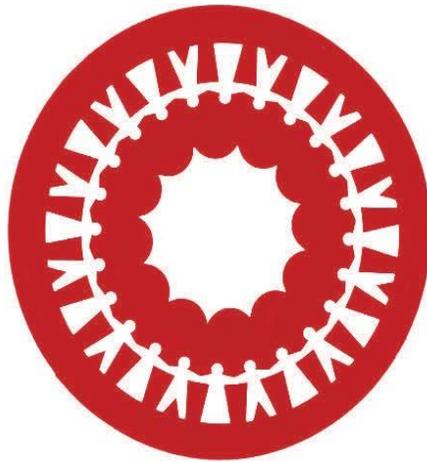


# PROCUREMENT PROCEDURES



**Metropolitan Development and  
Housing Agency**

**December 18, 2018  
(Revised June 25, 2020)**

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**PROCUREMENT PROCEDURES  
OF THE  
METROPOLITAN DEVELOPMENT AND HOUSING AGENCY  
OF  
NASHVILLE, TENNESSEE**

The Board of Commissioners of the Metropolitan Development and Housing Agency (MDHA) established this Procurement Procedure to be effective December 18, 2018. This Procurement Procedure is intended to comply with the following laws, regulations, and policies when applicable: the Annual Contributions Contract (ACC) between MDHA and HUD, 2 CFR Part 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, HUD Handbook 7460.8 REV-2, “Procurement Handbook for Public Housing Agencies,” Housing Authorities Law, Tennessee Code Annotated Titles 12 (Public Contracts) and 13 (Public Housing), Handbook 1530.01 REV-5, Litigation Handbook, Section 3 of the HUD Act of 1968, 24 CFR Part 135 and MDHA Diversity Business Enterprise (DBE) Program. The applicability of the above laws, regulations, and policies is dependent on various circumstance for any given procurement, most notably the source of the funding. It is the responsibility of all MDHA employees to ensure they are practicing procurement in accordance with the appropriate laws, regulations, and requirements stipulated by funding.

**I. GENERAL PROVISIONS**

**A. PURPOSE**

The purpose of these Procurement Procedures is to provide for the fair and equitable treatment of all persons or firms involved in purchasing and contracting by MDHA; assure that goods, supplies, services, and construction are procured efficiently, effectively and at the most favorable prices available; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and assure that purchasing actions are in full compliance with HUD regulations, when required, and any applicable Federal, State and local laws. These procedures are authorized under the MDHA Procurement Policy. To the extent these procedures conflict with the Policy, the Policy shall control.

**B. APPLICABILITY**

These Procurement Procedures apply to all procurements and include the purchase of supplies, services, and construction entered into after the effective date of these procedures. They shall apply to all contracts whether involving expenditure of funds or receipt of revenues; however, nothing in these procedures shall prevent MDHA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law.

The term “procurement,” as used in these procedures includes contracts, purchase agreements and modifications (change orders, change notices, amendments and supplemental agreements) for construction or services, as well as purchases, leases, or rental of supplies and equipment. The MDHA has chosen to use the same procedures for administering all federal programs and non-federal programs as applicable by program requirements and for the purpose of operational efficiency and cost savings.

### **C. PROCUREMENT POLICY/PROCEDURE AND CHANGES**

The Procurement Policy and any later changes shall be subject to the approval of the Board of Commissioners. As stated in the Procurement Policy, the Board has appointed and delegated procurement authority to the Executive Director, who is responsible for ensuring that any procurement policy adopted are appropriate and consistent with the Procurement Policy.

The Procurement Procedures and any later changes shall be subject to the approval of the Executive Director. Changes to the Procurement Procedures shall be submitted to the Executive Director by the Purchasing Agent or a written designee. When submitting proposed changes to the Procurement Procedures, a summary of the changes must be included as well as a justification for each change. Examples when a change in procedures is appropriate include but are not limited to changes in federal, state, or local regulations, technological advancement or systemic changes within MDHA, and more economical and responsible business practices of which MDHA has become aware.

To the extent anything in these Procurement Procedures is inconsistent with applicable law, the law shall control.

### **D. PUBLIC RECORDS POLICY**

Persons requesting procurement records shall follow the guidelines set forth in the Agency Public Records Policy which can be obtained from the MDHA Director of Communications.

## **II. PLANNING**

Planning is essential to managing the procurement function properly. Accordingly, MDHA will periodically review its record of prior purchases, as well as future needs, in order to: find patterns of procurement actions that could be performed more efficiently or economically; maximize competition and competitive pricing among contracts and decrease the Agency’s procurement costs; reduce MDHA administrative costs; ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and minimize errors that occur when there is inadequate lead time. Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

### **III. PROCUREMENT METHODS**

#### **A. SELECTION OF METHOD**

When it is determined that MDHA will directly purchase the required services or items, one of the following procurement methods shall be chosen based on the nature and anticipated dollar value of the total requirement.

#### **B. SMALL PURCHASE PROCEDURES**

General. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies and construction. Any purchase less than \$25,000 may be made in accordance with the small purchase procedures outlined in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase, thereby avoiding the more formal requirements associated with other procurement methods discussed below, except as may be reasonably necessary to comply with Section 3, MBE, WBE, DBE, and other requirements in Sections XII-XIV of these procedures.

#### **C. MICRO-PURCHASES OF \$10,000 OR LESS**

Procurement by micro-purchase is for the acquisition of supplies, services, travel or other items as outlined in Section IV F, General Policies, for the aggregate dollar amount of which does not exceed \$10,000. Subject to a change in relevant law, Davis-Bacon wage requirements are applicable for micro-purchases in the case of acquisition for construction over \$2,000. To the extent practicable, the Agency must distribute micro-purchases equitably among qualified suppliers and contractors where applicable. Micro-purchases may be awarded without soliciting competitive quotations and without any formal cost or price analysis as long as the price is considered to be reasonable.

Procurement-Card (P-Card): A P-Card can be utilized for micro-purchases that do not exceed \$3,000. For construction projects where the projects are subject to the Davis-Bacon Act, procurements up to \$2,000 may be used with the P-Card. P-Cards shall only be used by the P-Card Holder if the price is considered to be reasonable.

For all purchases equal to and more than \$3,000 (or \$2,000 for construction projects subject to the Davis-Bacon Act) and less than \$10,000, MDHA employees can request the purchase be made in accordance with micro-purchase procedures through a Yardi Customized Workflow. Utilizing Yardi Customized Workflows that will be uniquely developed for each Department, MDHA employees can submit a purchase request. This request will be routed through an approval hierarchy consisting of no less than the following: the Department Director or a written designee from the Department of which the request originated, the Purchasing Agent, and a delegate of the MDHA Finance Department. If the purchase request is not approved by any individual member of the approval hierarchy, the request will be denied and the employee making the request must submit a Purchase Order in accordance with MDHA's small purchase procedures.

No contract or Purchase Order is required for purchase of supplies or construction under the Micro-Purchase authority. The Agency shall use the vendor's invoice for direct payment or payment by P-Card is authorized.

The Micro-Purchase authority noted in these procedures extends only to employees of MDHA and does not include volunteers.

#### **D. SMALL PURCHASES ABOVE MICRO PURCHASES OF \$10,000 AND UNDER \$25,000**

For all purchases above the Micro Purchase threshold of \$10,000, MDHA 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.

A comparison with other previous, comparable offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required.

MDHA shall obtain a reasonable number of quotes (preferably three). If a reasonable number of quotes are not obtained to establish reasonableness through price competition, the Contracting Officer, or designee, shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer, or designee's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.

Quotations for small purchases may be obtained in writing (hard copy or email), orally, by fax, via catalogs, by letter, through electronic means, e.g., the Internet, through paid advertisement, or by displaying the solicitation in a public place. The method should be appropriate to the purchase (e.g., obtaining price quotes by phone for a commercially available supply item). Written solicitations are used when it is necessary to provide vendors with detailed information that cannot be conveyed orally (e.g., by phone), or with detailed quotation evaluation information.

The names, addresses, and/or telephone numbers of the firms/persons contacted and the date and amount of each quote received, shall be recorded and maintained as a public record unless otherwise provided in State or local law.

Award shall be offered to the vendor that provides the lowest acceptable quotation, unless justified in writing based on price and other specific factors. If non-price factors are used, they shall be made known to all those solicited.

