



PROCUREMENT POLICY

Adopted and Effective: June 7, 2017

Amended (via Resolution No. 23-19): April 5, 2023

(Revokes and Replaces the Procurement Policy Dated: December 7, 2011)

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Adopted: 06/07/2017

Resolution No.: 17-33

Preamble to Policy

The Housing Opportunities Commission of Montgomery County (“HOC”) is a complex enterprise. It operates as a traditional public housing authority managing federal funds to advance housing needs but also uses funds received from other sources and its own endeavors to advance its mission. That mission includes housing but also the added layer of development, management, financing, lending and the provision of additional supportive services for affordable and market rate residential properties as well as related commercial facilities. Given the variety of funding sources and HOC’s status as a government entity, HOC is attuned to the needs for fairness and transparency in differing transactions. HOC also recognizes that different sources of funding may require different standards and methodologies for solicitation and selection of contractors providing certain services while continuing to maintain equitable and fair treatment for all bidders. With that in mind, the Policy provides procurement procedures for the procurement of certain professional services and expertise in cases in which federal funds are not utilized distinct from those procedures required for procurements under federally funded programs.

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1. INTRODUCTION

1.1 General. Established for the Housing Opportunities Commission of Montgomery County (hereinafter, "HOC") by Action of the Agency Board of HOC's Commissioners ("Board") on **June 7, 2017**, this Procurement Policy ("Policy") complies with the Annual Contributions Contract ("ACC") between HOC and the United States Department of Housing and Urban Development ("HUD"), Federal Regulations at 2 CFR §200.317 through §200.326, (Appendix I), the procurement standards of the Procurement Handbook for Public Housing Authorities, *Procurement Standards*, HUD Handbook 7460.8, REV 2,(the "Handbook") and applicable State and local laws.

1.2 Changes in Laws and Regulations. In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with this Policy, automatically supersede this Policy.

2. GENERAL PROVISIONS

2.1 Policy Statement. This Policy establishes a broad framework of policies to ensure that HOC's purchasing and contracting functions promote administrative flexibility and efficiency, while at the same time maintaining prudent internal controls and compliance with applicable statutes and regulations. Specific purposes of this Policy include, but are not limited to, the following:

- a) Fairness and objectivity: providing a fair, objective, and equitable selection and contracting environment for all individuals and firms seeking to do business or contracting with HOC.
- b) Ensuring reasonable costs: promoting competition, and negotiating (where applicable) to ensure that HOC receives the most favorable prices and terms in its contracts.
- c) Efficiency: ensuring that supplies and services (consultant, construction, social services, etc.) are obtained efficiently and effectively.
- d) Value-added procurement: facilitating a procurement process that provides service and value to HOC in obtaining goods and services.
- e) Ethical standards: ensuring that HOC's procurement activities are implemented consistent with applicable ethical standards.
- f) Legal considerations: complying with all applicable federal, state and local statutes and regulations.

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2.2 Application. This Policy applies to all procurement actions of HOC except as noted under Exclusions below. Nothing in this Policy shall prevent HOC from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. HOC utilizes a variety of funding sources for procurement of goods and services, including earnings from its own activities. These sources have different procurement requirements. The Policy assures that HOC avoids unnecessary complexity while at the same time complying with applicable laws and regulations without requiring application of a higher standard to procurement than is necessary.

2.3 Application of Federal or Non-Federal Funding Sources for Professional and Consulting Services. When a contract provides for the use of funds from non-federal sources, unless otherwise required by the funding source, HOC may use Section 6 for the procurement of professional and consulting services. When only federal funding is to be applied to a contract, the procurement methods for professional and consulting services proscribed in Section 5 must be utilized. When both federal funding and non-federal sources are applied in a contract the procurement method for professional and consulting services in Section 6 shall **not** be utilized unless the funds and scope of work can be separated as, for example, by separate and distinct timing for availability of funds or by use of barriers preventing commingling of funds or other recognized methods to fungibility. If so, the Section of the Policy applicable to the funding source may be applied for procurement of professional and consulting services

2.4 Definitions

“Contractor” is any person or entity that enters into a contract with HOC under this Policy.

“Contracting Officer” is the employee responsible for procurement and administration of a particular contract.

“Procurement,” includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials; (2) construction and maintenance consultant services; (3) architectural and engineering (“A/E”) services; (4) social services; (5) professional and consulting services and (6) other services.

“Procurement Officer” is the employee of HOC within the Finance Division who is responsible for supervision and management of procurement procedures.

“Purchase Order” is a document issued by HOC that authorizes a purchase transaction. When accepted by the seller, it becomes a contract binding on both parties setting forth descriptions of the goods ordered, quantities, prices, discounts, shipment, payment and other term terms and conditions.

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2.5 Exclusions from Policy. This Policy does not govern the following types of contracts or procurements:

- a) administrative fees earned under the Section 8 voucher program,
- b) the award of vouchers under the Housing Choice Voucher Program also known as the Section 8 program,
- c) the execution of landlord Housing Assistance Payments contracts under that program,
- d) the acquisition of real estate which is governed by a separate HOC policy,
- e) the disposition of real estate,
- f) the sale of partnership, membership or other ownership interests in an entity owned or controlled by HOC,
- g) the purchase by HOC of partnership, membership or other ownership interests,
- h) employment contracts,
- i) loans to or from HOC,
- j) the incurring of travel expenses such as airfare, vehicle services, and hotel and meal charges, registration fees,
- k) the purchase of advertising in print, radio, television or digital media,
- l) the use of employment agencies for the hiring of temporary workers,
- m) the procurement of regulated utilities,
- n) the selection of a non-affiliated party as a shareholder, partner or member in an ownership entity when the non-affiliated party has presented an unsolicited offer to HOC to jointly own, develop, and/or operate real property which provides HOC an interest in real property or ownership interest in an entity which owns or will own real property,
- o) the purchase of financial derivatives, guaranteed investment contracts and other investments in connection with the issuance of HOC bonds when the Executive Director determines, in consultation with financial consultants, that expeditious decisionmaking is beneficial,

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- p) the selection of auditors to comply with audit and reporting requirements in tax credit partnership transactions under Section 42 of the Internal Revenue Code of 1986 when required by a limited partner,
- q) approval of an application for the issuance of conduit financing through the issuance of HOC bonds to be sold to one investor submitted by a private developer or owner.

