

PROCUREMENT POLICY

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PROCUREMENT POLICY

This Procurement Policy complies with the Annual Contributions Contract (ACC) between HUD and the housing authority (PHA) and 2 CFR PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS, HUD's procurement standards of the Procurement Handbook for PHAs, HUD Handbook 7460.8, Revision 2, and applicable state and local laws.

GENERAL PROVISIONS

The PHA shall:

1. Provide for a procurement system of quality and integrity;
2. Provide for the fair and equitable treatment of all persons or firms involved in purchasing by the PHA;
3. Ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to the housing authority;
4. Promote competition in contracting;
5. Assure that the housing authority's purchasing actions are in full compliance with applicable federal standards, HUD regulations, state and local laws

Simplified acquisition threshold. §200.88

Simplified acquisition threshold means the dollar amount below which the housing authority may purchase property or services using small purchase methods. The housing authority adopts small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. The simplified acquisition threshold is \$150,000. This threshold is periodically adjusted for inflation

Suspension and debarment. §200.213

The housing authority subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, sub-awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

General procurement standards. §200.318

- A. The housing authority's procedures will avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. 200.318 (c)(2)
- B. To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the housing authority will, when practical and feasible, enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. 200.318 (e)
- C. The housing authority will, when practical, use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. 200.318 (f)
- D. The housing authority will consider the use of value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. 200.318 (g)
- E. The housing authority will 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. 200.318 (h)
- F. The housing authority will maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. 200.318 (i)
- G. (1) The housing authority will use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the housing authority is the sum of:
 - I. The actual cost of materials; and
 - II. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract will set a ceiling price that the contractor exceeds at its own risk. Further, the housing authority when awarding such a contract will assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

H. The housing authority will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the housing authority of any contractual responsibilities under its contracts. HUD will not substitute its judgment for that of the housing authority unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

Application

This Procurement Policy applies to all procurement actions of the PHA, regardless of the source of funds, except as noted under “exclusions” below. However, nothing in this Policy shall prevent the housing authority from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. When both Federal awarding agency and non-federal grant funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, Federal awarding agency procurement regulations shall be applied to the total project. If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the source of funding may be followed.

Definitions

The term “procurement,” as used in this Policy, includes the procuring, purchasing, leasing, or renting of:

1. Goods, supplies, equipment, and materials;
2. Construction and maintenance, consultant services;
3. Architectural and engineering services;
4. Social services;
5. Other services.

The term “contracting officer,” as used in this Policy shall refer to the Executive Director or his or her designee.

Exclusions

This policy does not govern administrative fees earned under the Section 8 voucher program, the award of vouchers under the Section 8 program, the execution of landlord Housing Assistance Payments contracts under that program, or non-program income, e.g., fee-for-service revenue or Central Office Cost Center expenditures under 24 CFR Par 990. These excluded areas are subject to applicable state and local requirements.

Changes in Law and Regulations

In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.

Public Access to Procurement Information

Most procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in the Tennessee Open Records law.

ETHICS IN PUBLIC CONTRACTING

General

The housing authority hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct is consistent with applicable federal, state or local law.

Conflicts of Interest

The housing authority will conduct all procurement actions in strict accordance with the Code of Ethics outlined in its Personnel Policy.

Prohibition Against Contingent Fees

Contractors wanting to do business with the housing authority must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

PROCUREMENT PLANNING

Planning is essential to managing the procurement function properly. Hence, the housing authority will periodically review its record of prior purchases, as well as future needs, to:

1. Find patterns of procurement actions that could be performed more efficiently or economically;

2. Maximize competition and competitive pricing among contracts and decrease the PHA's procurement costs;
3. Reduce the PHA's administrative costs;
4. Ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests;
5. Minimize errors that occur when there is inadequate lead time. Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

Competition. §200.319

- A. All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals will be excluded from competing for such procurements. Situations considered to be restrictive of competition include but are not limited to:
 - (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - (2) Requiring unnecessary experience and excessive bonding;
 - (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive contracts to consultants that are on retainer contracts;
 - (5) Organizational conflicts of interest;
 - (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
 - (7) Any arbitrary action in the procurement process.
- B. The housing authority will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. However, nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- C. The housing authority's written solicitation documents for procurement transactions will:
 - (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description will not, in

competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, will set forth those minimum essential characteristics and standards to which it will conform if it is to satisfy its intended use. Detailed product specifications will be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which will be met by offers will be clearly stated; and

(2) Identify all requirements which the offerors will fulfill and all other factors to be used in evaluating bids or proposals.

