HOUSING AUTHORITY OF THE CITY OF ANNAPOLIS

PROCUREMENT POLICY

October 2009

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HOUSING AUTHORITY OF THE CITY OF ANNAPOLIS
PROCUREMENT POLICY

This Procurement Policy complies with the Annual Contributions Contract (ACC) between this Housing Authority (HA) and the HUD, Federal Regulations at 24 CFR 85.36, the procurement standards of the Procurement Handbook for Housing Authorities, HUD Handbook 7460.8, Rev 2, and applicable State and Local laws. Where there is a conflict between State and local laws and 24 CFR 85.36, it (24 CFR 85.36) shall take precedent over state law when using American Recovery and Reinvestment Act of 2009 Capital Funds.

GENERAL PROVISIONS:

A. General:

The HA shall:

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

B. Application:

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

C. Definition:

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

- 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 excluded areas are subject to applicable State and local requirements.

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. 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 the **State of Maryland Freedom of Information Act(Section 10-611 to 10-628)** and will be available to the public as provided in that statute.

ETHICS IN PUBLIC CONTRACTING

A. General:

The Housing Authority hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations.

B. Conflicts of Interest:

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

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

C. ***Gratuities, Kickbacks, and Use of Confidential Information:***

No officer, employee, Board member, or agent shall ask for or accept gratuities, favors, or items of more than $25 in value from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

D. ***Prohibition Against Contingent Fees:***

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

PROCUREMENT PLANNING

Planning is essential to managing the procurement function properly. Hence, the Housing Authority will periodically review its record of prior purchases, as well as future needs, to: find patterns of procurement actions that could be performed more efficiently or economically; maximize competition and competitive pricing among contracts and decrease the Housing Authority's procurement costs; reduce Housing Authority administrative costs; ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and minimize errors that occur when there is inadequate lead time. Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

PURCHASING METHODS

A. ***Petty Cash Purchases:***

Purchases under $100 may be handled through the use of a petty cash account. Petty Cash Accounts may be established in an amount sufficient to cover small purchases made during a reasonable period, e.g., one month. For all Petty Cash Accounts, the HA shall ensure that security is maintained and only authorized individuals have access to the account. These accounts should be reconciled and replenished periodically. Receipts are required for all purchases or expenditures from this fund.

B. ***Small Purchase Procedures:***

For any amounts above the Petty Cash ceiling, but not exceeding $25,000.00, the HA may use small purchase procedures except that when the Housing Authority utilizes American Recovery and Reinvestment Act of 2009 Capital Funds the small purchase shall be set at $100,000. Under small purchase procedures, the HA shall obtain a reasonable number of quotes (preferably three); however, for purchases of less than $2,000, also known as Micro Purchases, only one quote is required provided the quote is considered reasonable. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Quotes may be obtained orally (either in person or by phone), by fax, in writing, or through e-procurement. Award shall be made to the qualified vendor that provides the best value to the HA. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. The HA shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase

threshold) into several purchases that are less than the applicable threshold merely to: (1) permit use of the small purchase procedures or (2) avoid any requirements that applies to purchases that exceed the Micro Purchase threshold.

C. Sealed Bids:

Sealed bidding shall be used for all contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this document. Under sealed bids, the Housing Authority 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 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 $25,000.00 except that when the Housing Authority utilizes American Recovery and Reinvestment Act of 2009 Capital Funds then threshold will be set at $100,000.

1. Conditions for Using Sealed Bids.

The Housing Authority 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.

2. Solicitation and Receipt of Bids.

When an Invitation For Bid (IFB) is issued it 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.

3. Bid Opening and Award.

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

4. Mistakes in Bids.

Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if

the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices, or other provisions of bids prejudicial to the interest of the Housing Authority or fair competition shall not be permitted.

D. Competitive Proposals:

Unlike sealed bidding, the competitive proposal method permits: consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the Housing Authority, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

1. Conditions for Use.

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

2. Form of Solicitation.

Other than A/E services, competitive proposals shall be solicited through the issuance of a RFP. The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any subfactors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. The Housing Authority may assign price a specific weight in the evaluation criteria or the Housing Authority may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

3. Evaluation.

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

4. Negotiations.

Negotiations shall be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror

shall be given any information about any other offerors proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between the Housing Authority and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offerors proposal, and shall be conducted by the contracting officer with each offeror within the competitive range. The primary object of discussions is to maximize the HAs ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The contracting officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposers 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 Housing Authority 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 governments price analysis, market research, and other reviews have identified as reasonable. Auctioning (revealing one offerors price in an attempt to get another offeror to lower their price) is prohibited.