2.6 Exclusions from Competitive Procurement. Sections 5 and 6 of this Policy does not apply to procurement transactions that are typically exempt from competitive procurement. Such procurement transactions include those made pursuant to any of the following methods, so long as the respective conditions listed below are satisfied:

- a) **U.S. General Services Administration (GSA) Schedule 70, Information Technology (“GSA IT Schedule 70”).** HOC may purchase from the GSA IT Schedule 70 pursuant to Section 211 of the E-Government Act of 2002. Without open competition, HOC may not purchase items from GSA IT Schedule 70 vendors under terms that are less favorable than those of the GSA IT Schedule 70.
- b) **Intergovernmental or Interagency Purchasing Agreements.** HOC may procure supplies and services without competitive procurement by entering into intergovernmental or interagency purchasing agreements, provided that (i) the intergovernmental/interagency purchasing agreement is between HOC and a state or local governmental agency, which may be another PHA (the “Lead Procurement Agency”), (ii) the intergovernmental/interagency purchasing agreement provides for greater economy and efficiency and results in cost savings to HOC, as evidenced by documentation showing that cost and availability were evaluated before such an agreement was executed, (iii) the intergovernmental/interagency purchasing agreement is only used to purchase common supplies and services that are of a routine nature, and (iv) the goods and services obtained under the agreement were procured by the Lead Procurement Agency in accordance with 2 CFR §200.317 through §200.326. Under this method, HOC may order supplies and services from the vendors who have a contractual agreement to furnish the supplies and services to the Lead Procurement Agency, but only under terms that are not less favorable than the terms in the Lead Procurement Agency’s contract with such vendor. Whenever permitted by the Lead Procurement Agency, HOC may procure from the vendor without a formal written intergovernmental or interagency purchasing agreement between the PHA and the Lead Procurement Agency. When required by the Lead Procurement Agency, HOC may pay a nominal fee to the lead Procurement Agency for this benefit.
- c) **Section 13 Consortium of PHAs.** HOC may procure goods and services on a noncompetitive basis if the purchase is made through a consortium of housing authorities (“PHA”) pursuant to Section 13 of the Housing Act of 1937, so long as the consortia itself is engaged in competitive procurement for those goods and services. Participating in

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such a consortia requires that HOC enter into a consortium agreement with the other participating PHAs and submit joint PHA Plans to HUD.

2.7. Public Access to Procurement Information. Most procurement information that is not confidential commercial information or identified as proprietary is a matter of public record and shall be available to the public as provided in Maryland's Public Information Act, Md. Code Ann., General Provisions Art., § 4-101 through § 4-601.

3. ETHICS IN PUBLIC CONTRACTING

3.1 General. HOC has established a code of conduct regarding procurement issues and actions and has implemented a system of sanctions for violations through its Personnel Policy. This code of conduct is consistent with applicable Federal, State, or local law. In the event of a violation, a written warning of instruction shall be issued to the involved parties. In addition, depending upon the severity of the violation and in accordance with HOC's Personnel Policy, discipline will be instituted, including but not limited to suspension and termination.

3.2 Conflicts of Interest. In accordance with Montgomery County Code 19A Article ("Ethics Code"), no employee, officer, Commissioner, or agent of HOC shall, unless permitted by waiver from the County Ethics Commission participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest would occur. This type of conflict exists when a Commissioner, officer or employee is deemed to have an "economic interest" distinct from the general public in the selection, award or administration of a government contract. This may occur in an instance in which a Commissioner, officer or employee, or a relative (as provided in the Ethics Code, as hereafter defined) or a business entity in which the Commissioner or employee has an ownership interest or an instance in which the Commissioner, officer or employee and a potential bidder are negotiating or already have an employment arrangement. Any of these circumstances may result in the Commissioner, officer or employee having an "economic interest" financially distinct from that of the general public with a firm or person or entity competing for an award of a contract. In such instances, the Commissioner, officer or employee, either directly or through a relationship as described below shall be recused from participation in the decision making process:

- a) An employee, officer, Commissioner, or agent of HOC who is involved in making the award;
- b) a relative of any person listed in a) above including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law,

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stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister;

- c) a domestic partner of any person listed in a) above; or
- d) an organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

3.3 Gratuities, Kickbacks, and Use of Confidential Information. In accordance with the Ethics Code, no officer, employee, Commissioner, or agent of HOC shall ask for or accept meals and beverages with a value greater than Fifty Dollars (\$50) or gratuities, favors, or items of more than nominal value (i.e. inexpensive hat with logo) not to exceed Twenty Dollars (\$20.00) from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain. In the event a gratuity, favor or item of value exceeding the values proscribed is received, the recipient is required to disclose said item in writing to the Executive Director within 7 days of receipt. In the event of a violation, a written warning of instruction shall be issued to the involved parties. In addition, depending upon the severity of the violation and in accordance with HOC's Personnel Policy, other discipline will be instituted by the Human Resources Division.

3.4 Prohibition against Contingent Fees. Contractors wanting to do business with HOC must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

4. ASSISTANCE TO SMALL AND OTHER BUSINESSES

4.1 Definitions.

"Small business" is a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR §121 should be used to determine business size.

"Minority-owned business" is a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

"Women's business enterprise" is a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.

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“Section 3 business concern” is a business concern,

- (i) that is 51 percent or more owned by section 3 residents (public housing residents) or a low or very low income person residing in Montgomery County (collectively “section 3 participants”); or
- (ii) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 participants, or within three years of the date of first employment with the business concern were section 3 participants; or
- (iii) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in subsections (i) or (ii) in this definition of “section 3 business concern.”

“Labor surplus area business” is a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined in 20 CFR §654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

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

- a) Including such firms, when qualified, on solicitation mailing lists;
- b) Encouraging applicable businesses participation through direct solicitation of bids or proposals whenever they are potential sources;
- c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- d) Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- e) Using the services and assistance of available State and local agencies, the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- f) Including in contracts, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to

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award subcontracts for work in connection with the project to business concerns which provide opportunities to Section 3 business concerns; and

- g) Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed in (a) through (f) above.

4.3 Goals. Goals shall be established bi-annually by the Commission for participation by small businesses, minority-owned businesses, women’s business enterprises, labor surplus area businesses, and Section 3 business concerns in HOC prime contracts and subcontracting opportunities.

5. PROCUREMENT METHODS

5.1 Petty Cash Purchases. Purchases under \$200.00 (“Petty Cash Purchase”) may be made through the use of a petty cash account (“Petty Cash Account”). A Petty Cash Account may be established in an amount sufficient to cover Petty Cash Purchases made during a specific time period, no less than three (3) months, as determined by the Chief Financial Officer and reconciled prior to replenishment. Petty Cash Accounts shall be securely maintained and only authorized individuals shall have access.

5.2 Small and Micro Purchase Procedures¹. Purchases of goods and services for any amount less than \$10,000.00 (except for construction services for which the maximum is \$2,000.00 due to Davis-Bacon Act requirements) (“Micro Purchase”) may be made through the Micro Purchase Procedure. Small Purchases (“Small Purchase”) above the Micro Purchase Ceiling (as hereinafter defined), but not exceeding \$150,000.00 (“Small Purchase Ceiling”) shall be accomplished under the Small Purchase Procedure (the “Small Purchase Procedure”).

