



**WINTER PARK HOUSING AUTHORITY**  
**PROCUREMENT POLICY**

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## The Winter Park Housing Authority

### PROCUREMENT POLICY

Established for the Housing Authority of the City of Winter Park, Florida (hereinafter “the Agency” by action of the Agency Board of Commissioners on August 9, 2016, this Procurement Policy complies with HUD's Annual Contributions Contract (ACC) between the Agency and the United States Department of Housing and Urban Development (HUD), Federal Regulations at 2 CFR 200.317 through 200.326, Procurement Standards, and the procurement standards of the HUD Procurement Handbook 7460.8 REV-2, and applicable State and local laws.

#### I. General Provisions

##### A. Purpose

The purpose of this Procurement Policy is to: provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Agency; assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable price available to the Agency without sacrificing quality; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; ensure that unnecessary or duplicate purchases are not made; and assure that the Agency's purchasing actions are in full compliance with applicable Federal standards, HUD regulations, and State and local laws.

##### B. Application

This Procurement Policy applies to all contracts for the procurement of supplies, services, and construction entered into by the Agency after the Board resolution date of this Policy. It will apply to every expenditure of funds by the Agency for public purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds (such as concession contracts). However, nothing in this Policy will prevent the Agency from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law.

The term "procurement" as used in this Policy, includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of supplies and equipment.

##### C. Public Access to Procurement Information

Procurement information will be a matter of public record to the extent provided in the **State of Florida's Public Information Statute** and will be available to the public as provided in that statute.

##### D. Changes in Laws and Regulations

In the event an applicable laws or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall. To the extent inconsistent with this Policy, automatically supersede this Policy. The Executive Director is authorized to amend this Policy to ensure consistency with applicable laws and regulations.

##### E. Self-Certification

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



## II. Procurement Authority and Administration

### A. Board Approval of Procurement Actions

This Policy and any later changes, except those required by Section I, D. Changes in Laws and Regulations, shall be submitted to the Board of Commissioners for approval. The Board of Commissioners shall give final approval for all purchases of Thirty-five thousand dollars (\$35,000.00) or more.

### B. Delegation of Contracting Authority

The Board appoints and delegates procurement authority to the Executive Director, who shall be the Contracting Officer. The Executive Director shall be responsible for final approval of all purchases under Thirty-five thousand dollars (\$35,000.00).

All procurement transactions will be administered by the Contracting Officer, who will be the Executive Director or other individual he or she has authorized in writing. The Executive Director will issue operational procedures to implement this Policy, which will be based on HUD Handbook 7460.8. The Executive Director will also establish a system of sanctions for violations of the ethical standards described in section IX below, consistent with State law.

The Executive Director or designee will ensure that:

1. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing. Hence, the Agency will periodically review its record of prior purchases, as well as future needs, to:
  - a. Find patterns of procurement actions that could be performed more efficiently and/or economically;
  - b. Maximize competition and competitive pricing among contracts and decrease the Agency's procurement costs;
  - c. Reduce the Agency administrative costs;
  - d. Ensure that supplies and services are obtained without any need for re-procurement a9i.e., reducing and resolving bid protests; and
  - e. Minimize errors that occur when there is inadequate lead time.
2. Contracts and modifications are in writing, clearly specifying the desired supplies, services, or construction, and are supported by sufficient documentation regarding the history of the procurement, including as a minimum the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price;
3. For procurements other than small purchases, public notice will be given of each upcoming procurement at least ten (10) days before a solicitation is issued; notification of solicitation on specific purchases will be made to all qualified firms; responses to such notice are honored to the maximum extent practical; a minimum of fifteen (15) days is provided for preparation and submission of bids or proposals; and notice of contract awards is made available to the public;
4. Solicitation procedures are conducted in full compliance with Federal standards stated in 2 CFR 200.317 through 200.326, and applicable State and local laws, provided they are consistent with 2 CFR 200.317 through 200.326;
5. An independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation, and a cost or price analysis is conducted of the responses received for all procurements;



6. Contract award is made to the responsive and responsible bidder offering the lowest price (for sealed bid contracts) or contract award is made to the offeror whose proposal offers the greatest value to the Agency, considering price, technical, and other factors as specified in the solicitation (for contract awards based on competitive proposals). Unsuccessful firms are notified within ten (10) days after contract award;
7. There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), work is inspected before payment, and payment is made promptly for contract work performed and accepted; and
8. The Agency complies with applicable HUD review requirements as provided in its operational procedures. Complete files of all procurements and contracts will be maintained to demonstrate compliance with all Federal and state regulations as well as Authority policy.

