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**FOR**  
**MEDICAL UNIVERSITY HOSPITAL AUTHORITY**

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**CONSTRUCTION PROCUREMENT POLICIES  
FOR  
MEDICAL UNIVERSITY HOSPITAL AUTHORITY**

**SECTION 10. Statutory Authority.**

This Policy has been adopted pursuant to Section 59-123-60(E)(3) of the South Carolina Code of Laws and shall be known and may be cited as the "Construction Procurement Policy for Medical University Hospital Authority"

**SECTION 20. Purpose and Policies for Medical University Hospital Authority.**

The underlying purposes and policies are:

- (a) to provide increased economy in Authority procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to the Authority and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act;
- (b) to foster effective broad-based competition for Authority procurement within the free enterprise system;
- (c) to develop procurement capability responsive to appropriate Authority needs; to permit the continued development of explicit and thoroughly considered procurement policies and practices;
- (e) to require the adoption of competitive procurement policies and practices by the Authority;
- (f) to ensure the fair and equitable treatment of all persons who deal with the Authority;
- (g) to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the Authority procurement process;

**SECTION 30. Obligation of Good Faith.**

Every contract or duty within this Policy implies an obligation of good faith in its negotiation, performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable

commercial standards of fair dealing.

#### SECTION 40. Application of this Policy.

(1) General Application. This Policy applies only to contracts solicited or entered into after the effective date of the establishment of the Authority by resolution of Medical University of South Carolina Board of Trustees unless the parties agree to its application to a contract entered into prior to its effective date.

(2) Compliance with Federal Requirements. Where a procurement involves the expenditure of federal assistance or contract funds, the Authority, shall also comply with such federal law and authorized procurement policies as are mandatorily applicable. Where federal assistance or contract funds are used in a procurement by the Authority, requirements that are more restrictive than federal requirements shall be followed.

#### SECTION 210. Determinations.

Written determinations and findings required by the Policy shall be retained in an official contract file of the Authority. Such determinations shall be documented in sufficient detail to satisfy the requirements of audit.

#### SECTION 310. Definitions of Terms Used in this Policy

(1) "Chief Procurement Officer" means Executive Director of the Authority, or his designee, for areas of construction and construction management services.

(2) "Board" means State Budget and Control Board.

(3) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other legal entity.

(4) "Change order" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

(5) "Construction" means the process of building, altering, repairing, remodeling, improving or demolishing any Authority structure or building or other Authority improvements of any kind to any real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

(6) "Contract" means all types of agreements for the procurement of construction.

(7) "Contract modification" means a written order signed by an Authority

Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes an Authority Procurement Officer to order without the consent of the contractor.

(8) "Contractor" means any person having a contract with the Authority.

(9) "Days" means calendar days. In computing any period of time prescribed by this Policy or the ensuing Procurement Guidelines, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or the designated holidays for the Authority (New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day), then the period shall run to the end of the next business day.

(10) "Debarment" means the disqualification of a person to receive invitations for bids, or requests for proposals, or the award of a contract by the Authority, for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.

(11) "Designee" means a duly authorized representative of a person with formal responsibilities under the Policy.

(12) "Employee" means an individual drawing a salary from the Authority and any non-salaried individual performing personal services for the Authority.

(13) "Invitation for Bids" means a written or published solicitation issued by an authorized Authority Procurement Officer for bids to contract for the procurement of stated services or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.

(14) "Procurement" means buying, purchasing, or otherwise acquiring any services or construction. It also includes all functions that pertain to the obtaining of service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

(15) "Real Property" means any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.

(16) "Request for Proposals (RFP)" means a written or published solicitation issued by an authorized Authority Procurement Officer for proposals to provide services, which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to the Authority.

The award of the contract must be made on the basis of evaluation factors which must be stated in the RFP.

(17) "Services" means the furnishing of labor, time, or effort for construction and related services.

(18) "Subcontractor" means any person having a contract to perform work or render service to a prime contractor, at the jobsite, as a part of the prime contractor's agreement with the Authority.

(19) "State" means state government.

(20) "State Engineer" means the person holding the position as head of the State Engineer's Office.

(21) "Suspension" means the disqualification of a person to receive invitations for bids, requests for proposals, or the award of a contract by the Authority, for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or inadequacy of performance which may lead to debarment.

(22) "Authority Procurement Officer" means any person duly authorized by the Authority, in accordance with procedures prescribed by the Procurement Guidelines, to enter into and administer contracts and make written determinations and findings with respect thereto.

#### SECTION 410. Public Access to Procurement Information.

Procurement information shall be a public record to the extent required by Chapter 4 of Title 30 (The Freedom of Information Act) with the exception that commercial or financial information obtained in response to a "Request for Proposals" or any type of bid solicitation which is privileged and confidential need not be disclosed. Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information.

Examples of this type of information would include:

- (1) Customer lists;
- (2) Design recommendations and identification of prospective problem areas under an RFP;
- (3) Design concepts, including methods and procedures;
- (4) Biographical data on key employees of the bidder.

Evaluative documents pre-decisional in nature such as inter- or intra-agency memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-agency memoranda reflecting the pre-decisional deliberations. At the time of submitting a proposal or bid, the party supplying a bid or proposal must identify any portions of the proposal or bid considered by the party to be privileged and confidential or a trade secret and thus eligible to be withheld from public inspection and copying. If the information identified by the party is privileged and confidential or a trade secret, as defined either in Section 30-4-40(a)(1) or in Section 39-8-20 of the South Carolina Code of Laws, it may be withheld from public inspection and copying. If the party fails to identify information as privileged and confidential or as a trade secret, the entire bid or proposal is to be made available for public inspection and copying.

SECTION 475. Authority may accept certain gifts-in-kind; restrictions.  
Authority may accept gifts-in-kind of items of construction with the approval of the Authority Board of Trustees, provided that these gifts may not be made or accepted if these gifts are offered with intent of influencing the judgment of the Authority. No other approvals or procedural requirements, including the provisions of these policies, may be imposed on the acceptance of these gifts.