- a) For the Small Purchase Procedure, HOC shall obtain at least three quotes, to the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Quotes may be obtained orally (either in person or by telephone confirmed by email or in writing), by facsimile, in writing, including email, or through e-procurement. Award shall be made to the responsive and responsible (see, Section 12, *infra*) vendor that submits the lowest cost to HOC or if award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. HOC shall not break down or split requirements aggregating more than the Small Purchase Ceiling into several purchases that are less than the applicable ceiling merely to: (1) permit use of the Small Purchase Procedure or (2) avoid any requirement that applies to purchases that exceed the Small Purchase Ceiling.

¹ The Procurement Policy was amended on April 5, 2023 (via Resolution No. 23-19) to increase the Micro Purchase Ceiling from \$5,000 to \$10,000.

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- b) For Micro Purchase Procedure, which are purchases of less than \$10,000 (“Micro Purchase Ceiling”) (except construction services subject to Davis-Bacon Act requirements with a maximum of \$2,000), only one quote is required provided the quote is considered reasonable by the Procurement Officer after completing a cost and price analysis as provided in Section 8 of this Policy. HOC shall not break down or split requirements aggregating more than the Micro Purchase threshold into several purchases that are less than the Micro Purchase Ceiling merely to: (1) permit use of the Micro Purchase Procedure or (2) avoid any requirement that applies to purchases that exceed the Micro Purchase Ceiling.

5.3 Sealed Bids. A Sealed Bid (“Sealed Bid”), also known as Invitation for Bids (“IFB”), shall be used for all contracts that exceed the Small Purchase Ceiling and that are not Competitive Proposals or Non-competitive Proposals, as these terms are defined in this Policy. Under Sealed Bids, HOC publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsive and responsible bidder (see Section 12, *infra*) whose bid, conforming with all the material terms and conditions of the IFB, is the lowest in price. A Sealed Bid is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$150,000.00.

- a) **Conditions for Using Sealed Bids.** HOC shall use the Sealed Bid method when the following conditions are present:
 - (i) a complete, adequate, and realistic statement of work, specification, or purchase description is available;
 - (ii) two or more responsible bidders are willing and able to compete effectively for the work;
 - (iii) the contract can be awarded based on a firm fixed price;
 - (iv) the selection of the successful bidder can be made principally on the lowest price.
- b) **Solicitation and Receipt of Bids.** An IFB is issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder (see Section 12, *infra*) whose bid meets the requirements of the solicitation. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids received will be dated and time-stamped and stored unopened in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.

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- c) **Bid Opening and Award.** Bids shall be opened publicly. All bids received shall be recorded on an abstract (tabulation) of bids, which shall then be made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The method for doing this shall be stated in the IFB. If only one responsive bid is received from a responsible bidder, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis (See Section 8, *infra*).
- d) **Mistakes in Bids.** Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or facsimile notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Procurement Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interests of HOC or fair competition shall not be permitted.
- e) **Competition.** All Sealed Bid procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. Contractors that develop or draft specifications, requirements, statements of work, invitations for bids or requests for proposals must be excluded from competing for such procurements.

5.4 Competitive Proposals. Unlike Sealed Bid, the competitive proposal method ("Competitive Proposal"), also known as Request for Proposals ("RFP") permits: (i) consideration of technical factors other than price; (ii) discussion with offerors concerning offers submitted; (iii) negotiation of contract price or estimated cost and other contract terms and conditions; (iv) revision of proposals before the final contractor selection; (v) withdrawal of an offer at any time until the point of award; and (vi) an award normally made on the basis of the proposal that represents the best overall value to HOC, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

- a) **Conditions for Use.** Competitive Proposals are the preferred method for procuring professional services that will exceed the Small Purchase Ceiling and the selection is not based on price alone but rather on established criteria including price and

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other factors. Typical criteria include (i) demonstrated knowledge of the requirements; (ii) proposed technical approach; (iii) quality of the work plan; (iv) demonstrated prior experience; (v) successful prior performance, especially with the Commission and (vi) where applicable, performance record with respect to the Section 3 of the HUD Act of 1968 in prior contracts with HOC and others in Montgomery County . With respect to federal funded activities, construction services will typically be procured utilizing the Sealed Bid (IFB) or Small Purchase Procedure.

- b) **Form of Solicitation.** Competitive Proposals shall be solicited through the issuance of an RFP. Each RFP shall be distributed to an adequate number of known individuals or entities providing the needed services with sufficient time to reply. The RFP shall be in writing and clearly identify the importance and relative value of each of the evaluation factors as well as any subfactors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued for each RFP. Proposals shall be administered so as to prevent disclosure of the contents of the proposal until after award, subject to any Public Information Act requirements provided in Maryland's Public Information Act, Md. Code Ann., General Provisions Art., § 4-101 through § 4-601. HOC may assign price a specific weight in the evaluation factors or HOC may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.
- c) **Receipt of Responses.** Proposals shall be date-time stamped when received and held unopened securely until the time and date for receipt has passed. At that point, the proposals may be opened and evaluated in confidence.
- d) **Evaluation.** The proposals shall be evaluated only on the factors stated in the RFP. Where not apparent from the evaluation factors, HOC shall establish an evaluation plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee ("Evaluation Committee"). The Evaluation Committee shall be required to disclose any potential conflicts of interest or recuse if applicable, and to sign a Non-Disclosure statement. No information regarding any of the proposals shall be provided outside of the Evaluation Committee until after the award. An Evaluation Committee must not be composed solely of a supervisor and persons who directly report to such supervisor. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.
- e) **Negotiations.** Negotiations are exchanges in a Competitive Proposal solicitation between HOC and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. Negotiations shall be conducted with all offerors who submit a proposal determined to be within a competitive range of being

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selected for award as documented in the contract file, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror's proposal and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations.

- f) **Bargaining.** Negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract. When negotiations are conducted in a Competitive Proposal, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal, and shall be conducted by the Contracting Officer with each offeror within the competitive range. The primary object of discussions is to maximize HOC's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The Contracting Officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as technical approach, past performance, and terms and conditions) that could, in the opinion of the Contracting Officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the Contracting Officer's judgment. The Contracting Officer may inform an offeror that its price is considered by HOC to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that HOC's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited. No offeror shall be provided with information concerning any other offer.
- g) **Best and Final.** In the event there are two or more offerors in the competitive range and the Contracting Officer, after negotiation and bargaining has been unable to determine the most responsible bidder from among those bidding, the Contracting Officer may invite the offerors in the competitive range to submit their best and final offers, making any changes they wish in their technical proposal and the price. The best and final offers shall be evaluated in essentially the same manner as the initial offers. At his/her discretion, the Contracting Officer may have the Evaluation Committee evaluate the best and final offers.

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- h) **Award.** After evaluation of the revised proposals, if any, the contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to HOC provided that the price is within the maximum total project budgeted amount established for the specific property or activity. If HOC is unable to negotiate a contract with the highest ranked offeror, it may reject the offer and enter into negotiations with the next highest ranked offeror.

