

THE HOUSING AUTHORITY OF THE CITY OF CHARLESTON

CHARLESTON, SOUTH CAROLINA



PROCUREMENT POLICY

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HOUSING AUTHORITY OF THE CITY OF CHARLESTON PROCUREMENT POLICY

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THE HOUSING AUTHORITY OF THE CITY OF CHARLESTON PROCUREMENT POLICY

This Procurement Policy complies with the Annual Contributions Contract (ACC) between the Housing Authority of the City of Charleston and HUD, Federal Regulations at 2 CFR Part 200, Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Record, namely §§200.318-200.326; Appendix II to Part 200; 24 CFR 85.36 as may be amended, 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. To the extent possible and in the best interests of the Authority, American-made equipment and products shall be purchased with HUD funds.

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.

A. General Provisions

The Housing Authority of the City of Charleston (PHA) shall:

1. provide for the fair and equitable treatment of all persons or firms involved in purchasing by the PHA;
2. assure that goods, supplies, services and construction are procured efficiently, effectively, and at prices most favorable to the PHA;
3. promote full and open competition in contracting;
4. provide safeguards in maintaining a procurement system of quality and integrity; and
5. Assure that PHA purchases are in full compliance with applicable Federal standards, HUD regulations, and State and local laws.
6. English Language: all financial assistance announcements, award information (e.g., Notices of Funding Availability), and applications will be in the English language. In the event that a translation is available and any inconsistency arises the English language meaning would control.

B. Applicability

1. This Policy is applicable to all procurement actions involved with the PHA's procurement of goods, supplies, equipment, services, and construction, except as noted under "exclusions" below.
2. When both HUD and non-Federal grant funds are used for a project, the work to be accomplished with the funds shall be separately identified prior to procurement so that appropriate requirements can be applied, if necessary.
3. If it is not possible to separate the funds, HUD procurement regulations shall be applied to the total project.
4. 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.
5. 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.

C. Definition

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

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

D. Exclusions

This policy does not govern administrative fees earned under the Section 8 Voucher Program, the award of vouchers under the Section 8 program, the execution of landlord Housing Assistance Payments contracts under that program, or non-program income, e.g., fee-for service revenue under 24 CFR Part 990. These exclusions are subject to applicable State and local requirements. Where the provisions of Federal statutes or regulations differ from the provisions of part 200 the provisions of the Federal statutes or regulations take precedence.

E. 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 these Policies, automatically supersede these Policies.

F. Authority and Administration

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 President/CEO unless, otherwise appointed by the Board of Commissioners, to make sure that all procurement actions are conducted in accordance with the policies contained herein.

1. The President/CEO shall be responsible for developing procedures and procurement forms and documents to implement this Policy and a system of sanctions for violations of the ethical standards described below under Paragraph G, Code of Conduct. All procurement and forms will be consistent with state and Federal regulations and Procurement Handbook No. 7460.8 REV 2 for Public Housing Agencies.

Even though the President/CEO is responsible for ensuring that the PHA's procurements comply with this Policy, the President/CEO may delegate all procurement authority as is necessary and appropriate to conduct the business of the Agency.

2. It is the responsibility of the President/CEO regardless of the authority delegated,
 - a. use sound judgment in accomplishing the procurement activities of the PHA;
 - b. ensure that bidders and contractors receive fair, impartial, and equitable treatment;
 - c. ensure that contract actions comply with all applicable Federal, state and local laws and rules and with the PHA's approved procurement policy;
 - d. and 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;
 - e. procurement documents clearly specify the appropriate products, construction effort, and/or services, and the history of each procurement is fully documented;
 - f. including the method of procurement, the selecting of contract type, rationale for selecting offers, and the basis for the contract price;
 - g. for all procurement other than small purchases, public notice is given at least ten (10) days before Solicitation [unless otherwise required by State or local law] responses to notices are honored to the maximum extent practical, a minimum of fifteen (15) days [or other time period if required by State or local law] is allowed for preparation and submission of bids or proposals, and make notices of awards available to the public;
 - h. solicitation procedures are conducted in full compliance with Federal standards or more stringent State and local laws that are consistent with 24 CFR 85.36. Non-HUD related properties will follow appropriate state laws and other pertinent restrictions;
 - i. 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;

- j. 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);
 - k. unsuccessful firms are notified within ten (10) days (or other period required by State or local law) after contract award;
 - l. 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,
 - m. the PHA complies with applicable HUD review requirements.
 - n. that PHA staff, and responsible bidders comply with Section 3 requirements. Bidders and staff should refer to the PHA's adopted Section 3 Plan.
3. 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.
 4. 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 of agency 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."

