

**Housing Authority of the City of Williamson
Williamson, West Virginia**

PROCUREMENT POLICY

Adopted by PHA Board of Commissioners

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Procurement Policy

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PROCUREMENT POLICY

This Procurement Policy complies with the Annual Contributions Contract (ACC) between the Housing Authority of the City of Williamson and the HUD, Federal Regulations at 2 CFR Part 200, the Uniform Administrative Requirements, Cost Principles, and Audits Requirements for Federal Awards, the procurement standards of the Procurement Handbook for Public Housing Agencies, HUD Handbook 7460.8, Rev 2, and applicable State and Local laws.

This Public Housing Agency (herein known as PHA) has chosen to use the same policy for administering all federal programs as applicable by program requirements and for the purpose of operational efficiency and cost savings, e.g. small purchases.

This agency's policy is written to conform to HUD's guidance in support of asset management as applicable. The PHA may elect different organizational approaches to purchasing to include those that are centralized, partially centralized or decentralized, all of which are permissive. However, the PHA is responsible for assuring compliance with all applicable rules and regulations and will establish written procedures for implementation.

CHAPTER 1. GENERAL PROVISIONS

The Housing Authority of the City of Williamson shall:

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

The following outlines: applicability of this policy; procurement administration responsibilities; procurement methods, equal employment opportunity, requirements for contracting with small businesses, minority-owned firms and labor surplus area firms; Section 3 goals and objectives; appeals and remedies; and, code of conduct/ethics.

A. Applicability

This Procurement Policy applies to all procurement actions involved with the PHA's procurement of good, supplies, equipment, services and construction regardless of the source of funds, except as noted under "exclusions," below consistent with the law.

When both HUD 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, HUD 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.

Nothing in this Policy shall prevent the PHA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law.

B. Definition

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

- Good, supplies, equipment and materials,
- Construction and maintenance,
- Consultant services,
- Architectural and Engineering (A/E) services,
- Social services, and
- Other services

C. Exclusions

This policy does not govern administrative fees earned under the Section 8 program, the execution of landlord Housing Assistance Payment contracts under that program, or non-program income, e.g., fee for service revenue under 24 CFR Part 990. These excluded areas are subject to applicable State and local requirements.

D. Changes in Laws 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 this Policy, automatically supersede this Policy.

E. 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 West Virginia Freedom of Information or Opens Records Act.

CHAPTER 2. BOARD APPROVAL OF PROCUREMENT ACTIONS

Approval by the Board of Commissioners is not required for any procurement action, as permitted under State and local law other than approval of this Procurement Policy. It is the responsibility of the Board approved contracting officer who will be the Executive Director unless, otherwise appointed by the Board of Commissioners, to make sure that all procurement actions are conducted in accordance with the policies contained herein.

CHAPTER 3. ADMINISTRATION AND DELEGATION OF CONTRACTING AUTHORITY

A. Authority and Delegation

Although the Executive Director is responsible for ensuring that the PHA's procurements comply with this Policy, the Executive Director may delegate all procurement authority as is necessary and appropriate to conduct the business of the PHA.

The Executive Director shall be responsible for developing operational procedures, procurement forms and documents to implement this Policy and a system of sanctions for violations of the ethical standards described below under Ethics in Public Contracting. All procurement and forms will be consistent with state and Federal regulations and Procurement Handbook No. 7460.8 REV 2 for Public Housing Agencies.

It is the responsibility of the Executive Director regardless of the authority delegated, to:

- Use sound judgment in accomplishing the procurement activities of the PHA;
- Ensure that bidders and contractors receive fair, impartial, and equitable treatment;
- Ensure that contract actions comply with all applicable Federal, state and local laws and rules and with the PHA's approved procurement policy;
- Seek the greatest overall benefit and best value for the PHA in response to the needs desired;
- Procurement requirements are subject to an annual planning process to assure economical and efficient purchasing;
- Verify that the procurement documents clearly specify the appropriate products, construction effort, and/or services, and the history of each procurement is fully documented; including the method of procurement, the selecting of contract type, rationale for selecting offers, and the basis for the contract price;
- For all procurement other than small purchases, public notice is given at least ten (10) days (unless otherwise required per West Virginia law) before Solicitation responses to notices are honored to the maximum extent practical. A minimum of fifteen (15) days (or other time period if required per West Virginia law) is allowed for preparation and submission of bids or proposals and to make notices of awards available to the public;
- Solicitation procedures are conducted in full compliance with Federal standards or more stringent State and local laws in accordance with 2 CFR Part 200.319. Non-HUD related properties will follow appropriate state laws and other pertinent restrictions.
- An independent cost estimate (ICE) shall be prepared for all purchases above the Micro Purchase threshold prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.
- Contract award is made to the responsive and responsible bidder offering the lowest price (in sealed bid situations); or contract award is made to the offeror whose proposal offers the greatest value to the PHA, considering price and technical factors, as specified in the solicitation (competitive proposal situations);
- Unsuccessful firms are notified within ten (10) days (or other period required per West Virginia law) after contract award;

- There are sufficient unencumbered funds available to cover the anticipated cost before a contract award or modification, work is inspected before payment, and payment is made promptly for work accepted; and,
- The PHA complies with applicable HUD review requirements.
- That PHA staff and responsible bidders comply with Section 3 requirements. Bidders and staff should refer to the PHA's adopted Section 3 Plan.

Each purchase action or contract (e.g., new contract, modification, interagency agreement, purchase order, etc.) that obligates the PHA to pay a contractor or vendor must be signed or otherwise authorized by an individual to whom the PHA has expressly authorized the authority to make such an obligation.

If an individual is not an authorized Contracting Officer, that individual must not bind the PHA by making any implied contract such as by making a promise or stating intent to purchase, either orally or in writing. Under the laws governing the PHA and apparent authority, the PHA may be liable for, or bound by, the acts of a PHA employee, if such person (who is not a Contracting Officer) appears to be an offeror to have been given authority by the PHA. Therefore, all actions that could be misinterpreted as committing the PHA to purchase should be clarified with a statement such as, "*This request for price quotation is not an offer to buy and should not be assumed as such.*"

CHAPTER 4. ETHICS IN PUBLIC CONTRACTING

The PHA hereby establishes this code of standards (conduct/ethics) regarding procurement issues and actions and shall implement a system of sanctions for violations as required by 2 CFR Part 200.318 (c). This code of conduct/ethics is consistent with applicable Federal, State, or local law.

A. Conflicts of Interest

No PHA employee, officer, Board member, or agent of the PHA shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. This type of conflict would be when one of the persons listed below has a financial or any other type of interest in a firm competing for the award:

- An employee, officer, Board member, or agent involved in making the award;
- His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister);
- His/her partner; or
- An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

Neither the PHA nor any of its contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under the ACC in which any of the following classes of people have an interest, direct or indirect, during his or her tenure or for one year thereafter:

- Any present or former member or officer of the governing body of the PHA, or any member of the officer's immediate family.
- There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the PHA or a business entity.
- Any employee of the PHA who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.
- Any public official, member of the local governing body, State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) of the PHA.

No present or former PHA employee, officer, or agent shall engage in selling or attempting to sell supplies, services, or construction to the PHA for one year following the date such employment ceased. The term "sell" means signing a bid or proposal, negotiating a contract, contacting any PHA employee, officer, or agent for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling contract disputes; or any other liaison activity with a view toward the ultimate consummation of a sale, although the actual contract is negotiated by another person.

Note: For additional important provisions, see HUD Form 53012A (7/95), ACC: Part A – Terms and Conditions, Section 19 – Conflict of Interest.

B. Gratuities, Kickbacks, and Use of Confidential Information

No officer, employee, Board member, or agent shall ask for or accept gratuities, favors, or items from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

C. Prohibition Against Contingent Fees

Contractors who want to do business with the PHA 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.

CHAPTER 5. PROCUREMENT PLANNING

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

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

- Maximize competition and competitive pricing among contractors and decrease the PHA's procurement costs;
- Reduce PHA administrative costs;
- Ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and
- 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.

CHAPTER 6. PURCHASING METHODS

Based upon determination that the required goods or services will be purchased directly by the PHA, one of the following procurement methods will be chosen based on the nature and anticipated dollar value of the total requirement.

A. Petty Cash Purchases

The PHA is not authorized the use of Petty Cash.

B. Small Purchases

For purchases not exceeding \$25,000, the PHA use the small purchase procedures authorized in this section. Under small purchase procedures, the PHA shall obtain a reasonable number of quotes, preferably three.

Contract requirements shall not be artificially divided in order to constitute a small or micro purchase, thereby avoiding the more formal requirements associated with the other procurement methods discussed below, except as may be reasonably necessary to comply with Assistance to Small, Other Businesses and Section 3 of this policy.