#### **E. PURCHASE ORDERS**

The issuance of a Purchase Order by MDHA and its acceptance by the contractor (either through performance or signature on the purchase order) constitute a contract. The Purchase Order will clearly specify the item(s) or service(s) being purchased and the terms and conditions of the purchase.

The Purchase Order will contain information regarding scope of work/service to be provided, price, delivery, method of payment, inspection, and acceptance. Additional terms and conditions may be added depending on the nature and complexity of the work requested.

Mandatory provisions may be found in HUD's Mandatory Forms listed in Section XV of these procedures. These HUD forms will only be required for procurement when MDHA is utilizing HUD funds, HUD grants, or if dictated by the funder or lender.

#### **F. SEALED BIDS -- \$25,000 AND OVER**

Sealed bidding shall be used for procurements that exceed the small purchase threshold of \$25,000 and are not competitive proposals or non-competitive proposals, as these terms are defined in this document. Under sealed bids, MDHA publicly solicits (advertising in newspapers or other print mediums of local or general circulations) bids and awards a firm fixed-price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions of the Invitation for Bid (IFB), is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$25,000.

Condition for Use. MDHA shall use the sealed bid method if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are able to compete effectively for the work; the procurement lends itself to a firm fixed price; and the selection of the successful bidder can be made principally based on price.

Solicitation and Receipt of Bids. An invitation for bids shall be issued including specifications, all contractual terms and conditions applicable to the procurement, and a statement that the award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the invitation for bids. The invitation for bid for construction shall state the time and place for both the receipt of bids and the public bid opening. For contracts estimated to equal or exceed \$25,000, the prime contractor is required to list their license information on the outside of the envelope (containing the bid) to include the name, license number, expiration date, and the classification applying to the bid. In addition to the prime, the contractor license information must also be included on the outside of the bid envelope for the electrical, plumbing, heating, ventilation, air conditioning and masonry subcontractors, unless their portion is less than \$25,000 or the masonry portion is less than \$100,000. This guidance is in accordance with Chapter 6, Section 62-6-119 of the Contractor's License Law and Rules and Regulations of Tennessee. Also, all bidders must comply with all other sections of Chapter 6, Title 62, of the Contractor's License Law of Tennessee. If these laws change, the changes shall control.

Bid Opening and Award. Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded. Bids shall be available for public inspection after review and awarded to the lowest responsive and responsible bid. Award shall be made as provided in the invitation for bids by notice to the successful bidder. If equal low bids are received from responsive and responsible bidders, award shall be made by drawing lots. If only one responsive bid is received from a responsible bidder, award shall not be made unless a determination is made by the Contracting Officer that the bid price is reasonable.

Bid Review. When a contract award requires Board approval and the bids exceed the cost estimate by twenty (20) percent or more; the next lowest bid exceeds the low bid by twenty (20) percent or more; or only one (1) bid is received, all bids submitted shall be subject to special review by the Bid Review Committee. The Bid Review Committee shall be composed of at least three (3) members from the following:

Executive Director or designee  
MDHA Board of Commissioners  
Soliciting Department Designee  
MDHA Legal Counsel may serve as an advisor to the Committee.

Only MDHA Board members and the Executive Director have voting status on the Bid Review Committee, and staff is present in an advisory role only. At least two (2) board members must be available to vote.

When a contract award does not require Board approval and the bids exceed the cost estimate by twenty (20) percent or more; the next lowest bid exceeds the low bid by twenty (20) percent or more; or only one (1) bid is received, all bids submitted shall be subject to special review by the following Agency Staff.

Contracting Officer  
Department Director or Representative from the Department funding the project  
Architect (if under contract, if not, staff member who prepared Cost Estimate)

Mistakes in Bids. Correction or withdrawal of erroneous bids may be permitted before bid opening by written or facsimile notice received in the office designated in the invitation for bids, prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake was made, the nature of the mistake and the bid price actually intended. A low bidder alleging a mistake may be permitted to withdraw the bid if the bidder submits written evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer. Other than specifically provided herein, after bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of MDHA or fair competition shall be permitted.

## **G. BONDING REQUIREMENTS**

(Performance and Payment Bonds/Surety for Construction Contracts Only)

For solicitations/bids of \$25,000 or more, a bid guarantee equivalent to 5% of the bid price is required from each bidder. When the amount of the construction contract exceeds \$25,000 the contractor shall be required to give an approved performance and payment bond secured by a surety company authorized to do business in the State of Tennessee and listed in the Department of Treasury Circular 570 (use of companies on this circular is mandatory and individual sureties shall not be considered), or a 25% irrevocable letter of credit, or a 25% escrow account as provided

for in the Tennessee Code Annotated. Where the contract is less than \$25,000, surety may still be required.

## **H. COMPETITIVE PROPOSALS - REQUESTS FOR PROPOSALS (RFP) APPROVAL**

The Executive Director or his/her designee shall approve all Requests for Proposals (RFP). Competitive proposals may be used for procurement when the particular procurement is of such a complex nature or includes such technical detail that specifications cannot be fairly and objectively prepared to permit competition by sealed bid or when factors other than price are to be considered. Under such circumstances, the Contracting Officer or designee(s) shall determine in writing that a competitive proposal is necessary to carry out a particular procurement, i.e., Design/Build, Construction Manager or Construction Manager at Risk, etc. Competitive proposals shall commence by solicitation of a request for written proposals.

A written plan for evaluating the RFP will be established before the solicitation is issued (The RFP will suffice as the written plan).

**Method of Solicitation.** The RFP shall be advertised in the local newspaper or other print mediums of local or general circulations. The solicitation must run for a period sufficient to achieve effective competition.

**Evaluation Factors, Non-Price.**

The RFP must contain a clear statement of the evaluation factors to guide the offerors in structuring their proposal. The evaluation criteria should be tailored to fit each procurement.

**Amending and Canceling the RFP.** MDHA may amend or cancel RFPs when necessary or when otherwise considered to be in the best interest of MDHA.

**Documenting Amendments and Cancellations.** The Contracting Officer shall document the procurement file providing the rationale and supporting facts for amendments and cancellations, where necessary.

**Evaluation Factors, Price.** Price must be a factor in making awards with the method of price evaluation to be used indicated in the RFP.

**Receiving Proposals.** Proposals are to be date-time stamped when they are received and held unopened in a secure place until the established date for receipt of proposals has passed. Since proposals are submitted in confidence and may contain proprietary information (such as trade secrets or other confidential business information regarding the offeror's approach to the work), they are not to be opened publicly. After the closing date-time, all proposals received are opened and evaluated in confidence. Proposals and any changes to those proposals are shown only to MDHA personnel who have been authorized by the Executive Director or designee as having a legitimate interest in them on the condition that information in the proposals will not be released to anyone who has not been so authorized.

Confidentiality. No information regarding any of the proposals, including the names of the offerors or the number of proposals received, should be provided to anyone without the Contracting Officer's permission. Offerors submit proposals in confidence and expect their proposals to be protected from disclosure to other offerors or individuals.

#### Evaluation Process.

1. Evaluation Panel and Report. A committee will be appointed by the Executive Director to evaluate Requests for Proposals in accordance with the evaluation criteria in the Requests for Proposals. The committee will be a minimum of three (3) persons, with a chairperson designated, and usually from the department funding the requirement. The MDHA shall prepare an evaluation report to document the ranking of the proposals by technical merit, using point scores or similar methodology. (If price is included in the point scoring, the evaluation report will also include the price or cost analysis, as appropriate.) In addition, a narrative should accompany the scores to explain how the scores were derived, detailing the significant strengths, weaknesses, and deficiencies in the proposal. The level of detail for the evaluation report will be influenced by the complexity of the procurement, with more complex procurements likely requiring more detailed reports.

2. The evaluation shall be based on the evaluation factors set forth in the RFP. Factors not specified in the RFP shall not be considered. Initially, proposals should be evaluated on an individual basis against the requirements stated in the RFP; at this point proposals are not analyzed in comparison with each other. Also, during the initial review, the committee evaluates only the content of the proposals. Personal knowledge of the offeror not based on the contractor's written submission should not be part of the written proposals' initial evaluation. Evaluators should make the evaluations thorough, objective, and well documented (e.g. citing the specific areas of the proposal that led to a particular portion of the evaluation) as possible. The Contracting Officer is responsible for ensuring that the evaluation results are sufficiently documented and included in the contract file.