G. Public Contracting Code of Standards (Conduct/Ethics)

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, 2 CFR 200.318; Appendix II to Part 200 and 24 CFR 85.36 (b) (3) as amended. This code of conduct/ethics is consistent with applicable Federal, State, or local law.

1. Conflicts of Interest

No 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, real or apparent, would be involved. Such a conflict would arise when a financial or other interest in a firm competing for any award is held by:

- a. an employee, officer, Board member or agent involved in making the award;

- b. his/her relative (any member of 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, stepbrother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister;
- c. his/her partner, or;
- d. an organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above about to or plans to employ any of the above.

2. Gratuities, Kickbacks, and Use of Confidential Information

PHA officers, employees or agents shall not solicit or accept gratuities, favors or anything of monetary value from vendors, contractors, potential contractors, or parties to subcontract and shall not knowingly use confidential information for actual or anticipated personal gain.

3. 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.

H. Planning

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

1. find patterns of procurement actions that could be performed more efficiently or economically;
2. maximize competition and competitive pricing among contracts and decrease the PHA's procurement costs;
3. reduce PHA administrative costs;
4. ensure that supplies and services are obtained without any need for re- procurement, e.g., resolving bid protests;
5. minimize errors that occur when there is inadequate lead time.

Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

I. 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.

1. Small Purchase Procedures

- a. General. Any purchase not exceeding \$25,000 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 in Section V of this policy.
- b. Petty Cash Purchases. Small purchases below \$499.99, that can be satisfied by local sources may be processed through the use of a petty cash fund and shall be supported by receipts. The Chief Financial Officer, or designee, shall ensure that:
 - 1) the petty cash account is established in an amount sufficient to cover small purchases made during a reasonable period of time, monthly as needed.
 - 2) security is maintained and only authorized individuals have access to the fund;
 - 3) the fund is periodically reconciled and replenished.
- c. Micro Purchases (purchases of less than \$2,00.00)
Only one price quote is required if the quote is considered reasonable. Based on South Carolina Consolidated Procurement Code (CPC), the purchase request must be noted with "Price is Considered Fair and Reasonable."

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 the lowest price, the PHA shall provide documentation in the contract file.

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

- d. Small Purchases above the Micro Purchase threshold of \$2,000 and under \$25,000

The PHA shall obtain a minimum of three quotes and sources attached to the requisition.

For all purchases above the Micro Purchase threshold of \$2,000, the PHA 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.

e. 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 Section GG 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 \$25,000.00 shall be stamped or signed by the President/CEO (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.

2. Competitive Proposals

Preferred method for professional services that exceed the small purchase threshold of \$25,000 and for purchases that are not appropriate for sealed bidding.

The competitive proposal method, unlike sealed bidding, allows:

1. consideration of technical factors other than price;
2. discussion with offerors concerning offers submitted;
3. negotiation of contract price or estimated cost and other contract terms and conditions;
4. revisions of proposals before the final contractor selection; and the
5. 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 PHA, 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 \$25,000 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 President/CEO (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 PHA 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 PHA 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 PHA 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 PHA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation.

Discussions are tailored to each offeror's 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 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.

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

3. Sealed Bids. Sealed bidding, also known as Invitation for Bids (IFB), shall be for all contracts that exceed CHA small purchase threshold of \$25,000. Sealed bidding shall be used for procurements that exceed the small purchase threshold and that are not competitive proposals or noncompetitive 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 \$25,000.

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 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.

Equal Low Bids. In the rare case when two or more low bids are equal in all respects, the award should be decided by drawing lots; or other random means of selection.

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 PHA 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 PHA, 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; 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. **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:

1. Description of the requirement;
2. History of prior purchases and their nature (competitive vs. noncompetitive).
3. Any of the following exceptions in 24 CFR 85.36(d) (4) (i) (A) through (D) described below:
4. Statement as to the unique circumstances that require award by noncompetitive proposals;
5. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
6. Statement as to efforts that will be taken in the future to promote competition for the requirement;
7. Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
8. 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.