D. The housing authority will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the housing authority will not preclude potential bidders from qualifying during the solicitation period.

METHODS OF PROCUREMENT TO BE FOLLOWED

§200.320

The housing authority will use one of the following methods of procurement.

Procurement by micro-purchases.

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the housing authority will distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the housing authority considers the price to be reasonable.

Procurement by small purchase procedures.

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the State of Tennessee contracting Threshold (\$50,000). If small purchase procedures are used, price or rate quotations will be obtained from an adequate number of qualified sources. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Quotes may be obtained orally (either in person or by phone), by fax, in writing, or through e-procurement. Award shall be made to the qualified vendor that provides the best value to the housing authority. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. The Authority shall not break down requirements aggregating more than the small purchase threshold into several purchases that are less than the applicable threshold merely to permit use of the small purchase procedures or to avoid any requirements that apply to purchases that exceed the micro purchase threshold.

Procurement by sealed bids (formal advertising).

Sealed bidding shall be used for all contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals. Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (1) of this section apply.

- (1) In order for sealed bidding to be feasible, the following conditions should be present:
 - i. A complete, adequate, and realistic specification or purchase description is available;
 - ii. Two or more responsible bidders are willing and able to compete effectively for the business; and
 - iii. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

- (2) If sealed bids are used, the following requirements apply:
 - I. Bids will be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, bids will be publically advertised;
 - II. The invitation for bids, which will include any specifications and pertinent attachments, will define the items or services in order for the bidder to properly respond;
 - III. All bids will be opened at the time and place prescribed in the invitation for bids, and, the bids will be opened publicly;
 - IV. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in the bidding documents, factors such as discounts, transportation cost, and life cycle costs will be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - V. Any or all bids may be rejected if there is a sound documented reason.

Procurement by competitive proposals.

Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold. Unlike sealed bidding, the competitive proposal method permits:

- (1) Consideration of technical factors other than price;

- (2) Discussion with offerors concerning offers submitted;
- (3) Negotiation of contract price or estimated cost and other contract terms and conditions;
- (4) Revision of proposals before the final contractor selection;
- (5) The withdrawal of an offer at any time up until the point of award.

Award is normally made on the basis of the proposal that represents the best overall value to the PHA, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (1) Competitive proposals shall be solicited through the issuance of a Request for Proposal (RFP). Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals will be considered to the maximum extent practical;
- (2) Proposals will be solicited from an adequate number of qualified sources;
- (3) The housing authority will have a written method for conducting technical evaluations of the proposals received and for selecting recipients. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after the award. The housing authority may assign price a specific weight in the evaluation criteria or the PHA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP;
- (4) Contracts will be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (5) The housing authority may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

Evaluation

The proposals shall be evaluated only on the criteria stated in the RFP. Where not apparent from the evaluation criteria, the housing authority shall establish an evaluation plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to the award of a contract.

Negotiations

Negotiations shall be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations.

Negotiations are exchanges (in either competitive or sole source environment) between the PHA and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions.

Discussions are tailored to each offeror's proposal, and shall be conducted by the contracting officer with each offeror within the competitive range. The primary object of discussions is to maximize the housing authority's ability to obtain the best value, based on the requirements and the evaluation factors set forth in the solicitation. The contracting officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the contracting officer's judgment. The contracting officer may inform an offeror that its price is considered by the PHA to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that the government's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.

Award

After evaluation of the revised proposals, if any, the contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the housing authority provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

A/E and Development Partner Services

The housing authority must contract for A/E services using qualifications based solicitations (QBS) procedures, utilizing a RFQ and may do the same for soliciting a development partner. Sealed bidding shall not be used for A/E solicitations or development partner solicitation. Under QBS procedures, competitor's qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures shall not be used to purchase other types of services.

Procurement by noncompetitive proposals.

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the housing authority; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

Justification

Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible contracting officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:

1. Description of the requirement;
2. History of prior purchases and their nature (competitive vs. noncompetitive);
3. The specific exception in 2 CFR 200.320 (f), (1) through (4) which applies;
4. Statement as to the unique circumstances that require award by noncompetitive proposals;
5. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
6. Statement as to efforts that will be taken in the future to promote competition for the requirement;

7. Signature by the contracting officer's supervisor (or someone above the level of the contracting officer); and,
8. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

Procurement of recovered materials §200.322

The housing authority will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Cooperative Purchasing/Intergovernmental Agreements

The housing authority may enter into state and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The housing authority may use federal or state excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 CFR 200.