3. The results of proposal evaluations may be disclosed after award of the contract. In the case of protests or litigation, evaluation documentation will be made available to the protestor or litigant and their legal counsel.

4. Contracting Officers must be alert to attempts by offerors to change the requirements of an RFP by inserting conditions in their proposal or otherwise altering the contract's requirements. While proposals are not required to be "responsive" as that term is used in sealed bidding, offerors may not impose conditions or change requirements to suit their own needs or desires.

5. When possible, Contracting Officers should be willing to negotiate changes unless the changes violate Federal, State or local law or regulation, are required by HUD policy, or prejudice the other offerors (e.g. making a change that benefits a single offeror).

Evaluation of Price. The evaluation of price is made using the evaluation processes described in the RFP and in accordance with applicable law.

Competitive Range. After the evaluation committee has evaluated all proposals, the Evaluation Panel Chairperson, or the Contracting Officer or designee should determine a competitive range. The competitive range includes the proposals that have a reasonable chance of being selected for award considering their technical evaluation results and their proposed costs or prices.

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

Contract Award. Contracts shall be awarded only in accordance with the terms of the solicitation. Contracts awarded using the competitive proposals method are based on both price and technical merit of the proposal. Awards shall be made only to offerors who have been determined to be the most responsible of the responsive bidders.

Notice to Unsuccessful Offerors. The Contracting Officer should notify each unsuccessful offeror in writing and identify the successful offeror. The notice to unsuccessful offerors should also provide them with the opportunity to review the evaluation documents.

Protests. Protests against the award of contracts shall be handled as described further in these procedures.

Requests for Qualifications.

A. General. The Qualification-Based Selection (QBS) method is conducted using an RFQ. Use of the QBS is limited and is different, primarily, from the RFP method in that the MDHA first selects the highest-ranked respondent on technical factors and then negotiates price. The most common use of RFQs is for Architect/Engineer (A/E) contracts. RFQs can also be used to select development partners for mixed-financed projects.

B. Procedure. Unlike other methods, the QBS method does not use price as an evaluation factor. MDHA requests technical qualifications statements from prospective firms and then ranks the statements according to their qualifications as related to the project. MDHA then opens negotiations with the top-ranked firm with intentions to reach agreement on a fair and reasonable price. If agreement cannot be reached, MDHA terminates negotiations with this firm and proceeds to the next-highest rated firm until a price determined to be fair and reasonable to both parties is obtained. Once negotiations have been terminated with a firm, MDHA may not go back to that firm for additional negotiations – even if the next lower ranked respondent is higher in price.

C. Eligible Uses. The QBS method can only be used for Architectural and Engineering related contracts, or when specifically authorized by applicable law. The QBS method cannot be used to contract for other types of services provided by A/E firms, if not authorized by applicable law.

D. MDHA will follow the same procedures for approval of RFQ, solicitation, appointing of evaluation committee members and safeguarding qualifications as outlined in the Request for Proposal section of these procedures.

Procurement for Legal Services. The costs of legal services incurred under HUD grants (including those obtained under contract) must be reasonable and necessary in accordance with 2 CFR 200 Subpart E and as required, are procured by PHAs through procurement contracts.

2 CFR Part 225 incorporates the OMB Circular A-87, which contains a set of cost principles that PHAs must use for determining the allowable costs they incur under Federal grants and provides guidance in their use. Contracts for litigation services are also to meet the requirements of the HUD Litigation Handbook 1530.1 REV-5 dated May 2004 (the "Litigation Handbook").

#### NONCOMPETITIVE PROPOSALS

Condition for Use. Procurement shall be conducted competitively to the maximum extent possible. Noncompetitive procurement actions will only be used when there is a single source, or an emergency exists as defined by applicable law with written justification and appropriate approval authority.

Each procurement action of \$25,000 or more based on noncompetitive actions will be approved by the Executive Director after a cost analysis has been performed to determine the price is reasonable. For procurements requiring board approval, the Executive Director will make a recommendation to the Board of Commissioners for award after performing this determination.

Exemptions from competitive procurement requirements are permitted by HUD in 24 CFR 965.205(a) for procurements including but not limited to PHA-owned insurance entities.

#### CANCELLATION OF SOLICITATIONS

The Executive Director or his designee may cancel solicitations for any reason, including lack of funding, deficient specifications, or because the requirements underlying the solicitation no longer exist.

A notice of cancellation shall be sent to all offerors solicited and informed that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.

### IV. PROCUREMENT CARD POLICY

**A. Purpose** - To establish uniform guidelines governing the issuance and use of procurement cards to make purchases on behalf of MDHA

**B. Definitions** - *Procurement Card* - A mechanism that enables authorized MDHA cardholders to utilize a charge card, or p-card, to transact business as detailed below.

**C. Cardholder** - A cardholder is an individual approved to make purchases utilizing the procurement card by the Department Director or Manager.

**D. Procurement Card Administrator** - The Procurement Card Administrator is the individual authorized to administer the procurement card program. The Director of Finance or designee serves as Procurement Card Administrator.

**E. Procurement Card Holder** - The individual designated by the Department Director to hold the procurement card within the department.

#### **F. General Policies**

(1) The procurement card, or p-card can be used to purchase and make payment for *approved transactions only* including travel and related costs (hotels, car rentals, and ancillary items), petty cash type purchases, conference registrations, subscriptions and emergency purchases (as defined by the Construction Department), supplies and services, Rehabilitation Program (or \$2,000 in the case of acquisition for construction subject to the Davis-Bacon Act). Small purchases not exceeding \$3,000/\$2,000 are allowable p-card purchases. *NOTE: All purchases are subject to established purchasing regulations.*

(2) Upon request, departments will be issued cards to authorized employees. All cardholders shall comply with directives for reconciling charges to the card at the end of each month as directed by the procurement card administrator.

#### **G. Card Authorization**

(1) Only the employee whose name is embossed on a p-card may use the card. No other person is authorized to use the card. The use of the card shall not be delegated to any other person. Cardholder shall use the p-card for MDHA authorized purchases only.

(2) All requests for cards shall be initiated by the Department Director/Manager providing information as requested in the appropriate card request form.

(3) All cardholders should hold and keep p-cards secure at all times.

(4) Cardholder authorized daily and monthly limits should not exceed the cardholder department's delegated purchase authority or the department's budget availability.

#### **H. Responsibilities of Cardholders**

(1) All potential cardholders must receive training on the allowable use of the p-card by the Card Administrator or designee before being issued a card. Such training must be documented and maintained in the cardholder file in the card administrator's office. No MDHA p-card shall be issued to any individual unless the prospective cardholder has received proper training.

(2) Cardholders should collect and maintain proper sales receipts and invoices to support all charges. Proper sales receipts should include adequate description of the items purchased and the individual benefiting (when applicable) and should include vendor name, date of purchase, per item costs, total cost, etc. MDHA should also be named in the “Sold to” and/or “Ship to” fields. Procurement card charge slips are not sufficient support.

(3) Use of the p-card for personal expenses is a misappropriation of MDHA funds. Use of the p-card for personal expenses may result in cancellation of the card and/or disciplinary action. Repeated offenses and lack of immediate notification of personal use to the Procurement Card Administrator are grounds for cancellation of the p-card. A cardholder who uses the card for personal charges is required to refund MDHA in the amount of the non-allowed purchase.

(4) Cardholders are also responsible for identifying and disputing erroneous charges, including Tennessee sales tax charges, to their assigned cards. It is the responsibility of the cardholder to dispute the charges as specified in the cardholder agreement.

**I. Limits** - All cardholders shall observe the authorized monthly credit limits as established by the card administrator. No cardholder should exceed the authorized limits.

#### **J. Prohibited Uses**

(1) For p-card prohibited uses pertaining to travel, please see the MDHA Travel Policy for details. This policy can be acquired by contacting the Department of Finance or the Department of Human Resources.

(2) Official business meeting meals can be paid for with a p-card, but must be documented.

(3) The p-card shall not be used for cash advances, purchases of gift certificates or gift cards, purchases of alcoholic beverages, or any personal uses.

(4) The p-card shall not be used to circumvent the procurement process.

(5) Cardholders may not enter into installment agreements to charge the p-card for multiple payments for an individual purchase. Installment agreements include long term rentals, leases, installment purchase contracts and any other agreement causing multiple charges to the p-card for a single transaction.

#### **K. Documentation Requirements**

(1) Cardholders are personally liable for all charges to their assigned card. Cardholders should ensure that there is sufficient documentation to support all charges and payments made with the p- cards.