J. Alternate Procurement Methods

a. Architectural/Engineering Services

The PHA 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.

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 PHA 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.

b. Design/Construction

Design/Build Selection Procedures shall conform to the requirement of 10 U.S. Code § 2305a- and shall use the phased selection procedures outlined therein.

(b) CRITERIA FOR USE.—A contracting officer shall make a determination whether two-phase selection procedures are appropriate for use for entering into a contract for the design and construction of a public building, facility, or work when the contracting officer anticipates that three or more offers will be received for such contract, design work must be performed before an offeror can develop a price or cost proposal for such contract, the offeror will incur a substantial amount of expense in preparing the offer, and the contracting officer has considered information such as the following:

1. The extent to which the project requirements have been adequately defined.
2. The time constraints for delivery of the project.
3. The capability and experience of potential contractors.
4. The suitability of the project for use of the two-phase selection procedures.
5. The capability of the agency to manage the two-phase selection process.
6. Other criteria established by the agency.

(c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

- (1) The agency develops, either in-house or by contract, a scope of work statement for inclusion in the solicitation that defines the project and provides prospective offerors with sufficient information regarding the Government's requirements (which may include criteria and preliminary design, budget parameters, and schedule or delivery requirements) to enable the offerors to submit proposals which meet the Government's needs. If the agency contracts for development of the scope of work statement, the agency shall contract for architectural and engineering services as defined by and in accordance with chapter 11 of title 40.

- (2) The contracting officer solicits phase-one proposals that—

- (A) include information on the offeror's—
 - (i) technical approach; and
 - (ii) technical qualifications; and
- (B) do not include—
 - (i) detailed design information; or
 - (ii) cost or price information.

(3) The evaluation factors to be used in evaluating phase-one proposals are stated in the solicitation and include specialized experience and technical competence, capability to perform, past performance of the offeror's team (including the architect-engineer and construction members of the team) and other appropriate factors, except that cost-related or price-related evaluation factors are not permitted. Each solicitation establishes the relative importance assigned to the evaluation factors and subfactors that must be considered in the evaluation of phase-one proposals. The agency evaluates phase-one proposals on the basis of the phase-one evaluation factors set forth in the solicitation.

(4) The contracting officer selects as the most highly qualified the number of offerors specified in the solicitation to provide the property or services under the contract and requests the selected offerors to submit phase-two competitive proposals that include technical proposals and cost or price information. Each solicitation establishes with respect to phase two

- (A) the technical submission for the proposal, including design concepts or proposed solutions to requirements addressed within the scope of work (or both), and
- (B) the evaluation factors and subfactors, including cost or price, that must be considered in the evaluations of proposals in accordance with paragraphs (2), (3), and (4)

The contracting officer separately evaluates the submissions described in subparagraphs (A) and (B).

(5) The agency awards the contract

(d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO REQUESTS FOR COMPETITIVE PROPOSALS.

If the contract value exceeds \$4,000,000, the maximum number specified in the solicitation shall not exceed 5 unless the head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, approves the contracting officer's justification with respect to an individual solicitation that a number greater than 5 is in the Federal Government's interest.

c. 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 Part 200 and **24 CFR 85.22** as amended and as required, are procured by PHAs through procurement contracts. Legal services contracts are subject to the requirements set forth in 2 CFR Part 200 and **24 CFR Part 85** as amended, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," in particular, 2 CFR Part 200 and **24 CFR 85.36** as amended. Section 85.22(b) incorporates the OMB Circular A-87, which contains a set of cost principles that PHAs must use for determining the allowability of costs they incur under Federal grants and provides guidance in their use. 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").

Procurement Methods for Legal Services

2 CFR Part 200 and **24 CFR 85.36(d)** as amended permits PHAs to use all of the contracting methods listed below but they are expected to choose the method of procurement that is reasonable based on the facts surrounding the particular situation. The methods of procurement outlined in 2 CFR Part 200 and **24 CFR 85.36(d)** as amended are:

- 1) **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) **Sealed Bids.** This method is normally not appropriate for securing legal services. Sealed bidding may only be used when it is possible to quantify the cost of the required services (e.g. number of hours) to permit the submission of firm bids and award a firm fixed-price contract to the price and price –related factors. Additionally, it is often critical to consider other factors besides price (e.g., experience) when selecting a legal services contractor. Sealed bidding does not permit the use of other factors.

