

CHICAGO HOUSING AUTHORITY DEBARMENT POLICY & PROCEDURES

1. GENERAL INFORMATION

1.1 Policy

- (a) In order to ensure the effective and efficient administration of the Chicago Housing Authority's procurement policies and practices, and in compliance with Federal regulations, it is the policy of the Chicago Housing Authority (the "CHA") to do business only with responsible persons. Toward this end, the CHA shall have the discretion to remove and exclude from participation in its procurement transactions and activities a person who is debarred pursuant to this Debarment Policy and Procedures or who appears on any suspended, excluded or debarred list issued by any agency of any Federal, State or local government.
- (b) Debarment is a remedial measure designed to protect the integrity of the CHA's procurement practices and the public's confidence in the CHA's fiscal responsibility. Debarment is a serious action which may lead to the person being excluded from procurement transactions with the CHA for a period which may generally be three (3) years, but may be longer if circumstances warrant. Accordingly, the Debarment Policy and Procedures provide a person subject to a debarment action with due process pursuant to which the seriousness of the person's acts or omissions and any mitigating factors will be considered in making any debarment decision. Debarment shall be used only in the public interest and for the CHA's protection, not for purposes of punishment.
- (c) Reciprocal or parallel enforcement. The CHA is bound by and subject to various federal, state and local laws and regulations relating to public contracting and the protection of public resources. Pursuant to these obligations, the CHA may pursue or enforce debarment or suspension determination(s) or other actions in coordination with other agencies of United States, the State of Illinois, the City of Chicago, and other governmental or quasi-governmental agencies or bodies, including county and local entities ("Covered Agencies"). The CHA shall monitor the master lists and databases maintained or published by the Covered Agencies of any parties, contractors or persons who may be debarred, suspended, excluded or otherwise formally restricted from participation in public contracts and/or related transactions (including, without limitation, the United States Federal Government's System for Award Management), and any such restricted person(s) may be subject to exclusion, debarment or other action by the CHA, which may be comparable or equivalent to the restrictions or limitations established by other Covered Agencies.

The CHA may impose automatic debarment if the person or entity is debarred by any other government agency for cause, including, but not limited to, fraud, embezzlement, bribery, theft, deception, misrepresentation, indictment, felony conviction, and the violation or attempted violation of federal or state statutes. The CHA reserves the right to consider debarment and proceed with its own debarment process in the case that a person or entity is debarred by any other government agency for contract performance or reasons other than those listed in the preceding sentence.

1.2 Purpose and Applicability

The Debarment Policy and Procedures have been adopted by the CHA to further its goal of protecting the CHA from business relations with dishonest, unethical, or otherwise irresponsible persons by:

- (a) setting forth the acts or omissions that are grounds for debarment;
- (b) providing for the maintenance and updating of a list of debarred Participants and Participants who are excluded from participation in covered transactions;
- (c) setting forth the consequences of a debarment or voluntary exclusion;
- (d) prescribing procedures to provide due process that the CHA shall use to consider the debarment of any person or entity; and
- (e) offering such other guidance as is necessary for the effective implementation and administration of the Debarment Policy and Procedures.

1.3 Coverage

The Debarment Policy and Procedures apply to: (i) any person who has participated, is currently participating, or may reasonably be expected to participate in a covered transaction, irrespective of the source of funding; (ii) any person who has participated, is currently participating, or may reasonably be expected to participate in a related transaction, irrespective of the source of funding; (iii) any principal of the persons described in (i) and (ii) above; and (iv) any affiliate of the persons described in (i), (ii) or (iii) above.

1.4 Definitions

See, [Appendix A](#).

2. DEBARMENT

2.1 General

The causes of debarment set forth in this section are not intended to be an exhaustive list of the acts or omissions for which a person may be debarred; grounds other than those enumerated in

this section may be a basis for debarment. Moreover, the existence of a cause for debarment does not necessarily require that a Respondent be debarred; rather, the seriousness of the Respondent's acts or omissions and any mitigating factors should be considered in making any debarment decision.

2.2 Causes for Debarment

Debarment may be imposed pursuant to the Debarment Policy and Procedures for any of the following acts or omissions.

- (a) Conviction of or civil judgment for:
 - (1) commission or attempted commission of a fraud or criminal offense in connection with obtaining or attempting to obtain or performing a public or private agreement or transaction;
 - (2) commission or attempted commission of an act in violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors or bid rigging;
 - (3) commission or attempted commission of embezzlement, theft, forgery, bribery, falsification, destruction or concealment of records, making false statements, submitting false information, attempting to commit a fraud against the CHA, receiving stolen property, making false claims or obstructing justice, fraudulently obtaining public funds; or
 - (4) commission or attempted commitment of any other offense, or engaging in or attempting to engage in conduct indicating a lack of business integrity or honesty, which affects the responsibility of the person.
- (b) Violation of the terms of a CHA or other public or private policy, rule, procedure, agreement or transaction of such a serious nature that, if the CHA were to transact business with the contractor, it would affect the integrity of CHA programs, policies or activities. Such violations include, but are not limited to, the following:
 - (1) a failure to perform in accordance with the terms of one or more CHA rules, policies, agreements or transactions, including, but not limited to, failure to comply with CHA's MBE/WBE/DBE participation goals, bid "rigging" and "stringing" of contracts;
 - (2) failure to perform or unsatisfactory performance on a public or private agreement or transaction; or
 - (3) a violation of a statutory or regulatory provision or requirement applicable to a public or private agreement or transaction.

- (c) Any of the following acts:
- (1) knowingly or negligently doing business with a debarred, non-responsible, suspended or voluntarily excluded person, in connection with a covered transaction or a related transaction;
 - (2) violation of a material provision of a voluntary exclusion agreement or of any other equivalent settlement or agreement entered into with the CHA;
 - (3) violation of any CHA requirements for providing a drug-free workplace; or
 - (4) debarment by any governmental agency.
- (d) Any other act or omission of a serious or compelling nature which weighs against a determination that a person is responsible, which may include, but is not limited to, committing or violation(s) of:
- (1) The Civil Rights Act of 1964 as amended 42 U.S.C.A. Sec. 2000, et. seq.; The Age Discrimination in Employment Act, 29 U.S.C.A. §621 et. seq.; Section 504 of the Rehabilitation Act, 29 U.S.C.A. §701, et. seq., as amended; The Americans With Disabilities Act, 42 U.S.C.A. §12101, et. seq.; The Davis-Bacon Act, 40 U.S.C.A., §276a, et. seq.; The Copeland "Anti-Kickback" Act, 40 U.S.C.A. §276b, et. seq.; and the Illinois Human Rights Act, 775 ILCS 5/1-10 as amended; Public Officers' Corrupt Practices Act, 50 ILCS 105/3 et. seq.
 - (2) CHA Rules, Requirements, Policies or Procedures;
 - (3) Settlement agreements and consent decrees which impose obligations on the person to perform certain activities and/or to refrain from certain acts;
 - (4) Any law, regulation or agreement relating to conflict of interest with respect to Government funded procurement;
 - (5) Any nondiscrimination provision(s) included in any public agreement or transaction; or
 - (6) Performance or conduct on one or more private or public agreements or transactions which caused or may have caused a threat to the health or safety of the person's employees, any other persons involved with the transaction, the general public or property.