Contract Cost and Price §200.323

- A. The housing authority will perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the housing authority will make independent estimates before receiving bids or proposals.
- B. The housing authority will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the

contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- C. Costs or prices based on estimated costs for contracts are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the housing authority under 2 CFR, Subpart E—Cost Principles.
- D. The cost plus a percentage of cost and percentage of construction cost methods of contracting will not be used.

Cost and Price Analysis

The housing authority shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions.

Petty Cash and Micro Purchases

No formal cost or price analysis is required. Rather, the execution of a contract by the contracting officer (through a purchase order or other means) shall serve as the contracting officer's determination that the price obtained is reasonable, which may be based on the contracting officer's prior experience or other factors.

Small Purchases

A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes are not obtained to establish reasonableness through price competition, the contracting officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the contracting officer's personal knowledge at the time of purchase, comparison to the independent cost estimate, or any other reasonable basis.

Sealed Bids

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received and when the bid received is substantially more than the independent cost estimate, and where the housing authority cannot reasonably determine price reasonableness, the PHA must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

Competitive Proposals

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, the housing authority must compare the price with the independent cost estimate. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the independent cost

estimate, the PHA must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

Contract Modifications

A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through sealed bids, competitive proposals, or non-competitive proposals, or for projects originally procured through small purchase procedures and the amount of the contract modification will result in a total contract price in excess of the Simple Acquisition Threshold.

SOLICITATION AND ADVERTISING

Method of Solicitation

Petty Cash and Micro Purchases

The housing authority may contact only one source if the price is considered reasonable.

Small Purchases

Quotes may be solicited orally, through fax, via email, or by any other reasonable method.

Sealed Bids

Solicitation will be conducted publicly. The housing authority will use one or more following solicitation methods, provided that the method employed provides for meaningful competition.

1. Advertising in newspapers or other print mediums of local or general circulations.
2. Advertising in various trade journals or publications (for construction).
3. The PHA may conduct its public procurements through the Internet using e-procurement systems.

Competitive Proposals

The PHA will maintain a list of firms that have expressed interest in providing a particular type of service. Requests for Proposals will be solicited from all interested parties.

Time Frame

For purchases of more than the Simplified Acquisition Threshold amount, the public notice should run not less than once each week for two consecutive weeks.

Form

Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact person who can provide a copy of, and information about, the solicitation, and a brief description of the needed item(s).

Time Period for Submission of Bids

A minimum of 30 days shall generally be provided for preparation and submission of sealed bids and 15 days for competitive proposals. However, the Executive Director may allow for a shorter period under extraordinary circumstances.

Cancellation of Solicitations

An Invitation for Bid (IFB), Request for Proposal (RFP), or other solicitation may be cancelled before bids/offers are due if:

1. The supplies, services or construction is no longer required;
2. The funds are no longer available;
3. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
4. Other similar reasons.

A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:

1. The supplies or services (including construction) are no longer required;
2. Ambiguous or otherwise inadequate specifications were part of the solicitation;
3. All factors of significance to the PHA were not considered;
4. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
5. There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
6. For good cause of a similar nature when it is in the best interest of the PHA.

The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.

A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.

If all otherwise acceptable bids received in response to an IFB are at unreasonable prices an analysis should be conducted to see if there is a problem in either the specifications or the PHA's cost estimate. If both are determined adequate and if only

one bid is received and the price is unreasonable, the Contracting Officer may cancel the solicitation and either;

1. Re-solicit using an RFP; or
2. Complete the procurement by using the competitive proposal method. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of the PHA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.

If problems are found with the specifications, the PHA should cancel the solicitation, revise the specifications and re-solicit using an IFB.

Credit (or Purchasing) Cards

Credit card usage should follow the rules for all other small purchases. For example, the Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Contracting Officer would generally need to have obtained a reasonable number of quotes before purchasing via a credit card.

When using credit cards, the PHA should adopt reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

No individual purchase shall be made on a PHA credit card that exceeds \$500.00 without the prior written approval of Executive Director or designee. All purchases shall fit within the existing budget for that item. Adequate documentation shall be maintained by the user of the credit card so that when the bill is received for payment, each charge can be documented as to the reason for the charge.