SECTION 540. Authority and duties of the Board.  
Authority to Adopt Procurement Guidelines. Except as otherwise provided in this Policy, the Authority shall have the authority and responsibility to adopt Procurement Guidelines consistent with this Policy, governing the procurement, management, control, and disposal of any and all services and construction to be procured by the Authority. Such Procurement Guidelines shall be binding in all procurements made by the Authority.

SECTION 840. Delegation of Authority  
Subject to the Procurement Guidelines of the Authority, the Chief Procurement Officer and the Authority Procurement Officer may delegate any authority or responsibility to any designee.

## CHAPTER 2

## SOURCE SELECTION AND CONTRACT FORMATION

### SECTION 1410. Definitions of Terms Used

Unless the context clearly indicates otherwise:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable fee, if any.

(2) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or vendor of an item;

(b) is either published or otherwise available for inspection by customers;

(c) state prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for the supplies or services involved.

(3) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(4) "Purchase description" means specifications or any other document describing the services or construction to be procured.

(5) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(6) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.

(7) "Responsive bidder or offeror" means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.

### SECTION 1520. Competitive Sealed Bidding.

(1) Condition for Use. All construction contracts exceeding fifty thousand dollars shall be awarded by competitive sealed bidding except as otherwise provided in sections 1525, 1528, 1530, 1560, 1570, and 3020.

(2) Invitation for Bids. An invitation for bids shall be issued in an efficient and economical manner to include specifications and all contractual terms and conditions applicable to the procurement.

(3) Notice. Adequate notice of the invitation for bids shall be given at a reasonable



time prior to the date set forth therein for the opening of bids. Such notice shall include publications in a newspaper of general circulation in the State and must be advertised at least once in "South Carolina Business Opportunities."

(4) Receipt and Safeguarding of Bids. All bids (including modifications) received prior to the time of opening shall be kept secure and unopened.

(5) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as may be specified by procurement policy, together with the name of each bidder, shall be tabulated. The tabulation shall be open to the public inspection at that time.

~~(6) Bid Acceptance and Bid Evaluation. Bids shall be accepted unconditionally~~ without alteration or correction, except as otherwise authorized in this Policy. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. Bids shall be evaluated based on the requirements set forth in the invitation for bids.

(7) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation and re-award of awards or contracts, after award but prior to performance may be permitted in accordance with the Procurement Guidelines adopted by the Authority. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the Authority or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids, or to cancel awards, or contracts, after award but prior to performance shall be supported by a written determination of appropriateness made by an Authority Procurement Officer or Chief Procurement Officer.

(8) Discussion with Bidders. As provided in the invitation for bids, discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the Authority's sole judgment, needing clarification shall be accorded such an opportunity. Clarification of any bidder's bid must be documented in writing by an Authority Procurement Officer and shall be included with the bid. Documentation concerning the clarification shall be subject to disclosure upon request as required by Section 410.

(9) Tie Bids. If two or more bidders are tied in price while otherwise meeting all of

the required conditions, awards are determined as follows:

(a) If there is a South Carolina firm tied with an out-of-state firm, the award must be made automatically to the South Carolina firm.

(b) Tie bids involving South Carolina firms must be resolved in favor of the South Carolina firm located in the same taxing jurisdiction as the Authority's consuming location.

(c) Tie bids involving South Carolina firms in the same taxing jurisdiction as the Authority's location must be resolved by the flip of a coin in the office of an Authority Procurement Officer or Chief Procurement Officer witnessed by all interested parties.

(10) Award. Unless there is a compelling reason to reject bids as prescribed by the Procurement Guidelines, notice of an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids shall be given by posting such notice at a location specified in the invitation for bids. Prior to the posting of the award, the Authority may negotiate with the lowest responsive and responsible bidder to lower his bid within the scope of the invitation for bids. The invitation for bids and the posted notice must contain a statement of a bidder's right to protest and the date and location of posting must be announced at bid opening. When a contract has a total or potential value in excess of fifty thousand dollars, in addition to the posted notice, notice of an intended award must be given to all bidders responding to the solicitation, except when only one response is received. Such notice must contain a statement of the bidder's right to protest. When a contract has a total or potential value in excess of fifty thousand dollars, fifteen days after notice is given the Authority may enter a contract with the bidder named in the notice in accordance with the provisions of this Policy and of the bid solicited. When only one response is received, the notice of intended award and the fifteen day delay of award may be waived. A determination of responsibility must be made before award.

(11) Request for Qualifications. Prior to soliciting bids, an Authority Procurement Officer, may issue a request for qualifications from prospective bidders. Such request shall contain at a minimum a description of the construction to be solicited by the invitation for bids, the general scope of the work, the deadline for submission of information, and how prospective bidders may apply for consideration. The request shall require information concerning the prospective

bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract. Adequate public notice of the request for qualifications shall be given. After receipt of the responses to the request for qualifications from prospective bidders, the prospective bidders shall be ranked from most qualified to least qualified on the basis of the information provided. Bids shall then be solicited from at least the top two prospective bidders by means of an invitation for bids. The failure of a prospective bidder to be selected to receive the invitation for bids shall not be grounds for protest.

(13) Minor Informalities and Irregularities in Bids. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. An Authority Procurement Officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the Authority. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

(a) failure of a bidder to return the number of copies of signed bids required by the solicitation;

(b) failure of a bidder to furnish the required information concerning the number of the bidder's employees or failure to make a representation concerning its size;

(c) failure of a bidder to sign its bid, but only if the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of such authorization, and the bid carries such a signature or the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned document, such as the submission of a bid guarantee with the bid or a letter signed by the bidder with the bid referring to and identifying the bid itself;

(d) failure of a bidder to acknowledge receipt of an amendment to a solicitation, but only if (i) the bid received indicates in some way that the bidder received the amendment, such as where the amendment added another item to the solicitation and the bidder submitted a bid, thereon, provided that the bidder states under oath that it received the amendment prior to bidding and that the bidder will stand by its bid price or, (ii) the amendment has no effect on price at no more than 1%

of total contract or quantity or merely a trivial or negligible effect on quality, or delivery, and is not prejudicial to bidders, such as an amendment correcting a typographical mistake in the name of the Authority;

- (e) failure of a bidder to furnish an affidavit concerning affiliates;
- (f) failure of a bidder to execute the certifications with respect to Equal Opportunity and Affirmative Action Programs;
- (g) failure of a bidder to furnish cut sheets or product literature;
- (h) failure of a bidder to furnish certificates of insurance;
- (i) failure of a bidder to furnish financial statements;
- (j) failure of a bidder to furnish references;

#### SECTION 1525. Competitive Fixed Price Bidding.

(1) Conditions for Use. When the Authority, prior to issuing a solicitation, determines in writing that it is either not practical or not advantageous, to use procedures of Section 1520, a contract may be entered into pursuant to Section 1520 subject to the exceptions stated in Section 1525.