3) **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 price) for securing services estimated to cost more than the Federal small purchase threshold or a lower threshold as established by the PHA (e.g., to conform to State law).

Competitive offers are solicited, proposals are evaluated, and award is made to the offeror whose proposal is most advantageous to the PHA, with price and other factors (as specified in the solicitation) considered. Either a fixed-price or cost reimbursement type contract may be awarded. This method is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the conditions in 2 CFR Part 200 and 24 CFR 85.36(d) (3) as amended must be followed.

4) **Non-competitive Proposals.** This method may only be used when other methods of procurement are not feasible and the circumstances described in 2 CFR Part 200 and 24 CFR 85.36(d) (4) as amended as follows are applicable:

- a. legal services are available from only a single source;
- b. public exigency or emergency for the requirements will not permit a delay resulting from competitive solicitation;
- c. after solicitation of a number of sources, competition is determined inadequate; or
- d. HUD authorizes the use of non-competitive proposals. (An example of a situation considered to violate the requirements of full and open competition in 2 CFR Part 200 and 24 CFR 85.36 as amended would be non-competitive award to an attorney for legal services on a retainer basis.)

5) **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.

6) Obtaining Legal Services by Procurement of Employment Methods. PHAs may employ an attorney directly (house counsel), or the PHA may enter into a procurement contract with an attorney or firm. The procurement of legal services shall follow the procedures previously outlined under “Methods of Procurement”, this section.

PHA house counsel is ineligible to receive procurement contracts for legal services and the employment of house counsel is not covered by 2 CFR Part 200 and 24 CFR 85.36 as amended. All services of a 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 under “Methods of Procurement” this section.

7) Contracts for Litigation Services

(a) **General Requirements and Regional Council Approval.** In addition to the requirements described above under “Methods of Procurement”, the Litigation Handbook sets thresholds for Regional Council and Headquarters Program Associate General Counsel approval of litigation service contracts.

A PHA must submit to HUD Regional Council, 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.

Upon receiving a request for concurrence, if Regional Council is satisfied that the PHA has not violated HUD requirements or is otherwise not at fault, the Regional Council shall concur in a request received from the PHA for approval of a contract for litigation services if he/she is also satisfied that: the contract contains adequate protection against fraud and abuse; the contract contains all mandatory provisions for professional service contracts for the program or activity

giving rise to the litigation; and the contract amount is reasonable. (Note: In cases where the PHA is at fault, the Regional Counsel may authorize the limited use of program funds for the PHA's defense to facilitate settlement or obtain judicial definition of the required relief.) The contract amount will be considered reasonable if it does not exceed the rates prevailing in the same or similar localities for the same or similar services, or the PHA can demonstrate special circumstances that require payment of a higher amount. Regional Counsel's concurrence signifies that the attorney's fee (proposed contract price) under the contract is an allowable project expense, but is not a certification that there are sufficient project funds available to cover the contract amount.

- (b) **Headquarters Program Associate General Counsel Approval.** No contract for attorney's fees for litigation services entered into by any PHA, which calls for an estimated maximum price in excess of \$300,000 may be approved by the Regional Counsel without the prior concurrence of the Headquarters Program Associate General Counsel.
- (c) **Use of Fixed-Price Legal Contracts.** Fixed-price proposals will be approved only where the issues are uncomplicated, extensive preparation probably is not required, and any trial that may ensue probably will not be lengthy. Ordinarily, a fixed-price proposal in excess of \$100,000 shall not be approved but Regional Counsel may approve a higher amount for a good cause. For additional information regarding the above litigation services requirements, consult paragraphs 2-3g (3), 3-3b (3) and 5-4 of the Litigation Handbook.
- (d) **Legal Fee Management Service Contracts.** PHAs may also find it helpful to engage a legal fee management firm when heavy demand or high local priorities or other condition merit secure oversight of legal services.
- (e) **Contract Addendum – Legal Services Protocol.** The PHA shall include contract provisions as required 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. For further details, see procurement procedures.