5. <u>Award.</u>

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

6. <u>A/E Services, Development Partner and Consultant Services.</u>

The Housing Authority must contract for A/E services using Qualifications – Based Selection (QBS) procedures, utilizing a Request for Qualification (RFQ). Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures shall not be used to purchase other types of services, though architectural/engineering firms are potential sources.

E. <u>Noncompetitive Proposals</u>

1. <u>Conditions for Use.</u>

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

a. The item is available only from a single source, based on a good faith review of available sources;

b. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the HA, 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;
   1) HUD authorizes the use of noncompetitive proposals; or
   2) After solicitation of a number of sources, competition is determined inadequate.

2. <u>Justification.</u>

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

a. Description of the requirement;
b. History of prior purchases and their nature (competitive vs. noncompetitive);
c. The specific exception in 24 CFR 85.36(d) (4) (i) (A) through (D) which applies;
d. Statement as to the unique circumstances that require award by noncompetitive proposals;
e. 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.);
f. Statement as to efforts that will be taken in the future to promote competition for the requirement;
g. Signature by the Contracting Officers supervisor (or someone above the level of the Contracting Officer); and
h. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

F. <u>Cooperative Purchasing/Intergovernmental Agreements</u>

The Housing Authority may enter into State and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The Housing Authority may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 24 CFR 85.36.

G. <u>Independent Cost Estimate (ICE)</u>

For all purchases above the Micro Purchase threshold, the HA 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.

COST AND PRICE ANALYSIS

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

A. Petty Cash and Micro Purchases

No formal cost or price analysis is required. Rather, the execution of a contract by the Contracting Officer (through a Purchase Order or other means) shall serve as the Contracting Officers determination that the price obtained is reasonable, which may be based on the Contracting Officers prior experience or other factors.

B. Small Purchases

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

C. Sealed Bids

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

D. Competitive Proposals

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, the Housing Authority must compare the price with the ICE. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, the Housing Authority must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

E. Contract Modifications

A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of $25,000 except that when the Housing Authority utilizes American Recovery and Reinvestment Act of 2009 Capital Funds then threshold for modification will be set at $100,000.

SOLICITATION AND ADVERTISING

A. Method of Solicitation

1. Petty Cash and Micro Purchases.

The Housing Authority 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 Housing Authority must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.

a. Advertising in newspapers or other print mediums of local or general circulations.
b. Advertising in various trade journals or publications (for construction).
c. E-Procurement. The Housing Authority 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 the Authority's procurement policy.

B. Time Frame

For purchases of more than $100,000, the public notice should run not less than once each week for two consecutive weeks.

C. 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 items(s).

D. Time Period for Submission of Bids

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

E. Cancellation of Solicitations

1. IFB, RFP:

An IFB, 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. **Solicitation:**

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;
c. All factors of significance to the Housing Authority were not considered;
d. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
e. 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
f. For good cause of a similar nature when it is in the best interest of the Housing Authority.

3. **Reasons:**

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. **Notice:**

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. **Unreasonableness:**

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 Housing Authority'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 Housing Authority's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.

6. **Specification(s) Problems:**

If problems are found with the specifications, the Housing Authority will cancel the solicitation, revise the specifications and resolicit using an IFB.

F. Credit (or Purchasing) Cards

Credit card usage should follow the rules for all other small purchases. For example, the Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Contracting Officer would generally need to have obtained a reasonable number of quotes before purchasing via a credit card. When using credit cards, the Executive Director or his/her appointed designee shall monitor all expenditures to insure

compliance with this policy. The Housing Authority should have reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

BONDING REQUIREMENTS

The standards under this section apply to construction contracts that exceed $100,000. There are no bonding requirements for small purchases or for competitive proposals. The Housing Authority may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

A. Bid Bonds.

For construction contracts exceeding $100,000, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.

B. Payment Bonds.

For construction contracts exceeding $100,000, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four:

- A performance and payment bond in a penal sum of 100% of the contract price; or
- Separate performance and payment bonds, each for 50 % or more of the contract price; or
- A 20 % cash escrow; or
- 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.

