions in managing the development.
- 7209.6 DCHA, or a DCHA Instrumentality, is deemed to be making significant decision making functions in managing a development under §7209.5 when DCHA, or a DCHA Instrumentality, is the sole or managing general partner or managing member of the owner entity.
- 7209.7 The following actions do not constitute significant management functions:
- (a) Monitoring units receiving operating subsidy to ensure compliance with federal and local requirements or government loan and regulatory documents;
 - (b) Coordinating communications with government agencies regarding financing and operations of the project;
 - (c) Providing a list of eligible potential tenants;
 - (d) Providing social, educational, and other services offered through DCHA's own program to tenants;
 - (e) Attending construction progress meetings and reviewing and approving any draw of funds;
 - (f) Reviewing and approving operating and capital budgets;
 - (g) Approving substantial modifications to the improvements;
 - (h) Approving changes of the general partner or investors;
 - (i) Approving the sale of the property; and
 - (j) Approving the modification of the partnership or operating agreement.

7210 COST AND PRICE ANALYSIS

- 7210.1 DCHA shall perform a cost or price analysis before DCHA solicits for procurement, or a contract modification, in excess of a Simplified Acquisition threshold.

- 7210.2 If a procurement is based on a noncompetitive procurement (such as when only one offer was received) the offeror shall be required to submit the following documents:
- (a) A cost breakdown showing projected costs or discounts;
 - (b) Commercial cost information sufficient to enable DCHA to verify the reasonableness of the proposed cost; or
 - (c) Documentation showing the cost offered is set by law or regulation.
- 7210.3 Cost analysis shall be performed if an offeror is required to submit a cost breakdown under §7210.2.
- 7210.4 DCHA shall take the following actions when a cost breakdown is submitted to DCHA:
- (a) Perform a cost analysis on the individual cost elements;
 - (b) Audit the offeror's books and records regarding the proposed costs; and
 - (c) Analyze the profit or discount separately.
- 7210.5 DCHA shall negotiate profit as a separate element of the price for each contract in which there is no price competition and where a cost analysis is performed.
- 7210.6 DCHA shall consider the following factors in determining a fair and reasonable profit:
- (a) The complexity of the work to be performed;
 - (b) The risk to be borne by the contractor;
 - (c) The contractor's proposed investment;
 - (d) The amount of subcontracting;
 - (e) The quality of the contractor's record of past performance; and
 - (f) Industry profit rates in the geographical area for similar work.
- 7210.7 DCHA has the right to audit a potential contractor's books and records.
- 7210.8 DCHA shall consider an audit whenever the Contracting Officer lacks sufficient information in-house to make a realistic cost analysis in the case of substantial contracts.

7210.9 DCHA may rely upon its own staff to conduct the audit, obtain the services of other governmental agencies to perform the audit, or contract with a private entity for audit services.

7210.10 An offeror shall certify the accuracy of its pricing and cost information.

7210.11 If DCHA receives false cost information from an offeror, the Contracting Officer may award a contract to another offeror, or if the award has been provided, immediately terminate the contract.

7211 CANCELLATION OF SOLICITATIONS

7211.1 DCHA may cancel a solicitation before the offers are due when:

- (a) DCHA no longer requires the supplies, services, or construction;
- (b) DCHA can no longer reasonably expect to fund the procurement;
- (c) The proposed amendments or addendums to the solicitation would be of such magnitude that a new solicitation is desirable; or
- (d) The Executive Director or Contracting Officer believes it is in the best interest of DCHA to cancel the solicitation.

7211.2 A solicitation may be cancelled and all offers received by DCHA may be rejected when:

- (a) The supplies, services, or construction are no longer required;
- (b) Ambiguous or otherwise inadequate specifications were part of the solicitation;
- (c) The solicitation did not include all factors of significance to DCHA;
- (d) Prices exceed available funds and DCHA cannot adjust quantities to reflect the available funds;
- (e) Offers may not have been independently arrived at in open competition may have been collusive, or may have been submitted in bad faith; or
- (f) The Executive Director believes it is in the best interest of DCHA to cancel the solicitation.

7211.3 DCHA shall send a notice of cancellation to all offerors explaining they will be

provided an opportunity to compete on any revised solicitation or future procurement for similar items.

7211.4 DCHA shall document the reasons for cancellation and maintain the documents in DCHA's procurement file.

7211.5 DCHA shall provide an offeror the reasons for cancellation or rejection of the offeror's solicitation after DCHA's receipt of the offeror's written request for the cancellation or rejection reasons.

7211.6 If all offers received in response to a solicitation are at an unreasonable price, DCHA shall either:

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

7212 CONTRACTOR RESPONSIBILITY

7212.1 DCHA will award contracts only to responsible contractors that possess the ability to perform successfully under the terms and conditions of the proposed procurement.

7212.2 DCHA shall consider the contractor's integrity, compliance with public policy, record of past performance, and financial and technical resources in determining a responsible contractor.

7212.3 DCHA will not contract with any contractor that is (or has a subcontractor that is) debarred, suspended, or otherwise excluded from participation in federal or D.C. assistance programs or activities.

7212.4 Contractors must ensure their subcontractors meet the contractor responsibility standards in §7212.5.

7212.5 A responsible contractor shall warrant, and the Contracting Officer must determine, the contractor:

- (a) Maintains adequate financial resources to perform the contract or has the

ability to obtain adequate financial resources;

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

7212.6 DCHA shall only award contracts to responsible contractors.

7212.7 DCHA shall make no purchase or award until the Contracting Officer makes an affirmative determination of contractor responsibility.

7212.8 A bidder or offeror is not responsible when the bidder or offeror is suspended or debarred by a federal agency, D.C. agencies, or under a HUD limited denial of participation.

7212.9 A determination of non-responsibility for a contractor is a matter of judgment on the part of DCHA.

7212.10 The Contracting Officer shall document the findings supporting DCHA's decision that a bidder or offeror failed to meet the requirements of §7212.5 and file and maintain the document in DCHA's procurement file.

7212.11 The Contracting Officer shall send to the bidder or contractor the document of findings DCHA is required to produce under §7212.10.

7212.12 DCHA may disqualify the bidder, or cancel the contract, if DCHA determines the bidder falsified information during the bidding process.

7213 TYPES OF CONTRACTS

7213.1 The Contracting Officer may use any of the following types of contracts that is appropriate to the procurement and promotes the best interests of DCHA:

- (a) Incentive Contracts;
- (b) Firm Fixed Price Contracts;
- (c) Indefinite Delivery Indefinite Quantity Contracts; or
- (d) Time and Materials Contracts.

7213.2 DCHA prefers the Firm Fixed Price Contracts to be used by the Contracting Officer.

7213.3 The Contracting Officer is prohibited from using the following types of contracts:

- (a) Cost Plus a Percentage of Cost Contracts (as set forth in 2 CFR §200.324(d)); and
- (b) Percentage of Construction Cost Contracts (as set forth in 2 CFR §200.324(d)).