K. Documentation and Audits

The PHA must maintain records sufficient to detail the significant history of each procurement action. Records shall be kept in safe and secure location and readily available for PHA procured independent auditors or authorized government auditors.

These records shall include, but shall not necessarily be limited to, the following:

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

The level of 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, however, per 2 CFR Part 200.333 and 24 CFR 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 fiscal years after the fiscal year in which the funds were received”.

L. Disposition of Surplus Property

Property no longer necessary for the PHA’s purposes (non-real property) shall be transferred, sold, or disposed of in accordance with applicable Federal, state, and local laws and regulations and PHA policy.

M. 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.

N. Self-Certification

The PHA self-certifies 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.

O. Solicitation, Advertising, and Fair Competition

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.

Solicitation procedures are conducted in full compliance with Federal standards or more stringent State and local laws that are consistent with 24 CFR 85.36. Non-HUD related properties will follow appropriate state laws and other pertinent restrictions.

The Agency will use the following methods stated below 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.

Methods

1. **Petty Cash and Micro Purchases** – the PHA may contact only one source if the price is considered reasonable.
2. **Small Purchases** – quotes may be solicited orally, through fax, or by any other reasonable method.
3. **Sealed Bids and Competitive Proposals** – solicitation must be done publicly. The PHA 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 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 85.36, State and local requirements, and this policy.

Time Frames

- a. Sealed Bids-Notice of the invitation for sealed bids must be given at a reasonable time before the date set for in the opening of bids. The President/CEO may allow for a shorter period under extraordinary circumstances.
- b. Competitive Proposals- Notice of the invitation for competitive proposals must be given 15 days before the date set for in the opening of the competitive proposals. The President/CEO 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 24 CFR 85.36. Non-HUD related properties will follow appropriate state laws and other pertinent restrictions.

Form

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).

Composition

- 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)

P. Credit Cards and/or Purchasing Cards

Credit card usage should follow the rules as those of 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.

The Contracting Officer will generally need to obtain a reasonable number of quotes before purchasing via a credit card if amounts are above the Micro Purchase level.

The PHA has adopted 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. (*See CHA Credit Card Policy*).

Q. Cost and Price Analysis

The PHA 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 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.”*

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. 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 are not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer’s personal knowledge at the time of purchase, comparison to the Independent Cost Estimate, or any other reasonable basis.

Sealed Bids

Price reasonableness is generally established with the presence of adequate competition. The PHA 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 PHA cannot reasonably determine price reasonableness.

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 bids 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.

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 \$100,000.00.

R. 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;
 - a. the supplies, services or construction is no longer required;
 - b. The funds are no longer available;
 - c. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
 - d. Other similar reasons.
2. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if;
 - a. The supplies or services (including construction) are no longer required;
 - b. Ambiguous or otherwise inadequate specifications were part of the solicitation; All factors of significance to the PHA were not considered;
 - c. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - d. 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
 - e. 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 resolicitation 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:
 - a. re-solicit using an RFP; or
 - b. 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 resolicit using an IFB.

S. Cooperative Purchasing/Intergovernmental Agreements/GSA

The PHA may enter into State and/or local cooperative or intergovernmental agreements to purchase or use common goods, 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 the result is 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 and **24 CFR 85.36** as amended.

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.

T. Equal Employment Opportunity

The PHA will incorporate or cause to be incorporated into any contract the following equal opportunity 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, 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, 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, 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, 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.

U Resident-Owned Businesses

A resident-owned business is any business concern that is owned and controlled by public housing residents. 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 and 24 CFR 85.36 as amended, except that solicitations are limited to resident-owned businesses.

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

1. Prepare an Independent Cost Estimate (ICE) for the procurement.
2. Select the appropriate method of procurement (small purchase, sealed bidding, competitive proposals, or noncompetitive proposals).
3. Solicit a bid, proposal, or offer from one or more resident-owned businesses.
4. Receive offer(s) from one or more resident-owned businesses and ensures that:
 - a. 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;
 - b. 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;
 - c. 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
 - d. Will document the procurement file and comply with all other procurement requirements of 2 CFR Part 200 and **24 CFR 85.36** as amended, including the requirement for economy and efficiency.