(2) Fixed Price Bidding. The purpose of fixed price bidding is to provide multiple sources of supply for specific services based on a pre-set maximum price which the Authority will pay for such services.

(3) Public Notice. Adequate public notice of the solicitation shall be given.

(4) Pricing. The Authority shall establish, prior to issuance of the fixed price bid, a maximum amount the Authority will pay for the services desired.

(5) Evaluation. Vendors responses to the fixed price bid will be reviewed to determine if they are responsive and responsible.

(6) Discussion with Responsive Bidders. Discussions may be conducted with apparent responsive bidders to assure understanding of the requirements of the fixed priced bid. All bidders, whose bids, in the Authority's sole judgment, need clarification shall be accorded such an opportunity.

(7) Award. Award must be made to all responsive and responsible bidders to the Authority's request for competitive fixed price bidding. The contract file shall contain the basis on which the award is made.

#### SECTION 1528. Competitive Best Value Bidding.

(1) Conditions for Use. When the Authority, prior to issuing a solicitation, determines in writing that using all the procedures of Section 1520 is either not

practical or not advantageous, a contract may be entered into pursuant to Section 1520 subject to exceptions stated in Section 1528.

(2) Best Value Bidding. The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for specific services based on pre-determined criteria identified by the Authority.

(3) Public Notice. Adequate public notice of the request for the solicitation shall be given.

(4) Bid Opening: At bid opening, the only information that will be released is the names of the participating bidders. Cost information will be provided after the ranking of bidders and the issuance of award.

(5) Evaluation Factors. The best value bid shall state the factors to be used in determination of award and the numerical weighting for each factor. Cost must be a factor in determination of award and cannot be weighted at less than sixty percent. Best value bid evaluation factors may be defined to include, but are not limited to, any of the following as determined by the Authority in its sole discretion and not subject to protest: (a) Operational costs that the Authority would incur if the bid is accepted; (b) Quality of the service, or its technical competency; (c) Reliability of delivery and implementation schedules; (d) Maximum facilitation of data exchange and systems integration; (e) Warranties, guarantees, (f) Vendor financial stability; (g) Consistency of the proposed solution with the Authority's planning documents and announced strategic program direction; (h) Quality and effectiveness of business solution and approach; (i) Industry and program experience; (j) Prior record of vendor performance; (k) Vendor expertise with engagement of similar scope and complexity; (l) Extent and quality of the proposed participation and acceptance by all user groups; (m) Proven development methodologies and tools; and (n) Innovative use of current technologies and quality results.

(6) Discussion with Responsive Bidders. Discussions may be conducted with apparent responsive bidders to assure understanding of the best value bid. All bidders, whose bids, in the Authority's sole judgment, need clarification shall be accorded such an opportunity.

(7) Selection and Ranking. Bids shall be evaluated by using only the criteria stated in the best value bid and by adhering to the weighting as assigned. All evaluation factors, other than cost, will be considered prior to determining the effect of cost on the score for each participating bidder. Once the evaluation is

complete, all responsive bidders shall be ranked from most advantageous to least advantageous to the Authority considering only the evaluation factors stated in the best value bid.

(8) Award. Award must be made to the responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the Authority, taking into consideration all evaluation factors set forth in the best value bid. The contract file shall contain the basis on which the award is made.

#### SECTION 1530. Competitive Sealed Proposals.

(1) Conditions for Use. A contract may be entered into by Competitive Sealed Proposals as stated in Section 3020. A contract entered into by Competitive Sealed Proposals is subject to provisions of Section 1520, unless otherwise provided for in this Section.

(2) Public Notice. Adequate public notice of the request for proposals shall be given. (3) Receipt of Proposals. Proposals shall be opened publicly in accordance with procurement policies. A tabulation of proposals shall be prepared in accordance with procurement policies and shall be open for public inspection after contract award.

(4) Request for Qualifications. Prior to soliciting proposals, the Authority, acting through an Authority Procurement Officer, may issue a request for qualifications from prospective offerors. Such request shall contain at a minimum a description of the services to be solicited by the request for proposals and the general scope

~~of the work and shall state the deadline for the submission of qualifications and information and how~~  
prospective offerors may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract. After receipt of the responses to the request for qualifications from prospective offerors, the perspective offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top two prospective offerors by means of a request for proposals. The failure of a prospective offeror to be selected to receive the request for proposals shall not be grounds for protest.

(5) Evaluation Factors. The request for proposals shall state the relative importance of the factors to be considered in evaluating proposals but shall not require a numerical weighting for each factor. Price may but need not be an evaluation factor. (6) Discussion with Offerors. As provided in the request for

proposals, discussions may be conducted with apparent responsive offerors for the purpose of clarification to assure full understanding of the requirements of the request for proposals. All offerors, whose proposals, in the Authority's sole judgment, needed clarification shall be accorded such an opportunity.

(7) Selection and Ranking. Proposals shall be evaluated using only the criteria stated in the request for proposals and there must be adherence to any weightings that have been previously assigned. Once evaluation is complete, all responsive offerors shall be ranked from most advantageous to least advantageous to the Authority considering only the evaluation factors stated in the request for proposals. If price is an initial evaluation factor, award shall be made in accordance with Section(9) below.