5.5 QBS Procedures For Architectural/Engineering Services and Certain Other Contracts.

Under Qualifications Based Selection (“QBS”) procedures, competitors’ qualifications are evaluated using a Request for Qualifications (“RFQ”) and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Unlike Competitive Proposal, price is not used as a selection factor under this method. QBS procedures may be used to purchase Architect/Engineering services, Energy Performance Contracting and development services.

- a) **Solicitation and Evaluation.** Under a QBS procurement, the Competitive Proposals procedures above shall be followed except that price shall not be included as a consideration. Evaluation factors may include (i) evidence of the offeror’s ability to perform, (ii) capability to perform in a timely manner, (iii) past performance in terms of cost control and compliance with performance standards, and (iv) knowledge of local building codes and applicable federal requirements
- b) **Negotiation.** The Contracting Officer shall negotiate with the highest ranking offeror to reach an agreement on a reasonable price based on a cost and price analysis. If agreement cannot be reached, the Contracting Officer may terminate negotiations and proceed to negotiate with the next highest ranking offeror until a reasonable price is obtained.

5.6 Noncompetitive Proposal Procurement by Noncompetitive Proposals (also referred to as sole- or single-source) may be used only when the award of a contract is not feasible using Small Purchase Procedures, Sealed Bids, Cooperative Purchasing/Intergovernmental Agreement, or Competitive Proposals, and if one of the following applies:

- (i) The item is available only from a single source, based on a good faith review of available sources;
- (ii) An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to HOC, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods and the emergency procurement shall be

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limited to those supplies, services, or construction necessary simply to meet the emergency; or

(iii) HUD authorizes the use of Noncompetitive Proposals; or

(iv) After solicitation of a number of sources, competition is determined inadequate.

a) **Justification.** Each procurement based on a Noncompetitive Proposal shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the Executive Director or by the Board if the contract amount is expected to exceed the Awarding Authority of the Executive Director. Poor planning or lack of planning is not justification for emergency or Noncompetitive Proposal. The justification, to be included in the procurement file, should include the following type of information:

(i) Description of the requirement;

(ii) History of prior purchases and their nature (competitive vs. noncompetitive);

(iii) The specific exception in 2 CFR §200.320(f) (1)-(4) which applies;

(iv) Statement as to the unique circumstances that require award by noncompetitive proposals;

(v) Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);

(vi) Statement as to efforts that will be taken in the future to promote competition for the requirement;

(vii) Signature by the Contracting Officer's supervisor (or other employee above the level of the Contracting Officer); and

b) **Price Reasonableness.** The reasonableness of the price for all procurements based on Noncompetitive Proposals shall be determined by performing a cost and price analysis pursuant to Section 8 below. Negotiations between HOC and an offeror that are undertaken with the intent of allowing the offeror to revise its proposal are permitted as well. In determining price reasonableness and a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the offeror, the offeror's investment, the amount of

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subcontracting, the quality of its record of past performance, and industry profit rates for similar work.

6. PROCUREMENT OF PROFESSIONAL AND CONSULTING SERVICES WITH NON-FEDERAL FUNDING

6.1. Application. In addition to Sealed Bid, QBS, Competitive Proposal, Cooperative Purchasing/Intergovernmental Agreements and Noncompetitive Proposal methods of procurement as provided hereinabove, when a contract utilizes funds from non-federal sources only, unless otherwise required by the funding source, HOC may use the means provided below for procurement of professional and consulting services. When both federal funding and non-federal sources provide funding for a contract, the procurement method for professional and consulting services described below shall **not** be utilized unless the funds and scope of work can be separated and non-federal funds allocated exclusively to the professional services being procured.

6.2. Procurement of Qualified Professionals and Consultants with Non-Federal Funds Every three years, or more often in the discretion of the Executive Director, HOC may solicit expressions of interest for the provision of professional and consulting services from qualified individuals and firms. The procurement shall be in the nature of an RFQ where price is not a factor although hourly rates or charges for specific services can be requested. From the responses received and determined to have qualified, the Commission shall establish a list of professional contractors and consultants by particular field of expertise (i.e. legal, engineering, architecture, appraisal, financing consultant, construction management, general contractors, development services and professional moving companies) whose qualifications are deemed to satisfy the requirements stated in the solicitation (each a "Qualifier"). Each Qualifier shall enter into a three year contract agreeing to perform services by task order upon negotiation of price and terms upon selection as determined in Section 6.4 below. The maximum compensation to any Qualifier for work or services during the term of a contract for all task orders shall not exceed \$250,000 unless otherwise established by the Commission. Evaluation factors may include, but shall not be limited to (i) evidence of the offeror's ability to perform, (ii) capability to perform in a timely manner, (iii) past performance in terms of cost control and compliance with performance standards, (iv) knowledge of applicable legal requirements such as local building codes or laws applicable to HOC, (v) where applicable, performance record with respect to the Section 3 of the HUD Act of 1968 in prior contracts with HOC and others in Montgomery County and (vi) other criteria specific to the service requested. An Evaluation Committee may be established to determine compliance with the procurement and satisfaction of the criteria identified. HOC shall inform each bidder of the results of the analysis of the bids in a timely fashion and the Procurement Officer shall maintain a list of Qualifiers in each category.

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6.3. Solicitation and Process. Solicitation must be done publicly. HOC must use one or more of the following solicitation methods, provided that the method employed provides for meaningful competition.

- a) Advertising in newspapers or other print mediums of local or general circulations.
- b) Notices to Vendor List (as hereinafter defined).
- c) Advertising in various appropriate trade journals or publications .
- d) E-procurement using an internet system calculated to provide full and open advertisement, including publication on HOC's website.
- e) Public notice should be published or advertised not less than once each week for two consecutive weeks or be continuously posted on HOC's website.
- f) Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact that can provide a copy of, and information about, the solicitation, and a brief description of the needed item(s).
- g) A minimum of 15 days shall be provided for preparation and submission of responses.
- h) HOC may cancel the solicitation for any reason.

6.4 Selection from Among Qualifiers for Specific Service.

- a) From time to time, as the needs of HOC may require, with respect to work or service with a cost not anticipated to exceed the Executive Director's Awarding Authority (as defined in Section 17 herein and displayed on Appendix III), HOC shall select three (3) or more Qualifiers in the field of expertise required to bid on a particular service or project. Depending upon the type of work to be performed and the anticipated cost of the services to be procured, HOC may use the Small Purchase, Sealed Bid, Competitive Proposal or QBS procurement process to select a contractor but only addressed to or solicited from the selected Qualifiers.
- b) In determining the award of a contract, in addition to factors specific to a particular project HOC may consider:
 - (i) related experience on similar projects;

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- (ii) number and value of recent projects performed for HOC;
- (iii) compatibility of size of the firm with the size of the proposed project, or special familiarity with the project or project site;
- (iv) special qualifications, experience or design approach;
- (v) adequacy of local office facilities to render the services, ability to provide sufficient staff for the project, and technical competence in the work to be performed;
- (vi) with respect to architectural or engineering services, familiarity with zoning, land planning and permit requirements

6.5. Evaluation Committee. When applicable, an Evaluation Committee composed of a minimum of three persons shall evaluate proposals in accordance with the published selection criteria and submit an award recommendation to the Contracting Officer. An Evaluation Committee must not be composed solely of a supervisor and persons who directly report to such supervisor.

