



# Standard Operating Procedure

Procurement & REC

Contractor Suspension and Responsibility

Date last updated: 07/28/21

## I. Purpose of this Document

In contracting for goods, services (both professional and non-professional), and construction, Cincinnati Metropolitan Housing Authority and its instrumentalities and related entities (“CMHA”) has a responsibility to ensure that those vendors it contracts with are responsible and capable. From time to time, the exercise of being good stewards of taxpayers’ and investors’ resources requires CMHA to not award work to a defaulting, irresponsible, or non-performing contractor. The purpose of this document is to delineate the procedures to determine if a contractor is not responsible and if the contractor should be suspended.

## II. Authority

- A. The federal regulations require that CMHA “award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.” 2 CFR 200.318(h)
- B. To determine if contractors have been responsible on state and federal contracts, CMHA checks the federal and state debarment, suspension, and limited denial of participation lists. However, those lists do not take into account the contractor’s performance on CMHA’s contracts.

## III. Vicarious Liability

- A. CMHA will impute to the contractor all liability, and hold a contractor liable to CMHA, for all acts of an owner, officer, principal, partner, agent, employee, associate, representative, affiliate, subcontractor, or supplier of the contractor, or other person(s) acting on behalf of the contractor in performance of a CMHA contract. CMHA will consider a contractor’s receipt and acceptance of any benefit derived under or arising out of performance of a CMHA contract, including, but not limited to, compensation, as evidence of its approval, ratification, knowledge of and/or acquiescence in the act of any of the aforementioned persons that may be a basis for suspension.
- B. Partnerships/Joint Ventures. CMHA will consider the act of one entity in a partnership or a joint venture or any person named in section 3.1 above acting on behalf of that entity as the act of every other partner or joint venturer.



## Standard Operating Procedure

Procurement & REC

Contractor Suspension and Responsibility

Date last updated: 07/28/21

- C. Affiliates. Responsibility of an entity shall include responsibility of any of its divisions, organizational elements, or any wholly-owned or controlled affiliate or subsidiary unless the Suspension decision is limited by its terms to specific divisions, organizational elements or any wholly-owned or controlled affiliate or subsidiary.
- D. Owner, Officer, Principal, Partner, Agent, Employee, Associate, Representative, Affiliate, Subcontractor or Supplier. Responsibility of an entity may include responsibility of the owner, etc. for other businesses.

#### IV. **Restrictions on Contracting and Subcontracting**

- A. CMHA will not accept or approve a bid, offer, quote, proposal, or other communication intended to be the basis of a CMHA contract, or enter into any contract for goods or services, including professional services, or construction, or any contract in any capacity with a vendor, bidder, proposer, offeror, contractor, or firm that is suspended by CMHA, the State of Ohio and any of its political entities, or the federal government.
- B. A vendor, bidder, proposer, offeror, contractor, or firm who is awarded a CMHA contract while suspended by the State of Ohio and any of its political entities, or the federal government or who is suspended by the State of Ohio and any of its political entities, or the federal government while working on a CMHA contract will be considered in default of CMHA contract and subject to Suspension.
- C. CMHA will not approve for participation in the performance of a CMHA contract, whether as partner, affiliate, subcontractor, supplier, or otherwise, any firm that is suspended by CMHA, the State of Ohio and any of its political entities, or the federal government.
- D. The list of Vendors Suspended from Contracting or Subcontracting with CMHA may be furnished upon request to the Procurement Director.



## Standard Operating Procedure

Procurement & REC

Contractor Suspension and Responsibility

Date last updated: 07/28/21

The State of Ohio *Certified Search for Unresolved Finding for Recovery* may be accessed at <https://procure.ohio.gov/proc/debarment.asp>. The State of Ohio Office of Procurement Services Debarment List is located at <https://procure.ohio.gov/proc/debarment.asp>.

The Federal government's exclusion records may be accessed at <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>.

- E. CMHA shall neither accept nor be liable for any increase in costs, or other expenses, delay, loss, or subsequent ineligibility to contract with CMHA, incurred by a contractor as a result of CMHA rejecting any proposed person, firm, partner, principal, affiliate, subcontractor or supplier that is suspended or suspended after the submission of a bid, proposal, or other communication leading to a contract, but before the approval or award of the contract.

