

# DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY CONTRACTING AND PROCUREMENT POLICIES AND PROCEDURES

## I. INTRODUCTION AND STATEMENT OF PURPOSE

These Contracting and Procurement Policies and Procedures are intended to establish an open and transparent procurement process for the District of Columbia Health Benefit Exchange Authority (“HBX”) that (1) promotes public confidence in HBX’s procurements; (2) ensures the fair and equitable treatment of all persons and entities that participate in HBX’s procurement system; (3) fosters appropriate competition and provides safeguards for maintaining a procurement system of quality and integrity; (4) promotes increased economic efficiency and responsibility on the part of HBX; (5) achieves the maximum benefit from HBX’s purchasing power; and (6) provides clarity and simplicity in the rules and procedures governing HBX’s procurements.

Under D.C. Official Code § 31-3171.04(a)(5) and § 2-351.05(c)(17), HBX has procurement authority independent of the Office of Contracting and Procurement, but is subject to certain provisions of Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-0371; D.C. Official Code § 2-352.01 *et seq.*) (“PPRA”). These Contracting and Procurement Policies and Procedures, and the applicable provisions of the PPRA, govern all procurements for goods and services undertaken by HBX for its own benefit in furtherance of operational needs. These policies and procedures do not apply to agreements authorized under D.C. Official Code §31-3171.06(d), or financial interactions in which HBX is performing a pass-through function, such as, but not limited to, the transfer of premiums and advanced payments of premiums tax credits to an insurance carrier. These policies and procedures do not apply grants awarded by HBX for any purpose, such as, but not limited to, grants awarded to Navigators under D.C. Code §31-3171.04 (19) and §1311(i) of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat 119, *et seq.*, effective March 23, 2010.

## II. PRE-SOLICITATION NOTICES

- A. The Executive Director or a contracting officer designated by the Executive Director (designee) may, when applicable and in consideration of HBX’s best interest, issue a Request for Information or other pre-solicitation notices.
- B. The Executive Director or designee may hold informal discussions for information gathering purposes with outside parties, including contractors, regarding HBX operations and operational needs. HBX will not take remedial actions under Paragraph XI against parties for activities solely related to informational discussions described in this Paragraph.

## III. METHODS OF PROCUREMENT

All procurements by HBX shall be awarded by one of the following methods:

- A. Competitive Procurement
- B. Emergency Procurement
- C. Sole Source Procurement
- ~~D.~~ Letter Contract
- ~~E.~~ Simplified Methods for Small Procurements

E.F. Inter-Governmental Procurement

F.G. Unsolicited Proposals

G.H. Pilot Procurements

H.I. Blanket Purchase Agreements

Subject to the limitations set forth below, the Executive Director of HBX or designee shall have authority to select the method of procurement that best serves the needs of HBX and achieves the purposes of these Contracting and Procurement Policies and Procedures.

A. Competitive Procurement

1. Competitive Sealed Bidding

- i. Competitive sealed bidding is a competitive method of procurement and shall be used where (i) there is an adequate and realistic specification or purchase description available; (ii) the award will be made on the basis of price and other price-related factors; (iii) it will not be necessary to conduct negotiations with offerors; (iv) time permits the solicitation, submission, and evaluation of sealed bids; and (v) there is a reasonable expectation of receiving more than one bid.
- ii. Each invitation for bids shall be in writing, shall be in a form approved by the Executive Director, shall establish a process for the evaluation of bids, and shall identify the factors on which the contract will be awarded.
- iii. Each invitation for bids shall be published on the website of HBX and shall be advertised in any other reasonable manner that would promote competition and transparency in the procurement process as determined by the Executive Director or designee.
- iv. Bids are evaluated based on the lowest responsive price and other price-related factors.
- v. Contracts shall be awarded with reasonable promptness after the date of bid opening according to the process established in the invitation for bids and based on the factors identified in the invitation for bids.
- vi. Any and all bids may be rejected if the Executive Board or the Executive Director determines that it is in HBX's best interest to do so.

2. Qualification and Price Source Selection

- i. Qualification and price source selection is a competitive method of procurement and shall be used where (i) there is an adequate and realistic specification or purchase description available; (ii) the award will be made on the basis of price and other factors, including qualifications; (iii) time permits the solicitation, submission, and evaluation of sealed submissions; and (iv) there is a reasonable expectation of receiving more than one submission.

- ii. Each solicitation shall be in writing, shall be in a form approved by the Executive Director, shall establish a process for the evaluation of bids, and shall identify the factors on which the contract will be awarded.
- iii. Each solicitation shall be published on the website of HBX and shall be advertised in any other reasonable manner that would promote competition and transparency in the procurement process as determined by the Executive Director or designee.
- iv. Proposals are evaluated based on both qualifications and pricing factors and ranked based on -the overall value to HBX.
- v. Contracts shall be awarded with reasonable promptness after the date of solicitation opening according to the process established in the solicitation and based on the factors identified in the solicitation.
- vi. Any and all bids may be rejected if the Executive Board or the Executive Director determines that it is in HBX's best interest to do so.