(8) Negotiations. Whether price was an evaluation factor or not, the Authority through an Authority Procurement Officer, may, in its sole discretion and not subject to challenge, proceed in any of the manners indicated below:

(a) negotiate price with the highest ranked offeror. If a satisfactory price cannot be agreed upon, price negotiations may be conducted, in the sole discretion of the Authority, with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the Authority in its sole discretion; or

(b) negotiate with the highest ranking offeror on matters affecting the scope of the contract, so long as the overall nature and intent of the contract is not changed. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the Authority, with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the Authority in its sole discretion; or

(c) during the negotiation process as outlined in subsections (a) and (b) above, if the Authority is unsuccessful in its first round of negotiations, it may reopen negotiations with any offeror with whom it previously negotiated.

(d) If, after following the procedures set forth in Section(8), a contract is not able to be negotiated, the scope of the request for proposals may be changed in an effort to reduce the cost to a fair and reasonable amount, and all responsive offerors must be allowed to submit their best and final offers. In conducting negotiations, there must be no disclosure of any confidential information derived from proposals and negotiations submitted by competing offerors.

(9) Award. Award must be made to the responsive offeror whose proposal is determined in writing to be the most advantageous to the Authority, taking into

consideration price and the evaluation factors set forth in the request for proposals, unless the Authority determines to utilize one of the options provided in Section (8). The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit. Procedures and requirements for the notification of intent to award the contract shall be the same as those stated earlier.

#### SECTION 1560. Sole Source Procurements.

A contract may be awarded for construction or related services without competition when, under the Procurement Guidelines, the Chief Procurement Officer, or a designee, above the level of an Authority Procurement Officer, determines in writing that there is only one source for the required service or construction item. The Procurement Guidelines must include the requirements contained in this paragraph. Written documentation must include the determination and basis for the proposed sole source procurement. In cases of reasonable doubt, competition must be solicited. Any decision by the Authority that a procurement be restricted to one potential vendor must be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

#### SECTION 1570. Emergency Procurements.

Notwithstanding any other provision of this Policy, an Authority Procurement Officer, the Executive Director of the Authority or a designee of either may make or authorize others to make emergency procurements only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in Procurement Guidelines adopted by the Authority; and provided, that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

#### SECTION 1710. Cancellation of Solicitations

Any solicitation under this Policy may be canceled, or any or all bids or proposals may be rejected in whole or part as may be specified in the solicitation, when it is in the best interest of the Authority. The reasons for rejection, supported with documentation, shall be made a part of the contract file.



**SECTION 1810. Responsibility of Bidders and Offerors.**

(1) Determination of Responsibility. Responsibility of the bidder or offeror shall be ascertained for each contract let by the Authority based upon full disclosure to an Authority Procurement Officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts. The Authority shall by policy establish standards of responsibility that shall be enforced in all Authority contracts.

(2) Determination of Nonresponsibility. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with Procurement Guidelines adopted by the Authority. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(3) Right of Nondisclosure. Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the offices of the Authority without prior written consent by the bidder or offeror.

**SECTION 1825. Prequalification of Construction Bidders.**

The Authority shall develop a procedure and a list of criteria for pre-qualifying construction bidders. The criteria shall include, but not be limited to, prior performance, recent past references on all aspects of performance, financial stability, and experience on similar construction projects. The Authority may use the pre-qualification process for projects where the construction involved is highly specialized in nature or over ten million dollars in value as determined by and subject to the approval of the Chief Procurement Officer. All prequalification projects shall be under the supervision of the Chief Procurement Officer. When the pre-qualification process is employed, only those bidders who are pre-qualified through this procedure are entitled to submit a bid for the project. The determination of which bidders are pre-qualified, and thereby entitled to bid, is not protestable under any provision of this Policy.

**SECTION 1830. Cost or Pricing Data.**

(1) Contractor Certification. A contractor shall, except as provided in subsection (3) of this section, submit cost or pricing data and shall certify that, to the best of

his knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of mutually determined specified date prior to the date of:

(a) the pricing of any contract awarded by competitive sealed proposals or by the sole source procurement where the total contract price exceeds an amount established by the Procurement Guidelines; or

(b) the pricing of any change order or contract modification which exceeds an amount established by the Authority in Procurement Guidelines.

(2) Price Adjustment. Any contract, change order or contract modification under which a certificate is required shall contain a provision that the price to the Authority, including profit or fee, shall be adjusted to exclude any significant sums by which the Authority finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between parties.

(3) Cost or Pricing Data Not Required. The requirements of this section shall not apply to contracts:

(a) where the contract price is based on adequate price competition;

(b) where the contract price is based on established catalog prices or market prices;

(c) where contract prices are set by law or Procurement Guidelines; or

(d) where it is determined in writing in accordance with Procurement Guidelines adopted by the Authority that the requirements of this section may be waived and the reasons for such waiver are stated in writing.

#### SECTION 2010. Types and Forms of Contracts.

(l) Types of Contracts. Subject to the limitations of this section, any type of contract which will promote the best interests of the Authority may be used,

~~except that the use of a cost plus a percentage of cost contract shall be approved~~

by the Executive Director of the Authority. A cost-reimbursement contract, including a cost plus-a-percentage-of-cost contract, shall be used only when a determination is prepared showing that such contract is likely to be less costly to the Authority than any other type or that it is impracticable to obtain the services or construction required except under such a contract.

#### SECTION 2020. Approval of Accounting System.

The Authority Procurement Officer, the Chief Procurement Officer or a designee

of either may require that:

(1) the proposed contractor's accounting system shall permit timely development of all necessary cost data in the form required by the specific contract type contemplated;

(2) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

#### SECTION 2210. Right to Inspect Plant.

The Authority shall be authorized, at reasonable times, to inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded by the Authority.

#### SECTION 2220. Right to Audit Records.

(1) Audit of Cost or Pricing Data. All Authority contracts shall contain a clause setting forth the Authority's right at reasonable times and places to audit the books and records of any contractor or subcontractor who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data. The contract shall further set forth that the contractor or subcontractor who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing, provided, however, that such records shall be retained for additional periods of time beyond this three-year period upon request of the Authority Procurement Officer.