PHA BONDING REQUIREMENTS §200.325

The standards under this section apply to construction contracts that exceed the small purchase limit. There are no bonding requirements for small purchases or for competitive proposals. The PHA may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bonds.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the housing authority provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements will be as follows:

- A. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” will consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
- C. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

The payment bond may be any one of the following four:

- 1. A performance and payment bond in a penal sum of 100% of the contract price; or
- 2. Separate performance and payment bonds, each for 50 % or more of the contract price; or
- 3. A 20 % cash escrow; or
- 4. A 25 % irrevocable letter of credit.

Bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the state where the work is to be performed. Individual sureties shall not be considered. U. S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing government contracts, the maximum underwriting limits on each contract bonded, and the states in which the company is licensed to do business. Use of companies on this circular is mandatory.

CONTRACTOR QUALIFICATIONS AND DUTIES

Contractor Responsibility

PHAs shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

- 1. Have adequate financial resources to perform the contract, or the ability to obtain them;
- 2. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder’s/offeror’s existing commercial and governmental business commitments;
- 3. Have a satisfactory performance record;
- 4. Have a satisfactory record of integrity and business ethics;
- 5. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;

6. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
7. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not being suspended, debarred or under a HUD-imposed Limited Denial of Participation (LDP).

If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

Vendor Lists

All interested businesses shall be given the opportunity to be included on vendor mailing lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough sources to ensure competition.

CONTRACT PRICING ARRANGEMENTS

Contract Types

Any type of contract which is appropriate to the procurement and which will promote the best interests of the housing authority may be used, **provided the cost -plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used.** All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and the PHA.

For all cost reimbursement contracts, the PHA must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.

Options

Options for additional quantities or performance periods may be included in contracts, provided that:

1. The option is contained in the solicitation;
2. The option is a unilateral right of the PHA;
3. The contract states a limit on the additional quantities and the overall term of the contract;
4. The options are evaluated as part of the initial competition;
5. The contract states the period within which the options may be exercised;
6. The options may be exercised only at the price specified in or reasonably determinable from the contract; and

7. The options may be exercised only if determined to be more advantageous to the housing authority than conducting a new procurement.

CONTRACT ADMINISTRATION

The PHA shall maintain a system of contract administration designed to ensure that contractors perform in accordance with their contracts. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters. For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in HUD Handbook 2210.18.

SPECIFICATIONS

General

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying the PHA's needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Function or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

Limitation

The following types of specifications shall be avoided:

1. Geographic restrictions not mandated or encouraged by applicable Federal law (except for A/E contracts, which may include geographic location as a selection factor if adequate competition is available);
2. Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).

Nothing in this procurement policy shall preempt any state licensing laws. Specifications shall be reviewed to ensure that organizational conflicts of interest do not occur.

APPEALS AND REMEDIES

General

It is the housing authority's policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to HUD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

Informal Appeals Procedure

The PHA will utilize an informal bid protest/appeal procedure for contracts under the small purchase limit. Under these procedures, the bidder/contractor may request to meet with the Contracting Officer and try to resolve the dispute.

Formal Appeals Procedure

A formal appeals procedure has been established for solicitations/contracts in excess of the small purchase limit.

Bid Protest

Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy.

All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.

Contractor Claims

All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in the PHA. Construction Contract claims shall be governed by the Changes clause in the form HUD-5370.

CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS §200.321

Required Efforts

Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, all feasible efforts shall be made to ensure that small and minority-owned businesses, women's business enterprises, and other individuals or firms located in, or owned in, substantial part by persons residing in the area of the housing authority's development(s) are used when possible. Such efforts shall include, but shall not be limited to:

A. Affirmative steps may include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.
- (7) Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in **24 CFR Part 135** (so-called Section 3 businesses).

The housing authority has established the following annual goals that represent a percentage of the dollar value of contracting and procurement activities conducted by the housing authority during the federal fiscal year:

- A. *Management (Operating Funds) Goal:* Ten percent of the amount expended for the overall management operations for contracts and purchases of supplies and services.
- B. *Modernization Goal (Capital Funds):* Twenty percent of the dollar value of the total contracts awarded and purchases made with modernization funds.
- C. *Development (New Construction) Goal:* Five percent of the dollar value of the total contracts awarded and purchases made under a development program.

In an attempt to reach these goals, the Authority will maintain an up-to-date list of qualified MBE/WBE/Section 3 contractors and suppliers within its jurisdiction and will provide these contractors and suppliers with the opportunity to provide price quotes on materials and supplies. The list will maintain MBE/WBE/Section 3 by program categories, including the company name, professional category or trade, dollar amount, and race or national origin. This list of contractors and suppliers will be made available and provided to any general contractor.