### 3. Competitive Sealed Proposals

- i. Competitive sealed proposals is a competitive method of procurement and may be used where the award will be made on factors that include, but are not limited to, price, best value to HBX, and where time permits the solicitation, submission, and evaluation of sealed proposals.
- ii. Each request for proposals shall be in writing, shall be in a form approved by the Executive Director, shall establish a process for the evaluation of proposals, and shall identify the factors on which the contract will be awarded.
- iii. Each request for proposals shall be published on the website of HBX and shall be advertised in any other reasonable manner that would promote competition and transparency in the procurement process as determined by the Executive Director or designee. The Executive Director or designee may solicit proposals directly from any vendor.
- iv. The Executive Director or designee may conduct discussions or negotiations with any offeror after the receipt of proposals. The person conducting the discussions or negotiations shall keep a record of all such communications and shall treat all offerors fairly in conducting discussions or negotiations.
- v. The Executive Director or designee may request that offerors revise their proposals by submitting a best and final offer or a series of best and final offers.
- vi. Contracts shall be awarded according to the process established in the request for proposals and based on the factors identified in the request for proposals.
- vii. Any and all proposals may be rejected if the Executive Board or the Executive Director determines that it is in HBX's best interest to do so.

### 4. Exemption from Competitive Procurement Requirements

- i. Contracts for the following procurements are exempted from the competitive procurement requirements:
  - a. Artistic services or works of art;
  - b. Commodities or contractual services if federal or District law prescribes with whom HBX must contract;
  - c. Legal services or negotiation services in connection with proceedings before administrative agencies or state or federal courts, including experts, attorneys, and mediators;
  - d. Copyrighted or patented materials, including technical pamphlets, published books, maps, and testing or instructional materials, provided that the materials are purchased directly from the owner of the copyright or patent;
  - e. Memberships in trade or professional organizations;
  - f. Entertainers;
  - g. Job-related seminars and trainings for employees, the Executive Board, contractors and grantees;
  - h. Maintenance and support of existing software and technology to the extent that the creator of the intellectual property is still protected and is the only source of the maintenance and support of the existing software and technology;
  - i. Captive replacement parts or component parts for equipment, or specific technical equipment that is procured for standardization purposes;
  - j. Utility services, including but not limited to gas and water;
  - k. Public transit farecards and passes;
  - l. Personal property or services provided by another public entity, agency, or authority;
  - m. Postage;
  - n. Purchases of advertising in all media, including electronic, print, radio, and television;
  - o. Trade and career fairs for employees;
  - p. Special event venues and related services;
  - q. Ticket purchases for special events, tourist attractions and amusement parks; and

r. Insurance.

B. Emergency Procurement

1. Emergency procurement is a non-competitive procurement method and may only be used after a written determination, by the Executive Director or designee, that it is not possible to undertake another type of procurement because of an emergency condition, including but not limited to a natural disaster, riot, or imminent equipment or operational failure, requiring HBX to (i) protect the public health, safety, or welfare; (ii) preserve or protect HBX's property or systems; (iii) ensure the continuation of necessary governmental functions; or (iv) comply with legal requirements.
2. An emergency procurement shall be limited to the procurement of only the types and quantities of goods or services needed to meet the immediate emergency and shall not be used to meet long-term requirements.
3. The Executive Director, or designee, shall solicit responses from as many vendors as practicable and shall ensure that an emergency procurement is undertaken with the maximum amount of transparency consistent with the circumstances of the emergency.
4. The Executive Director or designee shall seek the most favorable price and the most favorable terms and conditions that can be obtained under the circumstances of the emergency.
5. Contracts shall be awarded to the offeror whose response is deemed most advantageous to HBX under the circumstances of the emergency.
6. Any ~~or and~~ all proposals may be rejected if the Executive Board or the Executive Director determines that it is in HBX's best interest to do so.

C. Sole Source Procurement

1. Sole source procurement is a non-competitive procurement method and may only be used after a written determination, by the Executive Director or a designee, that there is only one reliable source for goods or services that HBX requires. Sole source procurement includes situations where there is only a single available source that is capable of providing the required goods or services.
2. The Executive Director or designee shall ensure that sole source procurement is used only in circumstances in which it is both necessary and in the best interest of HBX.
3. The Executive Director or designee shall use a letter to request a proposal for sole source procurement. The letter shall refer to, or attach, a description of the tasks and the time and duration -of a proposed contract.
4. The Executive Director or designee shall negotiate with the source of the procurement for the most favorable price and the most favorable terms and conditions that can be obtained.
5. A contract may be awarded where, based on the negotiated price and terms and conditions, it is in the best interest of HBX to award the contract.

6. The Executive Director or designee shall take action whenever possible to avoid the need to continue to procure the same goods or services without competition.