7214 OPTIONS

7214.1 DCHA may include options for additional quantities or performance periods when the following conditions are met:

- (a) The use of options is mentioned in the solicitation;
- (b) The option is the unilateral right of DCHA;
- (c) The options are evaluated as part of the solicitation;
- (d) The contract states a limit on the additional quantities and the overall term of the contract;
- (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 determined from, the contract; and
- (g) The Contracting Officer determines the use of the option is more advantageous to DCHA than soliciting a new procurement.

7215 CHANGE ORDERS

7215.1 Change Orders shall include the following provisions:

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

7215.2 A contractor is entitled to submit a proposal to identify any changes in cost or schedules as a result of a unilateral Change Order.

7215.3 A contractor may negotiate an Equitable Adjustment with DCHA as a result of the unilateral Change Order.

7215.4 The Contracting Officer shall issue a Supplemental Agreement to the contract and document and maintain the Change Order in the files after DCHA and the contractor agree on an Equitable Adjustment.

7215.5 Change Orders shall not be for work that is outside the scope of the contract or outside the scope of authority referenced in the contract's changes clause.

7215.6 The following Change Orders require approval by the Board of Commissioners:

- (a) For contracts whose dollar value is below two hundred fifty thousand dollars (\$250,000);
- (b) Change Orders that did not previously receive approval by the Board of Commissioners; and
- (c) Any series of Change Orders, regardless of their dollar value, which causes the original dollar value of the contract to exceed two hundred fifty thousand dollars (\$250,000).

7216 CONTRACT DOCUMENTS

7216.1 Each contract shall state which documents (such as addenda, attachments, exhibits, schedules and riders) are part of the contract and the order of precedence for interpreting the contract in case of conflicting provisions.

7216.2

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

7217 CONTRACT CLAUSES

7217.1 All procurement documents shall include the clauses, forms, and provisions necessary or desirable to define the rights and responsibilities of the parties.

7217.2 All HUD-funded contracts shall include the following provisions:

- (a) Administrative, contractual, or legal remedies in case of a breach by the contractor and the sanctions and penalties for the breach;
- (b) Termination of the contract at DCHA's convenience and for the contractor's default;
- (c) Compliance with Executive Order 11246, as amended, and Department of Labor regulations regarding Equal Employment Opportunity (41 CFR Part 60);
- (d) Compliance with the Davis-Bacon Act, as amended (40 USC §3141-3148), as supplemented by Department of Labor regulations (29 CFR Part 5), and the Davis Bacon related acts, including but not limited to 42 USC §1437j(a);
- (e) Compliance with the Copeland "Anti-Kickback" Act (40 USC §3145), as supplemented by Department of Labor regulations (29 CFR Part 3);
- (f) Compliance with the Contract Work Hours and Safety Standards Act (40 USC §3701-3708), as supplemented by Department of Labor Regulations (29 CFR Part 5);
- (g) Rights to inventions made under the contract or agreement (37 CFR Part 401);
- (h) Compliance with Clean Air Act (42 USC §7401-7671q.) and Federal Water Pollution Control Act ((33 USC §1251-1387), as amended;
- (i) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC §6201);
- (j) Compliance with federal debarment and suspension requirements (such as Executive Orders 12549 and 12689);
- (k) Compliance with Byrd Anti-Lobbying Amendment (31 USC §1352);
- (l) Compliance with requirements related to procurement of recovered

materials in accordance with Section 6002 of the Solid Waste Disposal Act, as amended (2 CFR §200.322);

- (m) Compliance with Section 3 of the Housing and Urban Development Act of 1968;
- (n) Compliance with Drug-Free Workplace Act of 1988 requirements;
- (o) Compliance with the McNamara-O'Hara Service Contract Act of 1965;
- (p) Notice that DCHA, HUD, the Comptroller General of the United States, or any other duly authorized representatives, shall have access to any records of the contractor pertinent to the project to conduct an adequate audit or examination; and
- (q) Requirement that contractor retain required records for a minimum of three (3) years following contract closeout.

7218 CONTRACT MODIFICATIONS

7218.1 Contract and purchase order modifications shall be in writing and issued in one of the following forms:

- (a) A bilateral modification signed by both the Executive Director, or the Contracting Officer, and the contractor (such as a Supplemental Agreement) where both parties mutually agree on contract changes; or
- (b) A unilateral modification signed only by the Executive Director or the Contracting Officer.

7218.2 Bilateral modifications are the preferred method of modifying contracts.

7218.3 Only the Executive Director or the Contracting Officer has authority to modify any term or condition of a contract.

7218.4 All Contract Modifications must be authorized in writing by the Executive Director or the Contracting Officer.

7218.5 The Executive Director or the Contracting Officer may modify the contract unilaterally pursuant to specific authorization stated in a contract clause, or for administrative matters which do not change the rights or responsibilities of the contract parties.

7218.6 Except for the exceptions in §7218.5, all Contract Modifications shall be in the form of Supplemental Agreements signed by the contractor and Executive Director or Contracting Officer.

7218.7 A proposed modification requiring the approval of HUD shall not be effective until DCHA receives HUD's written approval.

7218.8 DCHA shall file and maintain in a procurement file all documentation regarding Contract Modifications.

7219 CONTRACT ADMINISTRATION SYSTEM

7219.1 DCHA shall maintain a contract administration system designed to ensure all contractors perform in accordance with the terms, conditions, and specifications of their respective contracts.

7219.2 DCHA's contract administration system may include the following procedures:

- (a) Inspection of supplies, services, or construction;
- (b) Monitoring contractor performance; and
- (c) Status or progress reporting on construction contracts.

7220 SUSPENSION OF WORK

7220.1 The Contracting Officer may order a suspension of work for a reasonable period of time.

7220.2 If the suspension of work is unreasonable, the contractor may submit a written claim for increases in the cost of performance, excluding any claim for a profit.

7221 CONTRACT TERMINATIONS

7221.1 The Contracting Officer may completely or partially terminate a contract for the contractor's actual or anticipated failure to perform its contractual obligations.