(2) Charges for stay at hotels must include detailed information documenting the list of individuals that stayed at the hotel and the business purpose for the hotel stay.

(3) Each charge shall be reviewed and approved by the Department Director/Manager or designee.

(4) Documentation supporting charges to the p-card will be submitted monthly to the Finance office for payment by the established deadline.

(5) If a cardholder is unable to secure documentation for a purchase, she/he must first attempt to obtain a duplicate copy. If a duplicate copy is not secured, the cardholder must complete the Lost Receipt Form and the respective Department Director must sign to approve. Acceptance of the form is at the discretion of the Director and Procurement Card Administrator.

(6) Disregard for the requirements of this policy will lead to cancellation of card.

## **V. PROCUREMENT AUTHORITY AND ADMINISTRATION**

### **A. CONTRACTING OFFICER'S AUTHORITY AND RESPONSIBILITIES**

The Board of Commissioners of MDHA authorizes the Executive Director, or his/her designee(s), to serve as Contracting Officer of the Agency.

The following positions have been delegated by the Executive Director to be recognized as designee:

- Deputy Executive Director
- Chief Operating Officer, Executive Department
- Chief Development Officer
- Director/Assistant Director for Construction
- Contracting Agent and Purchasing Agent
- Director for Community Development
- Director/Assistant Director of Affordable Housing

Although contracting authority flows from the MDHA Board of Commissioners through the Executive Director, the Contracting Officer or designee(s) bears responsibility at the operating level for such tasks as contract initiation, development, negotiation, award and subsequent administration throughout the life of the contract.

The signature of the Contracting Officer or designee(s) on MDHA contracts is a legal commitment and requires continuous performance by the Contracting Officer, or designee(s) on behalf of MDHA to ensure contract administration is accomplished in an effective and efficient manner. Such performance involves responding to disputes and claims by the contractors. The Contracting Officer or designee(s) will review contractors' requests for changes in performance, specifications

or price. The Contracting Officer, or designee(s) may also negotiate equitable price changes allowed under the contract.

## **B. APPROVAL AUTHORITY ON PROCUREMENT ACTIVITIES**

The Contracting Officer, or designee is delegated approval and signature authority for all individual procurements over \$10,000 (\$2,000 when Davis-Bacon Act is required) and under \$1,000,000.

As defined in Section IV, the individual(s) designated by the Department Director as a Procurement Card Holder has approval for purchases procured utilizing the P-Card.

A single procurement activity \$1,000,000 and over will require approval by the MDHA Board of Commissioners. Signature authority shall be delegated to the Contracting Officer or designee(s) after approval by the MDHA Board of Commissioners.

Change Order Approval:

Change Orders to contracts that are less than \$1,000,000 must have the approval of the Executive Director or designee.

Change Orders to contracts that exceed \$1,000,000 and no more than \$10,000,000 will require board approval when the cumulative change order(s) exceeds \$200,000. Once the Board has approved a change order exceeding \$200,000, subsequent change order(s) will not require board approval unless the accumulative amounts of those changes total \$200,000 or more which will require Board approval for those changes.

Change Orders to contracts that exceed \$10,000,000 will require board approval when the cumulative change order exceeds 2% of the original contract amount. Once the Board has approved a change order exceeding 2%, subsequent change order(s) will not require board approval unless the accumulative amounts of those changes exceeds 2% of the original contract amount. For example, a change order for a \$20,000,000 contract would have to exceed \$400,000 (2% of \$20,000,000) before board approval would be required.

## **C. EXECUTIVE DIRECTOR'S RESPONSIBILITIES**

The Executive Director or his designee shall ensure that:

Each department and each Asset Management property is responsible for planning its own purchases in coordination with the fiscal year.

Contracts and modifications are in writing, clearly specifying the desired supplies, services, or construction, and are supported by sufficient documentation regarding the history of the procurement including as a minimum the method of procurement chosen, independent cost estimate, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price.

For procurements \$25,000 or more, public notice is given. A minimum of fifteen (15) calendar days is provided for preparation and submission of bids or proposals, and notice of contract awards is available to the public.

Solicitation procedures are conducted in full compliance with 2 CFR Part 200 and when applicable to State and Local law.

An independent cost estimate is prepared by the designee before solicitation issuance and is appropriately safeguarded for each procurement.

A cost and price analysis is conducted by the designee for all procurements. Previous historical cost data should be utilized to determine whether the cost estimate is reasonable.

Contract award is made to the responsive and responsible bidder offering the lowest price, or contract award is made to the offeror whose proposal offers the greatest value to MDHA, considering price, technical, and other factors as specified in the solicitation (for contracts awarded based on competitive proposals). Unsuccessful proposers are notified within ten (10) days after contract award.

There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification, work is inspected before payment and payment is made promptly for work performed and accepted.

## **VI. CONTRACTOR'S RESPONSIBILITY**

Procurement shall be conducted only with responsible contractors who have the technical and financial competence to perform and who have a satisfactory record of integrity. Before awarding a contract, the Contracting Officer or designee shall review the proposed contractor's ability to perform the contract successfully. The Contracting Officer or designee will review such factors as the Federal (GSA) Debarment List, compliance with public policy, past performance and financial and technical resources. If a potential contractor is found to be non-responsive or non-responsible, a written determination will be prepared and included in the contract file, and the prospective contractor will be advised of the reason for the determination. Contracts will not be awarded to debarred, suspended, or ineligible contractors or persons not permitted to contract with MDHA under applicable law.

## **VII. TYPES OF CONTRACTS, CLAUSES AND CONTRACT ADMINISTRATION**

### **A. CONTRACT TYPE**

Any type of contract which is appropriate to the procurement and which will promote the best interest of MDHA may be used.

Intergovernmental Agreements for Procurement Activity. MDHA may enter into intergovernmental or interagency purchasing agreements without competitive procurement provided the following conditions are met:

1. The agreement provides for greater economy and efficiency and results in cost savings to MDHA. Before utilizing an interagency or intergovernmental agreement for procurement, MDHA should compare the cost and availability of the identified supplies or services on the open market with the cost of purchasing them through another unit of government to determine if it is the most economical and efficient method;
2. The agreement is used for supplies and services that are of a routine nature only.
3. MDHA must take steps to ensure that any supplies or services obtained using another agency's contract are purchased in accordance with 2 CFR Part 200, where applicable.
4. MDHA must document the file showing that cost and availability were evaluated before the agreement was executed, and these factors are reviewed and compared at least annually with those contained in the agreement, and
5. The agreement must be between the MDHA and a state or local governmental agency, which may be another PHA.

Cost-plus-a-percentage of cost and percentage of construction cost methods are prohibited when utilizing federal funds. All procurement shall include the clauses and provisions necessary to define the rights and responsibilities of the parties. A cost reimbursement type contract will not be used when utilizing federal funds. A time and material contract may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

Federal Supply Schedule Contracts. The General Services Administration (GSA) within the Federal Government awards a wide variety of contracts under which Federal agencies may purchase supplies and services from pre-priced schedules. Section 211 of the E-Government Act of 2002 only allows for state and local government entities (including PHAs) to purchase from GSA Schedule 70, Information Technology, and Consolidated Schedule contracts containing IT SINs. State and local government entities may not purchase information technology from any other GSA Schedules. No other schedule contracts are available to PHAs. In addition, PHAs may not purchase items from GSA schedule contractors on a noncompetitive basis.

Indefinite Delivery Contracts. There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award.

1. Definite-quantity contracts provide for delivery of a definite quantity of specific supplies or services for a fixed period of time (e.g., one year), with deliveries or performance to be scheduled at designated locations upon order. A definite-quantity contract may be used when it can be determined in advance that:

a. A definite quantity of supplies or services will be required during the contract period; and,

b. The supplies or services are regularly available or will be available after a short lead time.

2. Requirements contracts provide for filling all of MDHA's purchase requirements for the supplies or services specified in the contract during a fixed period of time. MDHA may not buy the supplies or services from another source during the period of the contract. A requirements contract may be appropriate for acquiring any supplies or services when MDHA anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that it will need during a definite period.