D. A letter contract may be used only after the Executive Director or designee determines that: (1) it is in HBX's best interest that a contractor be given a binding commitment so that work can start immediately; (2) negotiating a definitive contract is not possible in sufficient time to meet the requirement; and (3) the contract is valued at \$1 million or less. The Contracting Officer shall execute a definitive contract no later than ninety (90) days after the date of execution of the letter contract. The Contracting Officer may authorize the letter contract for an additional period of time only with approval of the Executive Director.

#### D.E. Simplified Methods for Small Procurements

1. For contracts valued at \$100,000 or less, a simplified competitive method may be used that does not incorporate all of the elements of a formal competitive procurement.
2. Each solicitation shall be in writing and shall be in a form approved by the Executive Director or designee. The Executive Director or designee shall obtain or request three (3) written quotations for each procurement in an amount over \$25,000 but less than or equal to \$100,000. The Executive Director or designee may determine that more or fewer quotations are required based on the following factors:
  - i. The nature of the item or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or if it is relatively non-competitive;
  - ii. Information obtained in making recent purchases of the same or similar item;
  - iii. The urgency of the proposed purchase;
  - iv. The dollar value of the proposed purchase; and
  - v. Past experience concerning specific contractor prices.
3. The Executive Director or designee shall ensure that responses are received and evaluated in a manner that promotes competition and transparency and that is fair to all offerors.
4. The Executive Director or designee may conduct discussions or negotiations with any offeror after the receipt of responses and shall attempt to treat all offerors fairly in conducting discussions or negotiations.
5. Contracts shall be awarded to the offeror whose response is deemed most advantageous to HBX in accordance with any evaluation factors identified in the solicitation.
6. Any and all responses may be rejected if the Executive Director or designee determines that it is in HBX's best interest to do so.
7. For contracts valued at \$25,000 or less, competitive selection is preferred, but not required. For such contracts, the procurement shall be considered a competitive procurement if the Executive Director, or designee, orally solicits and obtains responses from at least two vendors. The Executive Director or designee may award a contract when it is in the best interest of HBX to do so.
8. Contracts may not be split, artificially divided or purchased over a period of time for the purpose of bringing them within the dollar ranges in which these Procurement Policies and Procedures permit the use of simplified procurement methods.

~~9.~~—HBX may participate in the District of Columbia Purchase Card Program (P-Card) as determined by the Executive Director. HBX shall designate who shall be a card holder, the Agency Program Coordinator (APC) and an Approving Official (AO), if HBX elects to participate in the P-Card.

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program. Spending limits under the P-Card program are set by the Office of Contracting and Procurement (OCP).

#### E.F. Inter-Governmental and Intra-Governmental Contracting and Procurement

HBX may engage in the following methods of procurement with or without competition, as permitted by applicable rules or law.

1. When it is in the best interest of HBX, HBX may enter into an agreement to procure goods or services from another state, federal, or quasi-governmental entity.
2. HBX may participate in, sponsor, conduct or administer cooperative purchasing agreements for the procurement of goods, services, or construction.
3. HBX may use the District of Columbia supply schedule and the United States General Services Administration supply schedule.
4. When it is in the best interest of HBX, HBX may otherwise utilize the procurements of another state, federal, or quasi-governmental entity.

#### F.G. Unsolicited Proposals

1. HBX may, but is not required to, review unsolicited proposals and may consider whether they would benefit HBX and further HBX's mission. Unsolicited proposals that are not reviewed may be retained or disposed of by HBX.
2. An unsolicited proposal is a written proposal that:
  - i. Is innovative or unique;
  - ii. Is independently originated and developed by the offeror;
  - iii. Is prepared without HBX knowledge, supervision, direction or participation;
  - iv. Includes sufficient details to permit a determination that the proposed product, services or work could benefit HBX's operational needs and mission;
  - v. Is not an advance proposal for a known or anticipated HBX requirement that can be procured by competitive methods; and
  - vi. Does not address a previously published HBX requirement.
3. Unsolicited proposals in response to a publicized general statement of HBX needs are considered to be independently originated.
4. An unsolicited proposal may be the basis of a competitive procurement if it is in the best interest of HBX. The offeror of the proposal shall not be disqualified from participating in a competitive procurement process under the provisions set forth in Paragraph IX- for activities related solely to the submission of an unsolicited proposal.



5. HBX may begin negotiations to enter into a contract if:
  - i. The proposal meets the requirements set forth in Paragraph III.F.2; and
  - ii. The Executive Director has determined that the proposal is in the best interest of HBX.

#### G.H. Pilot Procurements

1. HBX may, ~~with prior public notice,~~ award a contract without a competitive process if it is determined that an unusual or unique situation exists that makes the application of all requirements of competitive procurement not in the public interest.
2. A special pilot procurement under this Paragraph shall be made with as much competition as is practicable under the circumstances.
3. A special pilot procurement shall require a determination and findings by the Executive Director or designee setting forth the reasons warranting the special procurement and approval of a special pilot procurement and for the selection of the particular contractor.
4. HBX shall post the notice of award and the determination and findings on the website of HBX after the execution and approval of a special pilot procurement.
5. An unusual or unique situation justifying a special pilot procurement shall include, but not be limited to, a contract made to:
  - i. Satisfy a new and unique HBX requirement; or
  - ii. Obtain a new technology.