### V. Reasons for Suspension

CMHA may suspend a person, company, vendor, bidder, contractor, subcontractor on a contract or bid, or principal or owner of a company, vendor, bidder, contractor, or subcontractor on a contract or bid from submitting a bid or proposal for any business or participating on any contract in any capacity with CMHA for any of the following reasons:

1. Abused the selection process by repeatedly withdrawing bids or proposals before purchase orders or contracts are issued or failing to accept orders based upon firm bids or proposals.
2. Defaults on any bid, proposal or contract with CMHA;
3. Providing false information regarding SBE, SLBE, ELBE, MBE, or WBE status;
4. Failure to cooperate in CMHA's monitoring of contract performance by refusing to provide information or documents required by a contract;
5. Failure to respond adequately to complaints by CMHA representatives regarding performance or other issues;
6. Accumulation of repeated documented complaints regarding performance of a contract;
7. Failure to pay prevailing wage as required by state or federal law or comply with similar laws, including without limitation the Davis Bacon and Related Acts and the Contract Work Hours and Safety Standards Act;



## Standard Operating Procedure

Procurement & REC

Contractor Suspension and Responsibility

Date last updated: 07/28/21

8. Commission of wage theft or payroll fraud;
9. Failure to pay a subcontractor
10. Failed to substantially perform a contract according to its terms, conditions, and specifications within specified time limits;
11. Failed to cooperate in monitoring contract performance by refusing to provide information or documents required in a contract, failed to respond to complaints to the vendor, or accumulated repeated justified complaints regarding performance of a contract;
12. Attempted to influence an employee or Board member to breach ethical conduct standards or to influence a contract award;
13. Colluded by any means;
14. Been convicted of a criminal offense related to the application for or performance of any public or private contract, including, but not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, and any other offense that directly reflects on the vendor's business integrity;
15. Been convicted under state or federal antitrust laws;
16. Deliberately or willfully submitted false or misleading information in connection with the application for or performance of a public contract;
17. Violated any other responsible business practice or performed in an unsatisfactory manner as determined by the Procurement Director;
18. Acted in such a manner as to be debarred, suspended, or have limited participation in a contract with any governmental agency.
19. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor;
20. Have a history of unsatisfactory performance of one or more contracts;
21. Commit a violation of 41 USC chapter 81, Drug-Free Workplace as indicated by:
  - a) Failure to comply with the requirements of 48 CFR 52.223-6, Drug-Free Workplace; or
  - b) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that



## Standard Operating Procedure

Procurement & REC

Contractor Suspension and Responsibility

Date last updated: 07/28/21

the contractor has failed to make a good faith effort to provide a drug-free workplace (see 48 CFR 23.504);

22. Any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.

### VI. Period of Suspension

The Procurement Director shall fix the Suspension for a period up to two years from the date of the default. In cases where the reason(s) for Suspension remain(s) fundamentally unchanged after expiration of the Suspension period, the Procurement Director may extend the Suspension period until the occurrence of an event set forth in section 12.1.

### VII. Suspension

- A. The Procurement Director may immediately suspend a bidder, vendor, firm, or contractor from eligibility for award of a CMHA contract upon finding a reasonable basis for Suspension. A reasonable basis for Suspension exists when it is more likely than not that the facts upon which the suspension is based are true. The suspension will be effective until the Procurement Director issues a final decision regarding Suspension. During the suspension period, CMHA will not do business with the suspended bidder, vendor, firm, or contractor.
- B. The Procurement Director shall send written notice of suspension and shall identify the reasonable basis for Suspension.

### VIII. Notice of Suspension and/or Notice of Suspension

The Procurement Director shall provide written notice to any person or business who is to be suspended. The aggrieved party shall have fourteen calendar days to submit written information to the Procurement Director regarding why the suspended person or business should not be suspended.