V. Section 3 and Assistance to Small and Other Disadvantaged Businesses

Required Efforts. The PHA shall make every feasible effort to ensure that small businesses, Minority Business Enterprises (MBEs), Women’s Business Enterprises (WBEs), and labor surplus area businesses participate in PHA contracting consistent with Presidential Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968.

Goals. PHAs are encouraged to establish goals by which they can measure the effectiveness of their 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. CHA will not adopt minority contracting set-aside policies or geographic limitations, which may be in conflict with Federal requirements for full and open competition.

Outreach. In the development of an outreach program for small, WBE, MBE, or labor surplus area, or Section 3 businesses, CHA may consider how to ensure that the program has the effect of enhancing competition by increasing the number of potential bidders and contractors capable of competing effectively for work generated by CHA. CHA may consider the following:

1. Study the existing barriers facing low-income persons and disadvantaged businesses;
2. Examine CHA policies and procedures that may contribute to these barriers and determine how to improve those policies and procedures;
3. Communicate directly with disadvantaged firms and resident-owned businesses about contracting opportunities, the standards CHA requires for quality work at a reasonable cost, and how to succeed in bidding for CHA work;
4. Maintain a list of disadvantaged and resident-owned firms and notify them of planned procurement activities;
5. Establish partnerships with other community agencies, Federal, State and local agencies, and educational institutions. That may have as their mission the fostering of job creation, training, and business development; and
6. Consider partnering in a consortium or interagency agreement with other PHAs or units of local government to enhance capacity to achieve Section 3 and disadvantaged contracting goals.

Section 3 of the Housing and Urban Development Act of 1968 (24 CFR 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 is 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:

1. PHA utilization of funds for public housing development, operations, and capital fund programs; these requirements do not apply to Section 8; and
2. 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. However, contracting with PHA resident-owned businesses for the purchase of supplies and materials is considered providing an “other business related economic opportunity” under 24 CFR 135.40, which can be used to satisfy a PHA’s overall Section 3 obligations. Additionally, 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 135.38, which applies to all contracts covered by Section 3. Covered contracts described at 24 CFR 135.3(a) 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 135.90, 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.

Semi-Annual Reporting of Contract and Subcontract Activity. PHAs are required to 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.

W. 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 by State and/or federal law.

X. Bonding Requirements

There are no bonding requirements for small purchases or for competitive proposals per federal guidelines. The standards under this section are applicable to construction contracts that exceed \$50,000, as required by the South Carolina Consolidated Procurement Code (CPC). – The PHA may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

Bid Bonds

For construction contracts exceeding \$50,000 - offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price. The State of Carolina CPC requires bid security for all competitive sealed bidding for construction contracts in a design-bid-build procurement in excess of \$50,000.

Performance and Payment Bonds

For construction contracts exceeding \$50,000 - the successful bidder shall furnish an assurance of completion. This assurance may be met with any one of the following four:

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

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.

Y. Contractor Qualifications, Duties and Responsibility

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

1. Have adequate financial resources to perform the contract, or the ability to obtain them;
2. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;
3. Have a satisfactory performance record;
4. Have a satisfactory record of integrity and business ethics;
5. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
6. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
7. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed LDP.
8. 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.

Z. 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 (24 CFR Part 24); listed on the government wide Excluded Parties List System in the System for Award Management (SAM); 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.

AA. Vendor Lists

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

BB. Contract Pricing Arrangements/Prohibited Contract Types

Contract Types (acceptable and prohibited)

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-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.

Options

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

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

CC. Contract Clauses (including termination clause)

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

Additionally, the applicable forms HUD-5369, 5369-A, 5369-B, 5370, 5370-C, and 51915- A, which contain all HUD-required clauses and certifications for contracts of more than \$100,000, as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by this PHA. All contracts shall contain a termination clause which complies with Form HUD-5370 or Form HUD-5370 is made part of the contract by reference or attachment.

Contract Terminations

- A. **General.** Contracts are terminated either for default or convenience, as prescribed in the termination clauses on forms HUD-5370, 5370-C, and 5370-EZ.