3. Indefinite-quantity contracts provide for delivery of an indefinite quantity, within stated limits (a minimum and maximum quantity), of supplies or services during a fixed period. Quantity limits may be stated in the contract as number of units or as dollar values. MDHA may use an indefinite-quantity contract when they cannot predetermine, above a specified minimum, the precise quantities of supplies or services that they will require during the contract period, and it is inadvisable to commit itself for more than a minimum quantity. MDHA should use an indefinite-quantity contract only when a recurring need is anticipated.

a. The contract must require MDHA to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The Contracting Officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.

b. To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that MDHA is fairly certain to order.

c. The contract may also specify maximum or minimum quantities that MDHA may order under each task or delivery order and the maximum that it may order during a specific period of time. This ensures that the contractor knows what the potential maximum number of deliveries he/she may have to make and allows him/her to adequately prepare.

d. The solicitation and resulting contract for an indefinite-quantity contract should:

- (1) Specify the period of the contract, including the number of options and the period for which MDHA may extend the contract under each option;
- (2) Specify the total minimum and maximum quantity of supplies or services MDHA will acquire under the contract. This may be expressed in units (e.g., number of items) or total dollar amount;
- (3) Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services MDHA will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;
- (4) State the procedures that MDHA will use in issuing orders, including the ordering media (fax, email, etc.) and whether oral orders may be placed; and,
- (5) Identify MDHA personnel who are authorized to issue orders.

4. Use of Indefinite Delivery Contracts. MDHA may avoid making repetitive small purchases by awarding indefinite-delivery contracts, sometimes referred to as “blanket” or “open-end” contracts. Indefinite-delivery contracts can be used when MDHA has a recurring need (e.g., cleaning supplies), but needs to order supplies and services and have them delivered as needed within a specific time period (e.g., one year). The contract specifies what MDHA may buy and establishes the prices. MDHA then orders the supplies or services from the contractor as needed. This type of contract avoids the administrative cost of making numerous separate purchases. These contracts:

- a. Specify the prices for the supplies or services, the period under which MDHA may place orders with the contractor, the ordering procedures, and the contract terms and conditions that govern the orders;
- b. Provide for obtaining the supplies or services when needed by placing orders with the contractor within the time period stated in the contract (e.g., one year);
- c. May be awarded using sealed bidding or competitive proposals as appropriate. Indefinite-delivery purchase orders should not be used unless MDHA knows that multiple orders for items or services will be needed, and the total amount of all orders will not exceed MDHA’s small purchase threshold; and,
- d. May use any type of pricing arrangement (e.g., fixed-price) as appropriate to the supplies and/or services being purchased.

5. Orders placed under indefinite-delivery contracts are not considered purchase orders. Since the indefinite-delivery contracts are awarded competitively, no further competition is required for individual orders placed under it.

## **B. OPTIONS**

Options for additional quantities or performance periods may be included in contracts provided that: 1) the option is contained in the solicitation; 2) the option is a unilateral right of MDHA; 3) the contract states a limit on the additional quantities and the overall terms of the contract; 4) the options are evaluated as part of the initial competition; 5) the contract states the period within which the options may be exercised; 6) the options may be exercised only at the price specified in or reasonably determinable from the contract; and 7) the options may be exercised only if determined to be more advantageous to MDHA than conducting a new procurement.

### **C. CONTRACT CLAUSES**

All contracts shall include any clauses required by Federal statutes, executive orders, their implementing regulations as provided in 2 CFR Part 200, as well as any State or local required clauses.

### **D. CONTRACT ADMINISTRATION**

A contract register will be maintained by the Purchasing Division of the Construction Department. The Contracting Officer or designee may modify the contract unilaterally pursuant to a specific authorization stated in a contract clause, and for administrative matters, which do not change the rights or responsibilities of the parties. All other contract modifications shall be in the form of change orders, amendments, or supplemental agreements signed by the appropriate authorities.

### **E. DAVIS-BACON**

#### **1. RAD Converted Properties:**

Unless and until there has been a change in applicable law, the Davis-Bacon prevailing wage requirements apply to all work, including new construction, which is identified in the Financing Plan and RAD Conversion Commitment (RCC) to the extent that such Work qualifies as **development**.

“Development” encompasses work that constitutes remodeling that alters the nature or type of housing units in a PBV or PBRA project, reconstruction, or a substantial improvement in the quality or kind of original equipment and materials, and **is initiated within 18 months of the HAP Contract**. Development activity does not include replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind.

Davis-Bacon requirements during RAD conversion apply only to projects with nine or more assisted units.

#### **2. Davis-Bacon requirements vary from project-to-project based on several different variables including, but not limited to, the amount of funding required for the project, the type of services being conducted by the contractor or subcontractor, and the source of funding for the project. It is the responsibility of all MDHA employees to do their due diligence to ensure that all contractors and subcontractors are paying to appropriate wages in accordance with the contract requirements.**

## **F. DOCUMENTATION AND AUDITS**

MDHA will maintain records sufficient to detail the significant history of each procurement action. Records shall be kept in safe and secure location and readily available for PHA procured independent auditors or authorized government auditors. These records shall include, but shall not necessarily be limited to, the following:

1. Rationale for the method of procurement (if not self-evident);
2. Rationale of contract pricing arrangement (also if not self-evident);
3. Reason for accepting or rejecting the bids or offers;
4. Basis for the contract price;
5. A copy of the contract documents awarded or issued and signed by the Contracting Officer;
6. Basis for contract modifications; and
7. Related contract administrative actions.

## **G. RECORD RETENTION**

The Agency shall retain all significant and material documentation and records concerning all procurements conducted. These records must be retained for a minimum period of three years after final payment and all matters pertaining to the contract are closed unless a longer period is required by applicable law. If any claims or litigation are involved, the records shall be retained until all issues are satisfactorily resolved. If the funder or lender of funds specifies a different period of record retention, records will be retained in accordance with their specifications but no less than three years.

## **H. DISPOSITION OF EQUIPMENT**

Property no longer necessary for MDHA's purposes (non-real property) shall be transferred, sold, or disposed of in accordance with applicable Federal, state, and local laws and regulations.

### **Interoffice Transfer of Equipment:**

The individual offices, departments or properties wishing to transfer an item of equipment from one department or property to another where the transfer item exceeds \$5,000 shall complete a transfer and disposition document. This document shall contain a description and tag number of the item being transferred, by the department supervisor receiving the item. A copy of this document shall then be forwarded to the Finance Department and the Procurement Division with a copy retained by the sending office and the receiving office. The Finance Department will

be responsible for making corrections on the inventory printout. The Transfer Document must be submitted within two working days of the transfer.

**Disposition of Equipment:**

The individual offices or properties of MDHA having material or equipment where the value of surplus, obsolete, stolen, or unused material or equipment exceeds \$5,000 shall certify this by completing a Transfer and Disposition Document. This document along with the equipment shall be submitted to the Procurement Division along with a brief reason for disposing of the property. The Purchasing Agent, if in agreement with the certification, shall initial the document and forward it to the Finance Department.

It is the responsibility of the Procurement Division to determine if any surplus, obsolete, or unused equipment can be transferred within the Agency or placed on e-bid or should be disposed of.

If an item of equipment is certified by the department director as being stolen, a Transfer and Disposition Document along with a copy of the police report shall be submitted within two working days of the report of the theft to the Procurement Division. The Purchasing Agent, if in agreement with the certification will submit to the Finance Department a copy of the document requesting that the item(s) of equipment be permanently removed from inventory.

When items of equipment are listed as surplus, the Procurement Division shall determine if any other department, office or division has a need for the material or equipment, and if there is a need, the material shall be transferred to the department/office in need.

If the Procurement Division determines that no other department, or office has a need for the material or equipment, it shall cause the material or equipment to be traded in on a new purchase of equipment, or to be e-bid for sale through the Procurement Division.

When it is determined by the Purchasing Agent that surplus, obsolete or unused material or equipment has no sale or salvage value, the department shall dispose of same in the best manner possible, except that title and/or possession shall not knowingly be transferred or passed to officers, members, or employees of the Agency or their families.

All actions as heretofore provided shall be approved by the Executive Director or designee and the Board of Commissioners, where applicable.

**VIII. SPECIFICATIONS**

**A. GENERAL**

All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying MDHA's needs. Designated staff shall review specifications prior to solicitation to ensure that the specifications are not unduly restrictive or represent unnecessary or duplicative items. Functional or performance specifications are

preferred. Proprietary specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For appropriate equipment purchases, a lease versus purchase analysis may be performed to determine the most economical form of procurement. The requesting department will provide complete and accurate purchase information, including such things as; training requirements, warranty, delivery time required, installation requirements, operation manuals and additional maintenance requirements after warranty expiration.