(2) Contract Audit. The Authority shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by an Authority Procurement Officer.

#### SECTION 2410. Finality of Determinations.

The determinations required by Section 1520 (7) (Correction or Withdrawal of Bids; Cancellation of Awards), Section 1520 (11) (Request for Qualifications), Section 1525 (1) (Conditions for Use), Section 1528 (1) (Conditions for Use), Section 1528 (8) (Award), Section 1530 (1) (Conditions for Use), Section 1530 (4) (Competitive Sealed Proposals: Request for Qualifications), Section 1530 (8) (Negotiations), Section 1530 (9) (Award), Section 1560 (Sole Source Procurements), Section 1570 (Emergency Procurements), Section 1810 (2) (Responsibility of Bidders and Offerors: Determination of Non-Responsibility), Section 1825 (Pre-qualification of Construction Bidders), Section 1830 (3) (Cost or Pricing Data Not Required), Section 2010 (Types and Forms of Contracts), Section 2020 (Approval of Accounting System), Section 3010 (Construction Contracting Administration); Section 3020 (17 (a) (i) (Construction Services Procurement Procedures), Section 3020 (1) (d) (Negotiations after Unsuccessful Competitive Sealed Bidding), Section 3040 (2) (a) (Price Adjustments), Section 3040 (4) (Modification of Required Clauses), shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law. The Executive Director of the Authority shall review samples of such determinations periodically for appropriateness of determinations made.

#### SECTION 2420. Reporting of Anti-competitive Practices.

When any information or allegations concerning anti-competitive practices among any bidders or offerors, come to the attention of any employee of the Authority immediate notice of the relevant facts shall be transmitted to the Attorney General.

### CHAPTER 3 Specifications

#### SECTION 2610. Definitions.

As used in this article, the term "specifications" means any technical or purchase description or other description of the physical or functional characteristics, or of the nature of a service or construction item. It may also include a description of any requirement for inspecting, testing or preparing a service or construction item for delivery.

**SECTION 2710. Procurement policies Governing Specifications.**

The Authority shall adopt procurement procedures governing the preparation, maintenance and content of specifications for services and construction required by the Authority.

**SECTION 2720. Duties of an Authority Procurement Officer**

An Authority Procurement Officer shall prepare or review, issue, revise and maintain the specifications for services and construction required by the Authority.

**SECTION 2730. Assurance of Competition.**

All specifications shall be drafted so as to assure cost effective procurement of the Authority's actual needs and shall not be unduly restrictive.

**SECTION 2750. Specifications Prepared by Architects and Engineers.**

The requirements of this article regarding the nonrestrictiveness of specifications apply to each solicitation and include, among others, all specifications prepared by architects, engineers, designers, draftsmen, and land surveyors for Authority contracts.

**CHAPTER 4**

**Construction and Construction Management**

**SECTION 2910. Definitions of Terms Used in this Article.**

(1) "Architect-engineer and land surveying services" are those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture and interior design pertaining to construction, as defined by the Authority, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals and other related services.

(2) "Construction" means the process of building, altering, repairing, remodeling, improving or demolishing any structure or building or other improvements of any

kind to any real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

~~(3) Construction management services are those professional services associated with projects,~~

professional construction manager to provide that group of management activities required to plan, schedule, coordinate, and manage the design and construction plan of an Authority project in a manner that contributes to the control of time, cost, and quality of construction as specified in the construction management contract.

#### SECTION 3010. Construction Contracting Administration.

(1) Selection of Method. The method of construction contracting administration used for a construction project by the Authority shall be determined to be that method which is most advantageous to the Authority and will result in the most timely, economical, and successful completion of the construction project. The Authority shall select in accordance with Procurement Guidelines of the Authority the appropriate method of construction contracting administration for a particular project and shall state in writing the facts and considerations which led to the selection of that particular method.

#### SECTION 3020. Construction Services Procurement Procedures.

(1) Source Selection. All Authority construction contracts shall be awarded by competitive sealed bidding pursuant to the procedures set forth in either Section 1520, 1525, or 1528, subject to the exceptions enumerated in this Section and except as otherwise provided in Sections 1560, 1570, 1825, and 3230. Competitive Sealed Proposals as provided for in Section 1530 shall not be used, except in such cases and in accordance with the criteria stated in Section 3022. Any determination to use Competitive Sealed Proposals must be made in writing.

##### (2) Invitation for Bids.

Invitations for bids for each Authority construction project subject to subsection (1) of this section shall be made in the following manner. Authority shall be responsible for developing a formal invitation for bids for each construction project subject to subsection (1) of this section. The invitation shall include, but not be limited to, all contractual terms and conditions applicable to the procurement. A copy of each invitation for bids shall be filed with the State Engineer's Office and

shall be formally advertised in an official state government publication. The manner in which this official state government publication shall be published, the content of the publication itself, the frequency of the publication, the method of subscription to the publication, and the manner by which the publication will be distributed shall as established within the Office of State Engineer.

(3) Bid Acceptance.

Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The Authority's invitation for bids shall set forth all requirements of the bid including, but not limited to:

(a) The Authority, in consultation with the architect-engineer assigned to the project, shall identify by specialty in the invitation for bids all subcontractors who are expected to perform work for the prime contractor when those subcontractors' contracts are each expected to exceed three percent of the prime contractor's total base bid. In addition, the Authority, in consultation with the architect-engineer assigned to the project, may identify by specialty in the invitation for bids any subcontractors who are expected to perform work which is vital to the project. The determination of which subcontractors are included in the list provided in the invitation for bids is not protestable. Any bidder in response to an invitation for bids shall set forth in his bid the name of only those subcontractor(s) that will perform the work as identified in the invitation for bids. If the bidder determines to use his own employees to perform any portion of the work for which he would otherwise be required to list a subcontractor and if the bidder is qualified to perform such work under the terms of the invitation for bids, the bidder shall list himself in the appropriate place in his bid and not subcontract any of that work except with the approval of the using agency for good cause shown.