#### H.I. Blanket Purchase Agreements

1. A blanket purchase agreement is not a contract and may be established without a purchase ~~requisition or order for~~ the obligation of funds.
2. The Executive Director or designee may use a blanket purchase agreement to fill anticipated repetitive needs for goods or services by establishing charge accounts with sources of supply if at least one of the following criteria apply:
  - i. There is a wide variety of items in a broad class of goods or services that are generally purchased, but the exact items, quantities and delivery requirements are not known in advance and may vary considerably; or
  - ii. The administrative cost of writing numerous purchase orders can be avoided through the use of this procedure.
3. The Contracting Officer shall not use a blanket purchase agreement to procure goods or services for which a requirements type contract has been ~~issued~~ awarded by the HBX.
4. The Contracting Officer shall include the following information in each blanket purchase agreement:
  - i. A statement that the supplier will furnish goods or services, described in general terms, if and when requested by the Contracting Officer during a specified period of time and within a stipulated total amount;
  - ii. A statement that HBX is obligated only to the extent that authorized purchases are actually made under the blanket purchase agreement;

- iii. A statement that the prices to HBX shall be as low as, or lower than, those charged to the supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment;
  - iv. A statement that specifies the dollar limitation for purchases under the blanket purchase agreement; and
  - v. A requirement that all deliveries or shipments under the blanket purchase agreement shall be accompanied by delivery tickets or sales slips which contain the following minimum information:
    - a. The name of the supplier;
    - b. The agreement number;
    - c. The purchase order number;
    - d. An itemized list of goods or services furnished;
    - e. The quantity, unit price, and extension of each item, less applicable discounts; and
    - f. The date of delivery or shipment.
5. To the extent practicable, blanket purchase agreements for items of the same type shall be placed concurrently with more than one supplier. All competitive sources shall be given an equal opportunity to furnish goods, services, or other items under a blanket purchase agreement.
  6. When there are an insufficient number of vendors with blanket purchase agreements to ensure maximum practicable competition for a particular purchase, the Contracting Officer shall:
    - i. Solicit quotations from other sources and make the purchase as appropriate; and
    - ii. Establish additional blanket purchase agreements to facilitate future purchases when recurring requirements for the same or similar items or services seem likely, when qualified sources are willing to accept a blanket purchase agreement, or when it is otherwise practical to do so.
  7. A blanket purchase agreement shall be considered terminated when the procurements under it are equal to its total dollar limitation or when the stated time period expires.

#### IV. CONTRACT APPROVAL AUTHORITY, REPORTING, AND TRANSPARENCY REQUIREMENTS

##### A. Contract Approval

1. The Executive Director or designee with prior approval from the Executive Director shall have authority to award any contract valued at \$100,000 or less during a 12-month period, or, for contracts executed with purchase orders, during the fiscal year in which the purchase order is executed.
2. Any contract with a total value of more than \$100,000 during a 12-month period or greater may only be awarded with the approval of the Finance Committee and the Executive Board.

3. A designee may award contracts for office operations valued at \$25,000 or less during a 12-month period (or fiscal year for purchase orders) without the approval of the Executive Director.

B. Contract Modifications

~~1. The Executive Director must approve all contract modifications, except:~~

~~a. Any no-cost modification to the terms of any contract or one that is budget neutral, and~~

~~b. Any modification to a contract for office operations that does not increase the total value of the contract to more than \$25,000 during a 12-month period (or fiscal year for purchase orders); otherwise;~~

~~2. The Finance Committee may approve any modification of \$100,000 or less that increases the value of a contract previously approved by the Executive Board.~~

~~3. The Finance Committee and Executive Board must approve:~~

~~a. any modification that increases the total value of a contract by more than \$100,000, or~~

~~b. any modification that brings a contract to a total value of more than \$100,000.~~

~~The Executive Director or designee may agree on behalf of HBX to the modification of the terms and conditions of a contract consistent with these requirements:~~

~~1. The Executive Director may approve any modification to the terms of any contract that is budget neutral.~~

~~2. The Finance Committee may approve any modification of \$100,000 or less that increases the value of a contract previously approved by the Executive Board.~~

~~3. The Finance Committee and Executive Board must approve:~~

~~a) any modification that increases the total value of a contract by more than \$100,000, or~~

~~b) any modification that brings a contract to a total value of more than \$100,000.~~

~~4. All other contract modifications must be approved by the Executive Director, except that a designee may modify a contract for office operations without prior approval if the modification does not increase the total value of the contract to more than \$25,000 during a 12-month period (or fiscal year for purchase orders).~~

C. Reporting Requirements

1. On a regular basis, the Chief Financial Officer shall present to the Finance Committee a report of all purchase orders made by HBX.

