

**DISTRICT OF COLUMBIA HEALTH BENEFIT AUTHORITY
CONTRACTING AND PROCUREMENT POLICIES AND PROCEDURES**

I. INTRODUCTION AND STATEMENT OF PURPOSE

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

Under D.C. Official Code § 31-3171.04(a)(5) and § 2-351.05(c)(17), the Authority has procurement authority independent of the Office of Contracting and Procurement, but is subject to certain provisions of Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-0371; D.C. Official Code § 2-352.01 *et seq.*) (“PPRA”). These Contracting and Procurement Policies and Procedures, and the applicable provisions of the PPRA, govern all procurements for goods and services undertaken by the Authority for its own benefit in furtherance of operational needs. These policies and procedures do not apply to financial interactions in which the Authority is performing a pass-through function, such as, but not limited to, the transfer of premiums and advanced payments of premiums tax credits to an insurance carrier.

II. PRE-SOLICITATION NOTICES

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

III. METHODS OF PROCUREMENT

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

- A. Competitive Procurement
- B. Emergency Procurement
- C. Sole Source Procurement
- D. Simplified Methods for Small Procurements
- E. Inter-Governmental Procurement
- F. Unsolicited Proposals
- G. Pilot Procurements

H. Blanket Purchase Agreements

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

A. Competitive Procurement

1. Competitive Sealed Bidding

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

2. Qualification and Price Source Selection

- i. Qualification and price source selection is a competitive method of procurement and shall be used where (i) there is an adequate and realistic specification or purchase description available; (ii) the award will be made on the basis of price and other factors, including qualifications; (iii) time permits the solicitation, submission, and evaluation of sealed submissions; and (iv) there is a reasonable expectation of receiving more than one submission.
- ii. Each solicitation shall be in writing, shall be in a form approved by the Executive Director, shall establish a process for the evaluation of bids, and shall identify the factors on which the contract will be awarded.
- iii. Each solicitation shall be published on the website of the Authority and shall be advertised in any other reasonable manner that would promote competition and transparency in the procurement process as determined by the Executive Director or designee..

- iv. Proposals are evaluated based on both qualifications and pricing factors and ranked based on the overall value to the Authority.
- v. Contracts shall be awarded with reasonable promptness after the date of solicitation opening according to the process established in the solicitation and based on the factors identified in the solicitation.
- vi. All bids may be rejected if the Executive Board or the Executive Director determines that it is in the Authority's best interest to do so.

3. Competitive Sealed Proposals

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

4. Exemption from Competitive Procurement Requirements

- i. Contracts for the following procurements are exempted from the competitive procurement requirements:
 - a. Artistic services or works of art;
 - b. Commodities or contractual services if federal or District law prescribes with whom the Authority must contract;

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

B. Emergency Procurement

1. Emergency procurement is a non-competitive procurement method and may only be used after a written determination, by the Executive Director or designee, that it is not possible to undertake another type of procurement because of an emergency condition, including but not limited to a natural disaster, riot, or imminent equipment or operational failure, requiring the Authority to (i)

- protect the public health, safety, or welfare; (ii) preserve or protect the Authority's property or systems; (iii) ensure the continuation of necessary governmental functions; or (iv) comply with legal requirements.
2. An emergency procurement shall be limited to the procurement of only the types and quantities of goods or services needed to meet the immediate emergency and shall not be used to meet long-term requirements.
 3. The Executive Director, or designee, shall solicit responses from as many vendors as practicable and shall ensure that an emergency procurement is undertaken with the maximum amount of transparency consistent with the circumstances of the emergency.
 4. The Executive Director or designee shall seek the most favorable price and the most favorable terms and conditions that can be obtained under the circumstances of the emergency.
 5. Contracts shall be awarded to the offeror whose response is deemed most advantageous to the Authority under the circumstances of the emergency.

C. Sole Source Procurement

1. Sole source procurement is a non-competitive procurement method and may only be used after a written determination, by the Executive Director or a designee, that there is only one source for goods or services that the Authority requires. Sole source procurement includes situations where there is only a single available source that is capable of providing the required goods or services.
2. The Executive Director or designee shall ensure that sole source procurement is used only in circumstances in which it is both necessary and in the best interest of the Authority.
3. The Executive Director or designee shall use a letter to request a proposal for sole source procurement. The letter shall refer to, or attach, a description of the tasks and the time and duration of a proposed contract.
4. The Executive Director or designee shall negotiate with the source of the procurement for the most favorable price and the most favorable terms and conditions that can be obtained.
5. A contract may be awarded where, based on the negotiated price and terms and conditions, it is in the best interest of the Authority to award the contract.
6. The Executive Director or designee shall take action whenever possible to avoid the need to continue to procure the same goods or services without competition.