7221.2 The Contracting Officer may terminate a contract for any of the following reasons:

- (a) Failure to deliver the supplies, services, or construction as specified;
- (b) Failure to perform work in a timely manner;
- (c) Failure to make sufficient progress;
- (d) Violation of a contract clause, such as the prohibition against gratuities;

- (e) Repeated violations of labor standards; or
 - (f) Any other reason that is in the best interests of DCHA.
- 7221.3 DCHA reserves the right to terminate, or cancel work, under any contract, in whole or in part, for the convenience of DCHA.
- 7221.4 The Contracting Officer shall terminate a contract for convenience or default by giving written notice to the contractor.
- 7221.5 The written notice in §7221.4 shall be sent electronically, in addition to being sent by certified mail, return receipt requested, or by a nationally recognized overnight delivery service.
- 7221.6 The termination notice in §7221.4 shall state the following information:
- (a) The contract number and date of contract;
 - (b) The contract clause authorizing the termination;
 - (c) The contractor's purported errors and omissions giving rise to the default if termination is for default;
 - (d) DCHA's right to charge excess costs of re-procurement to the contractor;
 - (e) Statement of the contractor's right to appeal the termination;
 - (f) The effective date of termination;
 - (g) If the termination is only partial, the extent of termination; and
 - (h) Any special instructions.
- 7221.7 The Contracting Officer may amend a termination notice for the following items:
- (a) Correcting non-substantive mistakes in the notice;
 - (b) Adding supplemental data or instructions; or
 - (c) Rescinding or modifying the termination notice if DCHA determines the basis for termination was cured before the contractor's receipt of the termination notice.
- 7221.8 An amendment to a termination notice shall be in writing and shall be delivered or sent to the contractor in the manner in §7221.5

7222 SECTION 3 COMPLIANCE

7222.1 Contracts funded by the public housing financial assistance programs listed below are covered by Section 3 regardless of the amount of the contract:

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

7222.2 Section 3 does not apply to projects that are solely funded by the Housing Choice Voucher program, the Project Based Voucher program, or material supply contracts.

7222.3 Section 3 compliance and Workforce Development for Section 3 Residents is administered through DCHA's Office of Resident Services.

7222.4 DCHA and its contractors and subcontractors shall provide employment and training opportunities generated by public housing financial assistance to Section 3 Workers in the following order of priority:

- (a) Residents in public housing projects where public housing financial assistance is expended;
- (b) Residents of other public housing projects managed by DCHA;
- (c) Residents of Section 8-assisted housing managed by DCHA;
- (d) Participants in YouthBuild programs (as described in 20 CFR §672.100); and
- (e) Low and very low income persons residing in the DC metropolitan area.

7222.5 DCHA and its contractors and subcontractors shall award contracts and subcontracts to business concerns providing economic opportunities to Section 3 Workers in the following order of priority:

- (a) Section 3 Business Concerns providing economic opportunities for

residents of public housing projects where the public housing financial assistance is expended;

- (b) Section 3 Business Concerns providing economic opportunities for residents of other public housing projects
- (c) Section 3 Business Concerns providing economic opportunities for residents in Section 8-assisted housing managed by DCHA
- (d) YouthBuild programs; and
- (e) Section 3 Business Concerns providing economic opportunities to Section 3 workers residing in the DC metropolitan area.

7222.6 Contractors shall implement efforts to achieve Section 3 compliance with the following benchmarks:

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

7222.7 Any contractor that does not meet the Section 3 benchmarks in §7222.6 shall provide DCHA with a written explanation why meeting the benchmarks were not feasible.

7222.8 All contractors submitting bids or proposals to DCHA (other than those for professional services) are required to certify they will comply with the requirements of Section 3.

7222.9 Prior to commencing of work, contractors and subcontractors shall certify to DCHA they will follow the required prioritization of effort for Section 3 Workers, Targeted Section 3 Workers, and Section 3 Business Concerns outlined in §7222.4 and §7222.5.

7222.10 After completion of the project, contractors and subcontractors shall certify to DCHA they followed the prioritization of effort requirements in §7222.4 and §7222.5.

7222.11 If any contractor or subcontractor does not meet the requirements in §7222.6, the contractor or subcontractor shall provide evidence to DCHA that the contractor or

subcontractor has made qualitative efforts to assist low and very low-income persons with employment and training opportunities.

7222.12 The qualitative efforts in §7222.11 include the following:

- (a) Engaging in outreach efforts to generate job applicants who are Targeted Section 3 Workers;
- (b) Providing training or apprenticeship opportunities;
- (c) Providing technical assistance to help Section 3 Workers compete for jobs (such as resume assistance, coaching);
- (d) Providing or connecting Section 3 Workers with assistance in seeking employment (such as drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services);
- (e) Hold one or more job fairs;
- (f) Providing or referring Section 3 Workers to services supporting work readiness and retention (such as work readiness activities, interview clothing, test fees, transportation, or childcare);
- (g) Providing assistance to apply to or attend community college, a four (4) year educational institution, or vocational and technical training;
- (h) Assisting Section 3 Workers to obtain financial literacy training or coaching;
- (i) Engaging in outreach efforts to identify and secure bids from Section 3 Business Concerns;
- (j) Providing technical assistance to help Section 3 Business Concerns understand and bid on contracts;
- (k) Dividing contracts into smaller jobs to facilitate participation by Section 3 Business Concerns;
- (l) Providing bonding assistance, guaranties, or other efforts to support viable bids from Section 3 Business Concerns;
- (m) Promoting use of business registries designed to create opportunities for disadvantaged and small businesses: and

- (n) Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.
- 7222.13 Individuals and businesses meeting Section 3 criteria may seek Section 3 preference from DCHA, or DCHA’s contractors or subcontractors, for training, employment, or contracting opportunities generated by public housing financial assistance.
- 7222.14 To qualify as a Section 3 Worker, Targeted Section 3 Worker, or a Section 3 Business Concern, each must self-certify they meet the applicable criteria.
- 7222.15 Businesses who misrepresent themselves as Section 3 Business Concerns and report false information to DCHA may have their contracts terminated and be barred from ongoing and future considerations for DCHA contracting opportunities.
- 7222.16 A Section 3 Worker seeking certification shall submit self-certification documentation to the recipient contractor or subcontractor that the person is a Section 3 Worker or Targeted Section 3 Worker as defined in 24 CFR Part 75.
- 7222.17 DCHA shall use individual income to determine Section 3 Worker eligibility using the guidelines published at <https://www.huduser.org/portal/datasets/il.html>.
- 7222.18 Persons seeking a Section 3 Worker preference shall provide documents showing they meet one or more of the following criteria currently or when hired within the past five (5) years:
- (a) The worker’s income for the previous or annualized calendar year is below the low or very low income limit established by HUD;
 - (b) Employed by a Section 3 Business Concern; or
 - (c) A YouthBuild participant.
- 7222.19 Persons seeking the Targeted Section 3 Worker preference shall provide documents showing they meet one or more of the following criteria:
- (a) Employed by a Section 3 Business Concern;
 - (b) Currently meets, or when hired, met at least one of the following categories as within the past five (5) years:
 - (1) A resident of public housing;
 - (2) A resident of other public housing projects or Section 8 assisted housing; or

(3) A YouthBuild participant.