D. Transparency Requirements

1. All competitive solicitations awarded under Section III.A shall be published on the website of HBX and other government websites to promote competition and transparency in the procurement process.
2. For contracts awarded under Paragraphs III.A, B, C, F G and H, HBX shall provide public notice of any ~~contract~~ award with a total value ~~of~~ greater than \$100,000, including the name of the contractor, the date of the award, and amount of the award, ~~for contracts awarded under Paragraphs III.A, B, C, F G and H.~~

## V. PRE-AWARD REVIEW

- A. For all contracts with a total value of over \$100,000, the Contracting Officer shall establish a process to certify that each prospective contractor:
  1. Is able to comply with the required or proposed delivery or performance schedule, based on existing commercial and government contract commitments;
  2. Has or will have the ability to obtain the necessary organization, experience, accounting,

operational control, technical skills, production, technical equipment, and facilities;

3. Has a satisfactory performance record, based on information available to the contracting officer;
4. Has a satisfactory record of integrity and business ethics based on information available to the contracting officer;
5. Has not been suspended or barred under D.C. Official Code §2-359.07 and does not appear on the U.S. Department of Health and Human Services List of Excluded Individuals and Entities;
6. Does not have outstanding fines, penalties, interest, taxes or other debts with the District government in a delinquent status as described in D.C. Official Code §47-2862; and
7. Is otherwise qualified and is eligible to receive an award under applicable law.

## VI. CONTRACT REQUIREMENTS

A. All contracts shall be in writing and shall be in a form approved by the Executive Director.

1. In case of an emergency procurement under Paragraph III.B, a contractor may be given a verbal authorization by the Contracting Officer to provide services or goods to HBX, provided that the directive shall be reduced to writing within three (3) business days after issuance. A verbal authorization may only be used with prior approval from the Executive Director and certification of availability of funding for the services or goods by the Chief Financial Officer.

~~B. A letter contract may be used only after the Executive Director or designee determines that: (1) it is in HBX's best interest that a contractor be given a binding commitment so that work can start immediately; (2) negotiating a definitive contract is not possible in sufficient time to meet the requirement; and (3) the contract is valued at \$1 million or less. The Contracting Officer shall execute a definitive contract no later than ninety (90) days after the date of execution of the letter contract. The Contracting Officer may authorize the letter contract for an additional period of time only with approval of the Executive Director.~~

~~C.B.~~ All contracts shall include a provision stating that contracts awarded in violation of these Contracting and ~~Procurement~~ Policies and Procedures shall be voidable at the election of HBX.

~~D.C.~~ The Executive Board may from time to time identify additional mandatory provisions for all contracts or for certain categories of contracts and may do so either by amending these Contracting and Procurement Policies and Procedures or by adopting a separate policy concerning contract terms.

## VII. MULTI-YEAR CONTRACTS

A. All contracts that, by their terms, ~~are to last~~ have a period of performance greater for more than one year ("multi-year contract") must be approved by the Executive Board.

B. Prior to the award of a multi-year contract, the Executive Director must submit the proposed contract to the Council of the District of Columbia for review and approval in accordance with the criteria and procedure established in §202 of the Procurement Practices Reform Act of 2010 (D.C. Law 18-371; D.C. Official Code §2-352.01 *et seq.*) ("PPRA").

## VIII. CONTRACTS IN EXCESS OF \$1 MILLION

- A. All contracts with a value in excess of \$1 million during a 12-month period must be approved by the Executive Board.
- B. Prior to the award of ~~such a contract in excess of \$1 million during a 12-month period~~, the Executive Director must submit the proposed contract to the Council of the District of Columbia for review and approval in accordance with the criteria and procedure established in §202 of the Procurement Practices Reform Act of 2010 (D.C. Law 18-371; D.C. Official Code § 2-352.01 *et seq.*) (“PPRA”).

## IX. CONFLICTS OF INTEREST

Notwithstanding any other policy or procedure contained herein, the Executive Director may take remedial action if an offeror, bidder, or contractor is determined to have a conflict of interest, the appearance of a conflict of interest, or has engaged in impropriety in connection with the contracting process or the execution of a contract.

### A. Remedial Actions

The Executive Director has broad discretion to select among remedial actions. If the Executive Director determines that there is a conflict of interest, the appearance of a conflict of interest, or another ethical consideration, the Executive Director may:

1. Disqualify a contractor at any point during the procurement process;
2. Rescind or terminate a contract subsequent to contract award;
3. Cancel a pending solicitation; or
4. Condition contract award or contract continuation on compliance with remedial conditions, including contract modification or the disqualification of a subcontractor.

