

**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), 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 products 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. METHODS OF PROCUREMENT**

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

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

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 Sealed Bidding
  - 1. Competitive, sealed bidding is a competitive method of procurement and shall be used where (a) the award will be made on the basis of price and other price-related factors, (b) it will not be necessary to conduct negotiations with offerors, (c) time permits the solicitation, submission, and evaluation of sealed bids, and (d) there is a reasonable expectation of receiving more than one bid.

2. 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.
3. 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 a procurement officer designated by the Executive Director. The Executive Director or designated procurement officer may solicit bids directly from any vendor.
4. The Executive Director shall ensure that there is reasonable time, after publication of an invitation for bids, for potential bidders to prepare and submit bids.
5. Bids must be submitted in a sealed envelope marked with the bidder's name. All bids shall be publicly opened at the time and place stated in the request.
6. 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.
7. 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.

B. Competitive Sealed Proposals

1. 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, and where time permits the solicitation, submission, and evaluation of sealed proposals.
2. 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.
3. 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 a procurement officer designated by the Executive Director. The Executive Director or designated procurement officer may solicit proposals directly from any vendor.
4. The Executive Director shall ensure that there is reasonable time, after publication of a request for proposals, for potential offerors to prepare and submit proposals.
5. The Executive Director or designated procurement officer 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.
6. The Executive Director or designated procurement officer may request that offerors revise their proposals by submitting a best and final offer or a series of best and final offers.
7. 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.

8. 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.

C. Expedited Procurement

1. Expedited procurement is a competitive procurement method and may only be used after a written determination, by the Executive Director or a procurement officer designated by the Executive Director, that urgent circumstances make it impractical for a procurement to be undertaken through more formal competitive procurement methods.
2. The urgent circumstances under which an expedited procurement may be undertaken include the need to make progress toward compliance with long-range deadlines set forth in federal or District law, in policy guidance from a federal or District agency, or in the terms of a grant received by the Authority, where the use of more formal procurement methods would prevent the Authority from making adequate progress toward compliance.
3. Each solicitation shall be in writing and shall be in a form approved by the Executive Director.
4. 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 designated procurement officer. The Executive Director or designated procurement officer may also solicit responses directly from any vendor.
5. The Executive Director shall ensure that responses are received and evaluated in the manner best suited to maximize competition and transparency, consistent with the urgent circumstances presented.
6. The Executive Director or designated procurement officer may conduct discussions or negotiations with any offeror after the receipt of responses. The person conducting the discussions or negotiations shall keep a record of all such communications and shall attempt to treat all offerors fairly in conducting discussions or negotiations, consistent with the urgent circumstances presented.
7. Contracts shall be awarded according to any process established in the solicitation and based on any factors identified in the solicitation, and, in any event, to the offeror whose response is deemed most advantageous to the Authority under the urgent circumstances of the procurement.
8. All responses may be rejected if the Executive Board or the Executive Director determines that it is in the Authority's best interest to do so.

D. 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 a procurement officer designated by the Executive Director, that it is not possible to undertake another type of procurement because of an emergency requiring the Authority to (a) protect the public health, safety, or welfare; (b) preserve or protect the Authority's property or systems; or (c) mitigate a threat to the continuation of services provided by the Authority.
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 a procurement officer designated by the Executive Director, shall solicit responses from as many vendors as practicable and shall ensure that any emergency procurement is undertaken with the maximum amount of transparency consistent with the circumstances of the emergency.
4. The Executive Director or designated procurement officer 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.

E. 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 procurement officer designated by the Executive Director, that there is only one source for goods or services that the Authority requires.
2. The Executive Director 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 designated procurement officer shall use a letter to request a proposal for sole source procurement. The letter shall refer to, or attach, the terms and conditions of a proposed contract.
4. The Executive Director or designated procurement officer 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 designated procurement officer shall take action whenever possible to avoid the need to continue to procure the same goods or services without competition.

F. Simplified Methods for Small Procurements

1. For contracts valued at less than \$75,000, 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 a procurement officer designated by the Executive Director.
3. 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 designated procurement officer. The Executive Director or designated procurement officer may solicit responses directly from any vendor.
4. The Executive Director 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 designated procurement officer 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.
7. All responses may be rejected if the Executive Director or designated procurement officer determines that it is in the Authority's best interest to do so.
8. For contracts valued at less than \$15,000, competitive selection is preferred, but not required. For such contracts, the procurement shall be considered a competitive procurement if the Executive Director, or a procurement officer designated by the Executive Director, orally solicits and obtains responses from at least two vendors. The Executive Director or designated procurement officer may award a contract when it is in the best interest of the Authority to do so.
9. Contracts may not be artificially divided for the purpose of bringing them within the dollar ranges in which these Procurement Policies and Procedures permit the use of simplified procurement methods.

G. 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 (a) the District of Columbia, (b) the federal government, (c) another state government or unit thereof, or (d) 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. When it is in the best interests of the Authority, the Authority may, without competition, enter into a memorandum of understanding, as described in D.C. Official Code § 1-301.01(k).
3. Any agreement described in this paragraph (II.G) valued at \$200,000 or more may be approved only by vote of the Executive Board. The Executive Director shall have authority to approve any such agreement valued at less than \$200,000; a procurement officer designated by the Executive Director shall have authority to approve any such agreement valued at less than \$25,000.