- 7222.20 DCHA shall include Section 3 language in all of its contracts to ensure compliance with regulations in 24 CFR Part 75.
- 7222.21 DCHA shall take appropriate actions upon finding a contractor is in violation of 24 CFR Part 75 and does not knowingly contract with any contractor found in violation of Section 3 regulations.
- 7222.22 On a periodic basis, DCHA will audit contractors and subcontractors for compliance with the minimum Section 3 requirements outlined in the Section 3 plan.
- 7222.23 Contractors and sub-recipients shall include language in all Section 3 covered contracts, or agreements with subcontractors, to meet the requirements of 24 CFR §75.9.
- 7222.24 For Section 3 covered contracts, contractors shall report on a monthly and annual basis to DCHA on the contractor's compliance with Section 3.
- 7222.25 Upon completion of a project, DCHA shall conduct a final review of the project's overall performance and compliance with Section 3.
- 7222.26 DCHA will report on the project as a whole and will indemnify the multiple associated recipients for Section 3 projects that include public housing financial assistance and housing and community development financial assistance.
- 7222.27 DCHA will follow 24 CFR subpart C of Part 75 and report to the applicable HUD program office, as prescribed by HUD, for projects assisted with funding from multiple sources of housing and community development assistance that exceed the thresholds of two hundred thousand dollars (\$200,000) and one hundred thousand dollars (\$100,000) for Lead Hazard Control and Healthy Homes Programs (LHCHH).
- 7222.28 LHCHH assistance shall not be included in calculating whether assistance exceeds the two hundred thousand dollar (\$200,000) threshold in §7222.27.
- 7222.29 HUD public housing financial assistance and HUD housing and community development financial assistance is not included in calculating whether the assistance in §7222.27 exceeds the LHCHH one hundred thousand dollar (\$100,000) threshold.
- 7222.30 Complaints of non-compliance with Section 3 shall be filed in writing with DCHA's Section 3 coordinator within thirty (30) calendar days after the complainant becomes aware of the alleged violation.

- 7222.31 The complaint in §7222.30 must contain the name of the complainant and brief description of the alleged violation of 24 CFR Part 75.
- 7222.32 DCHA shall conduct an investigation for a valid complaint affording all interested parties an opportunity to submit testimony and evidence.
- 7222.33 DCHA shall provide written documentation detailing the findings of the investigation in §7222.32 no later than one hundred and eighty days (180) days after the filing of complaint.
- 7222.34 DCHA may refer a contractor to HUD for sanctions if a contractor fails to meet the requirements of Section 3 and fails to provide adequate written justification for the contractor's Section 3 actions.
- 7222.35 Complainants who desire to have their concerns considered outside of DCHA must file the complaint with the HUD program office responsible for the public housing financial assistance or Section 3 project or to the local HUD field office which can be reached through the HUD website www.hud.gov.

7223 OTHER COMPLIANCE MATTERS

- 7223.1 All laborers and mechanics involved in construction contracts in excess of two thousand dollars (\$2,000), or any other construction contract that requires Davis-Bacon wages as determined by DCHA's Office of Administrative Services, shall be paid wages in accordance with federal labor standards issued pursuant to the Davis-Bacon Act by the United States Department of Labor.
- 7223.2 Contractors who entered into construction contracts with DCHA shall take the following actions:
- (a) The contractor shall pay not less than the applicable wage rates to all employees engaged in work under the contract;
 - (b) The contractor shall ensure all subcontractors pay not less than the applicable wage rates;
 - (c) The contractor shall submit a certified payroll and compliance statement to DCHA each week during the contract period; and
 - (d) The contractor shall ensure a separate payroll report is submitted to the DCHA for the contractor and each subcontractor.
- 7223.3 DCHA shall ensure all compliance requirements for recruitment, referral, and placement are fulfilled by the contractor.
- 7223.4 The following provisions shall be included in each construction contract:

- (a) The Contracting Officer will conduct a pre-construction conference to explain the requirements in §7222.
- (b) Construction contractors will be required to execute a written affirmation of their compliance with all compliance matters in §7222.
- (c) Construction contractors will be required to submit periodic reports to the Contracting Officer detailing their compliance.
- (d) DCHA staff may conduct periodic site visits and meetings with the contractor to ensure compliance with the requirements of §7222.
- (e) Construction contractors are required to ensure all subcontractors comply with the requirements in §7223.4.

7224 CONTRACTING WITH SMALL, AND MINORITY OWNED BUSINESSES

7224.1 DCHA shall make all necessary and affirmative efforts to assure that Small, Minority, Woman Owned Business Enterprises, and Labor Surplus Area Concerns are used when possible.

7224.2 The necessary and affirmative efforts in §7224.1 include the following:

- (a) Placing the qualified entities in §7224.1 on Bidders Lists;
- (b) Encouraging participation through direct solicitation of bids or proposals whenever the entities in §7224.1 are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by the entities in § 7224.1;
- (d) Establishing delivery schedules, where the requirements permit, which encourage participation by the entities in §7224.1;
- (e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, the D.C. Department of Small and Local Business Development, local Chamber of Commerce, and Section 3 Business Concerns; and
- (f) Requiring prime contractors, when subcontracting is anticipated, to take the steps listed above in §7224.1.

- 7224.3 The Board of Commissioners may periodically establish DCHA’s participation in prime contracts and subcontracting opportunities by Small, Minority, Woman Owned Business Enterprises, and Labor Surplus Area Concerns.
- 7224.4 The goals in §7224.3 shall not establish a preference for the businesses therein.
- 7224.5 DCHA shall not use geographic or local preferences, other than Section 3, to award or administer contracts funded with Federal Funds.
- 7224.6 DCHA shall follow the D.C. requirements concerning local business enterprises when conducting procurement with DC Funds.

7225 CONTRACTING WITH RESIDENT OWNED BUSINESS

- 7225.1 DCHA may consider employing an alternate procurement process for resident owned businesses in accordance with 24 CFR Part 963.
- 7225.2 The policies and procedures contained in §7225 shall apply solely to public housing developments owned by DCHA and covered by Annual Contributions Contracts (ACC) with HUD.
- 7225.3 The public housing contracts eligible for an award under the alternative procurement process in §7225 are limited to individual contracts that do not exceed one million dollars (\$1,000,000).
- 7225.4 Businesses eligible for an alternative procurement shall meet the following requirements:
- (a) Submit to DCHA certified copies of the licenses required for the business to be to engaged in the type of business activity for which it was formed;
 - (b) Submit a certified copy of the business’s corporate charter, or other organizational document, verifying the business is properly formed in accordance with applicable D.C. or state law;
 - (c) Submit a certification that the business is a resident owned business;
 - (d) Disclose each owners’ respective ownership percentage interest in the resident business;
 - (e) Disclose all individuals who possess the power to make the day-to-day or major decisions regarding management, policy, and operations;
 - (f) Identify all owners and management officials who are not public housing residents;

- (g) Disclose any relationship of the owners and management officials in § 7225.4(f) to another resident owned business;
- (h) Submit verification that the public housing residents owner, or owners, reside in DCHA's public housing;
- (i) Submit evidence demonstrating the business can successfully perform under the terms and conditions of the proposed contract;
- (j) DCHA shall consider the following factors in determining whether a business meets the requirement in §7225.4(i):
 - (1) The factors listed in 2 CFR Part 200;
 - (2) Proof of completion of courses in business administration or financial management; and
 - (3) Proof of job training or apprenticeship in the particular trade, business, profession, or occupation.
- (k) Submit a certification of the number and dollar amount of each contract award under §7225.