6.6. Contracts In Excess of Executive Director's Awarding Authority. In instances in which the cost of the contract is anticipated to exceed the Executive Director's Awarding Authority (See Section 16, *infra*), HOC may select three (3) or more Qualifiers in the field of expertise required to bid on a particular service or project or it may solicit publicly and, regardless of solicitation process, utilize the Competitive Proposal method or, with respect to architects, general contractors, engineers or developer services, the QBS method for selection. In the event HOC chooses to solicit publicly, it must use one or more of the following solicitation methods, provided that the method employed provides for meaningful competition.

- a) Advertising in newspapers or other print mediums of local or general circulations.
- b) Notice to the applicable Vendor List.
- c) Advertising in various appropriate trade journals or publications.
- d) E-procurement using an internet system calculated to provide full and open advertisement, including publication on HOC's website.
- e) The substance of the notice and period of time for response shall be, at a minimum, as provided in Section 6.3(e) and (f).

6.7. Compliance with Procurement Methods. Procurement by the methods proscribed in Section 6 may be procedurally less formal than in Sealed Bid, Competitive Proposal or QBS

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methods for a federally funded contract, provided that, except as otherwise provided for herein, such procurements shall be conducted substantially in compliance therewith and in a manner to assure equity and fairness in solicitation and selection.

7. INDEPENDENT COST ESTIMATE (ICE)

7.1 General. For all purchases above the Small Purchase Ceiling, HOC shall prepare an Independent Cost Estimate ("ICE") prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased and a written determination shall be maintained by the Procurement Officer. The purpose of the ICE is to determine the reasonableness of pricing in procurements when price is a factor or evaluating pricing in solicitations in which price is not utilized in selection criteria.

8. COST AND PRICE ANALYSIS

8.1 General. HOC shall determine that the price for the goods or services being procured is reasonable before entering into a contract.

8.2 Petty Cash Purchase and Micro Purchases. No formal cost or price analysis is required for Petty Cash Purchases and Micro Purchases. The execution of a Purchase Order by the Contracting Officer shall serve as the Contracting Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience, price lists, catalogs, market prices or any other reasonable basis.

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

8.4 Sealed Bids. The presence of adequate competition should generally be sufficient to establish price reasonableness for a Sealed Bid. Where sufficient bids are not received, and when the bid received is substantially more than the ICE, and when HOC cannot reasonably determine price reasonableness, HOC must conduct a cost analysis, consistent with federal regulations(2 CFR 200.323), to ensure that the price paid is reasonable.

8.5 Competitive Proposals. The presence of adequate competition should generally be sufficient to establish price reasonableness for a Competitive Proposal. Where sufficient proposals are not received, HOC must compare the price with the ICE. For Competitive

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Proposals where prices cannot be easily compared among offerors, when there is not adequate competition, or where the price is substantially greater than the ICE, HOC must conduct a cost analysis, consistent with federal regulations, to ensure that the price paid is reasonable.

8.6. Non-Competitive Proposals. A cost analysis shall always be conducted for the award of a contract under the Non-Competitive Proposal method of procurement consistent with federal regulations to insure price reasonableness.

8.7. Contract Modifications. A cost analysis, consistent with federal regulations, shall be conducted for all contract modifications for projects that were procured through Sealed Bid, Competitive Proposals, or Non-Competitive Proposals, or for projects originally procured through the Small Purchase Procedure in which the the amount of the contract modification will result in a total contract price in excess of \$150,000.00.

9. SOLICITATION AND ADVERTISING

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

9.2. Method of Solicitation. The number of quotes or bids required for procurement of goods and services or professional services are shown in Appendix II and described below:

- a) **Petty Cash and Micro Purchases.** HOC may contact only one source if the price is considered reasonable as determined by a cost and price analysis.
- b) **Small Purchases.** Quotes may be solicited in writing, through facsimile, E-Procurement, or by any other method calculated to provide a broad opportunity for competition.
- c) **Sealed Bids and Competitive Proposals.** Solicitation must be done publicly. HOC must use one or more of the following solicitation methods, provided that the method employed provides for meaningful competition.
 - (i) Advertising in newspapers or other print mediums of local or general circulations.
 - (ii) Notice to the applicable Vendor List

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- (iii) Advertising in various appropriate trade journals or publications (i.e., for construction).
 - (iv) E-procurement using an internet system calculated to provide full and open advertisement.
 - (v) All solicitations shall be in compliance with 2 CFR §200.317 through §200.326, and applicable State and local requirements.
- d) **Time Frame.** For purchases of more than \$100,000.00 but less than \$150,000.00, the public notice shall run for not less than once for a week and/or be continuously posted on HOC's website for at least one week. For purchases of more than \$150,000.00, the public notice should run not less than once each week for two consecutive weeks and/or be continuously posted on HOC's website for at least two weeks. The Executive Director may reduce the public notice period when expeditious decisionmaking will be beneficial. Written documentation of the need for reducing public notice shall be included in the contract file.
- e) **Form.** Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact that can provide a copy of, and information about, the solicitation, and a brief description of the needed item(s).
- f) **Time Period for Submission of Bids.** A minimum of 21 days shall be provided for preparation and submission of Sealed Bids and 15 days for Competitive Proposals. The Procurement Officer may allow for a shorter period under extraordinary circumstances and the file will be documented with an explanation of the basis for reducing the time for responses to be submitted.

9.3. Cancellation of Solicitations.

- a) An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:
- (i) The supplies, services or construction is no longer required;
 - (ii) The funds are no longer available;
 - (iii) Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
 - (iv) Other reasons that would eliminate the need for the procurement or require that the solicitation be substantially revised or amended.

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- b) A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
 - (i) The supplies or services (including construction) are no longer required;
 - (ii) Ambiguous or otherwise inadequate specifications were part of the solicitation;
 - (iii) Any factors of significance to HOC were not considered in the solicitation;
 - (iv) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - (v) There is a reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
 - (vi) For good cause in the best interest of HOC.