(b) Failure to complete the list provided in the invitation for bids renders the bidder's bid unresponsive.

(c) After bids are awarded, no prime contractor, shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except for one or more of the following reasons:

(i) upon a showing satisfactory to the Authority by the contractor that a subcontractor who was listed is not financially responsible;

(ii) upon a showing satisfactory to the Authority by the contractor that the scope of work bid by a listed subcontractor did not include a portion of the work required in the plans and specifications, and the exclusion is not clearly set forth in the

listed subcontractor's original bid;

(iii) upon a showing satisfactory to the Authority made by the contractor within four working days of the bid opening that the subcontractor was listed as a result of an inadvertent clerical error;

(iv) upon a showing satisfactory to the Authority by the contractor that the listed subcontractor failed or refused to submit a performance and payment bond when requested by the prime contractor after the subcontractor had represented to the prime contractor that he could obtain a performance and payment bond;

(v) upon a showing satisfactory to the Authority by the contractor that the listed subcontractor is required to be licensed and does not have the license by the time it is required by law;

(vi) when the listed subcontractor fails or refuses to perform his subcontract;

(vii) when the work of the listed subcontractor is found by the Authority to be substantially unsatisfactory;

(viii) upon mutual agreement of the contractor and subcontractor;

(ix) with the consent of the Authority for good cause shown.

The request for substitution must be made to the Authority in writing. This written request does not give rise to any private right of action against the prime contractor in the absence of actual malice.

(x) Where substitution is allowed, the prime contractor, before obtaining prices from any other subcontractor, must attempt in good faith to negotiate a subcontract with at least one subcontractor whose bid was received prior to the submission of the prime contractor's bid. Nothing in this section affects a contractor's ability to request withdrawal of a bid in accordance with the provisions of this Policy and the Procurement Guidelines adopted under it.

#### (4) Award.

The Authority shall send all responsive bidders a copy of the bid tabulation within ten working days following the bid opening. Unless there is a compelling reason to reject bids as prescribed by Procurement Guidelines of the Authority, notice of an intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation for bids shall be given by posting such notice at a location which has been specified in the invitation for bids. The invitation for bids and the posted notice must contain a statement of the bidder's right to protest under Section 4210, and the date and location of posting must be announced at bid opening. In addition to posting notice as provided



above, the Authority shall promptly send all responsive bidders a copy of the notice of intended award and of the bid tabulation. Such mailed notice must indicate the posting date and must contain a statement of the bidder's right to protest under Section 4210. Sixteen days after notice is given the Authority may enter into a contract with the bidder named in the notice in accordance with the provisions of this Policy and of the bid solicited. A determination of responsibility must be made before award in accordance with CHAPTER 2. If, after bid opening, only one bid is received and determined to be responsive and responsible and within the Authority's construction budget, award may be made without the sixteen day waiting period.

(5) Negotiations After Unsuccessful Competitive Sealed Bidding.

The following provisions apply:

(a) When bids received pursuant to an invitation for bids exceed available funds and it is determined in writing by the Authority that circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this section with the lowest responsible and responsive bidder, provided that this base bid, less any deductive alternates, does not exceed available funds by an amount greater than ten percent of the construction budget established for that portion of the work. The Authority may change the scope of the work to reduce the cost to be within the established construction budget but shall not reduce the cost below the established construction budget more than fifteen percent without written determination that the action is in the best interest of the Authority.

SECTION 3022. Specified Types of Supplies, Services or Construction.

(1) Pursuant to Section 3020(1), the following types of construction services may be procured by competitive sealed proposals:

- (a) Architect/Engineer services and construction services to be awarded in the same contract for an indefinite delivery of a specialized service (e.g. Hazardous waste remedial action).
- (b) Design/Build or Lease-Purchase contracts where there must be selection criteria in addition to price.
- (c) Energy conservation or other projects to be financed by vendors who will be paid from the Authority's savings.
- (d) Construction, where consideration of alternative methods or systems would be

advantageous to the Authority.

(2) The appropriate Chief Procurement Officer shall develop and issue procedures which shall be followed when using the competitive sealed proposal method of acquisition.

#### SECTION 3025. Changes to Construction Contracts.

The Authority shall be allowed to approve and pay for change orders to construction contracts, which do not alter the original scope or intent of the project, and which do not exceed the previously approved project budget.

#### SECTION 3030. Bond and Security.

##### (l) Bid Security.

(a) Requirement for Bid Security. Bid security is required for all competitive sealed bidding for construction contracts. Bid security shall be a bond provided by a surety company meeting the criteria established by the Most recent publication of the Office of the State Engineer.

(b) Amount of Bid Security. Bid security shall be in an amount equal to at least five percent of the amount of the bid at a minimum.

(c) Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected except that a bidder who fails to provide bid security in the proper amount or a bid bond with the proper rating shall be given one working day from bid opening to cure such deficiencies. If the bidder cannot cure these deficiencies within one working day of bid opening, his bid shall be rejected.

(d) Withdrawal of Bids. After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids. If a bidder is permitted to withdraw its bid before bid opening pursuant to CHAPTER 2 no action shall be had against the bidder or the bid security.

##### (2) Contract Performance Payment Bonds.

(a) When Required-Amounts. When a construction contract is awarded, the following bonds or security shall be delivered to the Authority and shall become binding on the parties upon the execution of the contract:

(i) a performance bond satisfactory to the, Authority, executed by a surety company meeting the criteria established by the Authority in procurement policies,

or otherwise secured in a manner satisfactory to the Authority, in an amount equal to one hundred percent of the price specified in the contract;

(ii) a payment bond satisfactory to the Authority, executed by a surety company meeting the criteria established by the Authority in procurement policies, or otherwise secured in a manner satisfactory to the Authority, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent of the contract price;

(b) Authority to Require Additional Bonds. Nothing in subsection (2) of this section shall be construed to limit the Authority to require a performance bond or other security in addition to these bonds, or in circumstances other than specified in item (a).