It is expressly understood that the adoption of this policy statement by the Board of Commissioners of the housing authority is to establish a MBE/WBE/Section 3 goal and is not to be construed as a quota.

Definitions

Small Business

Defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in **13 CFR Part 121** should be used to determine business size.

Minority-Owned Business

Defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

Women's Business Enterprise

Defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.

Labor Surplus Area Business

Defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the DOL in **20 CFR Part 654**, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

BOARD APPROVAL OF PROCUREMENT ACTIONS

The Board of Commissioners has appointed the Executive Director to be the Contracting Officer for the housing authority. The Contracting Officer is authorized to award and execute all procurement activities on behalf of the housing authority without approval by the Board of Commissioners.

DELEGATION OF CONTRACTING AUTHORITY

The Executive Director is responsible for ensuring that the housing authority's procurements comply with this Policy. The Executive Director may delegate all procurement authority within the limitations established under the section entitled "Board Approval of Procurement Actions".

Further, and in accordance with this delegation of authority, the Executive Director shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described herein, consistent with federal, state, or local law.

DOCUMENTATION

The housing authority must maintain records sufficient to detail the significant history of each procurement action. These records shall include, but shall not necessarily be limited to, the following:

1. Rationale for the method of procurement (if not self-evident);
2. Rationale of contract pricing arrangement (also if not self-evident);
3. Reason for accepting or rejecting the bids or offers;
4. Basis for the contract price (as prescribed in this handbook);
5. A copy of the contract documents awarded or issued and signed by the Contracting Officer;
6. Basis for contract modifications; and
7. Related contract administration actions.

The level of documentation should be commensurate with the value of the procurement.

Records are to be retained in accordance with the Housing Authority's Records Disposition Policy.

DISPOSITION OF SURPLUS PROPERTY

Property no longer necessary for the PHA's purposes (non-real property) shall be transferred, sold, or disposed of in accordance with applicable federal, state, and local laws and regulations and the housing authority's Disposition Policy.

FUNDING AVAILABILITY

Before initiating any contract, the housing authority shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or modification.

Federal awarding agency or pass-through entity review. §200.324

- A. The housing authority will make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the housing authority desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- B. The housing authority will make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
 - (1) The housing authority's procurement procedures or operation fails to comply with the procurement standards;
 - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 - (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

- C. The housing authority is exempt from the pre-procurement review of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
- (1) The housing authority may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these federal standards in order for its system to be certified. Generally, these reviews will occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;
 - (2) The housing authority may self-certify its procurement system. Such self-certification will not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the housing authority that it is complying with the federal standards. The housing authority will cite specific policies, procedures, regulations, or standards as being in compliance with the federal requirements and have its system available for review.

SELF-CERTIFICATION

The Authority self-certifies that this Procurement Policy, and the PHA's procurement system, complies with all applicable federal regulations and, as such, the PHA is exempt from prior HUD review and approval of individual procurement action.

CONTRACT PROVISIONS §200.326

All contracts made by the housing authority under the Federal award will contain provisions covering the following, as applicable.

- A. Contracts for more than the simplified acquisition, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, will address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. All contracts in excess of \$10,000 will address termination for cause and for convenience by the housing authority including the manner by which it will be effected and the basis for settlement.
- C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 will include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

- D. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities will include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors will be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors will be required to pay wages not less than once a week. The housing authority will place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract will be conditioned upon the acceptance of the wage determination. The housing authority will report all suspected or reported violations to the Federal awarding agency. The contracts will also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient will be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The housing authority will report all suspected or reported violations to the Federal awarding agency.
- E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the housing authority in excess of \$100,000 that involve the employment of mechanics or laborers will include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor will be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic will be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient will comply with the requirements of 37

CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

- G. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub-grants of amounts in excess of \$150,000 will contain a provision that requires the contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations will be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- H. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) will not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 will file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier will also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the housing authority.

CONTRACT CLAUSES

All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the PHA.

Additionally, the forms HUD-5369 (Instructions to Bidders), 5369-A (Representations, Certifications and Other Statements of Bidders), 5369-B (Instructions to Offerors-Non-Construction), 5369-C (Certifications and Representations of Officers Non-Construction), 5370 (General Conditions of the Contract for Construction Public and Indian Housing), 5370-C (General Contract Conditions Non-Construction), and 51915-A (Contract Provision Required by Federal Law), which contain all HUD-required clauses and certifications for contracts of more than \$100,000, as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by the housing authority.