Small purchases must be distributed among qualified sources to the extent practicable and to promote competition. Small purchases 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 PHA. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file.

- Micro Purchases: For purchases for supplies or services that aggregately do not exceed \$2,500 or \$2,000 for construction services subject to Davis-Bacon Act, 2 CFR Part 200.320(a).
- Quote: Only one quote is required provided the quote is considered reasonable.

No formal cost or price analysis is required for petty cash or micro purchases. The Contracting Officer's execution of a contract, purchase orders or other means shall serve as the determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.

- Small Purchases: Purchases that do not exceed the \$25,000, of the small purchase threshold.

- Quotes: The PHA must obtain price or rate quotations from an adequate number of qualified sources quotes (preferably three or more).

Award shall be offered, providing lowest acceptable quotation, unless justified in writing based on price and other specific factors. If non-price factors are used, they shall be made known to all those solicited.

- Purchase Orders: The issuance of a Purchase Order by the PHA and its acceptance by the contractor (either through performance or signature on the purchase order) constitute a contract. The Purchase Order will clearly specify the item(s) or service(s) being purchased and the terms and conditions of the purchase.

The Purchase Order will contain information regarding scope of work/service to be provided, price, delivery, method of payment, inspection, and acceptance. Additional terms and conditions may be added depending on the nature and complexity of the work requested.

Mandatory provisions may be found in HUD's Mandatory Forms listed in Chapter 24 of this policy. The PHA will ensure that all necessary contract clauses are included in its Purchase Orders or in its Request for Quotes, providing the latter are referenced, and made part of the Purchase Order.

All purchases shall be made by standard purchase order. Purchase orders exceeding \$500 (default amount) shall be stamped or signed by the Executive Director (or designee) to verify that sufficient and unencumbered funds are available for payment.

The names, addresses, and/or telephone numbers of the firms/persons contacted, the date and amount of each quote received, shall be recorded and maintained as a public record unless otherwise provided in State or local law.

C. Sealed Bids

Sealed bidding shall be used for all procurement contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this document. Under sealed bids, the PHA publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the *responsible bidder* whose bid, conforming with all the material terms and conditions of the Invitation for Bid (IFB), is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$150,000.

- Conditions for Using Sealed Bids. The PHA shall use the sealed bid method if the following conditions are present:
 - A complete, adequate, and realistic statement of work, specification, or purchase description is available;
 - Two or more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and
 - The selection of the successful bidder can be made principally on the lowest price.

- Solicitation and Receipt of Bids. An IFB is issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids received will be date and time-stamped and stored unopened in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.
- Bid Opening and Award. Bids shall be opened publicly. All bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The method for doing this shall be stated in the IFB. If only one responsive bid is received from a responsible bidder,
- Award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis.
- Mistakes in Bids.
 - Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening.
 - After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended.
 - A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made.

All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the PHA or fair competition shall not be permitted.

D. Competitive Proposals

Competitive proposals are the preferred method for procuring professional services and can also be used for other goods and services that will exceed the small purchase threshold of \$25,000, and where conditions are not appropriate for the use of sealed bidding.

The competitive proposal method, unlike sealed bidding, allows:

- Consideration of technical factors other than price;
- Discussion with offerors concerning offers submitted;
- Negotiation of contract price or estimated cost and other contract terms and conditions;
- Revision of proposals before the final contractor selection; and
- 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.

Additionally, purchase authorization shall be stamped or signed by the Executive Director (or designee) to indicate that sufficient and unencumbered funds are available for payment.

- **Form of Solicitation.** Competitive proposals, other than Architectural/Engineering (A/E) services, shall be solicited through the issuance of a Request for Proposal (RFP). The RFP shall clearly identify the importance and relative value of each of the evaluation factors, as well as, any sub-factors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established **before** the solicitation is issued. 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** award. The PHA 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.
- **Evaluation.** Proposals shall be evaluated only on the criteria stated in the RFP. The PHA 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 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.

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.

These negotiations may include bargaining that includes:

- Persuasion,
- Alteration of assumptions and positions,
- Give-and-take,
- May apply to price, schedule, technical requirements, type of contract, or
- Other terms of a proposed contract.

NOTE: 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 PHA's ability to obtain 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 PHA provided that the price is within the maximum total project budgeted amount established for the specific property or activity.
- A/E Services. The PHA shall contract for A/E services using Qualifications Based Selection (QBS) procedures, utilizing a RFQ. Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitors' 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, though architectural/engineering firms are potential sources or offerors.

E. Noncompetitive Proposals

Conditions for Use. Procurement by noncompetitive proposals (sole-source) may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, and if one of the following applies, per CFR Part 200.320(f):

- The item is available only from a single source, based on a good faith review of available sources;
- An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the PHA personnel or residents, 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;
- HUD authorizes the use of noncompetitive proposals; or
- 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:

- Description of the requirement;
- History of prior purchases and their nature (competitive vs. noncompetitive);
- The specific exception in 2 CFR Part 200.320(f)(1)-(4) which applies;
- Statement as to the unique circumstances that require award by noncompetitive proposals;
- 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.);
- Statement as to efforts that will be taken in the future to promote competition for the requirement;
- Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
- Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

F. Cooperative Purchasing/Intergovernmental Agreements/GSA

The PHA may enter into Federal, 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. The interagency agreement, if used, 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 PHA 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 Part 200.320.

G. General Services Administration (GSA) Purchasing

The PHA may utilize cooperative purchasing, subject to any limitations that may be established under state and local laws and procedures, to purchase certain items offered through the GSA under "GSA Schedule 70". Purchases are limited to the following automated data processing equipment: firmware, software, supplies, support equipment, and services. Other GSA Government wide Acquisition Contracts (GWACs) are not authorized for use by public housing agencies.

H. Independent Cost Estimate (ICE) and Reasonableness of Price

For all purchases above the Micro Purchase threshold, the PHA shall prepare an ICE prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

Under competitive procurement or quote process a comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further cost or price analysis is required.

If a reasonable number of quotes, bids, or proposals 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 (ICE), or any other reasonable basis.

CHAPTER 7. PROCUREMENT FOR LEGAL SERVICES

The costs of legal services incurred under HUD grants (including those obtained under contract) must be reasonable and necessary in accordance with 2 CFR Parts 200.435 and 200.459 and as required, will be solicited through appropriate procurement methods.

Legal services contracts are subject to the requirements set forth in 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," in particular, 2 CFR Part 200.435. 2 CFR Part 200.435 contains a set of cost principles the PHA will use to determine the allowability of costs incur under Federal grants and will follow guidance provided. Contracts for litigation services are also to meet the requirements of the HUD Litigation Handbook 1530.1 REV-5 dated May 2004 (the "Litigation Handbook").

A. Procurement Methods for Legal Services

According to 2 CFR Part 200, the PHA may use all of the contracting methods listed below and previously described, but are expected to choose the method of procurement that is reasonable based on the facts surrounding the particular situation.

- Small Purchase Procedures. Price or rate quotations will be obtained from an adequate number of qualified sources if relatively simple and informal small purchase methods are used 2 CFR Part 200.320(b).
- Competitive Proposals. This is the generally preferred method when procuring professional services because it allows for the consideration of technical quality or other factors (in addition to hourly rates) for securing services estimated.
 Either a fixed-price or cost reimbursement type contract may be awarded. If this method is used, the conditions in 2 CFR Part 200.320(d) must be followed.
- Noncompetitive Proposals. Are not recommended

B. Types of Legal Contracts

- Time and Materials Contracts. Legal services can be procured on an hourly basis using a type of contract known as time-and-materials (or sometimes, “labor-hour”) contracts. The contractor’s services are pre-priced in the contract (usually, in terms of hours) and the PHA orders services in unit amounts (e.g., hours) as needed until the funds in the contract are exhausted. PHAs may use this type of contract only after the PHA determines that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. 2 CFR Part 200.318(j)
- Obtaining Legal Services by Procurement or Employment Methods. PHAs may employ an attorney directly (house counsel) in accordance with the PHA’s Personnel Policy, or the PHA may enter into a procurement contract with an attorney or law firm. The procurement of legal services shall follow the procedures previously outlined under “Procurement Methods for Legal Services”, this section 2 CFR Part 200.459.
 - PHA house counsel is ineligible to receive procurement contracts for legal services. All services of the PHA house counsel would be part of his/her employment contract and are not to be procured separately. Where legal services are desired outside of the scope of services provided by the PHA house counsel, PHAs may use one of the procurement procedures previously described.