- B. **Termination Notice.** The Contracting Officer shall terminate contracts for convenience or default only by a written notice to the contractor. The notice shall be sent by certified mail with a return receipt requested. The notice shall state, at a minimum, the following:
 - 1. The contract is being terminated for default or for the convenience of the PHA under the cited contract clause authorizing the termination;
 - 2. Whether the contract is terminated in whole or in part (for partial terminations, identify the specific items being terminated);
 - 3. If terminated for default, the acts or omissions constituting the default, the Contracting Officer's determination that failure to perform is not excusable, the PHA's rights to charge excess costs of re-procurement to the contractor, and the contractor's appeal rights;
 - 4. The effective date of termination;
 - 5. The contractor's right to proceed under the non-terminated portion of the contract;
 - 6. Any special instructions; and
 - 7. Copies of the notice should be sent to the contractor's surety, if any, and any assignee.

- C. **Termination for Convenience.** Contracts may be terminated for convenience when the PHA no longer needs or desires the supplies or services under contract or can no longer fund the procurement.
 - 1. **Settlement.** Settlement of contracts terminated for convenience may be settled through negotiations or by a unilateral determination of the Contracting Officer. The contractor should submit a settlement proposal promptly to the Contracting Officer for any amounts claimed as a result of the termination. Whenever possible, the Contracting Officer should negotiate a fair and prompt settlement with the contractor and should settle by determination only when mutual agreement cannot be reached.

2. **Compensation.** A settlement should compensate the contractor fairly for work performed, for other costs incurred under the contract, and for preparations made for the terminated portions of the contract, including a reasonable allowance for profit.

However, no profit shall be allowed on settlement expenses. In addition, the Contracting Officer shall not allow profit if it appears that the contractor would have incurred a loss had the entire contract been completed. Fair compensation is a matter of judgment and cannot be measured exactly. The Contracting Officer should use prudent business judgment in the settlement process, as opposed to strict accounting principles. The parties may agree to a total amount to be paid to the contractor without agreeing on individual cost items or profit.

- D. **Termination for Default.** A contract may be terminated for default because of the contractor's actual or anticipated failure to perform its contractual obligations. Under a termination for default, the PHA is not liable for the contractor's costs on undelivered work and may be entitled to the repayment of progress payments. If the contractor fails to make progress so as to endanger performance of the contract, the Contracting Officer should issue a written notice to the contractor (generally called a "Cure Notice") specifying the failure and providing a period of 10 days (or longer period if needed) in which to "cure" the failure. After the 10 days, the Contracting Officer may issue a notice of termination for default, unless the failure to perform has been cured.

1. **Notice.** If the contractor has failed to perform work within the required time and a termination for default appears appropriate, the Contracting Officer should, if practicable, notify the contractor in writing of the possibility of the termination. This notice shall call the contractor's attention to the contractual liabilities if the contract is terminated for default, and request the contractor to "show cause" why the contract should not be terminated. If the response to this "show cause" notice is inadequate or insufficient, action is taken in response to it; the contract should then be terminated for default.
2. **Alternatives to Termination.** Alternatives to termination for default include the following (at the PHA's discretion): allow alternative dispute resolution (arbitration or mediation) as agreed to by both parties; allow the contractor or the surety to continue performance of the contract under a revised delivery schedule (in exchange for a reduced price or other consideration); permit the contractor to continue performance of the contract by means of a subcontract or other business arrangement with an acceptable third party, provided the rights of the PHA are adequately protected; or, if the contractor is not liable to the PHA for damages, execute a no-cost termination settlement agreement.
3. **Repurchase.** When the supplies, services, or construction activities are still required after termination, the Contracting Officer should seek to contract for the same or similar items as soon as possible. The Contracting Officer may use any appropriate contracting method for the procurement (sealed bids or competitive or noncompetitive proposals, as appropriate), provided competition is solicited to the maximum extent practicable to secure the lowest price obtainable under the circumstances in order to mitigate damages.

DD. Contract Administration

The PHA shall maintain a system of contract administration in accordance with CHA record management and file retention policy which is designed to ensure that contractors perform in accordance with their contracts. These systems shall provide for inspection of goods, supplies, services, or construction, as well as monitoring contractor performance, status reporting on major

projects including construction contracts, and similar matters. For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in HUD Handbook 2210.18.

EE. Records Retention

Section 200.333 continues the existing record retention period of generally three years, with some exceptions and caveats. Federal agencies and non-Federal entities should, whenever practicable, collect, transmit and store Federal award-related information in machine-readable formats instead of closed formats or on paper.

FF. Specifications

General

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.