CONTRACTOR QUALIFICATIONS AND DUTIES

A. Contractor Responsibility

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

- Have adequate financial resources to perform the contract, or the ability to obtain them;
- Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidders/offerors existing commercial and governmental business commitments;
- Have a satisfactory performance record;
- Have a satisfactory record of integrity and business ethics;
- Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed Limited Denial of Participation (LDP). If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

B. Suspension and Debarment

Contracts shall not be awarded 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) or by other Federal agencies, e.g., Dept of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings.

C. Vendor Lists

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

CONTRACT PRICING ARRANGEMENTS

A. Contract Types

Any type of contract which is appropriate to the procurement and which will promote the best interests of the Housing Authority may be used including but limited to Job Order Contracting (JOC), Indefinite Quantity Contracts(IDQC), Cooperative Purchasing, Intergovernmental Agreements, etc provided the cost -plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used. All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and Housing Authority. For all cost reimbursement contracts, the Housing Authority must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.

B. Options

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

- The option is contained in the solicitation;

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

CONTRACT CLAUSES

All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the Housing Authority. Additionally, the forms HUD-5369, 5369-A, 5369-B, 5369, 5370, 5370-C, and 51915-A , which contain all HUD-required clauses and certifications for contracts of more than $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 Authority. Further, when utilizing American Recovery and Reinvestment Act funds, the Housing Authority will ensure that all contracts for the construction, alteration, maintenance, or repair of Housing Authority buildings fully complies with PIH Notice 2009-31 prior to award.

CONTRACT ADMINISTRATION

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

SPECIFICATIONS

A. <u>General</u>

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

B. Limitation

The following types of specifications shall be avoided:

1. Geographic Restrictions:

Geographic restrictions are 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:

Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use). Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be reviewed to ensure that organizational conflicts of interest do not occur.

APPEALS AND REMEDIES

A. General

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

B. Informal Appeals Procedure

The Housing Authority shall adopt an informal bid protest/appeal procedure for contracts of $100,000 or less. Under these procedures, the bidder/contractor may request to meet with the appropriate Contract Officer.

C. Formal Appeals Procedure

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

1. Bid Protest.

Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contract 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 Officers decision shall inform the contractor of its

appeal rights to the next higher level of authority in Housing Authority. Contractor claims shall be governed by the Changes clause in the form HUD-5370.

ASSISTANCE TO SMALL AND OTHER BUSINESSES

A. Required Efforts

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

- Including such firms, when qualified, on solicitation mailing lists;
- Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in 24 CFR Part 135 (so-called Section 3 businesses); and
- Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above. Goals shall be established periodically for participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses and Section 3 business concerns in HA prime contracts and subcontracting opportunities.

B. Definitions

1. A small business:

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

2. A minority-owned business:

A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members

include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

3. **A women's business enterprise:**

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

4. **A Section 3 business:**

   A Section 3 business concern is as defined under 24 CFR Part 135.

5. **A labor surplus area business:**

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

BOARD APPROVAL OF PROCUREMENT ACTIONS

Other than approval of this Procurement Policy approval by the Board of Commissioners is not required for any procurement action. Rather, it is the responsibility of the Executive Director to make sure that all procurement actions are conducted in accordance with the policies contained herein.

DELEGATION OF CONTRACTING AUTHORITY

While the Executive Director is responsible for ensuring that the Housing Authority's procurements comply with this Policy, the Executive Director may delegate all procurement authority as is necessary and appropriate to conduct the business of the Agency. Further, and in accordance with this delegation of authority, the Executive Director shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The Executive Director shall also establish a system of sanctions (generally covered in the Housing Authority's Personnel Policy) for violations of the ethical standards described above, consistent with Federal, State, or local law.

DOCUMENTATION

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

- Rationale for the method of procurement (if not self-evident);
- Rationale of contract pricing arrangement (also if not self-evident);

- Reason for accepting or rejecting the bids or offers;
- Basis for the contract price (as prescribed in this handbook);
- A copy of the contract documents awarded or issued and signed by the Contracting Officer;
- Basis for contract modifications; and
- Related contract administration actions.

The level of 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 contact are closed.

FUNDING AVAILABILITY

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

SELF-CERTIFICATION

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