C. Contracts for Litigation Services

- General Requirements and HUD Regional Counsel Approval. PHA must submit to HUD Regional Counsel, for prior written concurrence, any litigation service contract where the fee is expected to exceed \$100,000 with a private attorney involving PHA program, project, or activity receiving loan, grant, or other subsidy assistance from HUD with the exception of litigation involving a PHA acting as a Section 8 private developer. Such contracts shall make provision for reasonable fees and reimbursement of necessary expenses. If additional funding or budget revision will be required to cover the cost of litigation services, the PHA shall consult appropriate Field and Regional Offices staff.
- Contract Addendum – Legal Services Protocol. The PHA shall include contract provisions as recommended by HUD into all legal service contracts executed and/or administered by PHAs, unless no federally provided funds will be used to administer the contract.

CHAPTER 8. COST AND PRICE ANALYSIS

The PHA shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions before entering into a contract. However, according to HUD Procurement Handbook 7460.8 REV 2, *“the number of times that a PHA will need to conduct a cost analysis will be limited given that most purchases will be of a commercial nature and based on adequate competition.”*

A. Petty Cash and Micro Purchases

Neither a formal cost nor price analysis is required. 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.

B. 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 ICE, or any other reasonable basis.

C. Sealed Bids

Price reasonableness is generally established with the presence of adequate competition. Where sufficient bids are not received, and when the bid received is substantially more than the ICE, and where the PHA cannot reasonably determine price reasonableness, the PHA will conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

D. Competitive Proposals

The presence of adequate competition is generally sufficient to establish price reasonableness. The PHA must compare the price with the ICE if sufficient proposals are not received. The PHA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable when prices cannot be easily compared among offerors, if there is inadequate competition, or when the price is substantially greater than the ICE.

E. 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 \$25,000.

CHAPTER 9. SOLICITATION, ADVERTISING AND FAIR COMPETITION

A. Fair and Open Competition

The Agency Contracting Officer(s) shall promote and provide for fair, full and open competition in soliciting offers and awarding Agency contracts. Contracting Officer(s) shall provide fair, full, and open competition through the use of competitive methods and procedures contained in this policy and the Agency's Procurement Procedures Manual. The competitive bidding process must be fair and open. "Fair" means that all bidders are treated the same and that no bidder/proposer/offeror has advance knowledge of the project information. "Open" means there are no secrets in the process – such as information

shared with one bidder, but not with others – and that all bidders know what is required of them.

The Agency is prohibited from using state or local geographical preferences in evaluating bids or proposals (except where applicable Federal statutes expressly mandate or encourage geographical preferences, such as HUD's Section 3 requirements in 24 CFR Part 135.11 and 2 CFR Part 200.319. When contracting for architectural and engineering (A/E) design 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.

The Agency will use the procurement methods previously stated in this Policy that are best suited to the circumstances of the contract action and consistent with the need to fulfill the Agency's requirements efficiently. Only the following exceptions to fair, full, and open competition are acceptable and must be justified in writing in the procurement file:

1. Only one responsible source and no other supplies or services will satisfy Agency requirements
2. Unusual and compelling urgency
3. Services of an expert or neutral person for any current or anticipated litigation or dispute
4. An acquisition is expressly authorized or required by statute

B. Method of Solicitation

- Petty Cash and Micro Purchases. The PHA may contact only one source if the price is considered reasonable.
- Small Purchases. Quotes may be solicited orally, through fax, email, or by any other reasonable method.
- Sealed Bids and Competitive Proposals. Solicitation must be done publicly. The PHA must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.
 - Advertising in newspapers or other print mediums of local or general circulations.
 - Advertising in various trade journals or publications (for construction).
 - E-Procurement. The PHA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 24 CFR Part 200.320, State and local requirements, and the Authority's procurement policy.

C. Time Frame

For purchases of more than \$25,000, the public notice should run not less than once each week for two consecutive weeks.

D. Time Period for Submission of Bids or Proposals

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

Solicitation procedures are conducted in full compliance with Federal standards or more stringent State and local laws that are consistent with 2 CFR Part 200.320. Non-HUD related properties will follow appropriate state laws and other pertinent restrictions.

E. Composition or Form

Notices/advertisements should state, at a minimum, the following:

- Place
- Date
- Time (that the bids or proposals are due),
- Solicitation number
- The name of a contact who can provide a copy and information about the solicitation, and
- A brief description of the needed item(s) or services.

F. Cancellation of Solicitations

1. An Invitation for Bids (IFB), Request for Proposal (RFP), or other solicitation may be cancelled before bids/offers are due if:
 - The supplies, services or construction is no longer required;
 - The funds are no longer available;
 - Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
 - Other similar reasons.
2. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
 - The supplies or services (including construction) are no longer required;
 - Ambiguous or otherwise inadequate specifications were part of the solicitation;
 - All factors of significance to the PHA were not considered;
 - Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - 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
 - For good cause of a similar nature when it is in the best interest of the PHA.

3. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.
4. 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.
5. 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:
 - Re-solicit using an RFP; or
 - 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.
6. If problems are found with the specifications, PHA should cancel the solicitation, revise the specifications and re-solicit using an IFB.

G. Credit (or Purchasing) Cards

Credit card usage should follow the rules for all other small purchases such as:

- The Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable.
- 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.

The PHA will adopt reasonable safeguards to assure that credit cards are used only for intended purposes, such as, limiting the types of purchases or the amount of purchases that are permitted with credit cards. See Credit Card Policy.

CHAPTER 10. BONDING REQUIREMENTS

There are no bonding requirements for small purchases or for competitive proposals per federal guidelines. (2 CFR Part 200.325) The standards under this section apply to construction contracts that exceed the Simplified Acquisition Threshold of \$150,000, per federal regulations, or State law. **State guidelines must be followed if stricter than federal regulations.** The PHA may require bonds in other circumstances when deemed appropriate. However, non-construction contracts should generally not require bid bonds.

- Bid Bonds. For construction contracts exceeding \$150,000 (federal regulation), offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.

The bid guarantee must consist of a firm commitment such as a bid bond, certified check, federal bank's irrevocable letter of credit, 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 when the time specified.

- Performance and Payment Bonds. For construction contracts exceeding \$150,000 (federal regulation), the successful bidder (contractor) shall furnish the following performance and payment bond(s).
 - 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.
 - 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 contract

NOTE: *A payment bond is required by West Virginia law if the construction contract is in excess of \$25,000. A performance bond is required by West Virginia law if construction is in excess of \$25,000. **The stricter requirement between federal regulation and State law must be followed.***

- These 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.**

CHAPTER 11. CONTRACTOR QUALIFICATIONS AND DUTIES

A. Contractor Responsibility

The PHA 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:

- Have adequate financial resources to perform the contract, or the ability to obtain them;
- 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;
- Have a satisfactory performance record;
- Have a satisfactory record of integrity and business ethics;
- Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,

- Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not being suspended, debarred or under a HUD-imposed 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.

B. Suspension and Debarment

The PHA shall not award contracts to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (2 CFR Part 200.212) or by other Federal agencies, e.g., Department of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings.

C. Vendor Lists

All interested businesses shall be given the opportunity to be included on vendor mailing or email 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.

D. Equal Employment Opportunity (EEO)

The PHA will incorporate or cause to be incorporated into any contract the following equal opportunity clause or another HUD approved EEO clause for construction or modification work, which is paid for in whole or in part with funds obtained under the ACC:

During the performance of this contract, the contractor agrees as follows:

1. The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity or national origin. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated properly during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity or national origin. Such action shall include, but is not limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post notices, to be provided by the PHA, setting forth the provisions of this equal opportunity clause in conspicuous places, available to employees and applicants for employment.
2. The contractor shall state in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.
3. The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the PHA advising the labor union or workers' representative of the

contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965 (as amended July 21, 2014), and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor shall furnish all information and reports required by Executive Order No. 11246, and by rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and shall permit access to his books, records, and accounts by the Government and the Secretary for Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the contractor's noncompliance with the equal opportunity clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contract in accordance with procedures authorized in Executive Order No. 11246 and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.
7. The contractor shall include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraph (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 so that such provisions shall be binding upon each subcontractor or vendor. The contractor shall take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The PHA will assist and cooperate actively with the Government and the Secretary of Labor in obtaining compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, and will furnish the Government and the Secretary of Labor such information as they may require for the supervision of such compliance, and will otherwise assist the Government in the discharge of the Government's primary responsibility for securing compliance.

The PHA will not enter into any contract modification subject to Executive Order No. 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the Government or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

The PHA will not participate in a contractual or other relationship that has the effect of subjection of a qualified applicant(s) with a handicap(s) or an employee(s) with handicaps to discrimination prohibited by Federal regulation. The relationships referred to in this paragraph include relationships with employment and referral agencies, labor union, organizations providing or administering fringe benefits to employees of the PHA, and organizations providing training and apprenticeship programs.