### B. Range of Remedial ~~Conditions~~ Measures Permitted

The Executive Director has broad discretion to fashion remedial ~~conditions~~ measures for the purpose of eliminating or mitigating conflicts of interest, the appearance of a conflict of interest, or another ethical consideration. Generally, remedial ~~conditions~~ measures should eliminate or mitigate conflicting roles that might bias a contractor's judgment and other circumstances that may give that contractor an unfair advantage in future contracts or procurements. Non-exhaustive examples include the following:

1. A contract to assist HBX in developing requirements for a future procurement ~~ordinarily should~~ will include a clause prohibiting the contractor from ~~participating in competing for~~ the future procurement.
2. A contract in which the contractor gains access to proprietary information of other companies (or non-public information on HBX's procurement plans) ~~will should~~ include an appropriate clause that prevents the contractor from using such information in any manner that might give it an unfair advantage and prohibits the contractor from disclosing this proprietary information.

### C. Writings Required

1. *Determinations* - A determination by the Executive Director of a conflict of interest, the appearance of a conflict of interest, or an engagement in impropriety under this section shall be made in writing and provided to the affected offeror(s), bidder(s), or contractor(s) and other parties determined to be

involved and placed in the contract file(s). Copies of this writing shall be provided to the Executive Board members where Executive Board approval is required and a copy shall be kept in the official records of HBX.

2. ~~Remedial Conditions/Measures~~ - A writing detailing the remedial ~~conditions/measures placed~~ ~~on~~ ~~taken with respect to~~ a contractor under this section shall be provided to the affected contractor(s) and other parties determined to be involved and placed in the contract file(s). Copies of this writing shall be provided to the Executive Board members and a copy shall be kept in the official records of HBX.

#### D. Conflicts and Ethical Considerations Defined

The Executive Director may properly take remedial action whenever necessary or prudent to avoid the appearance of impropriety or otherwise eliminate doubts about the integrity and fairness of procurement. The ethical considerations that may authorize remedial action are not limited to the ethics rules of HBX or the prospective contractor, if -any. Ethical considerations include those set forth in 6-B DCMR §1800 *et seq.* Examples of situations in which corrective measures might be warranted include, but are not limited to:

1. Cases where a member of the Executive Board or HBX staff has a prohibited conflict of interest under D.C. Official Code §31-3171.10(a) or (b) and that conflict impacted the contract or procurement award or performance.
2. Cases where a member of the Executive Board or HBX staff has a prohibited conflict of interest under D.C. Official Code §31-3171.10(c), has not disclosed it under the procedures enumerated in HBX's by-laws, and that conflict impacted the contract or procurement award or performance.
3. Other cases where a member of the Executive Board or HBX staff had an affiliation with an offeror, bidder, or contractor and it raised questions about the contract or procurement's integrity.
4. Cases where there is clear evidence suggesting collusive bidding or similar anti-competitive practices by prospective offerors, bidders, or contractors.
5. Cases where the offeror, bidder, or contractor would be unable to render impartial and objective assistance or advice to HBX.
6. Cases where an offeror, bidder, or contractor may have an unfair advantage over potential competitors, including but not limited to where a prospective offeror, bidder, or contractor received preferential treatment in relation to its competitors in the contracting or procurement process or was privy to non-public information about the procurement.

#### E. Appeals of Written Determinations Regarding Conflicts of Interest and Remedial Actions or Conditions

An offeror, bidder, or contractor may appeal any determination, remedial action, or remedial ~~condition/measure to~~ ~~the Executive Board~~ under the processes enumerated in Paragraph X.D of these policies and procedures pertaining to protest appeals. ~~All~~ ~~d~~ ~~Determinations~~ ~~of the Executive Board~~ are final.

### X. PROTESTS

#### A. Time Restrictions

1. A protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the closing date for receipt of proposals must be submitted to the Executive Director before bid



- opening or the closing date for receipt of proposals; otherwise, the protest may be denied as untimely.
2. In all other cases, protests must be submitted to the Executive Director not later than seven days after the basis for protest is known, or should have been known, whichever is earlier.

#### B. Form and Content of Protest

1. Any protest must be submitted in writing, signed by a responsible official of the protester, and must be addressed to the Executive Director.
2. Any protest must include: (i) the name and address of the protestor; (ii) appropriate identification of the procurement; a (iii) statement of the reasons for the protest; and (iv) supporting exhibits, evidence, or documents to substantiate the reasons for the protest.

#### C. Decision of Executive Director

1. The Executive Director may deny any bid protest (i) received after the time periods set forth in Paragraph X.A, or (ii) lacking the required elements set forth in Paragraph X.B.
2. With regard to all other bid protests, the Executive Director or designee shall resolve the protest.
3. The Executive Director or designee may: (i) notify other interested parties of the existence of the protest and may obtain the views of other interested parties and (ii) conduct discussions or negotiations with the protestor or with other interested parties and attempt to resolve the protest by agreement.
4. The Executive Director or designee shall issue a written decision resolving any bid protest that cannot be resolved by agreement. The decision shall be issued within 30 days of receipt of the bid protest.
5. Any failure by the Executive Director or designee to issue a decision on a protest within the required time period will be deemed to be a denial of the ~~claim~~protest, and will authorize the commencement of an appeal.
6. For bid protests associated with contracts valued at \$100,000 or less, or with a procurement in which the contract is reasonably anticipated to be valued at \$100,000 or less, the decision of the Executive Director or designee is final.