- (e) Commission of any other act indicating a lack of business integrity or honesty, including, but not limited to, non-compliance with public policy, default in ongoing contracts, false certifications or statements, fraud in performance or billing, or the lack of financial or technical resources.
- (f) For the purposes of this section, "agreement" is deemed to include contracts or subcontracts.

2.3 Voluntary Exclusion; Settlements.

- (a) When in the best interest of the CHA and the Participant, the CHA and the Participant may agree to a voluntary exclusion of the Participant and any of its principals and/or affiliates from CHA activities and transactions.
- (b) When in the public interest, the parties may, at any time, enter into an agreement which settles the debarment action.

2.4 Effect of Debarment and Voluntary Exclusion.

- (a) Debarment of a Respondent under this Debarment Policy and Procedures constitutes debarment of all its principals, divisions and other organizational elements from all covered transactions and related transactions, unless the debarment decision is limited by its terms to one or more specifically identified principals, individuals, divisions or other organizational elements or to specific types of transactions. Except to the extent prohibited by law, persons who are debarred shall be excluded from covered transactions and related transactions with the Authority as either Participants or principals for the period of their debarment.
- (b) As may be appropriate, the debarment action may include any affiliate of the Respondent that is specifically named and given notice of the proposed debarment and an opportunity to respond. Notice need not be given to an affiliate that is a principal of the Respondent.
- (c) The debarment of a Respondent under the Debarment Policy and Procedures may include the debarment of any other business that is, has been or will be controlled or owned by the Respondent.
- (d) Persons who accept voluntary exclusions pursuant to Section 2.3 shall be excluded in accordance with the terms of their settlements.
- (e) Persons who are debarred or who have voluntarily excluded themselves from participation in CHA transactions shall be placed on a list of debarred Participants, which shall be maintained and updated by the CHA.

- (f) Persons who are debarred from participation in CHA transactions shall be placed on a list of debarred or excluded Participants, which list shall be disseminated to CHA offices, properties and property managers, and to other Government procurement offices.
- (g) Persons who participate in CHA transactions during the period of their debarment will not be paid for goods or services provided.

2.5 Imputing Conduct

For the purposes of determining the scope of debarment, conduct may be imputed as follows:

- (a) The fraudulent, criminal or other seriously improper conduct of any principal or other individual associated with a Participant may be imputed to the Participant when the conduct occurred in connection with the principal's or individual's performance of duties for or on behalf of the Participant, or with the Participant's knowledge, approval or acquiescence. The Participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- (b) The fraudulent, criminal or other seriously improper conduct of a Participant may be imputed to any principal or other individual associated with the Participant who participated in, knew of or had reason to know of the Participant's conduct.
- (c) The fraudulent, criminal or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application or similar arrangement may be imputed to other Participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application or similar arrangement or with the knowledge, approval or acquiescence of these Participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

2.6 Period of Debarment

Debarments shall be for a period commensurate with the seriousness of the debarred Respondent's conduct, and may generally be three (3) years in duration, but may be longer if circumstances warrant.

2.7 Mitigating Factors

The COO may, in the public interest, recommend that the CHA debar a Respondent for any of the causes in Section 2 of this Policy, using the procedures herein. The existence of a cause for Debarment, however, does not necessarily require that the COO seek to debar any Person; the seriousness of the Person's acts or omissions and any mitigating factors should be considered in making any Debarment recommendations.

Before recommending any Debarment decision, the COO should consider factors such as the following, if documented and verifiable information is provided by the Respondent in its submission as provided by Section 8.5(c) of this Policy:

- (a) Whether the Respondent had effective standards of conduct and internal control systems in place at the time of the activity for which Debarment is being considered, or had adopted such procedures prior to any CHA or OIG investigation of the activity cited as a cause for Debarment;
- (b) Whether the Respondent brought the activity cited as a cause for Debarment to the attention of the OIG or other appropriate CHA personnel in a timely manner;
- (c) Whether the Respondent has fully investigated the circumstances surrounding the cause for Debarment and, if so, made the result of the investigation available to the CPO or the OIG;
- (d) Whether the Respondent cooperated fully with CHA personnel during any and all investigations and in any court or administrative actions;
- (e) Whether the Respondent has paid or has agreed to pay all criminal and administrative fines and Civil Judgments for the improper activity;
- (f) Whether the Respondent has paid or has offered to pay any investigative or administrative costs incurred by the CHA, and/or has made or offered to make full restitution;
- (g) Whether the Respondent has taken appropriate disciplinary action against the individual(s) responsible for the activity which constitutes cause for Debarment;
- (h) Whether the Respondent has implemented or agreed to implement remedial measures, including any identified by the CHA;
- (i) Whether the Respondent has instituted or agreed to institute new or revised review and control procedures and ethics training programs;
- (j) Whether the Respondent has had adequate time to eliminate the circumstances within the Respondent's organization that led to the cause for Debarment; and
- (k) Whether the Respondent and/or its management recognizes and understands the seriousness of the misconduct giving rise to the cause for Debarment and has taken appropriate steps to prevent recurrence.

The presence of any mitigating factors such as those set forth above does not necessarily mean that Debarment is unwarranted. Accordingly, the Respondent has the burden of demonstrating, to the satisfaction of the CHA, that Debarment is not warranted due to these potentially mitigating factors.

3. ACTIONS OTHER THAN DEBARMENT

In the event that it is determined that the subject's acts or omissions might not warrant debarment under the circumstances presented, one or more of the following actions may be taken.

3.1 Voluntary Exclusion

- (a) The CHA and the Participant may agree to a voluntary exclusion of the Participant and any of its principals and/or affiliates from CHA activities and transactions for a period of up to five (5) years.
- (b) Persons who are voluntarily excluded from participation in CHA transactions shall be placed on a list of voluntarily excluded Participants, which list shall be disseminated to CHA offices, properties and property managers, and to other Government procurement offices.
- (c) Persons who participate in CHA transactions during the period of their voluntary exclusion will not be paid for goods and services provided, and may be considered for debarment.