### **III. Procurement Methods**

#### **A. Selection of Method**

If it has been decided that the Agency will directly purchase the required items, one of the following procurement methods will be chosen, based on the nature and anticipated dollar value of the total requirement.

#### **B. Small Purchase Procedures**

1. General. Any contract not exceeding \$35,000 may be made in accordance with the small purchase procedures authorized in this section. The Agency shall not break down requirements aggregating more than the small or micro purchase thresholds into several purchases that are less than the applicable threshold to a) permit use of small purchase procedures or b) avoid any requirements that apply to purchases that exceed the micro purchase threshold.
2. Petty Cash Purchases. Small purchases under \$50.00 may be processed through the use of a petty cash account. The Contracting Officer will ensure that: the account is established in an amount sufficient to cover small purchases made during a reasonable period (e.g., one week); security is maintained and only authorized individuals have access to the account; the account is periodically reconciled and replenished by submission of a voucher to the Agency finance officer; and, the account is periodically audited by the finance officer or designee to validate proper use and to verify that the account total equals cash on hand plus the total of accumulated vouchers.
3. Small purchases of \$3,000 or less. For small purchases below \$3,000 also known as Micro purchases, only one quotation need be solicited if the price received is considered reasonable. Such purchases must be distributed equitably among qualified sources. If practicable, a quotation will be solicited from other than the previous source before placing a repeat order.
4. Small Purchases over \$3,000. For small purchases in excess of \$3,000, no less than three (3) offerors will be solicited to submit price quotations, which may be obtained orally, by telephone, by fax in writing, or by e-procurement. Award will be made to the offeror providing the lowest acceptable quotation, unless justified in writing based on price and other specified factors, such as for architect-engineer contacts. If non-price factors are used, they



will be disclosed to all those solicited. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation will be recorded and maintained as public record.

### C. **Sealed Bidding**

1. Conditions for Use. Contracts will be awarded based on competitive sealed bidding, also known as an Invitation for Bids, if the following conditions are present: a complete, adequate, and realistic statement of work, specification or purchase description is available; three or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price. Sealed bidding is the preferred method for construction procurement.

2. Solicitation and Receipt of Bids. An Invitation for Bids will be issued including specifications and all contractual terms and conditions applicable to the procurement, including a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the Invitation for Bids. The Invitation for Bids will state the time and place for both the receipt of bids and the public bid opening. All bids received will be time-stamped but not opened and will be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.

3. Bid Opening and Award. Bids will be opened publicly and in the presence of at least one witness. An abstract of bids will be recorded and the bids will be available for public inspection. Award will be made as provided in the Invitation for Bids by written notice to the successful bidder. If equal low bids are received from responsible bidders, award will be made by drawing lots or similar random method and stated in the Invitation for Bids. If only one responsive bid is received from a responsible bidder, award will not be made unless a cost or price analysis verifies the reasonableness of the price.

4. Mistakes in Bids.

a. Correction or withdrawal of inadvertently erroneous 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. After bid opening, corrections in bids will 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. 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.

b. All decisions to allow correction or withdrawal of bid mistakes will be supported by a written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Agency or fair competition will be permitted.

5. Bonds.

In addition to the other requirements of this Policy, the following requirements apply:



For construction contracts exceeding \$150,000 other than those specified in 5B and 5C below, contractors will be required to submit the following:

- (1) A bid guarantee from each bidder equivalent to 5% of the bid price; and
- (2) The successful bidder shall furnish an assurance of completion. This assurance may be 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 of Florida. 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.