7225.5 A resident owned business is not eligible to participate in the alternative procurement process if the resident owned business received one or more contracts pursuant to §7225 with a combined dollar value exceeding one million dollars (\$1,000,000).

7225.6 DCHA shall not award a resident owned business a contract under §7225 if the contract award exceeds the independent cost estimate required by 2 CFR 200 or the price normally paid for comparable supplies, services, or construction in the project area.

7225.7 Any contract entered into between DCHA and a resident owned business under §7225 shall comply with the following:

- (a) The provisions of 2 CFR Part 200; and
- (b) The bonding requirement provisions of 24 CFR Part 905.

7225.8 DCHA shall maintain the following records pertaining to a contract awarded under §7225:

- (a) An independent cost estimate and comparable price analysis;
- (b) The basis for contractor selection; and

(c) The basis for determining the reasonableness of the proposed contract price.

7225.9 For purposes of §7225, “resident owned business” shall mean any business concern which is owned and controlled by public housing residents including a sole proprietorship.

7225.10 For the purposes of §7225.9, “own and controlled” shall mean the following:

(a) A business which is at least fifty-one percent (51%) percent owned by one or more public housing residents; and

(b) The business’s management and daily business operations are controlled by one or more public housing residents.

7225.11 All securities which constitute ownership or control of a resident owned business shall be held directly by the public housing residents.

7225.12 The securities in §7225.11 shall not be held in trust, or by any guardian for a minor.

7226 APPEALS AND ACTIONS

7226.1 No party may refer a dispute under this chapter to a local or federal authority until all DCHA administrative remedies have been exhausted.

7227 BID PROTESTS

7227.1 Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of §7225.

7227.2 The Contracting Officer shall attempt to resolve the protest in §7225 in an informal manner.

7227.3 A protest against a solicitation must be received before the due date for receipt of bids or proposals.

7227.4 A protest against the award of a contract must be received within ten (10) calendar days after the date of the contract award.

7227.5 All Bid Protests shall be submitted in writing to the Contracting Officer and contain the following information:

(a) Name, address, and phone number(s) of the protestor;

(b) Solicitation number and project title;

- (c) A detailed statement of the basis for the Bid Protest;
- (d) Supporting evidence or documents to substantiate any arguments; and
- (e) The form of relief requested.

7227.6 The Contracting Officer may suspend the procurement of the contract pending resolution of the Bid Protest.

7227.7 The Contracting Officer shall issue a written decision within ninety (90) days of its receipt of the Bid Protest, by certified mail with receipt requested, containing the following information:

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

7227.8 The Contracting Officer's Final Decision may be appealed to the Executive Director of DCHA.

7227.9 The appeal of the Contractor Officer's Final Decision in §7227.8 shall be filed with the Executive Director within ten (10) days of the contractor's receipt of the Contracting Officer's Final Decision.

7227.10 The Executive Director's Final Decision may be appealed to the D.C. Contract Appeals Board or other court of competent jurisdiction as determined and agreed to by the parties.

7227.11 The appeal of the Executive Director's Final Decision in §7227.10 shall be filed within thirty (30) days of the contractor's receipt of the Executive Director's decision, or other time period required by the selected court of competent jurisdiction, as applicable.

7227.12 The DCHA Board of Commissioners has no jurisdiction over Bid Protests.

7228 CONTRACT DISPUTES

- 7228.1 All claims by a contractor relating to the performance of a contract awarded under this chapter shall be submitted in writing to the Contracting Officer for a written decision.
- 7228.2 The claim in §7228.1 shall contain the following information:
- (a) Name, address, and phone number(s) of the protestor;
 - (b) Contract number and project title;
 - (c) A detailed statement of the basis for the contract dispute;
 - (d) Supporting evidence or documents to substantiate any arguments; and
 - (e) The form of relief requested.
- 7228.3 Within ninety (90) days after receipt of the claim, the Contracting Officer shall issue a written decision, by certified mail with return receipt requested, containing the following:
- (a) A description of the claim;
 - (b) A reference to the pertinent contract clause;
 - (c) A statement of the factual areas of agreement or disagreement;
 - (d) A statement of the Contracting Officer's decision with supporting rationale; and
 - (e) A statement referencing appeal rights.
- 7228.4 The Contracting Officer's decision in §7228.3 may be appealed to the Executive Director.
- 7228.5 receipt The appeal in §7228.4 must be filed within ten (10) days of the contractor's of the Contracting Officer's Final Decision.
- 7228.6 The Executive Director's Final Decision of the appeal in §7228.5 shall be issued within twenty (20) days of the Executive Director's receipt of the appeal.
- 7228.7 Any failure by the Executive Director to issue the final decision in §7228.6 within the required time period in §7228.6 shall be deemed a denial of the claim and shall authorize the commencement of the appeal on the claim as otherwise provided in §7228.9.

- 7228.8 The Executive Director's Final Decision in §7228.6 or §7228.7 may be appealed to the D.C. Contract Appeals Board or other court of competent jurisdiction as determined and agreed to by the parties.
- 7228.9 The appeal in §7228.8 must be filed within thirty (30) days of the contractor's receipt of the Executive Director's decision, or other time period required by the selected court of competent jurisdiction, as applicable.
- 7228.10 The contractor shall proceed diligently with performance of the contract pending final resolution of any request for relief, claim, appeal, or action under or relating to the contract.
- 7228.11 The contractor shall comply with any decision of the Contracting Officer pending final resolution of the contractor's request for relief, claim, or appeal of the contractor's contract.
- 7228.12 The DCHA Board of Commissioners has no jurisdiction over contract disputes.

7229 ETHICS IN PUBLIC CONTRACTING

- 7229.1 DCHA shall comply with all ethics requirements imposed by HUD, the federal government, and the applicable laws of D.C.
- 7229.2 Violations by DCHA of the ethics requirements in §7229 may result in suspension, termination, referral to HUD or D.C. for debarment or criminal investigation, referral to the D.C. Board of Ethics and Governmental Accountability (BEGA), and other enforcement agencies.
- 7229.3 All parties bidding or seeking to provide goods or services to DCHA shall be required to disclose any potential conflicts of interest during the procurement process and throughout the contract administration process should a contract be awarded.
- 7229.4 All parties bidding or seeking to provide goods or services to DCHA shall not have a conflict of interest under the DCHA Enabling Act.
- 7229.5 For the purposes of §7229.4, a conflict of interest under the DCHA Enabling Act includes a financial interest, either directly or indirectly:
- (a) In any contract to which DCHA is a party for the purchase of supplies, materials, equipment, or services; or
 - (b) In any entity involved directly or indirectly in any transaction with DCHA, including construction companies, real estate development firms, property management companies, and service providers.