3.2 CHA Settlement

Persons found to be in violation of one or more provisions of the Debarment Policy may enter into a settlement with the CHA (a "CHA Settlement"). Any such CHA Settlement shall specifically provide that the person will refrain from the activities, act(s) or omission(s) that are in violation of the Debarment Policy of other CHA policies and procedures, including without limitation, the CHA's Ethics Policy. A CHA Settlement may be entered into alone or in conjunction with one or more of the procedures described in this Section 3.

3.3 Warning Letter

Where there appears to be an act or omission in violation of the Debarment Policy, a warning letter may be issued in the CHA's discretion to any person believed to be in violation. In all subsequent transactions between the person and the CHA, the warning letter will be considered notice concerning such acts or omissions and may be evidence in a subsequent debarment proceeding.

4. SUSPENSION

In the event that the State or Federal prosecutor's office issues an indictment against a person or a person's affiliate, the CHA may issue a notice of suspension to disqualify a person and/or the person's affiliate from contracting for or participating in covered transactions. The suspension may include work or contracts in progress.

The CHA may modify or terminate the suspension at any time. However, once debarment proceedings have been initiated, the suspension may continue indefinitely.

5. INITIATION OF DEBARMENT ACTION

5.1 General

Debarment actions are internal proceedings that the COO conducts and presides over. The COO shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures set forth herein in Section 7.

An in-person hearing is not a matter of right, and an in-person hearing will only be granted when the COO finds that a disputed issue of material fact exists, based on the parties' written submissions. (See, Section 7.5)

5.2 Notice Procedure

- (a) Upon a determination by the Chief Procurement Officer or her designee that adequate grounds for debarment exist, the Hearing Officer shall be notified of the following:
 - (1) the CHA's intent to debar the person;
 - (2) the identity and last known address of the person to be debarred, who shall be named as a Respondent in the debarment proceeding;
 - (3) the grounds for the person's debarment; and
 - (4) a brief statement of the issues the CHA intends to present as the grounds and support for a debarment determination.
- (b) Notices to the Respondent shall be deemed sufficient if served by any reasonable means of delivery, including by first class mail or delivery to the Secretary of the State of Illinois for any person registered therewith, or as otherwise specified in Section 6.5(b).

- (c) Any attempt by the Respondent to affirmatively avoid service (by way of example, and not limitation, refusing to pick up a certified letter) shall be deemed ineffective and shall not prevent the debarment proceeding from going forward.

6. FILING OF DOCUMENTS

6.1 Respondent's Response

- (a) The Respondent shall submit to the Hearing Officer and serve in accordance with Section 6.5 a response to the notice of administrative action within thirty (30) calendar days of receipt of the Hearing Officer's notice, which response shall briefly respond to the allegations of the debarment notice; Allegations contained in the debarment notice to the Respondent may be deemed admitted by the Hearing Officer when not specifically denied in the Respondent's response.
- (b) The response may set forth any affirmative defenses, and evidentiary support therefor, to the allegations by the CHA. Where a Respondent intends to rely upon any affirmative defense(s), it must be set forth such defense(s) in the response.
- (c) In the event that the Respondent fails to file a written response in accordance with this section, the allegations of the Chief Procurement Officer shall be deemed admitted. The Hearing Officer shall enter an order of default and notify the parties of said entry.

6.2 Reply by CHA

The CHA may submit to the Hearing Officer and serve in accordance with Section 6.5 a reply to the Respondent's response not later than thirty (30) days after receiving the Respondent's response.

6.3 Stipulations

The parties are encouraged to meet and resolve as many matters as possible prior to the hearing by stipulated agreement. The parties may stipulate as to any relevant matters of fact or law. Stipulations may be received in evidence at the hearing, and when received shall be binding on the parties with respect to the matter(s) stipulated.

6.4 Document and Submission Requirements

- (a) An original and one copy of all documents to be presented to the Hearing Officer at or before the debarment hearing shall be served on the Hearing Officer, and copies of all documents served on the Hearing Officer shall be served

simultaneously on the opposing party at the specific location designated on the Notice of Proposed Debarment.

- (b) Documents served in accordance with this section and Section 6.5 shall state clearly the party's name and the title of the document. All documents should be typewritten or printed in clear, legible form.
- (c) Although not required by the Debarment Procedure, the parties are encouraged to freely engage in the voluntary exchange of information. Parties should make requests informally.

6.5 Service

- (a) All documents required or permitted under this Debarment Policy and Procedures (in addition to being served on the Hearing Officer in accordance with Section 6.4) shall be served upon:
 - (1) the Office of General Counsel of the CHA (unless the notice designated an alternative representative for the CHA) at 60 East Van Buren Street, Chicago, Illinois 60605;
 - (2) the Respondent or Respondent's representative; and
 - (3) the Chief Procurement Officer at 60 East Van Buren Street, Chicago, Illinois 60605.
- (b) Service of documents, including the notice shall be made by any reasonable means, including by first class mail, telecopy or delivery to:
 - (1) the person to be served or that person's designated representative or agent, at the last known address;
 - (2) the person's last known place of business; or
 - (3) for a principal of the person, on the entity for which the person is a principal.
- (c) Proof of service shall not be required unless the fact of service is denied under oath and put in issue by appropriate objection on the part of the person allegedly served. In such cases, service may be established by written receipt signed by or on behalf of the person to be served, or may be established prima facie by any responsible means, including, but not limited to, affidavit or certificate of service of mailing, or by production of a confirmation, receipt or equivalent evidence of delivery by the United States Postal Service or any private delivery service.

6.6 Time Computation

Any period of time prescribed or allowed by the Debarment Policy and Procedures shall include in the computation of the prescribed period Saturdays, Sundays and national holidays, except that when the last day of the period computed is a Saturday, Sunday, national holiday or other day the CHA is closed, the period shall run until the end of the next following business day.

7. DEBARMENT PROCEDURES AND WAIVER

7.1 Notice and Initiation

The CPO initiates a Debarment proceeding by filing a Notice of Proposed Debarment (“Notice”) with the COO, and serving a copy of the Notice on the Respondent(s). The Notice may be issued for any cause(s) listed in Section 2 of this Policy. The CHA’s General Counsel or designee (“CHA Counsel”) shall represent the CPO in the Debarment proceeding, and may prepare, file and serve the Notice on behalf of the CPO.