CHAPTER 12. CONTRACT PRICING ARRANGEMENTS

A. Contract Types

Any type of contract which is appropriate to the procurement and which will promote the best interests of the PHA 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 PHA.

For all cost reimbursement contracts, 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.

B. Options

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

- The option is contained in the solicitation;
- The option is a unilateral right of the Authority;
- The contract states a limit on the additional quantities and the overall term of the contract;
- The options are evaluated as part of the initial competition;
- The contract states the period within which the options may be exercised;
- The options may be exercised only at the price specified in or reasonably determinable from the contract; and
- The options may be exercised only if determined to be more advantageous to PHA than conducting a new procurement.

CHAPTER 13. 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, 5369-A, 5369-B, 5369, 5370, 5370-C, and 51915-A , which contain all HUD-required clauses and certifications for contracts of more than \$150,000 (federal regulation), as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by this PHA. All contracts shall contain a termination clause which complies with Form HUD-5370 or Form HUD-5370-C is made part of the contract by reference or attachment.

CHAPTER 14. 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 conjunction with 2 CFR Part 200 Subpart E.

CHAPTER 15. SPECIFICATIONS

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying PHA 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.

A. Limitation

The following types of specifications shall be avoided:

- Geographic restrictions not mandated or encouraged by applicable Federal law (except for A/E design contracts, which may include geographic location as a selection factor if adequate competition is available);
- 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.

CHAPTER 16. APPEALS, DISPUTES, PROTESTS, CLAIMS AND REMEDIES

It is PHA 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.

A. Informal Appeals Procedure

The PHA shall adopt an informal bid protest/appeal procedure for contracts of \$100,000 or less (see PHA's Procurement Procedures Manual). Under these procedures, the bidder/contractor may request to meet with the appropriate Contract Officer.

Contracting Officer is responsible for receipt and processing all appeals, protests, claims and remedies. The Contracting Officer may assign an impartial Agency employee or another independent third party to investigate and decide protest and remedies. The PHA's Executive Director, if not serving as Contracting Officer, will hear and handle any appeal of the initial protest decision by the Contractor or prospective Contractor.

B. Formal Appeals Procedure

A formal appeals procedure shall be established for solicitations/contracts of more than \$100,000.

- 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. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contractor receives notice of the contract award, or the protest will not be considered. 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 PHA. Contractor claims shall be governed by the Changes clause in the form HUD-5370.

CHAPTER 17. ASSISTANCE TO SMALL, OTHER BUSINESSES AND SECTION 3

A. Required Efforts

Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, The PHA shall make all feasible efforts to ensure that Small and Minority Business Enterprises (MBEs), Women's Business Enterprises (WBEs), labor surplus area businesses, and other individuals or firms located in or owned in substantial part by persons residing in the area of the PHA project are used when possible. Such efforts shall include, but shall not be limited to:

- Including such firms, when qualified, on solicitation mailing lists;
- Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- 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 (Section 3 businesses); and
- Requiring prime contractors, to comply with Section 3 regulations.

B. Definitions

- A small business is 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.
- A minority-owned business is 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.
- A women's business enterprise is 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.
- A "Section 3 business concern" is as defined under 24 CFR Part 135.
- A labor surplus area business is 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.

C. Resident-Owned Businesses

A resident-owned business is any business concern that is 51% owned by one or more public housing residents and controlled by such individuals. HUD strongly encourages PHAs to contract with resident-owned businesses to the maximum extent feasible.

Alternative Procurement Process (not a requirement)

The regulation at 24 CFR Part 963 allows PHAs to use an alternative procurement process when contracting with businesses owned in substantial part by PHA residents (resident-owned businesses) for public housing services, supplies, or construction. The alternative procurement process must comply with procedures and requirements as set forth in HUD's procurement regulations at 2 CFR Part 200.320, except that solicitations are limited to resident-owned businesses.

The alternative procurement process under 24 CFR Part 963 follows. The PHA will:

- Prepare an Independent Cost Estimate (ICE) for the procurement.
- Select the appropriate method of procurement (small purchase, sealed bidding, competitive proposals, or noncompetitive proposals).
- Solicit a bid, proposal, or offer from one or more resident-owned businesses.
- Receive offer(s) from one or more resident-owned businesses and ensures that:
 - The offeror has submitted the required certification described in 24 CFR Part 963 regarding previous contracts received under the alternative procurement process and the total amount of such previous contracts is less than \$1,000,000;

- The PHA performs a cost or price analysis of the offer(s) received and determines that the price is reasonable, i.e., the price that normally would be paid for comparable supplies, services, or construction in the project area;
- Will make an award to the responsive and responsible bidder/respondent whose bid/offer/proposal is most advantageous overall to the PHA, consistent with the evaluation factors stated in the solicitation. The resident-owned business must be capable of performing satisfactorily; and
- Will document the procurement file and comply with all other procurement requirements of 2 CFR Part 200.320, including the requirement for economy and efficiency.

D. Contracting with a Resident Management Corporation (RMC)

The PHA may enter into a contract with an RMC to provide property management under 24 CFR Part 964, Tenant Participation and Tenant Opportunities in Public Housing. As with any other property management contract, the management agreement must specify the functions for which the RMC will be responsible.

The property management contract between the PHA and the RMC is administered as any other contract for services, and is subject to any collective bargaining agreement provisions. However, the requirements for competitive procurement and prior written contract approval by HUD, where applicable (see Chapter 12 of the HUD Procurement Handbook 7460.8 REV 2), do not apply to the decision of a PHA to contract with an RMC for property management.

In order for the PHA to make a sole source award to an RMC, certain conditions must be met that differentiate an RMC from a resident-owned business. They are:

- The duly elected resident council or councils of the development(s) and a majority of the residents must officially approve the RMC;
- If no resident council exists, a majority of the residents of the development must approve the RMC;
- The RMC's voting members must be 18 years of age, or heads of households (of any age) whose name appears on the lease of the development to be represented by the RMC;
- The RMC must be a validly incorporated nonprofit organization; and
- The RMC must be governed by an elected Board of Directors and include representatives from each participating Resident Council. It must have by-laws stating qualification of officers, frequency of elections, and procedures for recall. Elections must be held at least every three years.

Before making a sole source award, the PHA will ensure that the organization meets all criteria to qualify as an RMC, that the RMC can demonstrate that it is capable of performing the proposed work, and that the price is reasonable.

The RMC is obligated to provide fidelity bond coverage and insurance or equal protection to the PHA and HUD against loss, theft, embezzlement or fraudulent acts by the RMC or its employees.

In performing services, the RMC must comply with the requirements of 2 CFR Part 200. The RMC must also be audited each year by a licensed CPA and submit the audit report to HUD and the PHA within 30 days of issuance.

E. Goals

The PHA shall establish goals periodically for participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in PHA prime contracts and subcontracting opportunities.

Established goals shall measure the effectiveness of the PHA's efforts in implementing programs in support of Section 3 and contracting with disadvantaged firms. It is important to ensure that the means used to establish these goals do not have the effect of limiting competition and should not be used as mandatory set-aside or quota, except as may otherwise be expressly authorized in regulation or statute.

F. Contract and Subcontract Activity Report.

The PHA shall report MBE progress semi-annually in a format and method prescribed by HUD, currently HUD-2516. Where the prime contract is awarded to a MBE, the PHA counts the entire dollar amount of the contract toward the MBE goal. Where the prime contract is not awarded to a MBE, but one or more of the subcontracts are awarded to a MBE, the PHA counts the dollar value of such subcontract(s) toward the MBE goal. The dollar value of the prime contract and each of its subcontracts are not to be double counted.

Additionally, the PHA shall submit a Section 3 report in a format and method prescribed by HUD.

G. Section 3 of the Housing and Urban Development Act of 1968 (24 CFR Part 135)

The purpose of Section 3 is to ensure that, to the greatest extent feasible, employment, training, and business opportunities created by HUD financial assistance be directed to low and very-low income persons. Efforts to promote Section 3 objectives must be consistent with existing Federal, State and local laws and regulations. (See Glossary for definition.)

Covered Programs. Section 3 requirements apply to:

- PHA utilization of funds for public housing development, operations, and capital fund programs; these requirements do not apply to Section 8 Housing Choice Voucher Program; and
- Certain Notification of Funding Availability (NOFA) and grant agreements governing assistance to PHAs may contain Section 3 requirements.

Covered Work. Section 3 covers contracts for work and does not apply to contracts for the purchase of supplies and materials. If the contract includes installation of purchased equipment, the contract would be covered by Section 3.