## Standard Operating Procedure

Procurement & REC

Contractor Suspension and Responsibility

Date last updated: 07/28/21

### IX. Decision

- A. The Procurement Director shall have fourteen calendar days following the receipt of written materials challenging the Suspension or suspension to issue a written decision regarding the Suspension and provide the decision to the person or business who challenged the decision.
- B. Existence of a reason for Suspension of a person or business does not necessarily require CMHA to determine to suspend. In determining whether to suspend a person or business, CMHA shall consider the seriousness of the Contractor's actions or failure to act together with any mitigating factors.

### X. Appeal

The decision may be appealed in writing to the Procurement Director within fourteen calendar days after receipt of the Procurement Director's decision. The aggrieved person or business shall concurrently copy the written appeal to the Procurement Director.

### XI. List of Vendors Suspended from Contracting or Subcontracting with CMHA

- A. The Procurement Director shall maintain, disseminate a current list of suspended persons and firms (*List of Vendors Suspended from Contracting or Subcontracting with CMHA* (the "List")). The List shall clearly state the name of each suspended or suspended person or firm(s), the date of the Suspension or suspension determination, and the term of Suspension or suspension.
- B. The Procurement Director will update the List within five working days after any official Suspension, suspension or reinstatement action.



## Standard Operating Procedure

Procurement & REC

Contractor Suspension and Responsibility

Date last updated: 07/28/21

### **XII. Reduction or Termination of Suspension Period; Reinstatement**

Upon occurrence of an event set forth in section 12.1 below, a suspended person or business may, in writing, request that the Procurement Director reduce or terminate the Suspension period and, subject to the person or business first satisfying the requirements of section 12.2, reinstate the person or business to eligibility.

- A.** Upon a suspended business' or person's request, the Procurement Director may reduce or terminate Suspension period by reason of the following:
  - 1.** Discovery of new material evidence pertaining to the reason(s) for Suspension;
  - 2.** Bona fide change in business ownership; or
  - 3.** Cure or elimination of all reasons for which Suspension was imposed.
  
- B.** Expiration of the Suspension alone does not reinstate a business' or person's eligibility to contract with CMHA. Before granting a person's or business' reinstatement request, the Procurement Director shall require, as applicable, the following:
  - 1.** Prompt and complete financial restitution to CMHA, including all expenses CMHA incurred to complete any contract on which the person or business has defaulted or breached, and all interest computed on penalties or late payments;
  - 2.** Elimination of current Debarment or Suspension by any other public entity;
  - 3.** If a Contractor has had a complete or significant (over 50%) change of ownership since Suspension, proof that all suspended parties have no financial or management participation in control or conduct of the vendor's or contractor's business;
  - 4.** Three references, at least one of which must be a public entity, confirming that the person or business has satisfactorily performed a similar contract within the immediately preceding two years;
  - 5.** Evidence of the person's or business' financial capacity to perform a CMHA contract of the type it customarily would seek, including but not limited to, two years of audited financial statements or comparable business documents. Access to the vendor's or contractor's place of business must be provided to CMHA representative during business hours to visit, inspect, and evaluate vendor's or contractor's conduct of business and operational capacity; and/or,



# Standard Operating Procedure

Procurement & REC

Contractor Suspension and Responsibility

Date last updated: 07/28/21

6. Written proof from that the person or business is in good standing with CMHA in respect to its SBE, SLBE, ELBE, MBE, or WBE status.

### XIII. Contract Requirement

The Procurement Director and all CMHA departments, boards, and commissions shall distribute and disseminate this SOP to all present and prospective contractors and subcontractors by reference in all procurement documents (e.g., Invitation to Bids, Request for Proposals, etc.), at all pre-bid, pre-proposal, or other similar meetings preceding a CMHA contract, by or through CMHA's website, or other means sufficient to enable compliance. A bidder's, vendor's, contractor's, or subcontractor's failure or refusal to apprise itself of or to understand this SOP shall not excuse noncompliance with this SOP.

Revision	Last Updated	By	Comments	Approved
Original	2/16/2021	JD	Original SOP	2/16/21
1	7/28/2021	HR	Reformatting, no substantive changes.	7/28/21 JLD