## **B. LIMITATIONS**

The following specification limitations shall be avoided: Geographic restrictions not mandated or encouraged by applicable Federal law; unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy MDHA's needs); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use.) Nothing in these procurement procedures shall preempt any State licensing laws.

## **IX. APPEALS AND REMEDIES**

### **PROTESTS -- REQUEST FOR QUOTES, INVITATIONS FOR BID, REQUESTS FOR PROPOSALS AND REQUESTS FOR QUALIFICATIONS**

It is MDHA's policy to endeavor to resolve all procurement issues informally without litigation. Any actual or prospective offeror may protest the solicitation or award of a contract only for serious violations of this policy, federal laws or regulations, state and local laws. Any protest against the request for solicitation must be received before the due date for receipt of bids, quotes or proposals; and any protest against an award of a solicitation must be received from an offeror within fifteen (15) calendar days of award or the protest will not be considered. All protests referencing solicitations or awards must be in writing and submitted to the Contracting Officer who will issue a written decision on the matter or establish a schedule for the decision within fifteen (15) calendar days of receipt of protest. If the matter is not resolved on this basis, then the protestor may file a formal written protest with the Executive Director within fifteen (15) calendar days of the Contracting Officer's decision. The protest should include as a minimum:

- Name, address and phone number of the protestor
- Identification of procurement action under protest
- A statement of the reason for the protest
- Supporting evidence or documentation to substantiate the protest; and
- The form of relief requested.

The Executive Director will determine if the decision of the Contracting Officer will stand, or if the protest will be reviewed by an independent third party or parties to impartially assess the merit of the protest and make a recommendation(s) to the Executive Director.

The Executive Director may accept or reject the recommendation(s) at any level of the protest; also, the Executive Director is the final authority at the Agency level.

If applicable, a review by HUD of the bid protest will be limited to alleged violations of Federal law or regulations, and violation of the Housing Agency's protest procedures for failure to review a complaint or protest.

## **X. ETHICS IN PUBLIC CONTRACTING**

MDHA hereby establishes this code of standards (conduct/ethics) regarding procurement issues and actions and shall implement a system of sanctions for violations as required by 2 CFR Part 200.318(c)(1). This code of conduct/ethics is consistent with applicable Federal, State, or local law.

### **A. ETHICAL BEHAVIOR**

1. Board members and employees will perform their duties with diligence, loyalty, and honesty and in an impartial manner.

a. Any relationship that influences or could be construed as influencing normal, independent decision making at MDHA shall be avoided. Board members and employees are expected to disclose relationships with organizations that do business with MDHA or propose to do business with MDHA. Generally, there will be conflict of interest if the individual is not in a position to influence MDHA with respect to the business in which the individual or his/her relative. "His/her relative" is defined in Section X paragraph B.

b. Board members and employees shall not use information obtained as board members or employees for any personal gain or in any manner that would adversely reflect on MDHA.

### **B. CONFLICTS OF INTEREST**

1. No employee, officer, board member, or agent of MDHA shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such a conflict would arise when a financial or other interest in a firm competing for any award is held by:

an employee, officer, board member or agent involved in making the award;

his/her relative, (including but not limited to 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, stepfather, stepmother, stepbrother, stepson, stepdaughter, stepbrother, stepsister, half- brother, or half- sister; his/her partner, or;

an organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

In the event a board member has a direct or indirect interest in a matter to be voted on, he/she shall abstain from voting and shall announce such direct or indirect interest to the Chairman.

### **C. GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION**

An MDHA official or employee shall not accept, directly or indirectly, any money, gift, gratuity or other consideration or favor of any kind from anyone other than the agency:

1. For the performance of an act, or refraining from performance of an act, that he/she would be expected to perform, or refrain from performing, in the regular course of his/her duties; or
2. That might reasonably be interpreted as an attempt to influence his/her action, or reward him/her for past action, in executing agency business.

### **D. PROHIBITION AGAINST CONTINGENT FEES**

Contractors who want to do business with the PHA 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.

Any employee or official of MDHA who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of award, money or other items of value, as an inducement or intended inducement, in the procurement of goods and services, for, to or from any person, partnership, firm or corporation, offering, bidding for, or seeking to make sales to MDHA shall be subject to disciplinary action.

Any person, firm or corporation offering to make, or pay or give any rebate, percentage of award, money or any other thing of value as an inducement in the procurement of business, to any employee or official of MDHA shall be subject to suspension and disbarment.

**E. MDHA Personnel Policy provides further instructions concerning ethics, conflicts of interest, and acceptance of gifts on the part of employees. This policy can be obtained from the Human Resources Department.**

### **F. EMPLOYEE CONDUCT**

MDHA employees are not to discuss a supplier's product, methods, or personnel with other suppliers at any time other than responding to bonafide requests for references.

### **G. SUSPECTED VIOLATIONS**

Anyone suspecting a violation of these procedures shall report his/her suspicions in accordance with the Code of Ethics within the MDHA Personnel Policy.

## **XI. ENERGY EFFICIENCY**

It is MDHA's goal to reduce energy consumption across all properties owned or managed by MDHA. This objective will be accomplished through the support and everyday efforts of MDHA staff. MDHA will promote and focus on empowering residents to be accountable for their energy use by providing residents with educational and training resources to understand the importance of individual accountability. MDHA will also promote the use of energy efficient equipment when existing MDHA equipment is replaced due to equipment failure or routine equipment replacement. This process is necessary to fully realize the objective of reducing energy consumption across all properties.

## **XII. DIVERSITY BUSINESS ENTERPRISE POLICY**

It is the policy of MDHA to assist minority, women and small business enterprise firms in their aspirations of viability and growth, which support a more stable economic community. To this extent, we join with community agencies and organizations that support these businesses to create greater opportunities for these entrepreneurs in the attainment of mutually beneficial social and economic objectives. Minority, women and small business enterprise firms will be given the maximum practicable opportunity, consistent with efficient performance and applicable law, to compete for and participate in contracts, subcontracts, purchase orders and other procurement actions.

Businesses bidding or proposing on procurements are required to comply with the provisions of these procedures. MDHA prohibits discrimination against any person or business in pursuit of procurement opportunities on the basis of race, color, sex, religion, disability or national origin. MDHA will conduct its contracting and purchasing programs so as to prevent any discrimination and to resolve all allegations of discrimination.

## **XIII. SECTION 3**

The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance programs shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities to low- and very low-income persons.

## **XIV. RESIDENT-OWNED BUSINESSES**

### **CONTRACTING WITH MDHA RESIDENT-OWNED BUSINESSES**

MDHA strongly encourages contracting with resident businesses to the maximum extent feasible. This has been a proven strategy for moving low-income persons out of poverty and dependency. The alternative procurement process is based on the established procurement procedures and requirements set forth in 24 CFR 85.36, but limits solicitation to resident-owned businesses. The purpose of this rule is to enhance the economic opportunities available to MDHA residents by facilitating the award of MDHA

contracts to resident-owned businesses that can perform successfully under a proposed MDHA contract at a reasonable price.

**XV. MANDATORY HUD FORMS (WHEN APPLICABLE)**

HUD has developed certain mandatory forms that contain the required contract clauses related to construction and maintenance contracts, including non-routine maintenance work and non-construction contracts. These forms shall be used if required by applicable law.

Small purchases, including purchase orders, are subject only to certain mandatory clauses prescribed by HUD except in the case of bid specifications and contracts for construction or maintenance work in excess of \$2,000. MDHA shall comply with these laws as well as applicable State or local law when required.

In addition to Federal, State or local requirements, MDHA should include necessary and appropriate language with any small purchase that is consistent with good business practice.

Acceptable Methods of Incorporation

MDHA may utilize any one or any combination of the following methods to incorporate mandatory clauses and applicable wage decisions into bid specifications and contracts. MDHA may:

Attach required printed form(s), and/or wage decisions;

Incorporate the clauses/text of the applicable HUD form and wage decision into other documents (e.g., into MDHA’s own forms) that are bound/attached to the contract (and bid specifications, if applicable) or incorporated by reference;

Incorporate the clauses or HUD forms and/or any applicable Davis-Bacon or HUD wage decision by reference. The reference must be specific as to the exact clauses or form(s) that are incorporated, and where the clauses or forms(s) may be accessed or obtained (e.g., HUDCLIPS, PHA web site). A Davis-Bacon wage decision may be incorporated by reference to [www.wdol.gov](http://www.wdol.gov) and to the specific number, modification number, and date of the wage decision. HUD maintenance wage decisions are not available at HUD’s web site; however, MDHA may post any applicable HUD wage decision to its own web site and reference that site. MDHA must provide hard copies of any referenced clauses, forms, and/or wage decisions on request.