<b>III. CONTRACT APPROVAL AUTHORITY AND REPORTING REQUIREMENTS</b>
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- A. Where a competitive method of source selection has been utilized, the Executive Director shall have authority to award any contract valued at less than \$200,000; any contract valued at \$200,000 or more may only be awarded by vote of the Executive Board.
- B. Where a non-competitive source selection method other than emergency procurement has been utilized, the Executive Director shall have authority to award any contract valued at less than \$50,000; any contract valued at \$50,000 or more may only be awarded by vote of the Executive Board.
- C. Unless otherwise prohibited by law or these procedures, the Executive Director may award any contract where the emergency procurement method has been properly utilized and where the emergency does not permit the Executive Director to obtain the prior approval of the Executive Board.

- D. A contract valued at less than \$25,000 may be awarded by a procurement officer designated by the Executive Director.
- E. The Executive Director shall report to the Executive Board, at the next regular meeting of the Board following the award of any contract or any contract modifications made under Paragraph VII.
- F. At the first meeting of the Executive Board following the start of a new calendar year, the Executive Director shall present a written report identifying all contracts awarded by the Authority in the preceding calendar year.

#### **IV. CONTRACT REQUIREMENTS**

- A. All contracts shall be in writing and shall be in a form approved by the Executive Director. Contracts valued at less than \$10,000 may be in the form of a purchase order.
- B. All contracts valued at \$10,000 or more 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.
- C. The Executive Board may from time to time identify additional mandatory provisions for all contracts or for certain categories of contracts and may do so either by amending these Contracting and Procurement Policies and Procedures or by adopting a separate policy concerning contract terms.

#### **V. 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”).

#### **VI. CONTRACTS IN EXCESS OF \$1 MILLION**

- A. All contracts that 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”).

#### **VII. CONTRACT MODIFICATIONS**

The Executive Director, or a procurement officer designated by the Executive Director, may agree on behalf of the Authority to the modification of the terms of a contract. For modifications valued at \$50,000 or more, prior approval of the Executive Board is required. The Executive Director may approve any modification valued at less than \$50,000; a designated procurement officer may approve any modification valued at less than \$25,000.

#### **VIII. CONFLICTS OF INTEREST**

Notwithstanding any other policy or procedure contained herein, the Executive Director may take remedial action if a offerror, 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 procurement;
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 contractors 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 offerror(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 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 shall be provided to the affected offerror(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 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. 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 a prospective offeror, bidder, or contractor received preferential treatment in relation to its competitors in the contracting or procurement process.
6. Cases where a prospective offeror, bidder, or contractor was privy to non-public information about the procurement.
7. Cases where the offeror, bidder, or contractor would be unable to render impartial and objective assistance or advice to the Authority.
8. Cases where a offeror, bidder, or contractor may have an unfair advantage over potential competitors.

E. Appeal

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

## **IX. BID 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 the name and address of the protestor; appropriate identification of the procurement; a statement of the reasons for the protest; and 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 (a) received after the time periods set forth in Paragraph IX.A, or (b) lacking the required elements set forth in Paragraph IX.B.
2. With regard to all other bid protests, the Executive Director or a procurement officer designated by the Executive Director shall resolve the protest.
3. The Executive Director or designated procurement officer: (a) may notify other interested parties of the existence of the protest and may obtain the views of other interested parties and (b) may 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 designated procurement officer shall issue a written decision resolving any bid protest that cannot be resolved by agreement.
5. For bid protests associated with contracts valued at less than \$75,000, or with a procurement in which the contract is reasonably anticipated to be valued at less than \$75,000, the decision of the Executive Director or designated procurement officer is final.

D. Appeal

1. Except in cases where, as set forth above, the decision of the Executive Director or designated procurement officer is final, a protestor may appeal from the decision of the Executive Director or designated procurement officer to the Executive Board. The appeal must be in writing, must be addressed to the Chair of the Executive Board, 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 designated procurement officer resolving the protest. Appeals must be postmarked within 10 days after issuance of the decision resolving the protest. Ten copies of all required materials must be submitted.
2. The Executive Board may deny any appeal (a) received after the time periods set forth in Paragraph IX.D.1, or (b) lacking the required elements set forth in Paragraph IX.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 a Committee of the Executive Board may hold the hearing.
4. A final decision resolving the appeal will be issued by a majority vote of the Executive Board within thirty (30) calendar days of the appeal being received by the Chair.

E. Award Pending Protest

The Executive Board 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 Executive Board, Executive Director, or designated procurement officer may (a) deny the protest, (b) sustain the protest but nonetheless determine that the procurement should proceed, consistent with Paragraph X.B, below, or (c) 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.

**X. CONTRACTS VOIDABLE FOR NONCOMPLIANCE**

- A. If the Executive Board or a person with authority to award a contract under these Contracting and Procurement Policies and Procedures finds that a procurement violates these Policies and Procedures, or that a contract has been awarded in violation of these Policies and Procedures, the Board or person with authority 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.
- B. Alternatively, the Board or person with authority 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 (a) the parties acted in good faith, (b) proceeding with the procurement or ratification of the contract would not undermine the purposes of these Policies and Procedures, (c) the violation was insignificant or otherwise did not prevent substantial compliance with these Policies and Procedures, and (d) proceeding with the procurement or ratification would be in the best interests of the Authority.

**XI. AUTHORITY OF CHAIR IN ABSENSE OF EXECUTIVE DIRECTOR**

During any period during which the position of Executive Director is vacant, 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.