- 7229.6 Under the DCHA Enabling Act, for a period of one (1) year after termination or expiration of term of employment, no Officer shall appear before any court or government department or agency as agent or attorney for anyone other than DCHA in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which DCHA is substantially interested, whether or not the Officer took any action or made any decision as officer in connection with such matter.
- 7229.7 The provisions in §7229.6 do not preclude compliance with a subpoena duly issued to any former Officer.
- 7229.8 DCHA employees and Commissioners are required to comply with the D.C. Code of Conduct and to refrain from conflicts of interest related to the performance of their official duties.
- 7229.9 DCHA employees and Commissioners are prohibited under the D.C. Code of Conduct from capitalizing on an official title or position, disseminating non-public or confidential information, acting in a representative manner to non-governmental entities, or violating federal or D.C. law.
- 7229.10 DCHA employees and Commissioners are prohibited under the D.C. Code of Conduct from using their official position or title, or personally and substantially participating, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, or attempt to influence the outcome of a particular matter, in a manner that the employee knows is likely to have a direct and predictable effect on the employee's financial interests or the financial interests of a person closely affiliated with the employee.
- 7229.11 DCHA will refer suspected violations of this §7229 and the D.C. Code of Conduct to BEGA, which has substantial authority to conduct investigations into allegations of ethical misconduct and to impose sanctions including fines, where violations occur.
- 7229.12 Under the Federal Common Rule, the Executive Director, any member of the Board of Commissioners, and DCHA employees shall not participate in the selection, award, or administration of a contract supported by Federal Funds if they have a real or apparent conflict of interest.
- 7229.13 For the purposes of §7229.12, a conflict of interest exists if the Executive Director, any member of the Board of Commissioners, DCHA employee, any member of the DCHA employee's immediate family, partner, or an organization which employs or is about to employ any of those parties, has a financial or other

interest in or a tangible personal benefit from a firm considered for a contract with DCHA or that has a contract with DCHA.

7229.14 For the purposes of §7229.12, immediate family includes spouse, domestic partner, household member, parents, sibling, child, or the spouse or domestic partner of your parent, sibling, or child.

7229.15 DCHA may not hire an employee or contractor or subcontractor in connection with a project under an ACC with HUD if the prospective employee is an immediate family member of any person belonging to one of the following classes:

- (a) Any present or former member or officer of the governing body of the DCHA except for any former tenant commissioner who does not serve on the governing body of a resident corporation and who otherwise does not occupy a policymaking position with DCHA;
- (b) Any employee of the DCHA who formulates policy or who influences decisions with respect to the project(s) under the ACC;
- (c) Any public official, member of the local governing body, or D.C. Councilmember, who exercises functions or responsibilities with respect to the project(s) under the ACC or the DCHA;
- (d) This prohibition under §7229.15 shall remain in effect throughout the class member's tenure and for one (1) year thereafter;
- (e) The class member shall disclose to DCHA and HUD the member's familial relationship to the prospective employee, contractor, or subcontractor; and
- (f) The requirements of §7229.15 may be waived by the Board of Commissioners for good cause, provided that such waiver is permitted by D.C. law.

7229.16 For purposes of §7229.15, the term "immediate family member" means the spouse, mother, father, brother, sister, or child of a covered class member (whether related as a full blood relative, or as a 'half' or 'step' relative, such as a half-brother or stepchild).

7229.17 Neither DCHA nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with the HCV Program in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one (1) year thereafter:

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

7229.18 Any member of the classes described in §7229.17 must disclose their interest or prospective interest to DCHA and HUD.

7229.19 The conflict-of-interest prohibition in §7229.17 may be waived by the D.C. HUD Field Office for good cause.

7229.20 DCHA shall not pay funds derived from Section 8 subsidies to any “covered individual,” including any landlord who was an officer or occupied a policy-making role with DCHA.

7229.21 Failure of the parties in §7229 to disclose to DCHA a conflict of interest may be cause for disqualification from an award or for termination for cause of a contract that had been awarded by DCHA.

7229.22 The Contracting Officer shall refer a potential conflict of interest during the procurement process to the General Counsel or DCHA Ethics Officer for a determination of an actual conflicts of interest.

7229.23 Conflict of interest decisions by the General Counsel are final.

7229.24 The Executive Director, members of the Board of Commissioners, and employees have an ongoing duty to disclose and avoid any interest or contact in violation of conflict of interest rules imposed by HUD, D.C., and this chapter.

7229.25 DCHA Instrumentalities shall follow the procurement regulations in this chapter.

7229.26 DCHA Affiliates shall seek procurement and are subject to a conflict of interest review.

7229.27 If a proposal indicates that situations or relationships that could represent a conflict of interest are involved, or the Contracting Officer believes that potential conflicts of interest exist during the procurement process, the Contracting Officer

shall refer the matter to the General Counsel or DCHA Ethics Officer for a determination of actual conflicts of interest.

7229.28 Questions involving conflicts of interest should be referred to the General Counsel.

7229.29 The Executive Director, members of Board of Commissioners, and employees have an ongoing duty to disclose and avoid any interest or contact in violation of conflict of interest rules imposed by HUD, the District of Columbia, and this Regulation.

7229.30 The DCHA is subject to the Government Ethics Act of 2011 and the associated Code of Conduct as referenced at Section 1-1162.01 of the D.C. Code.

7230 GRATUITIES, KICKBACKS, AND USE CONFIDENTIAL INFORMATION

7230.1 The Board of Commissioners members, employees and agents shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value as an inducement or intended inducement, in the procurement of goods or services from contractors, potential contractors, or parties to subcontracts.

7230.2 The Board of Commissioners members, employees, and agents shall not knowingly use or share confidential information with a contractor for actual anticipated personal gain.

7230.3 Violation of §7230 may subject a DCHA employee, agent, or member of the Board of Commissioners to the following disciplinary actions:

- (a) Removal;
- (b) Termination of an agency agreement; or
- (c) Removal of a member of the DCHA Board of Commissioners under DCHA By-laws.

7230.4 Any person, firm, or corporation offering to make, or pay or give any rebate, percentage of contract, money, or any other thing of value as an inducement in the procurement of business to any member of the Board of Commissioners member, employee, or agent may subject the person, firm, or corporation to suspension or debarment by HUD or to ineligibility to contract with the DCHA.

7230.5 It is a breach of ethical conduct and prohibited for any payment, gratuity, or offer of employment to be made by, or on behalf of, a contractor or subcontractor under contract to the prime contractor, higher tier subcontractor, or any person associated therewith as an inducement for the award of a subcontractor order.

- 7230.6 The Contracting Officer shall report to the Executive Director, HUD, and the appropriate D.C. officials any suspected anticompetitive practices by contractors.
- 7230.7 No DCHA employee, agent, or member of the Board of Commissioners may discuss an active procurement with any bidder or other party who is not a DCHA employee, agent, or member of the Board of Commissioners, other than DCHA staff specifically designated by the Executive Director or the Contracting Officer.
- 7230.8 This §7230 is further implemented by the D.C. Code, §1-1162.01 as required by the Government Ethics Act of 2011.