The following is a listing of HUD forms for various types of procurement that might be utilized. The forms may be found on HUDCLIPS:

HUD-5369	<a href="#">Instructions to Bidders for Contracts</a>
HUD-5369-A	<a href="#">Representations, Certifications, and Other Statements of Bidders Public and Indian Housing Programs</a>
HUD-5369-B	<a href="#">Instructions to Offerors Non-Construction</a>

HUD-5369-C	<a href="#">Certifications and Representations of Offerors Non-Construction Contract</a>
HUD-5370	<a href="#">General Conditions of the Contract for Construction Public and Indian Housing</a>
HUD-5370-C	<a href="#">General Contract Conditions Non-Construction</a>
HUD-5370-C1	<a href="#">General Conditions for Non-Construction Contracts - Section I</a>
HUD-5370-C2	<a href="#">General Conditions for Non-Construction Contracts - Section II</a>
HUD-5370-EZ	<a href="#">General Contract Conditions for Small Construction/Development Contracts</a>
HUD-51915	<a href="#">Model Form of Agreement Between Owner and Design Professional</a>

## **XVI. EMERGENCY PROCEDURES & REQUIREMENTS**

### **A. PURPOSE**

To establish MDHA's standards for procurement operations during declared emergencies and to establish procedures and protocols for emergency operations.

### **B. GENERAL COMMENTS**

MDHA may choose to operate under these emergency procedures whenever an authority with the power to declare an official State of Emergency does so. Typically, such declarations will be made by the president of the United States, the Governor of the State of Tennessee, or the Mayor of Nashville.

## C. PROCEDURES

When MDHA chooses to operate under these emergency procedures, the following procedures shall be implemented in lieu of those stated in Section III, "PROCUREMENT METHODS", paragraph F, "SEALED BIDS - \$25,000 AND OVER.

1. Pre-Bid and Pre-Proposal Meetings - Pre-Bid and Pre-Proposal Meetings will be conducted as follows:
  - a. Host Pre-Bid and Pre-Proposal Meetings via teleconference or video conference.
  - b. Addenda will be issued addressing questions proposed electronically.
2. Receipt of Bids/Proposals/Qualifications Statements/Quotes - MDHA may choose to only accept responses to solicitations electronically during declared emergencies in lieu of a sealed bid.
3. Bid Openings - Bid openings will be conducted as follows:
  - a. Host bid openings via teleconference or video conference.
  - b. Post results to MDHA's webpage and MDHA Marketplace.
4. Public Access - MDHA may choose to "close" the office to the public until the emergency has passed.

## D. ADDITIONAL COMMENTS

1. MDHA may take other reasonable, prudent and logical steps to further MDHA's interests during a declared emergency subject to ratification by the Executive Director.
2. MDHA may use its normal "Emergency Procurement" procedures as applicable during such declared "States of Emergency."

## APPENDIX (A) Terms and Definitions

The following is a list of key procurement and contracting terms and definitions used throughout these procedures. Further information as referenced within these terms and definitions may be found in HUD Procurement Handbook 7460.8 REV 2 or in TCA Title 13 – Public Planning and Housing.

**Acceptance** – The act of an authorized representative of MDHA acknowledging that the supplies or services delivered to or received by MDHA conform to contract requirements.

**Annual Contributions Contract (ACC)** – Entered into between HUD and MDHA, setting forth terms and conditions for the operation, modernization, and development of public housing. The current version of the ACC (form HUD-53012-A, 7/95) does not actually contain any specific language governing MDHA procurement activity, but incorporates by reference regulations promulgated by HUD at

Title 2 of the Code of Federal Regulations, as well as all applicable laws and executive orders, and regulations.

**Amendment** – Written revision or clarification made to a solicitation.

**Anti-competitive Practices** – Actions by potential contractors that improperly reduce or eliminate competition or restrain trade. Examples are: an agreement or understanding among competitors to restrain trade, such as submitting collusive bids or proposals, rotating low bids, follow-the-leader pricing, or sharing of the business. Competition may also be wrongfully discouraged by illicit business actions that have the effect of restraining trade, such as controlling the resale price of products or an improper collective refusal to bid 2 CFR Part 200.319(a).

**Architect/Engineer (A/E)** – Person (or company) usually responsible for developing the plans and specifications of a building or development and, in some cases, supervising the construction effort.

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

**Bidder's List** – General list of persons or firms who may be interested in contracting opportunities with MDHA, and in submitting bids in response to an Invitation for Bid.

**Change Order** – A unilateral modification made to the contract by the Contracting Officer under the authority of the contract's Changes clause. Only the specific changes permitted by the particular Changes clause may be made under a change order (e.g., modify the drawings, design, specifications, method of shipping or packaging, place of inspection, delivery, acceptance, or other such contractual requirement). All change orders must be within the scope of the contract.

**Changed Conditions** – Construction site or repair conditions that differ significantly from those indicated in the contract or from those ordinarily encountered in the performance of the specific type of work required by the contract.

**Competitive Proposals** – Also called contracting by negotiation, a method of procurement using the solicitation, evaluation, and negotiation of proposals instead of sealed bids. The competitive proposal method is used for requirements exceeding the PHA's small purchase threshold when conditions are not appropriate for sealed bidding. (Note: Under the Qualifications-Based Selection method only, a Request for Qualifications (RFQ) is used in place of the RFP.)

**Competitive Range** – Those proposals submitted in response to a RFP that, after technical evaluation by the MDHA's selection panel and considering the proposed costs/prices, have a reasonable chance of being awarded the contract.

**Consortia** – These are a special kind of PHA consortium where two or more agencies join together to perform planning, reporting and other administrative functions, including, importantly, the joint preparation of a PHA Plan. Consortia are addressed separately in paragraph 14.7 in HUD Procurement Handbook 7460.8 REV 2.

**Contracting Officer** – The Executive Director or an official authorized by the Executive Director to enter into and/or administer contracts and make related determinations and findings. For the purpose of this handbook, the term includes any MDHA employee designated and authorized to perform the duties of a Contracting Officer.

**Contract Administration** – All the actions taken with regard to a contract after its award. Administration includes monitoring the contractor’s performance to ensure compliance with the contract requirements, and terms and conditions.

**Contract Modification** – Any written alteration to a contract executed by an authorized contracting officer.

**Contractor** – An Offeror who is awarded a contract.

**Contract Pricing Arrangements** – The arrangement, as reflected in the contract, for how the vendor will be paid for services. While there are two basic contract pricing arrangements – firm fixed-price and cost-reimbursement – there are multiple variations on these models, from indefinite quantity contracts (where the exact number of deliverable items is not known at the time of contract award but where minimum and maximum quantities are stated) to cost-plus fixed-fee (where costs are reimbursed, up to an estimated amount, plus a specified fee).

**Cost Analysis** – The evaluation of the separate elements (e.g., labor, materials, etc.) that make up a total cost proposal or price to determine if they are allowable, directed related to the requirement and reasonable.

**Cost-Reimbursement Contract** – The contractor is reimbursed for his/her allowable costs of performance up to a total estimated amount specified in the contract. The contract may provide for the payment of a fee (i.e., a type of profit) in addition to costs.

**Cure Notice** – A document originated by the Contracting Officer and sent to notify the contractor that the contract may be terminated for default unless performance is corrected within a specified number of days.

**Excusable Delay** – A failure to perform within the contract period that is beyond the control and without fault or negligence of the contractor, as determined by the Contracting Officer.

**Federal Small Purchase Threshold** – The maximum dollar amount for individual small purchases. The threshold is currently set at \$150,000 (41 U.S.C. 403(11)). MDHA may establish lower thresholds. Special Note: State law may set different thresholds and follow stricter limits.

**Firm Fixed Price Contract** – The contractor is paid a firm fixed-price for all required work regardless of the contractor’s actual costs of performance.

**Independent Cost Estimate (ICE)** – An estimate prepared by the PHA prior to obtaining offers. The degree of analysis will depend on the size and complexity of the purchase.