Mandatory Section 3 Contract Clause. The mandatory Section 3 contract clause can be found at 24 CFR Part 135.38, which applies to all contracts covered by Section 3. Covered contracts described at 24 CFR Part 135 include developments, operating and modernization assistance. This clause is included in mandatory forms HUD-5370, HUD-5370-C, and HUD-5370-EZ

Annual Report. Pursuant to 24 CFR Part 135, PHAs must submit to, the Assistant Secretary for Fair Housing and Equal Opportunity, an annual report using the Section 3 Data Reporting System as prescribed by HUD, currently on form HUD-60002- Economic Opportunities for Low- and Very Low-Income persons. The Section 3 report will also be submitted with any required annual performance report.

CHAPTER 18. FEDERAL LABOR STANDARDS, WAGE RATES – CONSTRUCTION AND MAINTENANCE

Since many HUD programs require the payment of Federal prevailing wage rates, the PHA shall abide by Federal Labor Standards, when applicable, and incorporate standard clauses and prevailing wage decisions into bid specifications and contracts. The PHA shall use mandatory clauses and wage decisions, or the satisfactory incorporation thereof, in accordance with HUD's instructions. See Chapter 10 of HUD Procurement Handbook 7460.8 REV 2 for further information.

A. Davis-Bacon Act

All laborers and mechanics (including apprentices and other workers trained by PHAs, Resident Management Corporations (RMCs), or other contractors under HUD's "Step-Up" or similarly approved training initiatives) involved in construction contracts in excess of \$2,000 must be paid wages in accordance with Federal labor standards issued pursuant to the Davis-Bacon Act by the Department of Labor (DOL).

B. Contract Work Hours and Safety Standards Act

In addition, the overtime requirements of the Contract Work Hours and Safety Standards Act are applicable to construction contracts in excess of \$100,000. For further information see the Department of Labor (DOL) regulations at 29 CFR Parts 1, 3 and 5. More information about labor standards administration and enforcement is contained in HUD Handbook 1344.1, REV 1, Chapter 1 and is also available on the Office of Labor Relations web site at: www.hud.gov/offices/olr

C. Solicitations and Contracts

Solicitations (e.g., Invitations for Bids) and contracts subject to Davis-Bacon wage requirements must contain the applicable wage decision and labor standards provisions. Davis-Bacon Wage Decisions can be obtained at no charge from a DOL-approved web site at: www.wdol.gov

CHAPTER 19. ENERGY EFFICIENCY

The PHA shall procure an Energy Audit (EA) conducted by a certified and/or licensed professional every five years in accordance with HUD requirements. A Green Physical Needs Assessment (GPNA) will be conducted, as a requirement under asset management and to establish the PHA's needs to reduce energy costs as well as other modernization priorities. The EA recommendations shall be incorporated into the GPNA.

The PHA supports the Energy Conservation equipment and practices regulations currently in place that require PHAs to purchase original or replacement equipment that meets minimum efficiency requirements set by 24 CFR Part 965.306.

The PHA may streamline the procurement process for purchasing energy-saving products above \$3,000 and below \$150,000 by utilizing the Department of Energy's (DOE's) ENERGY STAR Quantity Quotes' website, <http://quantityquotes.net>. If less than three DOE quotes are received, the PHA must supplement the difference with other quotes that may include telephone quotes. The PHA will stay within the state's procurement limits.

CHAPTER 20. DOCUMENTATION AND AUDITS

The PHA 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:

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

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

Records shall be kept in safe and secure location and readily available for PHA procured independent auditors or authorized government auditors (2 CFR Part 200.336). Records are to be retained for a period of three (3) years after final payment and all matters pertaining to the contact are closed (2 CFR Part 200.333). However, per 24 CFR Part 990.325, the PHA shall retain all documents related to all financial management and activities funded under the Operating Fund for a period of five (5) fiscal years after the fiscal year in which the funds were received.

CHAPTER 21. 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, local laws and regulations and PHA policy. (2 CFR Part 200, Subpart D 200.311, 200.313 and 200.314)

CHAPTER 22. FUNDING AVAILABILITY

The PHA shall ensure that there are sufficient, unrestricted funds available to cover the anticipated cost of the contract or modification before initiating any contract.

CHAPTER 23. SELF-CERTIFICATION

The PHA 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.

CHAPTER 24. MANDATORY HUD FORMS

The PHA shall utilize HUD mandatory forms that contain the required contract clauses related to construction and maintenance contracts, including non-routine maintenance work and non-construction contracts.

Further information may be found in the PHA's procurement procedures.

Small purchases, including purchase orders, are subject only to certain mandatory clauses prescribed by HUD except in the case of bid specifications and contracts for construction or maintenance work in excess of \$2,000. The PHA will also be bound by State or local requirements.

In addition to Federal, State or local requirements, the PHA may include necessary and appropriate language with any small purchase that is consistent with good business practice.

Acceptable Methods of Incorporation

The PHA will utilize any one or any combination of the following methods to incorporate mandatory clauses and applicable wage decisions into bid specifications and contracts. PHAs may:

1. Attach required printed form(s), and/or wage decisions, as prescribed by HUD in Handbook 7460.8 REV 2;
2. Incorporate the clauses/text of the applicable HUD form and wage decision into other documents (e.g., into the PHA's own forms) that are bound/attached to the contract (and bid specifications, if applicable) or incorporated by reference;
3. Incorporate the clauses or HUD forms and/or any applicable Davis-Bacon or HUD wage decision by reference. The reference must be specific as to the exact clauses or form(s) that are incorporated, and where the clauses or forms(s) may be accessed or obtained (e.g., HUDCLIPS, PHA web site). A Davis-Bacon wage decision may be incorporated by reference to www.wdol.gov and to the specific number, modification number, and date of the wage decision. HUD maintenance wage decisions are not available at HUD's web site; however, a PHA may post any applicable HUD wage decision to its own web site and reference that site. PHAs must provide hard copies of any referenced clauses, forms, and/or wage decisions on request.

The following is a listing of **mandatory** HUD forms for various types of procurement. The forms may be found on HUDCLIPS or in the PHA's procurement procedures:

HUD-5369	Instructions to Bidders for Contracts
HUD-5369-A	Representations, Certifications, and Other Statements of Bidders Public and Indian Housing Programs
HUD-5369-B	Instructions to Offerors Non-Construction
HUD-5369-C	Certifications and Representations of Offerors Non-Construction Contract
HUD-5370	General Conditions of the Contract for Construction Public and Indian Housing
HUD-5370-A	<i>Replaced by HUD-5370-C</i>
HUD-5370-C	General Contract Conditions Non-Construction
HUD-5370-C1	General Conditions for Non-Construction Contracts - Section I
HUD-5370-C2	General Conditions for Non-Construction Contracts - Section II
HUD-5370-EZ	General Contract Conditions for Small Construction/Development Contracts
HUD-51915	Model Form of Agreement Between Owner and Design Professional

Glossary

The following is a list of key procurement and contracting terms and definitions used throughout this policy. Further information as referenced within these terms and definitions may be found in HUD Procurement Handbook 7460.8 REV 2.

Acceptance:

The act of an authorized representative of the PHA acknowledging that the supplies or services delivered to or received by the PHA conform to contract requirements.

Annual Contributions Contract (ACC):

Entered into between HUD and the PHA, setting forth terms and conditions for the operation, modernization, and development of public housing. The current version of the ACC (form HUD-53012-A, 7/95) does not actually contain any specific language governing PHA procurement activity, but incorporates by reference regulations promulgated by HUD at Title 24 of the Code of Federal Regulations, as well as all applicable laws and executive orders, and regulations.

Amendment:

Written revision or clarification made to a solicitation.

Anti-competitive Practices:

Actions by potential contractors that improperly reduce or eliminate competition or restrain trade. Examples are: an agreement or understanding among competitors to restrain trade, such as submitting collusive bids or proposals, rotating low bids, follow-the-leader pricing, or sharing of the business. Competition may also be wrongfully discouraged by illicit business actions that have the effect of restraining trade, such as controlling the resale price of products or an improper collective refusal to bid (2 CFR Part 200.320).

Architect/Engineer (A/E):

Person (or company) usually responsible for developing the plans and specifications of a building or development and, in some cases, supervising the construction effort.

Bid:

The price submitted by a bidder in the sealed bidding method of procurement.

Bidder's List:

General list of persons or firms who may be interested in contracting opportunities with the PHA, and in submitting bids in response to an Invitation for Bid.

Change Order:

A unilateral modification made to the contract by the Contracting Officer under the authority of the contract's Changes clause. Only the specific changes permitted by the particular Changes clause may be made under a change order (e.g., modify the drawings, design, specifications, method of shipping or packaging, place of inspection, delivery, acceptance, or other such contractual requirement; see form HUD-5370). All change orders must be within the scope of the contract.

Changed Conditions:

Construction site or repair conditions that differ significantly from those indicated in the contract or from those ordinarily encountered in the performance of the specific type of work required by the contract.