7.2 Contents of the Notice

- (a) Statement that the CPO is proposing Debarment;
- (b) The reasons for the proposed Debarment, in terms sufficient to put the Respondent on notice of the conduct and/or transaction(s) upon which it is based;
- (c) The cause(s) for Debarment relied on, under Section 2, and the date(s), scope and duration of any prior Debarments, Suspensions and Voluntary Exclusions of the Respondent, and in the case of present or former CHA employees, the scope and duration of any disciplinary actions taken against them that are relevant to the present cause(s) of Debarment;
- (d) Statement of the scope and duration of the Debarment sought;
- (e) Notification that to contest the proposed Debarment, the Respondent must, within 30 calendar days after receipt of the Notice, submit a verified, written Answer, admitting or denying every allegation in the Notice, and stating any specific information and argument in opposition to the proposed Debarment, including any mitigating factors under Section 2 above, and the identification of specific information, if any, that raises a genuine dispute over the material facts relevant to the Debarment;
- (f) Notification that a failure to submit a verified, written Answer to the COO within the time allowed by this Policy shall be deemed an admission of the allegations set forth in the Notice;

- (g) Name, address, telephone and fax numbers, and e-mail address of the CHA Counsel who will be presenting the cause(s) for Debarment of the Respondent;
- (h) Copies of the portion(s) of any law, statute, ordinance, regulation, rule or policy alleged to have been violated.
- (i) A copy of this Debarment Policy, to inform the Respondent of its terms, including the procedures applicable to and consequences of Debarment.
- (j) The Notice also may, but need not, include copies of the statement(s) of any witness and of any documents supporting the proposed Debarment. Documents and statements obtained by the OIG as part of an investigation are admissible in the debarment proceeding under section 7.5(i)(7), subject to the limitations set forth in section 7.5(i)(8).

7.3 Service

- (a) The Notice of Proposed Debarment shall be served by regular or certified mail, return-receipt requested, at the address listed by the Respondent on the contract or agreement between it and the CHA, or other last known address, or by any other means reasonably calculated to provide actual notice to the Respondent (including publication).
- (b) All other notices and submissions required or allowed under this Policy shall be served on the Respondent by regular mail, reputable, established private delivery service, or personal service, at the address provided pursuant to Section 8.5(b).
- (c) All notices and submissions required or allowed under this Policy shall be served on the CHA's Counsel by regular mail, reputable, established private delivery service, or personal service, at the address provided in the Notice, pursuant to Section 8.2(g).
- (d) All mailed notices, including the Notice of Proposed Debarment, and all mailed submissions, shall be presumed to have been received within three calendar days after mailing. Proofs of service of every notice and submission shall be included in the record.

7.4 Consequences of Notice of Proposed Debarment

- (a) Upon filing of the Notice of Proposed Debarment, the Respondent is immediately suspended from performing under any existing CHA contracts and any subcontracts to CHA contracts identified in the Notice. The Respondent may appeal the Suspension by submitting to the COO a verified, written response stating the reasons the Suspension should not be applied, within five calendar days after the Notice is issued. The COO shall decide the appeal as soon thereafter as practicable.

- (b) Except as otherwise provided in Section 8.4(c), from the date the Notice is issued until a decision is made by the CHA, the following conditions shall apply to the Respondent:
- (1) The Respondent may submit bids or proposals on contracts. New contract(s) may only be awarded conditionally, and if a Respondent is later debarred, the contract(s) may be terminated. The facts underlying a Respondent's proposed Debarment and other factors may be considered when evaluating such bids or proposals. When appropriate, contract awards may be delayed to allow the CHA to reach a decision on the Debarment.
 - (2) The Respondent may continue to perform under any CHA contract not identified in the Notice, unless Interim Constraints are imposed under Section 7.4. However, if the Respondent is debarred, the CHA may not only terminate all the Respondent's existing CHA contracts, but also may terminate or suspend the Respondent's participation as a subcontractor or supplier, unless an exception is granted under this Policy.
- (c) When the cause or causes for Debarment are sufficiently serious and the evidence supporting Debarment is compelling or highly reliable, including but not limited to Indictment, Conviction, Civil Judgment, the filing of a Civil Enforcement Action, or for any of the causes listed under Section 2, or Debarment by another governmental entity or agency, the COO, in his or her sole discretion, may take an interim action constraining the Respondent in dealing with the CHA after issuance of the Notice but before the CHA makes its final decision ("Interim Constraints"). The CPO shall notify the Respondent that he or she is seeking Interim Constraints in the Notice of Proposed Debarment, or in a separate notice served in accordance with Section 7.3 ("Notice of Interim Constraints"). The COO may consider the views of the OIG and the head of any CHA office, department or operational element when determining whether the Respondent should be so constrained.
- (d) The Respondent shall have ten calendar days after service of the Notice or a Notice of Interim Constraints, whichever is later, to submit a verified, written response stating the reasons the Interim Constraint(s) should not be applied. No Interim Constraint shall go into effect until three calendar days after the time for response has passed, or in the case of a response, until the COO issues a decision on the imposition of Interim Constraints.
- (e) If the Respondent can prove that it did not receive notice of the imposition of constraints pursuant to Section 7.4(c), the Respondent may seek reconsideration.
- (f) Any Interim Constraints imposed under this Section shall remain in effect no longer than the date a final Debarment decision is rendered pursuant to Section 7.5.

7.5 Procedures Following Notice of Proposed Debarment

- (a) In response to the Notice of Proposed Debarment, the Respondent shall have the burden of production, i.e., coming forward with sufficient information, documentation, and argument to explain why Debarment should not be imposed.
- (b) Within ten calendar days after service of the Notice, the Respondent must provide CHA Counsel and the COO with contact information for purposes of the Debarment, including: a contact person or attorney, address, phone and fax numbers, and, preferably, email address. Immediate written notice must be given to the CHA Counsel and the COO of any changes in the contact information.
- (c) Within ten calendar days after service of the Notice or any subsequent notice concerning any additional documentation that may be considered in the proceeding, the Respondent may make a written request to CHA Counsel for access to the documentation the CPO has relied upon in seeking Debarment, any witness summaries or affidavits, or relevant prior Debarment decisions relating to the Respondent or an Affiliate, if these materials were not already provided to the Respondent with the Notice or otherwise. In the case of voluminous documentation, CHA Counsel may instead permit the Respondent to examine any and all such materials and thereafter request copies of any or all such materials. In such case, the Respondent must pay a reasonable copying fee to the CPO. If copies cannot be made available within fourteen calendar days of receiving the request, the COO shall give the Respondent additional time to submit the answer described in Section 7.2(e). The COO will notify the Respondent and CHA Counsel of such extensions.
- (d) The Respondent shall submit its written Answer to the COO and serve a copy on the CHA Counsel by any method set forth in Section 7.3(c), no more than 30 calendar days after receipt of the Notice. Date of submission will be the date of receipt, if by personal service, or the date of mailing or placing with a private delivery service, with proof of mailing or placement. Deliveries will be accepted only during the regular office hours of the CHA Counsel and COO. The Respondent's Answer must be in writing, verified (sworn on oath before a notary public), and must include an admission, denial, or other response to each of the allegations in the Notice. The omission of a response to any allegation in the Notice shall be deemed an admission of that allegation. The Answer also must include all the facts, arguments, or other bases upon which the Respondent contests the Debarment. Any documentation supporting the Answer must be attached or, if voluminous, indexed and included separately. Should the Respondent fail to file a timely Answer to the Notice of Proposed Debarment, all of the allegations of the Notice shall be deemed to be admitted.