9.4. Notice of Cancellation

- a) The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.
- b) A notice of cancellation shall be sent to all bidders/offerors solicited. If the specifications are deemed insufficient or unclear, HOC shall cancel the solicitation, and, if appropriate, explain to all prior bidders that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.
- c) If all otherwise acceptable bids or proposals received are at unreasonable prices, an analysis should be conducted to determine if either the specifications or HOC's cost estimate were inadequate. If both are determined adequate and if only one bid or proposal is received and the price is considered unreasonable, the Contracting Officer may cancel the solicitation and complete the procurement by using the Competitive Proposal method after a written determination by the Procurement Officer that such action is appropriate all bidders have been informed of HOC's intent to utilize this method of procurement.

10. SPECIFICATIONS

10.1 General. All specifications shall be drafted to promote overall economy for the purpose intended and to encourage competition in satisfying HOC's needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly

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restrictive or represent unnecessary or duplicative items or designed so as not restrict competition to one supplier. Function or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

10.2 Limitation. The following types of specifications shall be avoided:

- a) Geographic restrictions not mandated or encouraged by applicable Federal law except for architect/ engineer contracts, which may include geographic location as a selection factor if adequate competition is available See 2 CFR 200.319.
- b) Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).
- c) To eliminate unfair economic advantage and organizational conflict, contractors retained by HOC to develop specifications or a scope of work shall be excluded from competing in a following procurement.

11. SURETY REQUIREMENTS

11.1 General. The standards under this section apply to construction contracts that exceed \$100,000.00. There are no bonding requirements for Small Purchases or for Competitive Proposals. HOC may require bonds or a letter of credit in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

11.2 Bid Bonds. For construction contracts exceeding \$100,000.00, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.

11.3 Performance and Payment Bonds. For construction contracts exceeding \$100,000.00, the successful bidder shall furnish an assurance of completion and payment. This assurance may be any one of the following:

- a) Performance and payment bond in a penal sum of 100% of the contract price; or
- b) Separate performance and payment bonds, each for 100% or more of the contract price; or
- c) A 20 % cash escrow; or

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d) A 25 % irrevocable letter of credit approved by the Procurement Officer.

11.4 Surety Form. Bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State of Maryland. U. S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory. Individual sureties will not be accepted.

12. CONTRACTOR QUALIFICATIONS AND DUTIES

12.1 Contractor Responsibility. HOC shall not award any contract unless the prospective contractor (i.e., low responsive bidder or successful offeror) has been determined to be responsible. A responsible bidder/offeror must:

- a) Have adequate financial resources to perform the contract, or the ability to obtain them;
- b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all of the bidder's/offeror's existing commercial and governmental business commitments;
- c) Have a satisfactory performance record;
- d) Have a satisfactory record of integrity and business ethics;
- e) Have the necessary credentialing and/or licensing for the state of Maryland, organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not being suspended, debarred or under a HUD-imposed Limited Denial of Participation ("LDP").

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

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12.3 Suspension and Debarment. Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (2 CFR §200.317 through §200.326) or by other Federal agencies, e.g., Department of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings. Prior to issuance of a contract, HOC shall, as provided within Section 10.2.H.1 and 10.2.H.2 of the Handbook, conduct the required searches within the HUD (LDP system and the U.S. General Services Administration System for Award Management (“SAM”)) and place within the applicable contract file a printed copy of the results of each such search.

13. CONTRACT TYPES AND CREDIT PURCHASES

13.1 Credit or Purchasing Cards. Credit or Purchasing Cards are a payment method, not a procurement method. Credit card usage should follow the rules for all other small purchases. For example, the Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Contracting Officer would generally need to have obtained at least three (3) quotes before purchasing via a credit card as required by the procurement method provided in Section 5. HOC shall adopt reasonable policy safeguards to assure that credit cards are used only for intended purposes prior to issuance (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

13.2 Contract Types. Any type of contract which is appropriate to the procurement and which will promote the best interests of HOC may be used, provided the cost -plus- percentage-of-cost and percentage-of-construction-cost methods are not used. All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and HOC.

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

- a) The option is contained in the solicitation;
- b) The option is a unilateral right of HOC;
- c) The contract states a limit on the additional quantities and the overall term of the contract;
- d) The option is evaluated as part of the initial procurement;
- e) The contract states the period within which the options may be exercised;

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- f) The option may be exercised only at the price specified in or reasonably determinable from the contract.

13.4 Limitations on Option Use. An option may be exercised only if determined to be more advantageous to HOC than conducting a new procurement. If the contractor seeks an option to increase the price subject to inflation, that option must be identified in the bid and shall be clearly defined and the period that the option is exercisable specified.

14. CONTRACT CLAUSES

14.1 Contract Pricing Arrangements. All contracts shall identify the contract pricing arrangement as well as other pertinent terms and conditions as determined by HOC that were part of the bid offer including any price adjustment factors.

14.2 Required Forms For Federally Funded Contracts. For contracts utilizing federal funds, the forms HUD-5369; 5369-A; 5369-B; 5370; 5370-C (Sections I and II); 51915; and 51915-A, which contain all HUD-required clauses and certifications for contracts of more than \$150,000.00, as well as any forms/clauses as required by HUD for Small Purchases, shall be used, as applicable, in all corresponding solicitations and contracts issued by HOC as well as all provisions required under HOC policy and state law where applicable.

14.3 Required Contract Clauses For Federally Funded Contracts: HOC shall ensure that each contract executed by it contains the required contract clauses detailed within 2 CFR §200.326 and Appendix II thereto (See Appendix I).

14.4 Required Contract Clauses for Non-Federally Funded Contracts: The Contracting Officer and General Counsel shall prepare and negotiate contracts which are not funded through federal sources. HOC shall insure that each such contract contains the following contract clauses:

- a) A right to terminate without cause by HOC.
- b) Indemnification, defense and hold harmless provision by contractor for the benefit of HOC.
- c) Contractor shall provide appropriate insurance and name HOC as an additional insured on all applicable insurance .
- d) All change orders shall be subject to HOC review and approval and shall not be accepted without HOC's written authorization.
- e) Contracts may not exceed five years including any renewal period except for those identified on Appendix IV.

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- f) No automatic renewals.
- g) Maryland law applies to all contract interpretation.
- h) Jurisdiction for litigation to be exclusively in Maryland.

15. APPEALS AND REMEDIES

15.1 Protest.

- a) **Protest of Solicitation.** Any protest against a solicitation issued by the HOC must be received before the response submittal deadline.
- b) **Protest of Award Based on Petty Cash, Micro Purchase or Small Purchase Solicitation:** Any protest against the award of a contract based on these solicitations must be received prior to award. It shall be the responsibility of respondents to contact HOC regarding the status of a contract award.
- c) **Protest of Award Based on Sealed Bid:** Any protest arising out of the award of a contract resulting from an IFB must be received no later than ten (10) days after the bid submittal deadline.
- d) **Protest of Award Based on QBS or Competitive Proposal:** Any protest arising out of the award of a contract from a QBS or Competitive Proposal, must be received no later than ten (10) days after notification to an unsuccessful respondent that it was not selected.
- e) **Protest of HOC's Rejection of Response:** Any protest of a decision by the HOC to reject a response to an RFP or RFQ in response to a solicitation must be received no later than two (2) business days after being notified in writing of HOC's decision.
- f) **Late Protests:** Protests that are not timely received in accordance with the applicable filing deadline set forth in this Section will not be considered.