Competitive Proposals:

Also called contracting by negotiation, a method of procurement using the solicitation, evaluation, and negotiation of proposals instead of sealed bids (see Chapter 7 in HUD Procurement Handbook 7460.8 REV 2). The competitive proposal method is used for requirements exceeding the PHA's small purchase threshold when conditions are not appropriate for sealed bidding. (Note: Under the Qualifications-Based Selection method only, a Request for Qualifications (RFQ) is used in place of the RFP.)

Competitive Range:

Those proposals submitted in response to a RFP that, after technical evaluation by the PHA's selection panel and considering the proposed costs/prices, have a reasonable chance of being awarded the contract (see Chapter 7, paragraph 7.2.N in HUD Procurement Handbook 7460.8 REV 2 for detailed guidance).

Consortia:

These are a special kind of PHA consortium where two or more agencies join together to perform planning, reporting and other administrative functions, including, importantly, the joint preparation of a PHA Plan. Consortia are addressed separately in paragraph 14.7 in HUD Procurement Handbook 7460.8 REV 2.

Contract

A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the PHA to pay for them. It includes all types of commitments that obligate an agency to an expenditure of funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include: contract awards and notices of awards; job orders or task letters issued under basic ordering agreements, requirement contracts, or definite- or indefinite-quantity contracts; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; bilateral (two-party) contract modifications; and various cooperative and interagency agreements (as described elsewhere in this policy and in HUD Procurement Handbook 7460.8 REV 2). Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, *et seq.*

Contracting Officer:

The Executive Director or an official authorized by the Executive Director to enter into and/or administer contracts and make related determinations and findings. For the purpose of this handbook, the term includes any PHA employee designated and authorized to perform the duties of a Contracting Officer.

Contract Administration:

All the actions taken with regard to a contract after its award. Administration includes monitoring the contractor's performance to ensure compliance with the contract requirements, and terms and conditions.

Contract Modification:

Any written alteration to a contract executed by an authorized contracting officer (see Chapter 11, paragraph 11.4.A of the HUD Procurement Handbook 7460.8 REV 2).

Contractor:

An Offeror who is awarded a contract.

Contract Pricing Arrangements:

The arrangement, as reflected in the contract, for how the vendor will be paid for services. While there are two basic contract pricing arrangements – firm fixed-price and cost-reimbursement – there are multiple variations on these models, from indefinite quantity contracts (where the exact number of deliverable items is not known at the time of contract award but where minimum and maximum quantities are stated) to cost-plus fixed-fee (where costs are reimbursed, up to an estimated amount, plus a specified fee). (See Chapter 11 of the HUD Procurement Handbook 7460.8 REV 2 for more detail.)

Cost Analysis:

Is the evaluation of the separate elements (e.g., labor, materials, etc.) that make up a total cost proposal or price to determine if they are allowable, directed related to the requirement and reasonable.

Cost-Reimbursement Contract:

The contractor is reimbursed for his/her allowable costs of performance up to a total estimated amount specified in the contract (see Chapter 10, section 10.1 of the HUD Procurement Handbook 7460.8 REV 2, for detailed guidance on cost-reimbursement contracts). The contract may provide for the payment of a fee (i.e., a type of profit) in addition to costs.

Cure Notice:

A document originated by the Contracting Officer and sent to notify the contractor that the contract may be terminated for default unless performance is corrected within a specified number of days.

Excusable Delay:

A failure to perform within the contract period that is beyond the control and without fault or negligence of the contractor, as determined by the Contracting Officer.

Federal Small Purchase Threshold:

The maximum dollar amount for individual small purchases (see Chapter 5 of the HUD Procurement Handbook 7460.8 REV 2). The threshold is currently set at \$150,000 (41 U.S.C. 403(11)). PHAs may establish lower thresholds. Special Note: State law may set different thresholds and follow stricter limits.

Firm Fixed Price Contract: The contractor is paid a firm fixed-price for all required work regardless of the contractor's actual costs of performance (see Chapter 10, section 10.1 of the HUD Procurement Handbook 7460.8 REV 2, for detailed guidance on fixed-price contracts).

Independent Cost Estimate (ICE):

An estimate prepared by the PHA prior to obtaining offers. The degree of analysis will depend on the size and complexity of the purchase.

Inspection:

The examination and/or testing of supplies and services to determine conformance with the contract requirements.

Instrumentality:

Shall mean a subsidiary branch of the PHA through which functions or policies are implemented.

Intergovernmental or Interagency Agreement:

An agreement between a PHA and a Federal, State, or local government agency (including other PHAs) for the provision of supplies or services. In recent years, the terms Cooperative Agreement, Intergovernmental Agreement, Consortium Agreement, or Memorandum of Agreement have been used interchangeably and are treated the same for the purposes of this handbook.

Internal Controls:

Safeguards that ensure contracting actions will be conducted in conformity with applicable Federal and State regulations and PHA policy.

Invitation for Bids (IFB):

Solicitation type used under the sealed bidding method of procurement. This document explains the intended purchase and invites bids from potential contractors.

Joint Venture Partner:

This is a participant, other than a PHA, in a joint venture, partnership, or other business arrangement or contract for services with a PHA.

Labor Surplus Area Business:

Is one which, together with its immediate subcontractors, will incur more than fifty percent (50%) of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR Part 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.

Level-of-Effort Contract:

Contract (usually cost-reimbursement) that specifies the number and type of person-hours that the contractor will use in performance of the contract requirements.

Major Change:

Modification to an existing contract that is beyond the general scope of the contract or a change to a substantive element of the contract that is so extensive that a new procurement should be used.

Micro Purchases:

Small purchases under \$3,000, or \$2,000 for construction work subject to the Davis-Bacon Act, (or lower threshold established by the PHA; see paragraph 5.2.B of the HUD Procurement Handbook 7460.8 REV 2).

Minority-Owned Business:

Is one which is at least fifty-one percent (51%) owned by one or more minority group members; or, in the case of a public-owned business, one in which at least fifty-one percent (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.

Negotiation:

Discussions with offerors in the competitive range regarding technical and/or price proposals when awarding a contract using the competitive proposals method of procurement or when issuing modifications to existing contracts or other required discussion with offerors for the other methods of procurement.

Noncompetitive Proposals:

Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

Offer:

A response to a solicitation (IFB or RFP) that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called “bids” or “sealed bids”, responses to requests for proposals negotiation) are offers called(“proposals”; however, responses to requests for quotations (small purchases) are “quotations,” not offers. Small purchases become binding contracts once the vendor accepts the order (e.g., by signature or substantial performance of the order). Offers submitted under the Qualifications-Based Selection (QBS) method are called “qualifications” (see paragraph 7.3.A of the HUD Procurement Handbook 7460.8 REV 2).

Offeror:

The general term for the entity that submits a response to a solicitation. For the purposes of this handbook, offeror may be used interchangeably with bidder, proposer, or respondent.

Price Analysis:

Is essentially price comparison. It is the evaluation of a proposed price (i.e., lump sum) without analyzing any of the separate cost elements of which it is composed.

Procurement:

The acquiring by contract of supplies and services (including construction) with the PHA’s Federal program grant funds through purchase, lease, or other means. Procurement begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Proposal:

The offer submitted by a potential contractor in the competitive or noncompetitive proposals method of procurement.

Qualification Based Selection (QBS):

A form of procurement of architect-engineering (A/E) or development services by competitive proposals in which price is not requested in the Request for Qualifications (RFQ) or used as an evaluation factor. Instead, technical qualifications only are reviewed negotiations are conducted with the best-qualified firm. Only A/E services and development partners may be procured by this method.

Quotation:

The price or cost submitted by a vendor in the small purchase procedures method.

Request for Proposals (RFP):

Solicitation method used under both the competitive or non-competitive methods of procurement. Proposal evaluation and contractor selection are based on the evaluation criteria and factors for award as stated in the RFP. Contract award is based on the best proposal responsive to the requirements of the statement of work resulting in the greatest benefit and best value to the PHA, which may not necessarily be primarily determined based on price.

Responsible Bidder: A bidder who is able to comply with the required or proposed delivery or performance schedule; has a satisfactory performance record; has a satisfactory record of integrity and business ethics; has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and is otherwise qualified and eligible to receive an award under applicable laws and regulations, including the fact that the bidder is not suspended, debarred or under a HUD-imposed Limited Denial of Participation.

Responsive Bid:

A bid that conforms exactly to the requirements in the Invitation for Bids (IFB).