#### D. Appeals of Protest Decisions

1. Except in cases where, as set forth in Paragraph X.C, the decision of the Executive Director or designated procurement officer is final, a protestor may appeal from the decision of the Executive Director or designee (or the deemed denial of the protest) to the Executive Board Business Operations Committee. The appeal must be in writing, signed by a responsible official of the protester, must be addressed to the Chair of the Business Operations Committee, must identify each ground on which the protestor claims that the protest was resolved in error, and must include a copy of the initial protest and the decision of the Executive Director or designee resolving the protest. Appeals must be filed within ten (10) days after issuance of the decision resolving the protest. Four copies of all required materials must be submitted.
2. The Business Operations Committee may deny any appeal that is (i) received after the time periods set forth in Paragraph X.D.1, or (ii) lacking the required elements set forth in Paragraph X.D.1.
3. Upon the request of two (2) Executive Board members, the Business Operations Committee shall

hold a hearing.

4. A final decision resolving the appeal will be issued by a majority vote of the Business Operations Committee within thirty (30) calendar days of the appeal being received by the Chair.

#### E. Award Pending Protest

The Business Operations Committee may vote to award a contract before there is a final decision of HBX resolving a pre-award bid protest. ~~Otherwise, a contract shall not be awarded during the pendency before HBX of a bid protest related to that contract; otherwise, the contract shall not be awarded pending a decision upon the protest. Unless the Business Operations Committee votes to suspend performance in a post-award protest, contract performance may proceed.~~

#### F. Resolution of Protest

In resolving a bid protest, the Business Operations Committee, Executive Director, or designee may (i) deny the protest; (ii) sustain the protest but nonetheless determine that the procurement should proceed, consistent with Paragraph XI.A.2, below; or (iii) sustain the protest and declare a contract to be void, order that all bids be re-evaluated for award, order that a solicitation be re-issued, or require that any other action be taken that fairly addresses the protest.

### **XI. PROHIBITED CONDUCT AND REMEDIES**

#### A. Contracts Voidable for Noncompliance

1. If the Executive Director or designee finds that a procurement violates these Policies and Procedures, or that a contract has been awarded in violation of these Policies and Procedures, excluding unauthorized commitments, the Executive Director may order that any action be taken to resolve the violation and may declare void a contract awarded in violation of these Policies and Procedures.
2. Alternatively, the Executive Director may determine that a procurement should proceed, or that a contract should not be declared void, notwithstanding a violation of these Contracting and Procurement Policies and Procedures, if:
  - i. The parties acted in good faith;
  - ii. Proceeding with the procurement or ratification of the contract would not undermine the purposes of these Policies and Procedures;
  - iii. The violation was insignificant or otherwise did not prevent substantial compliance with these Policies and Procedures; and
  - iv. Proceeding with the procurement would be in the best interest~~ed~~ of HBX.
3. Ratifications of unauthorized commitments.
  - i. An unauthorized commitment is an agreement that is not binding solely because HBX representative who made it lacked the authority to enter into that agreement on behalf of HBX. The Executive Director or designee, in consultation with the Finance Committee, may ratify an unauthorized commitment when:

- A. Supplies or services have been provided to and accepted by HBX, or HBX otherwise has obtained a benefit from the performance of the unauthorized commitment;
- B. The resulting contract would otherwise have been proper if made by an appropriate contracting officer; and
- C. The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;
- D. The contracting officer recommends payment and the General Counsel concurs in the recommendation;
- E. Funds are available and were available at the time the unauthorized commitment was made; and
- F. The ratification is in accordance with any other limitations set forth in these Contracting and Procurement Policies and Procedures.

ii. An individual making unauthorized commitments ~~will~~may be subject to disciplinary action under D.C. Official Code §1-616.51.

B. Termination of Contracts

- 1. The Executive Director or designee may terminate, without liability, any contract if the contractor has been convicted of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract. If a contract is terminated under this section, the contractor shall:
  - i. Be paid only the actual costs of the work performed to the date of termination, plus any termination costs, if any;
  - ii. Refund, and HBX shall recover, all profits or fixed fees realized under the contract; and
  - iii. Refund, and HBX shall recover, any other fee, commission, percentage, gift, compensation, or similar consideration paid, including contingent fees and brokerage fees.
- 2. The Executive Director or designee may terminate, without liability, any contract for contractor noncompliance with applicable terms and conditions.
- 3. The Executive Director or designee may terminate performance of work under a contract if the Executive Director or designee determines that a termination is in HBX's interest.

C. Debarment and Suspension

HBX shall refer a contractor to the Chief Procurement Officer for review under D.C. Code §2-359.07 if any of the causes set forth under D.C. Code §2-359.07(c) exist.