(c) Suits on Payment Bonds-Right to Institute. Every person who has furnished labor, material, or rental equipment to a bonded contractor or his subcontractors for the work specified in the contract, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by such person or material or rental equipment was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute such action for the sum or sums justly due such person. A remote claimant shall have a right of action on the payment bond only upon giving written notice to the contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment upon which such claim is made, stating with substantial accuracy the amount claimed as unpaid and the name of the party to whom the material or rental equipment was furnished or supplied or for whom the labor was done or performed. Such written notice to the bonded contractor shall be personally served or served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. However, in no event shall the aggregate amount of any claim against such payment bond by a remote claimant exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor,

materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. Such written notice to the bonded contractor shall be personally served or sent by fax or sent by electronic mail or sent by registered or certified mail, postage prepaid, to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, no payment by the bonded contractor shall lessen the amount recoverable by the remote claimant. However, in no event shall the aggregate amount of claims on the payment bond exceed the penal sum of the bond. No suit under this section shall be commenced after the expiration of one year after the last date of furnishing or providing labor, services, materials, or rental equipment. For purposes of this section, 'bonded contractor' means the contractor or subcontractor furnishing the payment bond, and 'remote claimant' means a person having a direct contractual relationship with a subcontractor of a bonded contractor, but no contractual relationship expressed or implied with the bonded contractor."

(d) Suits on Payment Bonds-Where and When Brought. Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or circuit in which the construction contract was to be performed, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

(3) Bonds Forms and Copies.

(a) Bond Forms. In its Procurement Guidelines, the Authority shall adopt the form of the bonds required by this section.

(b) Certified Copies of Bonds. Any person may request and obtain from the Authority a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, executions and delivery of the original.

(4) Retention.

(a) Maximum amount to be withheld. In any contract or subcontract for construction which contract or subcontract provides for progress payments in

installments based upon an estimated percentage of completion, with a percentage of the contract's proceeds to be retained by the Authority or general contractor pending completion of the contract or subcontract, the retained amount of each progress payment or installment shall be no more than ten percent.

(b) Release of Retained Funds: When the work to be performed on an Authority construction project or pursuant to an Authority construction contract is to be performed by multiple prime contractors or by a prime contractor and multiple subcontractors, the work contracted to be done by each individual contractor or subcontractor will be considered a separate division of the contract for the purpose of retention. As each such division of the contract is certified as having been completed, that portion of the retained funds which is allocable to the completed division of the contract shall be released forthwith to the prime contractor, who shall, within ten days of its receipt, release to the subcontractor responsible for the completed work the full amount of any retention previously withheld from him by the prime contractor.

#### SECTION 3050. Cost Principles Procurement policies for Construction Contractors.

The Authority may adopt Procurement Guidelines setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under provisions in construction contracts which provide for the reimbursement of costs.

#### SECTION 3230. Exception for Small Construction Services Contract.

(1) Procurement Procedures for Certain Contracts. The Authority, when securing construction services which are estimated not to exceed fifty thousand dollars,

may employ the contractor by direct negotiation and selection, taking into account (a) the nature of the project, (b) the proximity of the contractor to the project, (c) the capability of the contractor to produce the required service within a reasonable time, (d) past performance, and (e) ability to meet project budget requirements.

(2) Maximum Fees Payable to One Person or Firm. Fees paid during the twenty-four month period immediately preceding negotiation of the contract by the Authority for construction services performed by any one firm shall not exceed two hundred thousand dollars. All persons or firms seeking to render construction services pursuant to this section shall furnish the Authority with whom the firm is

negotiating a list of construction services, including fees paid therefor, performed for the Authority during the fiscal year immediately preceding the fiscal year in which the negotiations are occurring and during the fiscal year in which the negotiations are occurring.

(3) Splitting of Larger Projects Prohibited. The Authority will not break a project into small projects for the purpose of circumventing these limitations.

#### SECTION 3310. Indefinite Delivery Contracts for Construction Items.

(1) General Applicability. Indefinite delivery contracts may be awarded on an as-needed basis for construction services pursuant to the procurement procedures stated in this Policy. (a) Construction services. When construction services contracts are awarded, each contract shall be limited to a total expenditure of \$2,000,000.00 for a three year period with individual project expenditures not to exceed \$500,000.00.

### CHAPTER 5

#### Legal and Contractual Remedies

SECTION 4210. (1) Right to Protest; Exclusive Remedy . Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to an Authority Procurement Officer in the manner stated in subsection (2) below within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment thereto, if the amendment is at issue.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to an Authority Procurement Officer in the manner stated in subsection (2) below within fifteen days of the date notification of award is posted in accordance with this policy.

The rights and remedies granted in this article to a disappointed bidder, offeror, contractor, or subcontractor are to the exclusion of all other rights and remedies of such disappointed bidder, offeror, contractor, or subcontractor against the Authority at common law or otherwise for the loss or potential loss of an award of a contract under this Policy.

(2) Protest Procedure. A protest under subsection (1) above shall be in writing, submitted to an Authority Procurement Officer, and shall set forth the grounds of the protest and the relief requested with enough specificity to give notice of the issues to be decided.

(3) Attempt to Settle Protests. An Authority Procurement Officer shall attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, concerning award of the contract. An Authority Procurement Officer shall have the authority to approve any settlement reached by mutual agreement.

(4) Administrative Review Decision and Notice. If in the opinion of an Authority Procurement Officer, a protest cannot be settled by mutual agreement, the Authority Procurement Officer shall promptly conduct an administrative review and issue a decision within ten days of completion of the review. The decision shall state the reasons for the action taken. A copy of the decision shall be furnished to the protestant and any other intervening party.

(5) Finality of Decision. A decision under subsection (5) of this section shall be final unless, within five days of posting of the decision, at a place and time communicated to all parties participating in the administrative review, an aggrieved party requests further administrative review of the matter in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The request shall be submitted to the Chief Procurement Officer, who shall forward the request to legal counsel of the Authority.

(6) The Chief Procurement Officer shall conduct a prompt administrative review and issue a decision within ten days of completion of the review. A copy of the decision shall be furnished to the protestant and any other intervening party.