D. Simplified Methods for Small Procurements

1. For contracts valued at \$100,000 or less, a simplified competitive method may be used that does not incorporate all of the elements of a formal competitive procurement.
2. Each solicitation shall be in writing and shall be in a form approved by the Executive Director or designee.

3. The Executive Director or designee shall obtain or request three (3) written quotations for each procurement in an amount over \$25,000 but less than or equal to \$100,000. The Executive Director or designee may determine that more or fewer quotations are required based on the following factors:
 - i. The nature of the item or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or if it is relatively non-competitive;
 - ii. Information obtained in making recent purchases of the same or similar item;
 - iii. The urgency of the proposed purchase;
 - iv. The dollar value of the proposed purchase; and
 - v. Past experience concerning specific contractor prices.
4. The Executive Director or designee shall ensure that responses are received and evaluated in a manner that promotes competition and transparency and that is fair to all offerors.
5. The Executive Director or designee may conduct discussions or negotiations with any offeror after the receipt of responses and shall attempt to treat all offerors fairly in conducting discussions or negotiations.
6. Contracts shall be awarded to the offeror whose response is deemed most advantageous to the Authority in accordance with any evaluation factors identified in the solicitation.
7. All responses may be rejected if the Executive Director or designee determines that it is in the Authority's best interest to do so.
8. For contracts valued at \$25,000 or less, competitive selection is preferred, but not required. For such contracts, the procurement shall be considered a competitive procurement if the Executive Director, or designee, orally solicits and obtains responses from at least two vendors. The Executive Director or designee may award a contract when it is in the best interest of the Authority to do so.
9. Contracts may not be split, artificially divided or purchased over a period of time for the purpose of bringing them within the dollar ranges in which these Procurement Policies and Procedures permit the use of simplified procurement methods.
10. The Authority may participate in the District of Columbia Purchase Card Program (P-Card) as determined by the Executive Director. The Authority shall designate who shall be a card holder, the Agency Program Coordinator (APC) and an Approving Official (AO), if the Authority elects to participate in the P-Card program. Spending limits under the P-Card program are set by the Office of Contracting and Procurement (OCP).

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

1. When it is in the best interest of the Authority, the Authority may, without competition, enter into an agreement to procure goods or services from an agency or unit of (i) the District of Columbia, (ii) the federal government, (iii) another state government or unit thereof, or (iv) another health benefits

exchange established under sections 1311 or 1321 of the Patient Protection and Affordable Care Act of 2010 (P.L. 111-148 & 111-152).

2. The Authority may participate in, sponsor, conduct or administer cooperative purchasing agreements for the procurement of goods, services, or construction, provided that such agreements are consistent with applicable law.
3. The Authority may use the District of Columbia supply schedule and the General Services Administration supply schedule.
4. When it is in the best interest of the Authority, the Authority may, without competition, enter into a memorandum of agreement.

F. Unsolicited Proposals

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

G. Pilot Procurements

1. The Authority may, with prior public notice, award a contract without a competitive process if it is determined that an unusual or unique situation exists that makes the application of all requirements of competitive procurement not in the public interest.
2. A special pilot procurement under this Paragraph shall be made with as much competition as is practicable under the circumstances.
3. A special pilot procurement shall require a determination and findings by the Executive Director or designee setting forth the reasons warranting the special procurement and approval of a special pilot procurement and for the selection of the particular contractor.
4. The Authority shall post the notice of award and the determination and findings on the website of the Authority within seven (7) days after the execution and approval of a special pilot procurement.
5. An unusual or unique situation justifying a special pilot procurement shall include a contract made to:
 - i. Satisfy a new and unique Authority requirement; or
 - ii. Obtain a new technology.

H. Blanket Purchase Agreements

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

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

IV. CONTRACT APPROVAL AUTHORITY, REPORTING AND TRANSPARENCY REQUIREMENTS

A. Contract Approval Authority and Reporting Requirements

- 1. The Executive Director or designee shall have authority to award any contract valued at \$100,000 or less; any contract valued at more than \$100,000 may only be awarded with approval by the Finance Committee and the Executive Board.