- (e) CHA Counsel may submit to the COO a written Reply to the Answer within 30 calendar days of its receipt or due date, whichever is later. CHA Counsel must serve the Respondent with a copy of the Reply, if any, and any other letter, notice, requests, or filings made by CHA Counsel, by any method set forth in Section 7.2(b).
- (f) Leave to make written submissions by the CHA Counsel or the Respondent beyond the Answer and Reply shall be at the sole discretion of the COO, upon specific request detailing the need for a further submission, or as he or she directs. Requests for further written submissions are not favored.
- (g) If any material information not previously given or offered to the Respondent is introduced into the record subsequent to the Notice of Proposed Debarment or after documents are provided pursuant to Section 7.5(c), upon written request the Respondent shall have the right to file a further written submission commenting on that information within a time frame set by the COO, and the CHA Counsel may file a further written response thereto. Similarly, if material information not previously given or offered to the CHA is introduced into the record subsequent to the Respondent's Answer or after documents are provided pursuant to Section 7.5(c), upon written request the CHA Counsel shall have the right to file a further written submission commenting on that information within a time frame set by the COO, and the Respondent may file a further written response thereto.
- (h) When the Respondent believes its Answer raises a genuine issue of disputed material fact that cannot be resolved on the paper submissions and wishes to present a witness or witnesses in support of its position, the Respondent may request an in-person hearing. When requesting an in-person hearing, the Respondent must identify the fact or facts at issue and the witness or witnesses in its request. Respondent requests for in-person hearings must be part of the Answer, must demonstrate to the COO that the hearing is necessary to decide any matter(s) pertaining to the CHA's decision on Debarment, and must include a detailed description of the expected testimony. Requests for in-person hearings may also be made in a similar manner and for similar reasons by CHA Counsel. Notwithstanding the foregoing, an in-person hearing is not a matter of right.
- (i) In-person hearings will only be granted when the COO finds that a disputed issue of material fact exists, based on the parties' written submissions. The COO may conduct the in-person hearing, or may appoint a Hearing Officer to do so and refer the proceedings to the duly-appointed Hearing Officer in the COO's discretion. If the COO appoints a Hearing Officer, the CHA shall be responsible for paying his or her reasonable fee.

When an in-person hearing is ordered:

- (1) The COO may limit the issues to be presented at such hearing, and shall notify the Respondent, CHA Counsel, and Hearing Officer (if any) of this limitation.
- (2) The individual conducting the hearing shall have the right to limit the number of witnesses and the length and scope of testimony, including but not limited to prohibiting non-relevant, cumulative, or duplicative testimony.
- (3) When a Hearing Officer conducts the hearing, he or she shall prepare written factual findings. The COO may reject the Hearing Officer's findings if the COO determines those findings to be arbitrary and capricious or clearly erroneous. The Hearing Officer shall have no authority to render legal conclusions, or to determine whether conduct in question violates any law, CHA Rule, policy or contract; these determinations are reserved solely to the judgment of the CHA.
- (4) Notice of any in-person hearing shall be given to the Respondent and to CHA Counsel no less than twenty-one calendar days prior to the date and time of the hearing, and shall specify the date, time, and location, and the factual issue(s) to be examined. The Respondent and CHA Counsel must submit to the opposing party and the COO or Hearing Officer, as the case may be, a list of all proposed attendees under their control no less than five calendar days prior to the in-person hearing, which list must identify the individuals who will be presented as witnesses. The COO or Hearing Officer shall have the right to limit the number of attendees present at the hearing, and to exclude witnesses from the in-person hearing when they are not testifying.
- (5) Hearings shall be conducted in a manner consistent with principles of fundamental fairness. The official conducting the hearing may use flexible procedures, and is not required to follow formal rules of evidence or procedure unless such rules are adopted by the COO. Hearsay evidence may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, and, if admitted, will be given appropriate weight by the official conducting the hearing. A certified Court Reporter or stenographer shall be present throughout the hearing to administer oaths and to record (and if ordered, transcribe) the proceedings. The CHA shall bear the cost of providing the court reporter or stenographer for the hearing, but the party ordering a transcript shall bear the cost of its preparation.

- (6) The Respondent may appear with or be represented by counsel, and, as limited by Section 7.5(i)(2), shall have the right to present witnesses and to cross-examine any witnesses presented in support of the proposed Debarment. CHA Counsel also shall have the right to present witnesses, as limited by Section 7.5(i)(2), and cross-examine those of the Respondent. The COO or Hearing Officer may also question the witnesses.
- (7) Documents and reports of witness interviews (“OIG Statements”) obtained by the OIG as part of an investigation shall be admissible, subject to subparagraph (8) below, provided they are included with or identified in the Notice, Response or Reply.
- (8) The statement of a witness, relied upon by the Respondent, who is under the control of the Respondent, may not be offered or admitted into the record unless CHA Counsel stipulates to its admission, or the Respondent shows good cause why the witness cannot appear. For purposes of this subsection, “statement” includes a written summary, affidavit, or other form. Witnesses under the control of the Respondent include, but are not limited to, Affiliates, employees, employees of subcontractors or suppliers of any tier, and the relatives and business associates of the Respondent or of any Person who has a beneficial interest in the contract or who exercises management or control over the Respondent. Similarly, CHA Counsel may not present the statement of a witness who is under the control of the CHA, unless the Respondent stipulates to its admission, or CHA Counsel shows good cause why the witness cannot appear. Witnesses under the control of the CHA are its employees and officials. “Good cause” for non-appearance of a witness shall be limited to military or other official service or duties preventing attendance, death, serious illness or other similar impediment, and shall be determined within the sole discretion of the COO or Hearing Officer.