7231 PROHIBITION AGAINST CONTINGENT FEES

7231.1 Contractors shall not retain a person to solicit or secure a DCHA contract for a commission, percentage, brokerage, or contingent fee, except for the following entities:

- (a) Employees;
- (b) Established commercial selling agencies; or
- (c) Persons named in any DCHA issued invitation for bid, request for proposals, or other solicitation.

7299 DEFINITIONS

7299.1 For the purposes of Chapter 72 of Title 14 of the District of Columbia Municipal Regulations, the following definitions shall apply:

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

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

Amendment – Written revision made to a solicitation or contract.

Bid – The offer submitted by a bidder in the sealed bidding method of procurement.

Bid Guarantee – A form of security assuring that the bidder (1) will not withdraw a bid within the period specified for acceptance and (2) will execute a written contract and furnish required bonds within the time specified in the bid.

Bidders List – List of contractors that are interested in responding to DCHA invitations for bids, requests for proposals, or other solicitations for contractors.

Bid Protest – A written objection, submitted by an actual or prospective contractor, protesting a solicitation, the cancellation of a solicitation, or the award or proposed award of a contract.

Board of Commissioners – Shall mean the members of the Stabilization and Reform Board created pursuant to the District of Columbia Housing Authority Stabilization and Reform Emergency Amendment Act of 2022 and the board of commissioners appointed pursuant to the DCHA Act after the completion of the stabilization and reform of DCHA.

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

Competitive Proposals – The competitive method of procurement used when small purchases and sealed bidding are not appropriate.

Competitive Range – In a competitive proposals procurement, those offerors whose proposals, after evaluation by DCHA, have a reasonable chance of receiving the award, both from a technical and cost standpoint.

Contract – A promise or set of promises for breach of which the law gives a remedy or performance of which the law recognizes as a duty; a legal instrument providing for the purchase, lease, or barter of property or services for the direct benefit of DCHA.

Contracting Officer – An official authorized by the Executive Director to enter into or administer procurement contracts and make related determinations and findings.

Contracting Officer's Technical Representative (COTR) – An individual designated and authorized in writing by the Contracting Officer to perform specific technical or administrative functions related to the procurement process.

Contract Dispute – A disagreement between the contractor and the DCHA regarding the rights of the parties under the contract.

Contract Modification – Any written alteration in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provision of an existing contract.

Cost Analysis – The review and evaluation of any separate cost elements and profit or fee in a proposal, as needed to determine a fair and reasonable price, and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

Cost Reimbursement Contract – A contract in which DCHA and the contractor agree on an estimate of contract costs. The buyer agrees to reimburse the seller for reasonable, allowable, and allocable costs necessary to complete the work.

DCHA Enabling Act – The District of Columbia Housing Authority Act of 1999, as amended.

DCHA Affiliate – An entity related to DCHA, other than a DCHA Instrumentality, in which DCHA has some measure of control over the assets, operations, and management, but such control does not rise to the level of control to qualify the entity as a DCHA Instrumentality. DCHA Affiliates must be procured and are subject to a conflict of interest review.

DCHA Instrumentality – An entity related to DCHA whose assets, operations, and management are legally and effectively controlled by DCHA, through which DCHA functions or policies are implemented and that utilizes DCHA funds or DCHA assets to carry out the DCHA mission. DCHA Instrumentalities follow these procurement regulations, and DCHA does not procure for or on behalf of these instrumentalities. When a DCHA Instrumentality follows this Regulation, any reference to “DCHA” can be read to refer to DCHA Instrumentality.

Debarment – Debarment is an exclusion from participation in all federal programs for a reasonable and specified time-period commensurate with the seriousness of the violation or failure to perform on other contracts. Debarment may be imposed for violation of contract clauses, including equal employment opportunity provisions, acceptance of contingent fees, and other serious contract violations. The Secretary of Labor may also debar a contractor based on violations of the labor standards regulations.

Discussions - When negotiations are conducted with offerors determined to be included in the competitive range.

District Standards – Refers to the standards of procurement outlined in the D.C. Procurement Practices Reform Act of 2010 effective April 8, 2011, as may be amended from time to time and as may apply to DCHA.

Equitable Adjustment – A fair price adjustment under a contract clause for changed work, including an adjustment in profit, a change in the delivery schedule, or a change in any affected term of the contract.

Executive Director – The person appointed by the Board of Commissioners under D.C. Code §6-203 to implement the executive management functions of DCHA under D.C. Code §6-213.

Federal Standards – The standards for procurement as described in 2 CFR Part 200.

Final Decision – A written document signed by the Contracting Officer or Executive Director ruling on a claim by or against DCHA.

Firm Fixed Price Contract – A contract that provides for a price that is not subject to any adjustment because of the cost experience of the contractor in the performance of the contract.

General Counsel – The General Counsel of the District of Columbia Housing Authority.

Immediate Family Member – Includes father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, life partner, significant other, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half- sister.

Incentive Contracts – Contracts designed to encourage a contractor to manage the contract to meet targeted goals set by DCHA by operating under the following incentive penalty structures.

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

Indefinite Delivery Indefinite Quantity Contracts – Contracts used where the exact requirements of DCHA are not known at the time of contracting to provide DCHA with the flexibility in both quantities of goods and services that may be ordered, and in delivery scheduling with a minimum and a maximum of supplies or services for a specified contract term.

Independent Cost Estimate – A written estimate developed by DCHA of the cost to complete the scope of work, also known as a price analysis.

Ineligible Contractor – Contractors that have been debarred, suspended, or determined ineligible by HUD, or any other federal or local agency.

Inspection – The examination and testing of supplies and services to determine whether they conform to contract requirements.

Invitation for Bids (IFB) – Under the sealed bidding method of procurement, the written solicitation document that explains what DCHA is buying and requests bids from potential contractors.

Labor Hour Contract – Contract that provides for the procurement of property or services based on direct labor-hours as specified, fixed hourly rates that include direct and indirect labor, overhead, and profit.

Labor Surplus Area Concern – A concern which, together with its first-tier subcontractors, will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if more than 50 percent of the dollar amount of the contract will be manufactured, produced, or performed in labor surplus areas.

Labor Surplus Area – Areas with concentrated unemployment or underemployment or an area of labor surplus. These are geographical areas identified by the U.S. Department of Labor under 20 C.F.R. 654, Subpart A, and listed annually by Federal Register notice and on the Department of Labor website.

Letter of Solicitation – Under the Simplified Acquisition method of procurement, a written request for proposals from potential contractors.

Limited Denial of Participation – A Limited Denial of Participation (“LDP”) is an administrative sanction that HUD can impose on a contractor and is narrower in scope and effect than either suspension or debarment.

Mixed-Finance Development – A public housing development financed by a combination of private funding and public housing development funds under 24 CFR §905.604.

Minority-Owned Business –

- (a) A business that is at least fifty-one percent (51%) owned by one or more minority group members; or
- (b) In the case of a publicly-owned business, one in which at least fifty-one percent (51%) percent of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals.
- (c) Minority group members include the following groups: Black Americans; Hispanic Americans; Native Americans (Alaska Natives, Native Hawaiians, or enrolled members of a Federally or State recognized Indian Tribe); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, the Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the

Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal); and members of other groups designated from time to time by the U.S. Small Business Administration.