15.2 Form and Manner of Filing Protests. All protests shall be in writing, clearly identified as a "procurement protest" and signed by the protesting party. Protests shall contain a detailed statement of basis of the protest. Protests lacking signatures or detailed statements or the basis of the protest shall not be considered

15.3 HOC Review of Protests. The Procurement Officer shall review and investigate all properly and timely filed protests and issue a written decision to the protestor. The

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Procurement Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.

15.4 Appeal. Any appeal of a formal written decision by the Procurement Officer must be received by the Executive Director within two (2) business days of receipt of the written decision from the Procurement Officer or the appeal will not be considered. Appeals of a formal decision by the Procurement Officer will be reviewed and investigated by the Executive Director who shall issue the final decision.

15.5 Notifications of Protest. HOC's notification may be by any reasonable means available to provide timely and accurate notice of actions and decisions, including but not limited to U.S. mail, electronic mail (e-mail), or facsimile. The effective date of notice by mail is the date that the notice is deposited in the mail. The effective date of all other means of notice is the date it is transmitted.

15.6 Documentation of Protest. Documentation of the protest process and resolution shall be maintained as part of the contract file.

15.7 Contractor Claims. All claims by a contractor relating to performance of a contract shall be submitted in writing to the Procurement Officer for a written decision. Claims shall identify the contract at issue, provide a statement of the basis for the claim and include any supporting documentation. The contractor may request a conference and the Procurement Officer shall investigate the claim. The Procurement Officer shall issue a written decision and shall inform the contractor of its appeal rights to the Executive Director. Contractor claims shall be governed by the Changes Clause in the relevant form HUD-5370 or other contract between the parties.

15.8 Appeal of Contractor Claim. Any appeal of a formal written decision by the Procurement Officer must be received by the Executive Director within two (2) business days of receipt of the written decision from the Procurement Officer, or the appeal will not be considered. Appeals of a formal decision by the Procurement Officer will be reviewed and investigated by the Executive Director who shall issue the final decision.

15.9 Notifications of Claim. HOC's notification may be by any reasonable means calculated to provide timely and accurate notice of actions and decisions, including but not limited to U.S. mail, electronic mail (e-mail), or facsimile. The effective date of notice by mail is the date that the notice is deposited in the mail. The effective date of all other means of notice is the date it is transmitted.

15.10 Documentation of Claim. Documentation of the claim process and resolution shall be maintained as part of the contract file.

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16. AWARDING AUTHORITY AND CONTRACT MODIFICATION

16.1 Awarding Authority. All awarding authority (“Awarding Authority”) under this Policy is vested in the Commission. However, the Commission may and has delegated procurement Awarding Authority to the Executive Director and other employees as provided in Appendix III. All procurement awards that exceed the limits set forth in Appendix III must be presented to and approved by the Commission prior to award and/or contract execution.

16.2 Renewals and Extensions. Except as may be required for contracts provided for in Appendix IV or with respect to those contracts approved pursuant to the procedures established in Section 6.2 hereof, in instances in which the Commission has approved an award of a contract with authorization for extensions or renewals, the Executive Director may administratively renew or extend such contract even if the value of the contract exceeds the Executive Director’s Awarding Authority unless the Commission, as part of the initial award, requires reconsideration or review prior to renewal or extension.

16.3 Change Orders and Contract Modifications.

- a) The Executive Director may approve contract modifications that result in increases in compensation to the Contractor which, cumulatively, including the original contract sum, do not exceed the Executive Director’s Awarding Authority provided that funds to pay for the contract modification is included in the budget for the project to which the contract is allocated.
- b) With respect to contracts for which the Executive Director does not have Awarding Authority, except contracts for construction or substantial renovation, the Executive Director may approve contract modifications that do not exceed ten (10%) percent of the original contract sum.
- c) With respect to contracts for construction or substantial renovations, the Executive Director may approve change orders or contract modifications provided that after the adjustment caused by any increase in compensation to the Contractor, the Commission approved budget remains in balance. (See Budget Policy #5)

17. DELEGATION OF CONTRACTING AUTHORITY

17.1 Procedures. The Executive Director is responsible for ensuring that HOC’s procurements comply with this Policy. The Executive Director shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The Executive Director shall also establish a system of

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sanctions for violations of the ethical standards described herein, consistent with Federal, State, or local law and the Personnel Policy.

18. CONTRACT ADMINISTRATION AND PROCUREMENT PLANNING

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

18.2 Planning. Planning is essential to managing the procurement function properly. Every three (3) years, the HOC Finance Division will review and report to the Budget Finance and Audit Committee the record of prior purchases, as well as future needs, to:

- a) Find patterns of procurement actions that could be performed more efficiently or economically;
- b) Maximize competition and competitive pricing among contracts decrease HOC's procurement costs;
- c) Reduce HOC's administrative costs;
- d) Ensure that supplies and services are obtained without any need for re-procurement (i.e., resolving bid protests);
- e) Minimize errors that occur when there is inadequate lead time; and
- f) Provide for the most efficient storage, security, and handling for procurement records and activities

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

- a) Rationale for the method of procurement (if not self-evident);
- b) Rationale of contract pricing arrangement (if not self-evident);
- c) Reason for accepting or rejecting the bids or offers;
- d) Basis for the contract price (as prescribed in this Policy);

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- e) A copy of the contract documents awarded or issued and signed by the Contracting Officer/Procurement Officer;
- f) Basis for contract modifications; and
- g) Related contract administration actions.

18.4 Level of Documentation. The size and scope of documentation shall be commensurate with the value of the procurement.

18.5 Record Retention. Records are to be retained for a period of seven (7) years after final payment and all matters pertaining to the contract are closed.

19. DISPOSITION OF SURPLUS PROPERTY

19.1 General. Personal property, equipment and supplies no longer necessary for HOC's purposes shall be transferred, sold, or disposed of in accordance with applicable Federal, state, and local laws and regulations, subject to the Chief Financial Officer's (CFO's) authorization.

20. FUNDING AVAILABILITY

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

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APPENDIX I:

Contract Clauses and Procedures Appendix II, 2 CFR §200.317 through §200.326

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also may address the timing, form, and content of notifications to unsuccessful applicants. See also §200.210 Information contained in a Federal award.