The statements of witnesses not controlled by either party shall be accepted only if the party seeking their admission offers guarantees of the veracity and trustworthiness of the statement that the COO or Hearing Officer deems sufficient. Such statements and demonstrations of “good cause” must be provided at least five calendar days prior to the in-person hearing unless otherwise allowed by the COO or Hearing Officer. Reasonable accommodation will be made to facilitate presentation of witnesses. Requests relating to the presentation of witnesses should be made as early as possible. Each party may request the appearance of witnesses under the control of the other, but such requests must be made no less than fourteen calendar days prior to the in-person hearing.

- (9) Exhibits or other documentary evidence not previously submitted or produced pursuant to this Section 7.5 may not be presented at the in-person hearing without the agreement of the opposing party or the prior written permission of the COO or Hearing Officer.
- (10) The Notice, the Answer, the Reply and any materials submitted in support of them, proofs of service, correspondence relating to the proceedings, the testimony of witnesses at the in-person hearing, if any, and the factual findings of the Hearing Officer, unless rejected by the COO under Section 7.5(i), shall constitute the record.

7.6 Extensions of Time

Any deadline in this Section 7 may be extended in the discretion of the COO, or in the case of deadlines relating solely to the in-person hearing, in the discretion of the Hearing Officer. Requests for extension of deadlines shall be in writing and shall be submitted at least five days before the deadline passes. The COO or Hearing Officer shall issue a response within three days of receipt of the request. One such extension shall be granted absent extraordinary circumstances, but additional extensions are discouraged. The COO or Hearing Officer will notify the Respondent and CHA Counsel of any extensions as soon as practicable, by fax, email or mail.

7.7 Voluntary Exclusion

- (a) CHA Counsel or the CPO, and a Respondent, may settle a Debarment proposal through Voluntary Exclusion as defined herein, subject to the CHA's approval upon the COO's Report.
- (b) Persons who are voluntarily excluded from participation in CHA contracts and transactions shall be placed on a list of excluded participants, which list shall be maintained by the CPO and disseminated to CHA offices, departments, property managers and other persons or entities, as determined to be necessary or prudent in the discretion of the CPO. The list is subject to disclosure under the Illinois Freedom of Information Act, 5 ILCS 140/1, et seq.
- (c) Any Person who participates in a CHA contract or Related Transaction during the period of their Voluntary Exclusion will be deemed to have donated any goods or services so provided, will not be paid for the goods and services, and may be considered for Debarment on the basis of that participation.

7.8 Withdrawal of Notice

The CPO may withdraw the Notice of Proposed Debarment without prejudice for any reason prior to the CHA's final decision.

7.9 Pre-Hearing Procedures

- (a) At the request of any party or on the Hearing Officer's own initiative, the Hearing Officer may conduct a pre-hearing conference to encourage the parties to settle issues or enter stipulations as provided herein.
- (b) Although not required by the Debarment Policy and Procedures, the parties are encouraged to freely engage in the voluntary exchange of information. Parties should make requests informally.
- (c) If a party unreasonably fails to cooperate in the exchange of information, the requesting party should request a pre-hearing conference under Section 5.3(a) to assist in resolution of the dispute. A party's refusal or failure to provide information voluntarily may be considered by the Hearing Officer as a factor in any findings of fact or other rulings.
- (d) The Hearing Officer shall initiate the debarment proceeding by notice to the Respondent in writing at least ninety (90) days prior to the date of the debarment review hearing, advising the Respondent of the following:
 - (1) that the CHA is seeking to debar the Respondent pursuant to the Debarment Procedures;
 - (2) the reasons for the proposed debarment in terms sufficient to put the Respondent on notice of the conduct or transaction(s) upon which it is based;
 - (3) a brief statement of the issues the CHA intends to present at the hearing;
 - (4) that the Respondent must submit a written response within thirty (30) days of the receipt of the Hearing Officer's notice;
 - (5) that the Respondent may appear at the debarment review hearing to challenge the debarment action and that failure to appear may result in a waiver of the Respondent's defenses to the debarment action and be taken as an admission by the Respondent that the basis for debarment is accurate, except to the extent the Respondent challenges the debarment action solely by means of a written submission pursuant to Section 6.1(c) of the Debarment Policy and Procedures;
 - (6) that the CHA may submit a reply to the Respondent's written response pursuant to Section 6.2 of the Debarment Policy and Procedures;
 - (7) the potential effect of a debarment; and

- (8) a copy of the Debarment Policy and Procedures.

8. HEARING OFFICER: POWERS AND RESPONSIBILITIES

8.1 General

Debarment proceedings may be presided over by a Hearing Officer, as defined in Section (m) of the Definitions of the Debarment Policy and Procedures (Appendix A), upon a determination by the COO. The CHA may employ or appoint more than one Hearing Officer, if necessary, for the efficient administration of debarment actions.

8.2 Powers of the Hearing Officer

The Hearing Officer shall conduct a fair and impartial review and determination upon the proposed debarment action, including hearing or other proceedings as part of the Hearing Officers duties and responsibilities and, to that end, shall have the power to:

- (1) schedule the debarment review;
- (2) schedule, manage and administer the debarment review, including the production and exchange of documents, the scheduling of activities and hearing, if any;
- (3) regulate the course of the hearing and the conduct of the parties and their counsel;
- (4) hold conferences to facilitate the settlement or simplification of the issues by consent of the parties or at the request of a party;
- (5) consider and rule upon all evidentiary and procedural matters pertaining to the hearing, including, but not limited to, setting page limits on documents that may be submitted;
- (6) make findings of fact and take notice of any material fact not appearing in evidence in the record which would properly be a matter of judicial notice;
- (7) receive evidence and rule upon offers of proof;
- (8) submit proposed subpoenas to an authorized CHA official with a request that such subpoenas be issued as authorized by law;
- (9) administer oaths and affirmations;
- (10) make a recommendation of debarment of the Respondent or any other available determination with respect to future CHA transactions, or denying debarment;

- (11) recommend to the Chief Procurement Officer, if so requested, a course of action to remedy Respondent's past actions which gave rise to the debarment action; and
- (12) take any other action necessary to protect each party's rights, to avoid delay in the disposition of the debarment proceeding and to maintain order.

8.3 Prohibition Against *Ex parte* Communications

- (a) *Ex parte* communications are prohibited except where:
 - (1) the purpose and content of the communication have been disclosed in advance or simultaneously to all parties involved; or
 - (2) the communication is a request for information to the Hearing Officer's staff concerning the status of the debarment action.
- (b) Unauthorized *ex parte* communications shall not be taken into consideration by the Hearing Officer in deciding any matter in issue.