**XII. CONTRACT CLAIMS**

A claim is a written demand by a contractor or the Authority or assertion seeking the payment

of money, the adjustment of contract terms, or other relief arising under or relating to a contract to which both HBX and the contractor are parties.. HBX shall make all reasonable efforts to resolve contractual disputes prior to the submission of a claim, but in the event such disputes cannot be resolved, claims arising under or relating to contracts are to be handled as follows:

A. Claims by a Contractor against HBX

1. Claim, as used in this section, means is a written assertion seeking the payment of money, the adjustment or interpretation of contract terms, or other relief arising under or relating to a contract.
2. All claims by a contractor against HBX arising under or relating to a -contract shall be in writing, signed by an official with authority to bind the contractor, and shall be submitted to the Executive Director or designee for a decision. The contractor's claim shall contain at least the following information:
  - i. A description of the claim and the amount in dispute;
  - ii. Any data or other information in support of the claim;
  - iii. A brief description of the contractor's efforts to resolve the dispute prior to filing the claim; and
  - iv. The contractor's request for relief or other action by the Executive Director or designee.
  - v. In all claims exceeding \$100,000, an official with authority to bind the contractor must provide the following certification in writing:  
I certify, under penalty of perjury, that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes HBX is liable; and that I am duly authorized to certify the claim on behalf of the contractor.
3. The Executive Director or designee may meet with the contractor in a further attempt to resolve the claim by agreement.
4. For any claim of \$100,000 or less, the Executive Director or designee shall issue a decision within one hundred twenty (120) days from receipt of the -claim.
5. For any claim over \$100,000, the Executive Director or designee shall, in consultation with the -Finance Committee, issue a decision within -one hundred twenty (120) days of receipt of the claim.
6. Whenever possible, the Executive Director or designee shall take into account factors such as the size and complexity of the -claim and the adequacy of the information in support of the claim provided by -the contractor.
7. The Executive Director or designee's written decision shall state the reasons for the decision reached, and shall inform the contractor of the contractor's right to an appeal: Specific findings of fact are not required. If made, specific findings of fact are not binding in any subsequent proceeding.
8. Within 90 days after the date of receipt of a written decision of the Executive Director or designee, the contractor may appeal the decision to the Contract Appeals Board using the process set forth in the District of Columbia Contract Appeals Board Rules (49 DC Reg. 2078 (March 8, 2002)) and DC Code §§ 2-309.03, 2-309.04, and 2-309.08. The Executive Director or -designee's -decision is final and subject to review only upon timely commencement of an appeal.
9. Any failure by the Executive Director or designee to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal.

Approved by HBX Executive Board on \_\_\_\_\_

10. Pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the decision of the Executive Director or designee.

E. Claims by HBX against a Contractor

1. All claims by HBX against a contractor arising under or relating to a contract shall be decided by the Executive Director or designee.
2. The Executive Director or designee shall send written notice of the claim to the contractor with at least the following information:
  - i. A description of the claim and the amount in dispute;
  - ii. Any data or other information in support of the claim;
  - iii. The pertinent contract terms;
  - iv. A brief description of HBX's efforts to resolve the dispute prior to filing the claim; and
  - v. HBX's request for relief or other action.
3. The contractor shall have (14) days to respond to the claim in writing. The written response ~~may~~ **must**: identify any factual areas of agreement and dispute or provide additional data or information that is pertinent to the claim for HBX's consideration.
4. The Executive Director or designee may meet with the contractor in a further attempt to resolve the claim by agreement.
5. For any claim of \$100,000 or less, the Executive Director or designee shall issue a decision within one hundred and twenty (120) days from receipt of a written request from a contractor that a decision be rendered within that period.
6. For any claim over \$100,000, the Executive Director or designee shall, in consultation with the Finance Committee, issue a decision within one hundred and twenty (120) days of receipt of the claim. Whenever possible, the Executive Director or designee shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.
7. The Executive Director or designee's written decision shall state the reasons for the decision reached, and shall inform the contractor of the contractor's right to an appeal: Specific findings of fact are not required. If made, specific findings of fact are not binding in any subsequent proceeding.
8. Within ninety (90) days after the date of receipt of a decision of the Executive Director or designee, the contractor may appeal the decision to the Contract Appeals Board. The Executive Director or designee's decision is final and subject to review only upon timely commencement of an appeal.
9. Pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the decision of the Executive Director or designee.

**XIII. AUTHORITY OF CHAIR IN ABSENCE OF EXECUTIVE DIRECTOR**

Any period during which the position of Executive Director is vacant or the Executive Director is unable to take action on a specific matter because of a conflict of interest, the Chair of the Executive Board shall have authority to take any action that these Contracting and Procurement Policies and Procedures authorize the Executive Director to take, including the designation of a procurement officer in any circumstance where the Executive Director is

authorized to designate a procurement officer.

**XIV. REVIEW AND UPDATE OF POLICIES AND PROCEDURES**

The Operations Committee of the Executive Board shall review these Procurement Policies and Procedures no less frequently than once every two (2) years and make updates as necessary.