2. A contract valued at \$25,000 or less may be awarded by a designee with prior notice to the Executive Director. Contracts valued at \$25,000 or less for office operations, including purchases of office supplies, do not require prior notice to the Executive Director.
3. On a regular basis, the Chief Financial Officer shall present to the Finance Committee a report of all purchase orders made by the Authority.

B. Transparency Requirements

1. All competitive solicitations shall be published on the website of the Authority and other government websites to promote competition and transparency in the procurement process.
2. The Authority shall publish a notice of contract award, including the name of the contractor, the date of the award and amount of the award, for all contracts under Paragraphs III.A, B, C, D, G and H on the website of the Authority.

V. Pre-Award Review

- A. For all contracts valued at over \$100,000, the Contracting Officer shall establish a process to certify that each prospective contractor:
1. Is able to comply with the required or proposed delivery or performance schedule, based on existing commercial and government contract commitments;
 2. Has or will have the ability to obtain the necessary organization, experience, accounting, operational control, technical skills, production, technical equipment, and facilities;
 3. Has a satisfactory performance record, based on information available to the contracting officer;
 4. Has a satisfactory record of integrity and business ethics based on information available to the contracting officer;
 5. Has not been suspended or barred under D.C. Official Code §2-359.07 and does not appear on the U.S. Department of Health and Human Services List of Excluded Individuals and Entities;
 6. Does not have outstanding fines, penalties, interest, taxes or other debts with the District government in a delinquent status as described in D.C. Official Code §47-2862; and
 7. Is otherwise qualified and is eligible to receive an award under applicable law.

VI. CONTRACT REQUIREMENTS

- A. All contracts shall be in writing and shall be in a form approved by the Executive Director.
- a. Contracts valued at \$25,000 or less may be in the form of only a purchase order.

- b. In case of an emergency procurement under Paragraph III.B, a contractor may be given a verbal authorization by the Contracting Officer to provide services or goods to the Authority, provided that the directive shall be reduced to writing within three (3) business days after issuance. A verbal authorization may only be used with prior approval from the Executive Director and certification of funding for the services or goods by the Chief Financial Officer.
- B. A letter contract may be used only after the Executive Director or designee determines that: (1) it is in the Authority's best interest that a contractor be given a binding commitment so that work can start immediately; (2) negotiating a definitive contract is not possible in sufficient time to meet the requirement; and (3) the contract is valued at \$1 million or less. The Contracting Officer shall execute a definitive contract no later than ninety (90) days after the date of execution of the letter contract. The Contracting Officer may authorize the letter contract for an additional period of time only with approval of the Executive Director.
- C. All contracts shall include a provision stating that contracts awarded in violation of these Contracting and Procurement Policies and Procedures shall be voidable at the election of the Authority.
- D. The Executive Board may from time to time identify additional mandatory provisions for all contracts or for certain categories of contracts and may do so either by amending these Contracting and Procurement Policies and Procedures or by adopting a separate policy concerning contract terms.

VII. MULTI-YEAR CONTRACTS

- A. All contracts that, by their terms, are to last for more than one year must be approved by the Executive Board.
- B. Prior to the award of a multi-year contract, the Executive Director must submit the proposed contract to the Office of the Secretary to the D.C. Council for review and approval in accordance with the criteria and procedure established in §202 of the Procurement Practices Reform Act of 2010 (D.C. Law 18-371; D.C. Official Code §2-352.01 *et seq.*) ("PPRA").

VIII. CONTRACTS IN EXCESS OF \$1 MILLION

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

IX. CONTRACT MODIFICATIONS

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

- A. The Executive Director, or designee with prior approval by the Executive Director, may approve any modification to the terms of a contract that is budget neutral.
- B. For modifications that would increase the total cost of the contract, prior approval by the Finance Committee is required.

- C. For modifications that would increase the total cost of the contract to more than \$100,000 or that would increase the cost of the contract by more than \$100,000 a vote by the Executive Board is required.

X. CONFLICTS OF INTEREST

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

A. Remedial Actions

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

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

B. Range of Remedial Conditions Permitted

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

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

C. Writings Required

1. *Determinations* - A determination by the Executive Director of a conflict of interest, the appearance of a conflict of interest, or an engagement in impropriety under this section shall be made in writing and provided to the affected offeror(s), bidder(s), or contractor(s) and other parties determined to be involved and placed in the contract file(s). Copies of this writing shall be provided to the Executive Board members where Executive Board approval is required and a copy shall be kept in the official records of the Authority.