Limitation

The following types of specifications shall be avoided:

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

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

GG. Appeals, Protests, and Remedies

General

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.

Informal Appeals Procedure

The PHA shall adopt an informal bid protest/appeal procedure for contracts of \$100,000 or less (see Agency's Procurement Procedures Manual). Under these procedures, the bidder/contractor may request to meet with the appropriate Contracting 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 Agency's President/CEO, if not serving as Contracting Officer, will hear and handle any appeal of the initial protest decision by the Contractor or prospective Contractor.

Formal Appeals Procedure

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

1. **Bid/RFP/RFQ 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.
2. **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.

HH. 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).

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

II. Federal Labor Standards

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.

JJ. 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, Chg 1 and is also available on the Office of Labor Relations web site at: www.hud.gov/offices/olr

KK. Rights to Inventions Made Under a Contract or Agreement.

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

LL. Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

MM. Energy Efficiency

The PHA shall procure an Energy Audit (EA) every five years in accordance with HUD requirements. A Physical Needs Assessment (PNA) will be conducted, as a requirement under asset management and to establish the agencies needs to reduce energy costs as well as other modernization priorities.

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 965.306.

The PHA may streamline the procurement process for purchasing energy-saving products above \$2,000 and below \$100,000 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. If quotes are less than the federal limit of \$100,000, PHAs will stay within their state’s procurement limits. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

NN. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress,

or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award

OO. Mandatory HUD Forms

HUD has developed certain 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. PHAs may also be bound by State or local requirements. In addition to Federal, State or local requirements, PHAs should include necessary and appropriate language with any small purchase that is consistent with good business practice.

Acceptable Methods of Incorporation

PHAs may 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 into other documents, (e.g., into the PHA's own forms, the clauses/text of the applicable HUD form and wage decision that are bound/attached to the contract (and bid specifications, if applicable) or incorporated by reference;
3. Reference the clauses or HUD forms and/or any applicable Davis-Bacon or HUD wage decision. 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., HUD website (www.hudclips.org), or CHA website www.chacity.org). PHAs must make available, when requested, hard copies of any referenced clauses, forms, and/or wage decisions on request.
 - 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, CHA may post any applicable HUD wage decision to its own web site www.chacity.org and reference that site.

The following is a listing of **mandatory** HUD forms for various types of procurement. The forms may be found on CHA website at www.chacity.org or HUD website www.hudclips.org http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/

HUD-5369	Instructions to Bidders for Contracts Public and Indian Housing Programs
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 Housing Programs
HUD-5370-C	General Contract Conditions for Non-Construction Contracts [Section I-(with or without Maintenance Work)]
HUD-5370-C	General Contract Conditions Non-Construction Section I [Section II-(with Maintenance Work)]
HUD-5370-C2	General Contract Conditions Non-Construction Section II
HUD-5370-EZ	General Contract Conditions for Small Construction/Development Contracts (Greater than \$2,000.00 but not more than \$100,000.00)
HUD-51915	Model Form of Agreement Between Owner and Design Professional
HUD-51915-A	Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development

PP. 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 (24 CFR 85.36(c)(1)).

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 President/CEO or an official authorized by the President/CEO 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.

Design/Build-Design/Construction-Construction contract that provides for a general contractor to manage the project from design phase through the completion of construction

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 \$100,000 (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 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 \$2,000 (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, 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 (24 CFR 85.36(d) (2)).

Section 3 Business Concern - is as defined under **24 CFR Part 135**: A business concern located in the area of the development defined as an individual or firm located within the relevant Section 3 covered development area, as determined pursuant to CFR 135.36, listed on HUD's registry or eligible business concerns, and meeting the definition of small business above. A business concern owned in substantial part by persons residing in the area of the development is one which is fifty-one percent (51%) or more owned by persons residing within the Section 3 covered development, owned by persons considered by the U.S. Small Business Administration to be socially or economically disadvantaged, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above.

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 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 \$150,000.00; 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.) (24 CFR 85.36(d)(1)).

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.

Supplies- Supplies includes computing devices if the acquisition cost was less than the lesser of the capitalization level established by a non-federal entity or financial statement purpose of \$5,000.00 regardless of the length of their useful life §§200.94

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 firms or persons interested in doing businesses with the CHA.

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