8.4 Disqualification of a Hearing Officer

- (a) When the Hearing Officer has a close relationship with, or financial interest in, the Respondent or any of its principals (other than as a consequence of his/her position as an employee or official of the CHA), the nature of which would create the likelihood of bias or appearance of bias, the Hearing Officer may withdraw by notice to the Chief Executive Officer and the parties, or be disqualified by the Chief Executive Officer.
- (b) If a relationship as described in subsection (a) above exists and the Hearing Officer does not withdraw nor does the Chief Executive Officer act to disqualify him/her, then a party may submit a disqualification request pursuant to Section 8.4 at least thirty (30) days prior to the hearing date. The Chief Executive Officer shall respond to the disqualification request within fourteen (14) days by letter to the moving party, with copies to the Hearing Officer and the non-moving party or its designated representative.

9. REVIEW AND RECOMMENDATION BY CHIEF OPERATING OFFICER

9.1 When a Notice is based upon a Conviction, Civil Judgment, or Debarment by another government agency, the COO may recommend the CHA debar the Respondent on the basis of such Conviction, Civil Judgment or Debarment, and any submissions made pursuant to Section 8.

9.2 When a Respondent fails to timely submit an Answer or otherwise admits the allegations set forth in the Notice, the COO may recommend the CHA debar the Respondent on the basis of such admissions. The recommendation shall include a copy of the Notice. No Debarment based on admissions may exceed the scope or duration sought in the Notice.

9.3 Standard of Proof

The cause for debarment must be established by a preponderance of the evidence. If the debarment is based upon a conviction, civil judgment or a debarment by another governmental agency, the standard shall be deemed to have been met.

9.4 Burden of Proof

The CHA has the burden to establish the cause for debarment. The Respondent has the burden of proof to establish mitigating circumstances.

9.5 Debarment Recommendations and Decisions

- (a) The COO shall make any other recommendation that the CHA debar a Respondent on the basis of the record as defined in Section 9.5(i)(10), by report. A copy of the recommendation shall be provided to the Respondent and CHA Counsel within thirty (30) calendar days by any means of service permissible under Section 8.3(a).
- (b) A recommendation of Debarment shall include information:
 - (1) Referring to the Notice of Proposed Debarment;
 - (2) Specifying the reasons for recommending Debarment, with reference to record facts;
 - (3) Stating the period and scope of the recommended Debarment, including effective dates;
 - (4) Stating the effect of the recommended Debarment on the Respondent's existing CHA contracts;
 - (5) Stating the effect of the recommended Debarment on the Respondent's eligibility to act as a subcontractor or supplier of any tier on any existing and/or future CHA contracts; and
 - (6) Stating the effect of the recommended Debarment on the Respondent's Affiliates or any other individuals.

- (c) The decision of the CHA, in acting on the COO's recommendation, shall be final. The Respondent's sole remedy shall be judicial review by a common law writ of certiorari.

9.6 A list of debarred Persons will be distributed to the CHA's offices, departments and divisions, and may be published on the CHA's website or any other media the CHA in its discretion may choose. The CHA also may share this list with other governmental entities and agencies.

9.7 Any Interim Constraints put in place under Section 8.4 shall terminate no later than the CHA's approval of the CHA Report acting upon the COO's recommendation of debarment under this Section. A final Debarment decision shall supersede any interim action.

10. PERIOD OF DEBARMENT, EXTENSIONS AND REDUCTIONS

10.1 The period of Debarment under this Policy and Procedures may generally be three (3) years in duration, but may be longer if circumstances warrant, and may extend to any and all goods and services the Respondent has provided or may in the future seek to provide, or it may be for a stated period of time. Periods of Debarment may be imposed concurrently or consecutively, in the sole discretion of the CHA.

10.2 The COO may recommend that a Debarment be cancelled prospectively or the duration and/or scope may be reduced or waived by the CHA, upon the verified, written application of the debarred individual or entity, supported by documentation, for any of the following reasons:

- (a) Discovery of new material evidence within 2 years after the CHA's decision, but only if this evidence could not have been discovered through reasonable diligence before the time to submit it under this Policy had passed (an affidavit explaining why the newly discovered evidence could not have been discovered in time for such submission must be attached), or conclusively documented error in the findings of the CHA's decision.
- (b) Reversal of the Conviction or judgment on which the debarment or ineligibility is based.
- (c) Bona fide change in ownership and/or control of the entity, or other mitigating factors sufficient, in the discretionary judgment of the COO, to remove the conditions giving rise to the conduct that led to the debarment or ineligibility, such as the mitigating factors identified in Section 2.

10.3 An application by or on behalf of a debarred Person to reduce or waive the duration or scope of the Debarment or to cancel the Debarment, must be in writing, must state the specific bases for the application, must include all reasons and all documents the applicant intends to rely upon in support of the application, and must include the applicant's sworn oath that the statements in the application are true and correct. The COO may convene an in-person hearing regarding the application, following the procedures set out in Section 8.5, and shall make a recommendation to the CHA following the procedures set out in Section 5.3.

10.4 The COO may recommend that the CHA suspend a debarred Person's ineligibility to contract with the CHA in whole or in part to allow execution of a specific contract or type of contract with the Person, based on a written application by the head of an office or a department affected by the proposed contract, setting forth facts and providing documentation, which in the COO's judgment show that:

- (a) public health, safety or welfare requires the goods or services of the debarred Person, or that it is otherwise in the best interest of the CHA to use the goods or services of the debarred Person, or
- (b) the CHA is unable to acquire the goods or services at comparable price and quality, or in sufficient quantity, from other sources.

10.5 During the Debarment period, the COO may recommend that the CHA extend the duration and/or broaden the scope of the Debarment, if he or she determines that expansion is appropriate. However, Debarment may not be extended or broadened solely on the basis of the specific facts upon which the initial Debarment decision was based. Prior to a decision to extend the duration and/or broaden the scope of an existing Debarment, the debarred Person must be provided with notice of the recommendation and an opportunity to respond pursuant to Section 7.

APPENDIX A
Definitions

(a) *Affiliate.* Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees or a business entity organized following the suspension, debarment, bankruptcy, dissolution, or reorganization of a person which has the same or similar management, ownership or principal employee as the debarred, excluded or voluntarily excluded person.

(b) *Agency.* Any executive department or other agency of the executive branch of a local, State or Federal government, or any other unit of local government, excluding independent regulatory agencies.