Negotiation – Discussion regarding technical and price proposals with offerors in the competitive range for a contract being awarded using the competitive proposals or noncompetitive proposals method of procurement.

Noncompetitive Proposals – The method of procurement in which DCHA solicits proposal(s) from only one source, as outlined in this Regulation.

Nonjudgmental Mistake – A mistake evident on the face of a bid, quote, or proposal that is a minor informality or insignificant omission that is a matter of form rather than substance, with a negligible effect on the price, quantity, quality, delivery, or contractual conditions, that can be waived or corrected without prejudice to other bidders or offerors.

Notice to Proceed – A written authorization to begin work.

Offeror – An entity that has submitted a bid or proposal.

Payment Bond – A promise of a surety payment to all persons supplying labor or materials in the work provided for in a contract.

Performance Bond – A promise of surety assuring DCHA that once the contract is awarded, the contractor will perform its obligations under the contract.

Price Analysis – An estimate of the total value of the services, based on the scope of work, also referred to as an Independent Cost Estimate.

Procurement – Procurement includes the procuring, purchasing, leasing, or renting of: (a) goods, supplies, equipment, and materials, (b) construction and maintenance; consultant services, (c) Architectural and Engineering (A/E) services, (d) Social Services, and (e) other services.

Proposal – In the competitive and noncompetitive proposals methods of procurement, the offer is submitted by a potential contractor.

Public Emergency - Events that seriously threaten the public health, welfare, or safety, or endanger property, or would otherwise cause serious injury to the DCHA, by reason of a flood, earthquake, epidemic, pandemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement

methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency.

Qualifications Based Procurement – A form of procurement by competitive proposals in which price is not the main evaluation factor; instead, technical qualifications are reviewed and a fair and reasonable price is negotiated with the best-qualified firm.

Qualified Bidders' List – A list of bidders who have satisfied all applicable qualification requirements of a solicitation.

Quotation – In the small purchase method of procurement, the price or offer is submitted by a bidder.

Request for Proposals (RFP) – Under the competitive proposals method of procurement, DCHA's written solicitation to prospective offerors to submit a proposal based on the terms and conditions set forth therein, including both technical and price factors.

Request for Qualifications – Under the competitive proposals method of procurement, DCHA's written solicitation to prospective offerors to submit a proposal based on the terms and conditions set forth therein, including only technical factors.

Request for Quotations (RFQ) – Under the simplified acquisition method of procurement, a brief, written request for a price quotation from potential contractors.

Responsible Bidder – A bidder who has the technical and financial capacity to secure the necessary resources to deliver the goods and services.

Responsive Bid – A bid that conforms to the requirements in the Invitation for Bids.

Scope of Work – Written definition of work to be performed that establishes standards sought for the goods or services to be supplied.

Sealed Bidding – The procurement method in which DCHA requests competitive sealed bids. This method of procurement requires specifications that describe the requirements of the government clearly, accurately, and completely; a public bid opening; and an evaluation of bids and an award of the contract based on the lowest bid submitted by a responsive and responsible contractor.

Section 3 – Section 3 of the Housing and Urban Development Act of 1968 (codified as amended at 12 USC 1701u)

Section 3 Business Concern means–

- (a) A business concern meeting at least one of the following criteria, documented within the last six-month period:
 - (1) It is at least fifty-one percent (51%) percent owned and controlled by low or very low-income persons;
 - (2) Over seventy-five percent (75%) percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 Workers; or
 - (3) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.
- (b) The status of a Section 3 Business Concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.
- (c) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 Business Concern. Section 3 Business Concerns are not exempt from meeting the specifications of the contract.

Section 3 Worker means-

- (a) Any worker who currently fits or when hired within the past five (5) years fits at least one of the following categories, as documented:
 - (1) The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
 - (2) The worker is employed by a Section 3 Business Concern.
 - (3) The worker is a YouthBuild participant.
- (b) The status of a Section 3 Worker shall not be negatively affected by a prior arrest or conviction.
- (c) Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 Worker. Section 3 Workers are not exempt from meeting the qualifications of the position to be filled.

Simplified Acquisition – Purchases of supplies and services that do not exceed one hundred fifty thousand dollars (\$150,000) in the aggregate.

Small Business Concern –Is a business that is:

- (a) Independently owned and operated;
- (b) Not dominant in its field of operation;
- (c) Not an affiliate or subsidiary of a business dominant in its field of operation; and
- (d) Meets the size standards in 13 CFR Part 121.

Solicitation – Any request to submit offers or quotations to DCHA. Solicitations under sealed bid procedures are called “invitations for bids.” Solicitations under negotiated procedures are called “requests for proposals.” Solicitations under simplified acquisition procedures may require the submission of either a quotation or an offer.

Specifications – Clear and accurate description of the technical requirements of a service or supply contract.

Supplemental Agreement – A contract modification that is accomplished by the mutual action of the parties.

Suspension – Suspension means that a contractor is disqualified from all federal programs for a temporary period because of adequate evidence that the contractor engaged in criminal, fraudulent, or other very serious misconduct. A contractor is suspended pending investigation and appropriate action. All suspensions are temporary pending the completion of an investigation and such legal proceedings as may ensue.

Targeted Section 3 Worker - means a Section 3 Worker who is:

- (a) A worker employed by a Section 3 Business Concern; or
- (b) A worker who currently fits or when hired fits at least one (1) of the following categories, as documented within the past five (5) years:
 - (1) A resident of public housing or Section 8-assisted housing;
 - (2) A resident of other public housing projects or Section 8-assisted housing managed by DCHA that is providing the assistance; or
 - (3) A YouthBuild participant.

Termination for Cause or for Default – Termination of a contract when the contractor fails to perform a contract term or fails to make progress as so to endanger performance.

Termination for Convenience – DCHA’s unilateral termination of a contract, in whole or in part, when the product or service is no longer needed, DCHA can no longer fund the contract, or when it is in the best interest of DCHA.

Time and Materials Contracts – Contract that provides for payment of supplies and services based on incurred direct labor hours at fixed rates that include direct costs, indirect costs, and profit.

Time Delay – An interruption during which services, supplies, or work are not delivered under the performance schedule stated in the contract.

Unsolicited Proposal – A written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror to obtain a contract with DCHA, and is not in response to a request for proposals.

Woman-Owned Business Enterprise – A business at least 51% owned by a woman or women who are U.S. citizens and who also control or operate the business.

All persons desiring to comment on these proposed rules must submit comments in writing, no later than thirty (30) days after the date of publication of this notice in the *District of Columbia Register*, to the following: District of Columbia Housing Authority, Office of the General Counsel, 1133 North Capitol Street, N.E., Suite 210, Washington, D.C. 20002-7599 or in the alternative to email comments to PublicationComments@dchousing.org. Copies of these proposed regulations may be obtained without charge at the above-described address.