**Inspection** – The examination and/or testing of supplies and services to determine conformance with the contract requirements.

**Instrumentality** – A subsidiary branch of the PHA through which functions or policies are implemented.

**Intergovernmental or Interagency Agreement** – An agreement between MDHA and a Federal, State, or local government agency (including other PHAs) for the provision of supplies or services. In recent years, the terms Cooperative Agreement, Intergovernmental Agreement, Consortium Agreement, or Memorandum of Agreement have been used interchangeably and are treated the same.

**Internal Controls** – Safeguards that ensure contracting actions will be conducted in conformity with applicable Federal and State regulations and PHA policy.

**Invitation for Bids (IFB)** – Solicitation type used under the sealed bidding method of procurement. This document explains the intended purchase and invites bids from potential contractors.

**Joint Venture Partner** – A participant, other than MDHA, in a joint venture, partnership, or other business arrangement or contract for services with MDHA.

**Labor Surplus Area Business** – A business which, together with its immediate subcontractors, will incur more than fifty percent (50%) of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.

**Level-of-Effort Contract** – Contract (usually cost-reimbursement) that specifies the number and type of person-hours that the contractor will use in performance of the contract requirements.

**Major Change** – Modification to an existing contract that is beyond the general scope of the contract or a change to a substantive element of the contract that is so extensive that a new procurement should be used.

**Micro Purchases** – Micro-purchases under \$10,000 (or lower threshold established by the MDHA; see 2 CFR Part 200.320 (a) and 2 CFR Part 200.67).

**Minority-Owned Business** – A business that is at least fifty-one percent (51%) owned by one or more minority group members; or, in the case of a public-owned business, one in which at least fifty-one percent (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.

**Negotiation** – Discussions with offerors in the competitive range regarding technical and/or price proposals when awarding a contract using the competitive proposals method of procurement or when issuing modifications to existing contracts or other required discussion with offerors for the other methods of procurement.

**Noncompetitive Proposals** – Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

**Offer** – A response to a solicitation (IFB or RFP) that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called “bids” or “sealed bids”, responses to requests for proposals (negotiation) are offers called “proposals”; however, responses to requests for quotations (small purchases) are “quotations,” not offers. Small purchases become binding contracts once the vendor accepts the order (e.g., by signature or substantial performance of the order). Offers submitted under the Qualifications-Based Selection (QBS) method are called “qualifications”.

**Offeror** - The general term for the entity that submits a response to a solicitation. For the purposes of this handbook, offeror may be used interchangeably with bidder, proposer, or respondent.

**Price Analysis** – The evaluation of a proposed price (i.e., lump sum) without analyzing any of the separate cost elements of which it is composed; essentially price comparison.

**Procurement** – The acquiring by contract of supplies and services (including construction) with the PHA’s Federal program grant funds through purchase, lease, or other means. Procurement begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

**Proposal** – The offer submitted by a potential contractor in the competitive or noncompetitive proposals method of procurement.

**Qualification Based Selection (QBS)** – A form of procurement of architect-engineering (A/E) or development services by competitive proposals in which price is not requested in the Request for Qualifications (RFQ) or used as an evaluation factor. Instead, technical qualifications only are reviewed and negotiations are conducted with the best-qualified firm. Only A/E services and development partners may be procured by this method.

**Quotation** – The price or cost submitted by a vendor in the small purchase procedures method.

**Request for Proposals (RFP)** – Solicitation method used under both the competitive or non- competitive methods of procurement. Proposal evaluation and contractor selection are based on the evaluation criteria and factors for award as stated in the RFP. Contract award is based on the best proposal responsive to the requirements of the statement of work resulting in the greatest benefit and best value to the PHA, which may not necessarily be primarily determined based on price.

**Responsible Bidder** – A bidder who is able to comply with the required or proposed delivery or performance schedule; has a satisfactory performance record; has a satisfactory record of integrity and business ethics; has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and is otherwise qualified and eligible to

receive an award under applicable laws and regulations, including the fact that the bidder is not suspended, debarred or under a HUD-imposed Limited Denial of Participation.

**Responsive Bid** – A bid that conforms exactly to the requirements in the Invitation for Bids (IFB).

**Sanctions** – Measures that may be invoked by HUD to exclude or disqualify contractors, PHA staff or agents acting on behalf of a PHA from participation in HUD programs (such as limited denial of participation or debarment), or measures the PHA may take regarding employees, officers, agents, or others who violate the ethical standards of the policies of the PHA (such as dismissal, reassignment, removal from position, etc.). In the case of violations, HUD would exercise any available remedy under the ACC, federal regulations and statutes, and grant agreements, including the U.S. Housing Act of 1937 as amended, 2 CFR Part 200, and sections 17 and 19 of the ACC.

**Sealed Bidding** – A method of procurement inviting sealed bids. This method requires: specifications that are clear, accurate, and complete; a public bid opening; and evaluation of bids and award of the contract based on the lowest price submitted by a responsive and responsible contractor. Sealed bidding is the preferred method for construction (2 CFR 200.320(c)(1)).

**Section 3 Business Concern** – As defined under 24 CFR Part 135: A business concern located in the area of the development defined as an individual or firm located within the relevant Section 3 covered development area, as determined pursuant to CFR 135.36, listed on HUD's registry or eligible business concerns, and meeting the definition of small business above. A business concern owned in substantial part by persons residing in the area of the development is one which is fifty-one percent (51%) or more owned by persons residing within the Section 3 covered development, owned by persons considered by the U.S. Small Business Administration to be socially or economically disadvantaged, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above.

**Show Cause Letter** – A document sent by the Contracting Officer notifying a defaulting contractor that the contract may be terminated for default unless the contractor can provide adequate justification for not terminating within a specified time period (usually 10 days).

**Small Business** – 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 131 should be used, to determine business size unless the PHA determines that their use is inappropriate.

**Small Purchase Procedures** – A simplified method for acquiring supplies, materials, and services (including construction) that do not exceed the PHA's small purchase threshold. (The Federal threshold is \$150,000; PHAs are limited to this or a lower amount as specified in applicable State or local law or dictated by the PHA's Procurement Policy or imposed by HUD due to PHA's procurement performance.) (2 CFR 200.320(b)).

**Small Purchase Threshold** – The per purchase dollar limit established by MDHA for small purchases. The threshold may not exceed the Federal small purchase threshold.

**Solicitation** – The general term for the agency's request for offers from potential offerors. A solicitation package generally contains the proposed contract, including contract terms and conditions, instructions to

potential offerors regarding the submission of an offer, and any other information needed to prepare an offer.

**Solicitation Provisions** – The instructions provided to bidders/offerors included in solicitations. The provisions include such information as how to prepare an offer, bonding requirements, date and time for submission of offers, etc. Provisions required by HUD, as applicable, are included on forms HUD-5369, Instructions for Bidders and HUD-5369-A, B and C, Representations, Certifications, etc., and HUD-5369-B for solicitations above the federal small purchase threshold.

**Specifications or Scope** – Description of the technical requirements of a contract.

**Statement of Work (SOW)** – Written description of work to be performed that establishes the standards sought for the supplies or services furnished under the contract; typically used for service contracts.

**Subsidiary** – A type of operating entity created and operated by a PHA over which it has a controlling interest. It may be wholly owned or controlled by the PHA and may be a non-profit organization.

**Supplemental Agreement** – A type of contract modification to which both parties agree.

**Termination for Cause** – Termination of a contract on a unilateral basis when the contractor fails to perform, fails to make progress so as to endanger performance, or commits a default as specified in the contract.

**Termination for Convenience** – Termination of a contract by the PHA on a unilateral basis when the product or service is no longer needed or when it is in the best interest of the PHA.

**Time Delay** – An interruption during which supplies are not delivered or services or work are not completed in accordance with the performance schedule stated in the contract.

**Time and Materials Contracts** – Provides for acquiring supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and, (2) materials at cost, including, if appropriate, material handling costs as part of material costs. (This form of contract may be used only when the Contracting Officer has determined that no other type of contract is suitable in accordance with 2 CFR Part 200).

**Women's Business Enterprise** – A business that is at least fifty-one percent (51%) owned by a woman or women who are U.S. citizens and who also control or operate the business.

**Vendor** – The term often used for an offeror or contractor when talking about small purchasing.

**Vendor List** – List of persons or firms interested in doing business with the MDHA.