(c) *CHA.* The Chicago Housing Authority, an Illinois municipal corporation organized and operating under the Illinois Housing Authorities Act and other federal and state laws.

(d) *Benefits.* Money or any other thing of value provided by, or realized because of, a CHA procurement transaction or activity. Thing of value includes insurance or guarantees of any kind.

(e) *Civil Judgment.* The disposition of a civil action by any court or tribunal of competent jurisdiction, whether entered by verdict, decision, consent decree, confession of judgment, settlement, stipulation, or otherwise, creating a civil liability for alleged wrongful acts, as well as any agreement terminating a dispute before a civil action has been filed in court.

(f) *CHA Settlement.* A written settlement, disposition or agreement between the CHA and any person (whether real, corporate, legal or otherwise) whereby the person promises to refrain from certain activities, acts or omissions or practices covered by the CHA's policies and procedures, including, without limitation, the CHA's Debarment Policy and CHA's Ethics Policy.

(g) *Contractor.* As used in this part, contractor means any person that:

- (1) submits offers for, or is awarded, or reasonably may be expected to submit offers for or be awarded, a bid and/or contract with the Government or the CHA (or a subcontract under a Government or CHA contract or activity); or
- (2) conducts business with the Government or the CHA as an agent or representative of another contractor.

(h) *Conviction.* A judgement of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of no contest ("*nolo contendere*").

(i) Covered Transaction. Any procurement program, activity, agreement or transaction with the CHA, regardless of type, amount or source of funding.

(j) Debarment. Any exclusion, suspension, probation or other appropriate action taken by the CHA in accordance with the Debarment Policy and Procedures with respect to a person's participation in covered transactions and/or related transactions.

(k) Ex parte Communication. Any communication with a Hearing Officer, direct or indirect, oral or written, concerning the merits of procedures of any pending proceeding which is made by a party in the absence of any other party.

(l) Government. Any local, State or Federal government agency or entity, unless otherwise designated.

(m) Hearing Officer. An official appointed by the CHA's Chief Operating Officer (or such equivalent officer of the CHA as may be designated by the CHA from time to time, hereinafter the "COO") or by such Officer's designee to preside over debarment proceedings. The official may be, but need not be, an administrative law judge, attorney or employee of the CHA, but must be adjudged by the Officer or designee to have sufficient expertise to conduct proceedings under this Debarment Policy and Procedures. The COO may serve in the capacity of a Hearing Officer in the event that the Debarment action is not referred to another appointed Hearing Officer.

(n) HUD. United States Department of Housing and Urban Development.

(o) Non-Responsible. A determination by the CHA that the person does not possess the technical or financial capacity to secure the necessary resources to deliver the goods or services required for a specific contract, or who has a record of a lack of integrity or unsatisfactory past performance on other contracts. A person is excluded from participation in Authority procurement activities and transactions where a determination of non-responsibility has been made by the CHA, and the person is placed on the "List of Parties Excluded from Authority Procurement Transactions."

(p) List of Parties Excluded from CHA Procurement Transactions. A list compiled, maintained and distributed by the CHA's Chief Procurement Officer (or such equivalent officer as the CHA may designate, from time to time, hereinafter the "CPO"), containing the names of and other information regarding persons debarred, suspended or voluntarily excluded, whether under the Debarment Policy and Procedures or any other action, determination or other procedure.

(q) Notice. The written communication served on a Respondent in accordance with Section 3.2 of the Debarment Policy and Procedures, to initiate a debarment action. Notice shall be considered to have been received by the addressee five (5) days after being sent to the last known address by the CHA from information provided by the addressee or otherwise obtained by the CHA upon reasonable search and inquiry.

(r) Office of Inspector General (“OIG”). The CHA’s Inspector General and his or her office.

(s) Participant. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(t) Person. Any individual, company (including, without limitation, a corporation, partnership, limited liability company, association or other entity organized and/or recognized at law), unit of government or other legal entity, however organized, except: foreign governments or foreign government entities, public international organizations, foreign government-owned (in whole or in part) or -controlled entities and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(u) Principal. Any officer, director, owner, partner, key employee or other person within a Participant with significant management or supervisory responsibilities; a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the Participant; or any affiliate of a Participant, the operations of which are so intertwined with the Participant that the separate corporate identities may be disregarded.

(v) Proposal. Any solicited or unsolicited bid, application, request for proposal, invitation to bid or similar communication, response or proposal by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(w) Related Transaction. A transaction directly related to a covered transaction, which assists the Participant in executing a covered transaction, regardless of the extent the person performing the related transaction has a critical influence on, on substantive control over, the covered transaction. Related transactions include, but are not limited to, transactions of the Participant with any of the following persons:

- (1) contractors;
- (2) principal investigators;
- (3) loan officers;
- (4) staff appraisers and inspectors;
- (5) underwriters;
- (6) bonding companies;
- (7) borrowers under programs financed by HUD or loans guaranteed, insured or subsidized through HUD programs;
- (8) purchasers of properties with HUD-insured or HUD Secretary-held mortgages;
- (9) recipients under HUD assistance agreements;
- (10) appraisers and inspectors;
- (11) real estate agents and brokers;
- (12) management and marketing agents;

- (13) accountants, consultants, investment bankers, architects, engineers, attorneys and others in a business relationship with Participants in connections with a covered transaction under a CHA procurement transaction, or agreement or activity;
- (14) suppliers or vendors of materials and equipment in connection with a CHA procurement transaction, agreement or activity;
- (15) closing agents;
- (16) turnkey developers of projects;
- (17) title companies;
- (18) escrow agents;
- (19) project owners;
- (20) developers, sellers or owners of property financed with loans insured under Title I or Title II of the National Housing Act; and
- (21) employees or agents of any of the above.

(x) *Respondent.* A person against whom a debarment action has been initiated.

(y) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States or any agency of a State, exclusive of institutions of higher education, hospitals and units of local government. A State instrumentality will be considered part of the State Government if it has a written determination from a State Government that such State considers that instrumentality to be an agency of the State Government.

(z) *Suspension.* A temporary involuntary exclusion from participation in covered transactions and/or related transactions with the CHA. A suspension cannot exceed one year.

(aa) *Voluntary Exclusion or Voluntarily Excluded.* A status, assumed by a person pursuant to the terms of a settlement, pursuant to which the person agrees to be excluded from participating in covered transactions and related transactions with the CHA in accordance with the terms of such settlement.

(bb) *Warning Letter.* A written communication from the CHA to one or more persons concerning activities, acts or omissions covered by the Debarment Policy.