Sanctions:

Measures that may be invoked by HUD to exclude or disqualify contractors, PHA staff or agents acting on behalf of a PHA from participation in HUD programs (such as limited denial of participation or debarment), or measures the PHA may take regarding employees, officers, agents, or others who violate the ethical standards of the policies of the PHA (such as dismissal, reassignment, removal from position, etc.). In the case of violations, HUD would exercise any available remedy under the ACC, federal regulations and statutes, and grant agreements, including the U.S. Housing Act of 1937 as amended, 24 CFR Parts 84 and 85 (20013 edition) for Federal awards made prior to December 26, 2014, 2 CFR Part 200 for Federal awards made after December 26, 2014 and sections 17 and 19 of the ACC.

Sealed Bidding:

A method of procurement inviting sealed bids. This method requires: specifications that are clear, accurate, and complete; a public bid opening; and evaluation of bids and award of the contract based on the lowest price submitted by a responsive and responsible contractor. Sealed bidding is the preferred method for construction 2 CFR Part 200.320).

Section 3 Business Concern:

As pursuant to 24 CFR Part 135, pending regulation change.

Section 3 Resident:

1) A public housing resident; or 2) An individual who resides in the metropolitan area or nonmetropolitan county in which a HUD-assisted project is located and who have a household income that does not exceed 80% of the median income for the area.

Show Cause Letter:

A document sent by the Contracting Officer notifying a defaulting contractor that the contract may be terminated for default unless the contractor can provide adequate justification for not terminating within a specified time period (usually 10 days).

Small Business: Is one 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 131 should be used, to determine business size unless the PHA determines that their use is inappropriate.

Small Purchase Procedures – Small Purchase Procedure:

A simplified method for acquiring supplies, materials, and services (including construction) that do not exceed the PHA's small purchase threshold. (The Federal threshold is \$150,000; PHAs are limited to this or a lower amount as specified in applicable State or local law or dictated by the PHA's Procurement Policy or imposed by HUD due to PHA's procurement performance.) 2 CFR Part 200.320).

Small Purchase Threshold:

The per purchase dollar limit established by a PHA for small purchases. The threshold is set in the PHA's procurement policy. The threshold may not exceed the Federal small purchase threshold (see Chapter 5, section 5.2 of the HUD Procurement Handbook 7460.8 REV 2).

Solicitation:

The general term for the agency's request for offers from potential offerors. A solicitation package generally contains the proposed contract, including contract terms and conditions, instructions to potential offerors regarding the submission of an offer, and any other information needed to prepare an offer.

Solicitation Provisions:

The instructions provided to bidders/offerors included in solicitations. The provisions include such information as how to prepare an offer, bonding requirements, date and time for submission of offers, etc. Provisions required by HUD, as applicable, are included on forms HUD-5369, Instructions for Bidders and HUD-5369-A, B and C, Representations, Certifications, etc., and HUD-5369-B for solicitations above the federal small purchase threshold.

Specifications or Scope:

Description of the technical requirements of a contract.

Statement of Work (SOW):

Written description of work to be performed that establishes the standards sought for the supplies or services furnished under the contract; typically used for service contracts.

Subsidiary:

A type of operating entity created and operated by a PHA over which it has a controlling interest. It may be wholly owned or controlled by the PHA and may be a non-profit organization.

Supplemental Agreement:

A type of contract modification to which both parties agree.

Termination for Cause:

Termination of a contract on a unilateral basis when the contractor fails to perform, fails to make progress so as to endanger performance, or commits a default as specified in the contract.

Termination for Convenience:

Termination of a contract by the PHA on a unilateral basis when the product or service is no longer needed or when it is in the best interest of the PHA.

Time Delay:

An interruption during which supplies are not delivered or services or work are not completed in accordance with the performance schedule stated in the contract.

Women's Business Enterprise:

Is one that is at least fifty-one percent (51%) owned by a woman or women who are U.S. citizens and who also control or operate the business.

Vendor:

The term often used for an offeror or contractor when talking about small purchasing.

Vendor List:

List of persons or firms qualified to do business with the PHA.

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APPENDIX - Capital Fund Stimulus Grant Procurement Policy
An Amendment to the Agency's Current Procurement Policy
(This Appendix Expires September 23, 2018)

In accordance with the U.S. Department of Housing and Urban Development PIH Notice 2009-12 (HA), our Agency here-in amends our current procurement policy in order to expedite and facilitate the use of American Recovery and Reinvestment Act (ARRA) Capital Fund Formula Grants. This amended policy can be used only for procurements under the ARRA Capital Fund Stimulus Grants.

A. General Provisions

- 1) **Priorities:** Our Agency shall give priority to Capital Fund Stimulus Grant projects that can award contracts based on bids within 120 days from February 17, 2009.
- 2) **State and Local:** As provided for in HUD PIH Notice 2009-12 (HA) and the ARRA, any requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to Capital Fund Stimulus Grants. Our Agency shall follow the Code of Federal Regulations Title 24, Part 85 requirements.
- 3) **Noncompetitive Proposals:** According to 24 CFR 85.36(d) (4), if solicitation of a proposal is only from one source or if our Agency finds that after solicitation of a number of sources, that competition is inadequate, our Agency may award the contract noncompetitively where small purchase procedures, sealed bids or competitive proposals are infeasible and one of the circumstances in 85.36(d)(4)(i) applies. One such circumstance is public exigency that will not permit a delay resulting from competitive solicitation (85.36(d)(4)(i)(B)). If our Agency finds that other competitive methods of procurement are infeasible, our Agency may use the public exigency circumstance based on the purpose and requirements of the Recovery Act (ARRA). Section 3 of the Recovery Act provides that these funds shall be managed and expended to achieve the purposes specified including commencing expenditures and activities as quickly as possible consistent with prudent management. Further, the Recovery Act has imposed expeditious obligation and expenditure requirements on the Capital Fund Stimulus Grants. It is necessary for our Agency to expedite and facilitate the use of these grants. Our Agency may use the noncompetitive proposals method, but will do so on a contract-by-contract basis and in compliance with Part 85 requirements including the requirement for a cost analysis and the conflict of interest requirement. Our Agency will ensure that the noncompetitive proposals process followed is per this policy. Further, our Agency will maintain records sufficient to detail the significant history of each contract's 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 (85.36(b)(9)). The

Agency will not have a HUD pre-award review for noncompetitive proposals as stated in Section 8.4(C), Chapter 8 of HUD Handbook No. 7460.8 Rev 2. However, our Agency will make available, upon HUD's request, the Agency Capital Fund Stimulus Grant Procurement Policy and any documents requested relating to procurement activity as stated in 24 CFR 85.36(g).

- 4) Force Account (In House direct Labor where Agency acts as general Contractor): To the extent feasible, our Agency will consider employing existing or additional force account laborers on either a permanent or a temporary basis to perform Capital Fund stimulus grant work. See 24 CFR 968.105 and 968.120. Prior HUD approval will not be requested specifically for force account labor, but such work will be incorporated into the Capital Fund planning, budgeting and reporting documents.
- 5) Buy American: Our Agency will follow Buy American requirements of section 1605 of the Recovery Act and use only iron, steel and manufactured goods produced in the United States in their projects.
- 6) Unless changed by this amended policy, all other provisions of our current procurement policy apply.
- 7) Wage Rate Requirements: All laborers and mechanics employed by our Agency's contractors and subcontractors on projects funded under the Capital Fund Stimulus Grant shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

B. Purchasing Methods for Public Exigency Circumstances

Based upon determination that the required goods or services will be purchased directly by the Agency under public exigency circumstances, one of the following procurement methods will be chosen, based on the nature and anticipated dollar value of the total requirement.

1. Small Purchase Procedures

- a. General. Any purchase not exceeding **\$100,000** may be made in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided in order to constitute a small purchase, thereby avoiding the more formal requirements associated with the other procurement methods discussed below, except as may be reasonably necessary to comply with Section 3, MBE, WBE, DBE, and other requirements.
- b. Micro Purchases under exigency circumstances are defined as purchases less than **\$15,000** Only one price quote is required if the quote is considered reasonable.

Quotes may be obtained orally (either in person or by phone), by fax, in writing, email or through e-procurement. Award shall be made to the qualified vendor that provides the

best value to the Agency. If award is to be made for reasons other than the lowest price, the Agency shall provide documentation in the contract file.

Small purchases must be distributed among qualified sources to the extent feasible, and to promote competition.

The Agency shall not break down requirements aggregating more than the small purchase (or Micro Purchase) threshold into several purchases that are less than the applicable threshold to merely (1) allow use of the small purchases procedures or (2) avoid any requirements that apply to purchases that exceed the Micro Purchase threshold.

No formal cost or price analysis is required for petty cash or micro purchases. The Contracting Officer's execution of a contract, purchase or other means shall serve as the determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.