2. *Administrative and National Policy Requirements—Required.* This section must identify the usual administrative and national policy requirements the Federal awarding agency's Federal awards may include. Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before receiving the Federal award. The announcement need not include all of the terms and conditions of the Federal award, but may refer to a document (with information about how to obtain it) or Internet site where applicants can see the terms and conditions. If this funding opportunity will lead to Federal awards with some special terms and conditions that differ from the Federal awarding agency's usual (sometimes called "general") terms and conditions, this section should highlight those special terms and conditions. Doing so will alert applicants that have received Federal awards from the Federal awarding agency previously and might not otherwise expect different terms and conditions. For the same reason, the announcement should inform potential applicants about special requirements that could apply to particular Federal awards after the review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).

3. *Reporting—Required.* This section must include general information about the type (e.g., financial or performance), frequency, and means of submission (paper or electronic) of post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ (e.g., by report type, frequency, form/format, or circumstances for use) from what the Federal awarding agency's Federal awards usually require. Federal awarding agencies must also describe in this section all relevant requirements such as those at 2 CFR 180.335 and 2 CFR 180.350.

If the Federal share of any Federal award may include more than \$500,000 over the period of performance, this section must inform potential applicants about the post award reporting requirements reflected in Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters.

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G. FEDERAL AWARDING AGENCY CONTACT(S)—REQUIRED

The announcement must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so the Federal awarding agency should consider approaches such as giving:

- i. Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or email, as well as regular mail).
- ii. A fax or email address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.
- iii. Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

H. OTHER INFORMATION—OPTIONAL

This section may include any additional information that will assist a potential applicant. For example, the section might:

- i. Indicate whether this is a new program or a one-time initiative.
- ii. Mention related programs or other upcoming or ongoing Federal awarding agency funding opportunities for similar activities.
- iii. Include current Internet addresses for Federal awarding agency Web sites that may be useful to an applicant in understanding the program.
- iv. Alert applicants to the need to identify proprietary information and inform them about the way the Federal awarding agency will handle it.
- v. Include certain routine notices to applicants (e.g., that the Federal Government is not obligated to make any Federal award as a result of the announcement or that only grants officers can bind the Federal Government to the expenditure of funds).

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 43310, July 22, 2015]

APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency

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Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (36 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensa-

tion to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management

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(SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

[78 FR 78808, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

APPENDIX III TO PART 200—INDIRECT (F&A) COSTS IDENTIFICATION AND ASSIGNMENT, AND RATE DETERMINATION FOR INSTITUTIONS OF HIGHER EDUCATION (IHEs)

A. GENERAL

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHEs (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1, Definition of Facilities and Administration, for a discussion of the components of indirect (F&A) costs.

1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic depart-

ments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

(3) Only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. Salary costs above statutory limits are not considered cost sharing.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

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Appendix II

MINIMUM LEVELS OF SOLICITATION

\$ Range	Purchase Procedure	Non-Professional Goods & Services	Professional Services
<\$10,000.00 ⁽¹⁾	Micro	1 quote considered reasonable	1 quote considered reasonable
>\$10,000-\$150,000	Small	3 written quotes minimum	3 written quotes minimum
Expected to exceed \$150,000	Sealed Bids	Solicit all bidders on list, advertise and post on website	Solicit all bidders on list, advertise and post on website
Expected to exceed \$150,000	Competitive Proposals	Solicit all bidders on list, advertise and post on website	Solicit all bidders on list, advertise and post on website

1. Excludes construction purchases which are set at \$2,000.00 (Davis Bacon Act.)

See Appendix IV with respect to schedule of and length of contracts for certain professional services and core services which are to be procured under this Policy.

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Appendix III

AWARDING AUTHORITY

Maximum amounts shown. All Authority is delegated to individuals.			
POSITION	PURCHASE ORDERS	CONTRACTS Goods & Services	CONTRACTS Professional
Executive Director ¹	\$250,000.00	\$250,000.00	\$250,000.00
Chief Operating Officer or Deputy ED	\$100,000.00	\$100,000.00	\$100,000.00
Division Directors	\$25,000.00	\$0.00	\$0.00
Assistant Division Directors	\$15,000.00	\$0.00	\$0.00
Designated Buyers ²	\$5,000.00	\$0.00	\$0.00

1. Awarding Authority limited to \$100,000 for NonCompetitive contracts
2. Executive Director designates all buyers on the recommendation of the Procurement Officer and CFO

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Appendix IV

FREQUENCY OF SELECTION FOR CERTAIN PROFESSIONALS AND CORE SERVICES

Contracts solicited every five years shall include an initial term of two years, with three, one-year renewals allowed, subject to approval at each renewal as provided below. Other combinations of terms are allowable, up to the maximum contract term of five years, subject to Commission approval at the time of award.

DESCRIPTION

SELECTION POLICY

Auditors
(Agency Main Audit)

The Commission shall solicit auditors for a two year term with three one Year renewals. All renewals shall be subject to Commission approval. The Commission may utilize an Evaluation Committee consisting exclusively of representatives of the Commission or Commissioners and representatives of the Finance Division and Executive Division provided that the members of the Committee shall not consist of a supervisor and persons who report directly there to.

Banks (Primary)

Solicit for a two year term with three one year renewals. The first renewal shall be permitted on the approval of the Executive Director, the second renewal on approval of the Budget and Finance and Audit Committee and the third renewal subject to Commission approval. Evaluation Committee shall consist of at least one Commissioner and representatives of the Finance Division, Mortgage Finance Division and Executive Division provided that the members of the Committee shall not consist of a supervisor and persons who report directly thereto. No limit on number of times selected.

*Bond Counsel

Solicit for a four year term with two one year renewals. The one -year renewals, shall be subject to Commission approval at each renewal. No limit on number of times selected. Evaluation Committee shall consist of at least one Commissioner and representatives of Finance Division, Mortgage Finance Division and Executive Division provided that the members of the Committee shall not consist of a supervisor and persons who report directly thereto

*Financial Advisor

Solicit for a term of four years with two one year renewals. Each renewal shall be subject to Commission approval at each renewal. No limit on number of times selected. Evaluation Committee shall consist of at least one commissioner and representatives of FinanceDivision, Mortgage Finance Division and Executive Division provided that the members of the Committee shall not consist of a supervisor and persons who report directly thereto.

Trustees

Select every time HOC has a new bond indenture. No limit on number of bond issues per trustee.

*Underwriters

Solicit for a term of two years with two one year renewals. Each renewal shall be subject to Commission approval. Evaluation Committee shall consist of

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representatives of Finance Division, Mortgage Finance Division and Executive Division provided that the members of the Committee shall not consist of a supervisor and persons who report directly thereto. No limit on number of times selected.

Property Management Services

Solicit for a term of two years with two one year renewals. Each renewal shall be subject to Commission approval. No limit on number of times selected.

Contracts for core functions and services such as telephone, technology systems, customer relations software and property management software, electronic mortgage application software system and single family mortgage database software will not be procured on a schedule but as needed.

*The Commission shall attempt to stagger the terms of these contracts so that no two terms will expire at the same time.