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

D. Conflicts and Ethical Considerations Defined

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

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

E. Appeal

An offeror, bidder, or contractor may appeal any determination, remedial action, or remedial condition to the Executive Board under the processes enumerated in Paragraph XI.D of these policies and procedures. Determinations of the Executive Board are final.

XI. PROTESTS

A. Time Restrictions

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

2. In all other cases, protests must be submitted to the Executive Director not later than seven days after the basis for protest is known, or should have been known, whichever is earlier.

B. Form and Content of Protest

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

C. Decision of Executive Director or Procurement Officer

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

D. Appeal

1. Except in cases where, as set forth in Paragraph XI.C, the decision of the Executive Director or designated procurement officer is final, a protestor may appeal from the decision of the Executive Director or designee to the Executive Board Business Operations Committee. The appeal must be in writing, must be addressed to the Chair of the Business Operations Committee, must identify each ground on which the protestor claims that the protest was resolved in error, and must include a copy of the initial protest and the decision of the Executive Director or designee resolving the protest. Appeals must be filed within ten (10) days after issuance of the decision resolving the protest. Four copies of all required materials must be submitted.
2. The Business Operations Committee may deny any appeal that s (i) received after the time periods set forth in Paragraph XI.D.1, or (ii) lacking the required elements set forth in Paragraph XI.D.1.
3. Upon the request of two (2) Executive Board members, the Executive Board shall hold a hearing. Either the full Executive Board or the Business Operations Committee may hold the hearing.
4. A final decision resolving the appeal will be issued by a majority vote of the Business Operations Committee within thirty (30) calendar days of the appeal being received by the Chair.

E. Award Pending Protest

The Business Operations Committee may vote to award a contract before there is a final decision of the Authority resolving a bid protest. Otherwise, a contract shall not be awarded during the pendency before the Authority of a bid protest related to that contract.

F. Resolution of Protest

In resolving a bid protest, the Business Operations Committee, Executive Director, or designee may (1) deny the protest; (2) sustain the protest but nonetheless determine that the procurement should proceed, consistent with Paragraph XII.A.1, below; or (3) sustain the protest and declare a contract to be void, order that all bids be re-evaluated for award, order that a solicitation be re-issued, or require that any other action be taken that fairly addresses the protest.

XII. PROHIBITED CONDUCT AND REMEDIES

A. Contracts Voidable for Noncompliance

1. If the Executive Director or designee finds that a procurement violates these Policies and Procedures, or that a contract has been awarded in violation of these Policies and Procedures, excluding unauthorized commitments, the Executive Director may order that any action be taken to resolve the violation and may declare void a contract awarded in violation of these Policies and Procedures. An unauthorized commitment is an agreement that is not binding solely because the Authority representative who made it lacked the authority to enter into that agreement on behalf of the Authority.
2. Alternatively, the Executive Director may determine that a procurement should proceed, or that a contract should not be declared void, notwithstanding a violation of these Contracting and Procurement Policies and Procedures, if:
 - i. The parties acted in good faith;
 - ii. Proceeding with the procurement or ratification of the contract would not undermine the purposes of these Policies and Procedures;
 - iii. The violation was insignificant or otherwise did not prevent substantial compliance with these Policies and Procedures; and
 - iv. Proceeding with the procurement would be in the best interested of the Authority.
3. Ratifications of unauthorized commitments.
 - i. The Executive Director or designee may ratify an unauthorized commitment only when:
 - A. Supplies or services have been provided to and accepted by the Authority, or the Authority otherwise has obtained a benefit from the performance of the unauthorized commitment;
 - B. The resulting contract would otherwise have been proper if made by an appropriate contracting officer;
 - C. The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;

- D. The contracting officer recommends payment and the General Counsel concurs in the recommendation;
- E. Funds are available and were available at the time the unauthorized commitment was made; and
- F. The ratification is in accordance with any other limitations set forth in these Contracting and Procurement Policies and Procedures.

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

B. Termination of Contracts

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

C. Debarment and Suspension

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

XIII. AUTHORITY OF CHAIR IN ABSENSE OF EXECUTIVE DIRECTOR

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

XIV. Review and Update of Policies and Procedures

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