- c. Small Purchases above the Micro Purchase threshold of **\$15,000** and under **\$100,000** The Agency shall obtain a reasonable number of quotes (preferably three). For all purchases above the Micro Purchase threshold of \$15,000, the Agency shall prepare an Independent Cost Estimate (ICE) prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

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 (ICE), or any other reasonable basis.

Award shall be offered, providing lowest acceptable quotation, unless justified in writing based on price and other specific factors. If non-price factors are used, they shall be made known to all those solicited.

2. Competitive Proposals

Preferred method for professional services that exceed the small purchase threshold of **\$100,000** and for purchases that are not appropriate for sealed bidding,

The competitive proposal method, unlike sealed bidding, allows:

- consideration of technical factors other than price;
- discussion with offerors concerning offers submitted;
- negotiation of contract price or estimated cost and other contract terms and conditions;
- revisions of proposals before the final contractor selection; and the
- withdrawal of an offer at any time up until the point of award.

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

Goods and services costing over **\$100,000** generally shall be procured on the basis of competitive proposals when there is an adequate method for evaluating proposals and the use of sealed bids is not appropriate. Purchase authorization shall be stamped or signed by the Executive Director (or designee) to indicate that sufficient and unencumbered funds are available for payment.

a. Form of Solicitation

Competitive proposals, for other than Architectural/Engineering (A/E) services, shall be solicited through the issuance of an RFP. The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any sub-factors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established **before** the solicitation is issued. Proposals shall be handled in order to prevent disclosure of the number and identity of the offerors, and the contents of their proposals until **after** award. The Agency may assign a specific weight to price in the evaluation criteria or may consider price in conjunction with technical factors. In either case, the method for evaluating price shall be established in the RFP.

b. Evaluation

Proposals shall be evaluated only on the criteria stated in the RFP. The Agency shall establish an Evaluation Plan for each RFP when not apparent from the evaluation criteria. Generally, an appropriately appointed Evaluation Committee shall evaluate all RFPs. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. An Evaluation Report that summarizes the results of the evaluation, shall be prepared prior to the contract award.

c. Negotiations are exchanges (in either a competitive or sole source environment) between the Agency and offerors that are undertaken with the intent of allowing the offeror to revise its proposal.

Negotiations take place after establishment of the competitive range and are called discussions. The primary objective of discussions is to maximize the Agency's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation.

Discussions are tailored to each offerors proposal and shall be conducted by the contracting officer with each offeror within the competitive range.

Negotiations may include bargaining that 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.

Negotiations shall be conducted with all offerors who submit a proposal and who are 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.**

The determination is based on the relative score of the proposals as they are evaluated and rated according to the technical and price factors specified in the RFP.

- 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.

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 Agency 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.

- d. 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 Agency, provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

Architectural/Engineering Services in excess of the small purchase limitation may be obtained by competitive proposals for non-design or design/build work. Selected offerors are subject to negotiation of fair and reasonable compensation. The Agency must contract for A/E services (e.g. design) using Qualifications Based Selection (QBS) procedures, utilizing an RFQ. Sealed bidding shall not be used for A/E solicitations. 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, though architectural/engineering firms are potential sources.

Alternative Procurement Methods for A/E Services: The Agency may choose other alternative procurement methods for A/E Services. However, all said alternatives will follow the Qualification Based Selection (QBS) process mandated by state law for design and/or design/build A/E services. Alternative procurement methods may include full service, design/construction, and indefinite quantity contract approaches.

3. Sealed Bids (contracts that exceed small purchase threshold – (\$100,000))

Sealed bidding shall be used for contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this document. Under sealed bids, the Agency publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the **responsible** bidder whose bid, conforming with all the material terms and conditions of the Invitation for Bid (IFB), is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$100,000.

Conditions for Using Sealed Bids

The Agency shall use the sealed bid method if the following conditions are present:

- a complete, adequate, and realistic statement of work, specification, or purchase description is available;
- two or more responsible bidders are willing and able to compete effectively for the work;
- the contract can be awarded based on a firm fixed price; and
- the selection of the successful bidder can be made principally on the lowest price.

Solicitation and Receipt of Bids. An Invitation for Bid (IFB) is issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids received will be date and time-stamped and stored unopened in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.

Bid Opening and Award. Bids shall be opened publicly. All bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection. Selection shall be made by drawing lots or other similar random method if equal low bids are received from responsible bidders. The IFB shall state the method for doing this. If only one responsive bid is received from a responsible bidder, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis.

Mistake in Bids

- 1) Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening.
- 2) After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended.
- 3) A low bidder alleging a non-judgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made.
- 4) After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Agency or fair competition shall be permitted.
- 5) All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer.

4. Non-Competitive Proposals

- a. Conditions for Use. Procurement by non-competitive proposals (sole-source) may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, and if one of the following applies:
 1. The item is available only from a single source, based on a good faith review of available sources;
 2. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the Agency or its residents, 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. **HUD authorizes the use of noncompetitive proposals such as is the case of ARRA Capital Fund Stimulus Grants;** or
 4. After solicitation of a number of sources, competition is determined inadequate.

- b. **Justification.** Each procurement based on non-competitive 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.

The justification, to be included in the procurement file, should include the following:

1. Description of the requirement and selection of contract types;
2. History of prior purchases and their nature (competitive vs. noncompetitive);
3. Any of the exceptions in 24 CFR 85.36(d)(4)(i)(A) through (D) described in above paragraph a.
4. A rational statement as to the unique circumstances that require award by noncompetitive proposals. **This statement may include that the ARRA Capital Fund Grants require expeditions obligation and expenditure;**
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.) and basis for contract price;
6. Identify Contractor(s) selected and/or rejected;
7. Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
8. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

C. Documentation

The Agency 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;

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 procurement documentation should be commensurate with the value of the procurement. Records are to be retained for a period of **three years** after final payment and all matters pertaining to the contract are closed **per 24 CFR 990.325**.

D. Funding Availability

The Agency shall ensure that there are sufficient ARRA Stimulus Capital funds available to cover the anticipated cost of the contract or modification before initiating any contract.

E. Self-Certification

The AGENCY self-certifies this Capital Fund Stimulus Grant Procurement Policy, and the Agency's procurement system, complies with all applicable Federal regulations and, as such, the Agency is exempt from prior HUD review and approval of individual procurement action(s).

F. Solicitation and Advertising

Methods

1. **Petty Cash and Micro Purchases** – the Agency may contact only one source if the price is considered reasonable.
2. **Small Purchases** – quotes may be solicited orally, by email, through fax, or by any other reasonable method.
3. **Sealed Bids and Competitive Proposals** – solicitation must be done publicly. The Agency must use one or more of the following methods, provided that the method used provides for meaningful competition:
 - a. Advertising in newspapers or other print mediums of local or general circulation.
 - b. Advertising in various trade journals or publications (for construction)
 - c. E-Procurement – the Agency may conduct its public procurements through the Internet using e-procurement systems, however, all e-procurements must otherwise be in compliance with 24 CFR 85.36, State and local requirements, and this policy.

Time Frame

For purchases of more than \$100,000, 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 who can provide a copy of, and information about the solicitation, and a brief description of the needed service(s) or items(s).

Time Period for Submission of Bids

- Generally 30 days shall be provided for preparation and submission of sealed bids and 15 days for competitive proposals. **The Executive Director or Contracting Officer may allow for a shorter period under public exigency circumstances as provided in the purpose and requirements of the Recovery ACT.**
- Solicitation procedures are conducted in full compliance with Federal standards consistent with 24 CFR 85.36.

G. Cost and Price Analysis

The Agency shall require assurance that a price is reasonable and in accordance with the following before entering into a contract. However, according to HUD Procurement Handbook 7460.8 REV 2, *“the number of times that an Agency will need to conduct a cost analysis will be limited given that most purchases will be of a commercial nature and based on adequate competition.”*

Petty Cash and Micro Purchases

Neither a formal cost or price analysis is required. 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. This determination 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 is 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

Price reasonableness is generally established with the presence of adequate competition. The Agency must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable if sufficient bids are not received, and when the bid received is substantially more than the Independent Cost Estimate (ICE), and when the Agency cannot reasonably determine price reasonableness.

Competitive Proposals

The presence of adequate competition is generally sufficient to establish price reasonableness. The Agency must compare the price with the ICE if sufficient bids are not received. The Agency must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable when prices cannot be easily compared among offerors, if there is inadequate competition, or when the price is substantially greater than the ICE.

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 \$100,000.

NOTICE

The Nelrod Company has made its best efforts to comply with regulations, laws, and Federal/local policies. The Nelrod Company does not offer advice on legal matters or render legal opinions. We recommend that this policy be reviewed by the Housing Agency's general counsel and/or attorney prior to approval by the Board of Commissioners.

The Nelrod Company is not responsible for any changes made to these policies by any party other than The Nelrod Company.