(7) Stay of Procurement During Protests. In the event of a timely protest under (1) (Right to Protest) above, the Authority shall not proceed further with the solicitation or award of the contract until a decision is rendered under the above procedures; provided, however, that solicitation or award of a protested contract will not be stayed if the Authority Procurement Officer, after consultation with the Chief Procurement Officer, makes a written determination that the solicitation or award of the contract without delay is necessary to protect the best interests of the Authority.

**SECTION 4230. Authority to Debar or Suspend.**

(1) Authority. After reasonable notice to the person or firm involved, and a reasonable opportunity for such person or firm to be heard, the Chief Procurement Officer shall have the authority to debar a person for cause from consideration for award of contracts, provided that doing so is in the best interest of the Authority and there is probable cause for debarment. The Chief Procurement Officer may also suspend a person or firm from consideration for award of contracts during an investigation where there is probable cause for debarment. The period of debarment or suspension shall be as prescribed by the Chief Procurement Officer.

(2) Causes for Debarment or Suspension. The causes for debarment or suspension shall include, but not be limited to, the following:

(a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or professional honesty which currently, seriously, and directly affects responsibility as an Authority contractor;

(c) conviction under state or federal antitrust laws arising out of the submission of bids or proposals;

(d) violation of contract provisions, as set forth below, of a character which is regarded by the Chief Procurement Officer to be so serious as to justify debarment action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(e) any other cause the Chief Procurement Officer determines to be so serious and compelling as to affect responsibility as an Authority contractor.

(3) Decision. The Chief Procurement Officer shall issue a written decision to debar or suspend within ten days of the completion of administrative review of the



matter. The decision shall state the action taken, the specific reasons therefore, and the period of debarment or suspension, if any.

(4) Notice of Decision. A copy of the decision under subsection (3) of this section shall be furnished immediately to the debarred or suspended person and any other party intervening. The Chief Procurement Officer shall also post a copy of the decision at a time and place communicated to all parties participating in the administrative review and such posted decision shall indicate the date of posting on its face.

## CHAPTER 6

### Remedies

#### SECTION 4310. Solicitation or Awards in Violation of the Law.

(1) Applicability. The provisions of this section apply where it is determined by either the Chief Procurement Officer or an Authority Procurement Officer upon administrative review pursuant to section 4210, that a solicitation or award of a contract is in violation of the law. The remedies set forth herein may be granted by an Authority Procurement Officer after review.

(2) Remedies Prior to Award. If, prior to award of a contract, it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award may be:

- (a) canceled;
- (b) revised to comply with the law and re-bid; or
- (c) awarded in a manner that complies with the provisions of this Policy.

(3) Remedies After Award. If, after an award of a contract, it is determined that the solicitation or award is in violation of law;

- (a) the contract may be ratified and affirmed, provided it is in the best interests of the Authority; or
- (b) the contract may be terminated and the payment of such damages, if any, as may be provided in the contract, may be awarded.

#### SECTION 4320. Contract Controversies.

The Chief Procurement Officer or an Authority Procurement Officer may award such relief as is necessary to resolve a controversy brought pursuant to Section 4330 as allowed by the terms of the contract or by applicable law.

**SECTION 4330. Resolution of Contract and Breach of Contract Controversies.**

(1) **Applicability.** This section applies to controversies between the Authority and a contractor or subcontractor when the subcontractor is the real party in interest, which arise under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. The procedure set forth in this section shall constitute the exclusive means of resolving a controversy between the Authority and a contractor or subcontractor concerning a contract solicited and awarded under the provisions of this Policy.

(2) **Request for Resolution; Time for Filing.** Either the Authority or the contractor or subcontractor when the subcontractor is the real party in interest may initiate resolution proceedings before an Authority Procurement Officer by submitting a request for resolution to an Authority Procurement Officer in writing setting forth the general nature of the controversy and the relief requested with enough particularity to give notice of the issues to be decided. A request for resolution of contract controversy must be filed within one year of the date the contractor last performs work under the contract; provided, however, that in the case of latent defects a request for resolution of a contract controversy must be filed within one year of the date the requesting party first knows or should know of the grounds giving rise to the request for resolution.

(3) **Duty and Authority to Attempt to Settle Contract Controversies.** Prior to commencement of an administrative review as provided in subsection (4), an Authority Procurement Officer shall attempt to settle by mutual agreement a contract controversy brought under this section. An Authority Procurement Officer shall have the authority to approve any settlement reached by mutual agreement.

(4) **Administrative Review and Decision.** If, in the opinion of an Authority Procurement Officer, after reasonable attempt, a contract controversy cannot be settled by mutual agreement, the Authority Procurement Officer shall promptly conduct an administrative review and shall issue a decision in writing within ten days of completion of the review. The decision shall state the reasons for the action taken.

(5) **Notice of Decision.** A copy of the decision under subsection (4) of this section and a statement of appeal rights under Section 4340 shall be mailed or otherwise furnished immediately to all parties participating in the administrative review proceedings. The Authority Procurement Officer shall also post a copy of the

decision at a time and place communicated to all parties participating in the administrative review, and such posted decision shall indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal provided in Section 4340.

(6) Finality of Decision. A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected requests arbitration under Section 4340 within ten days of the posting of the decision of the Authority Procurement Officer. The request for review shall be directed to the Chief Procurement Officer who shall forward the request to legal counsel for the Authority in writing setting forth the reasons why the person disagrees with the decision of the Authority Procurement Officer.

#### Section 4340. ARBITRATION

(1) All claims, disputes, and other matters submitted for arbitration shall be decided in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. No arbitration shall include by consolidation, joinder, or in any other manner, parties other than the Owner, the Contractor, and any other persons substantially involved in a common question of fact or law, whose presence is required if complete relief is to be accorded in the arbitration. No person other than the Owner or Contractor shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein. The agreement to arbitrate and any other agreement to arbitrate with an additional person or persons duly consented to by the parties to the Owner-Contractor Agreement shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final.

(2) Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any arbitration proceedings, and the Authority shall continue to make payments to the Contractor in accordance with the Contract Documents.

**EXHIBIT**

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