#### **D. Competitive Proposals**

1. Conditions for Use. Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the Agency determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources will be solicited. Competitive Proposals are the preferred method for procuring professional services that will exceed the small purchase threshold. As detailed within Section 7.2.B of the HUD procurement Handbook 7460.8 rev 2, “only under limited circumstances would construction services be procured by competitive proposals.” accordingly, construction services will most typically be procured utilizing the sealed bid or small purchase procedures.
2. Solicitation. Other than Architectural and Engineering (A/E), developer-related services and energy performance contracting, competitive proposal shall be solicited through the issuance of a The Request for Proposals (RFP).The RFP will clearly identify the relative importance of price and other evaluation factors and subfactors, including the weight given to each technical factor and subfactor. A mechanism for fairly and thoroughly evaluating the technical and price proposals will be established before the solicitation is issued. Proposals will be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals.
3. Evaluation The proposals will be evaluated only on the criteria stated in the Request for Proposals. The Agency may assign price a specific weight in the evaluation factors or the Agency may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

Generally, all proposals shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee members 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 evaluations, shall be prepared prior to award of a contract.

4. Negotiations. Unless there is no need for negotiations with any of the offerors, negotiations will be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerors will be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations will be to seek clarification with regard to and advise offerors of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offeror will be provided information about any other offeror's proposal, and no offeror will be assisted in bringing its proposal up to the level of any other proposal. Offerors will not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline will be established for receipt of proposal revisions based on negotiations.

5. Award. After evaluation of proposal revisions, if any, the contract will be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the Agency provided that the price is within the maximum total project budgeted amount established for the specific project or activity..

6. Architect/Engineer (A/E) Services. Architect/Engineer Services in excess of the small purchase limitation may be obtained by the qualifications based selection (QBS) procedures, Request for Qualifications (RFQ). Sealed bidding will not be used to obtain architect/engineer services. Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. Qualifications-based selection procedures will not be used to purchase other types of services even though architect-engineer firms are potential sources.

## **E. Noncompetitive Proposals**

1. Conditions for Use. Procurement will be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchases procedures, sealed bids, or competitive proposals, and 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 Agency, as may arise by reason of a flood, earthquake, tornado, 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 other procurement methods, and the emergency procurement will be limited to those supplies, services, or construction necessary to meet the emergency;
- (c) HUD authorizes the use of noncompetitive proposals: or



- (d) After solicitation of a number of sources, competition is determined inadequate.
2. Justification. Each procurement based on noncompetitive proposals will be supported by written justification for using such procedures. The justification will be approved in writing by the Contracting Officer and should include the following information:
- (a) Description of the requirement;
  - (b) History of prior purchases and their nature (competitive vs. non-competitive);
  - (c) The specific exception in 2 CFR 200.320(f)(1)-(4) which applies;
  - (d) Statement as to the unique circumstances that require award by non-competitive proposals;
  - (e) Description of the efforts made to find competitive sources (advertisements in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.)
  - (f) Statement as to the efforts that will be taken in the future to promote competition for the requirement;
  - (g) Signature by the Executive Director
3. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals will be determined by performing a cost analysis, as described in this policy

#### **F. Cooperative Purchasing**

The Agency may enter into State and local intergovernmental agreements to purchase common goods and services. The decision to use an intergovernmental agreement or conduct a direct procurement will be based on economy and efficiency. If used, the intergovernmental agreement will stipulate who is authorized to purchase on behalf of the participating parties and will specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The use of Federal or state excess and surplus property will be considered instead of the purchase of new equipment and property whenever such use is feasible and reduces project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 CFR 200.317 through 200.326.

#### **G. Credit (or Purchasing) Cards**

Credit card usage should follow the same 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 prior to the purchase. When using credit cards, the Agency shall adopt reasonable safeguards to assure that they are used only for intended purposes.<sup>9</sup>(for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

#### **H. Solicitation and Advertising**

Advertising requirements depend on the method of solicitation as follows:

1. Petty Cash and Micro Purchases. The Agency may contact only one source, if the price is considered reasonable.
2. Small Purchases. Quotes may be solicited orally, through fax, E-Procurement, or by any other reasonable method.



3. Sealed Bids and Competitive proposals. Solicitations must be done ~~publically~~publicly, provided that the method employed provides for meaningful competition.
  - (a) Advertising in newspapers or other print mediums of local or general circulation
  - (b) Advertising in various trade journals or publications(for construction)
  - (c) E-Procurement the Agency may conduct its public procurements through the internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2 CRF 200.317 through 200.326, applicable State and local requirements and the Agency's procurement policy.
4. Time Frame. For purchases, more than \$150,000, the public notice should run not less than once a week for two consecutive weeks.
5. Form. Notices/advertisements should state at a minimum, the place, date and time that the bids are due, the solicitation number, a contact that can provide a copy of and information about the solicitation and a brief description of the needed item(s)
6. 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.

## H. Cancellation of Solicitations

1. An Invitation for Bids, Request for Proposals, or other solicitation may be cancelled before offers are due if: the Agency no longer requires the supplies, services, or construction; the Agency can no longer reasonably expect to fund the procurement; proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or similar reasons.
2. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if the supplies, services or construction are no longer required; ambiguous or otherwise inadequate specifications were part of the solicitation; the solicitation did not provide for consideration of all factors of significance to the Agency; prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or for good cause of a similar nature when it is the best interest of the Agency.
3. The reasons for cancellation will be documented in the procurement file and the reasons for cancellation and/or rejection will be provided upon request to any offeror solicited.
4. A notice of cancellation will be sent to all offerors solicited and, if appropriate, will 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 Invitation for Bids are at unreasonable prices, or only one bid is received and the price is unreasonable, the Agency will cancel the solicitation and either:



- (a) Resolicit using a Request for Proposals; or
- (b) Complete the procurement by using the competitive proposals method. The Contracting Officer must determine in writing that such action is appropriate, all bidders are informed of the Agency's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

#### **IV. Cost and Price Analysis**

The Agency shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following

1. Independent Cost Estimate (ICE) for all purchases above the Micro Purchase threshold, the Agency shall prepare an ICE prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.
2. Small Purchase: 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 determine price reasonableness through other means, such as prior purchases of this nature, catalog prices, the CO's personal knowledge at the time of the purchase, comparison to the ICE or any other reasonable
3. 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 Agency cannot reasonably determine price reasonableness, the Agency must conduct a cost analysis, consistent with federal guidelines, to ensure that the price is reasonable.
4. Competitive Proposals. The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient proposals are not received, the Agency must compare the price with the ICE. For proposals where prices cannot be easily compared, where there is not adequate competition or where the price received is substantially more than the ICE, the Agency must conduct a cost analysis, consistent with federal guidelines, to ensure that the price is reasonable.
5. Contract modification. 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 \$150,000.

#### **V. Contractor Qualifications and Duties**

##### **A. Contractor Responsibility**

Procurements will be conducted only with responsible contractors, i.e. those who have the technical and financial competence to perform and who have a satisfactory record of integrity. Before awarding a contract, the Agency will review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity (including a review of the List of Parties Excluded From Federal Procurement and Non-Procurement Programs published by the U.S. General Services Administration) compliance with public policy, record of past performance (including contacting previous clients of the contractor, such as other PHAs), and financial technical resources. If a prospective contractor is found to be nonresponsible, a written determination of nonresponsibility will be prepared and included in the contract file, and the prospective contractor will be advised of the reasons for the determination.

**B. Suspension and Debarment**

Contracts will not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by HUD in accordance with HUD regulations (2 CFR 2300.317 through 200.326 or by other Federal agencies (e.g., Department of Labor for violation of Secretary of Labor regulations) when necessary to protect the Agency in its business dealings, prior to issuance of a contract, Agency staff shall, as detailed within Section 10.2.H.1 and 10.2.H.2 of HUD Procurement Handbook 7460.8 rev2, conduct the required searches within the HUD limited Denial Participation system and the U.S. General Services Administration System for Award Management (SAM) and place within the applicable contract file a printed copy of the results of each search.

**C. Vendor Lists**

All interested businesses will be given an opportunity to be included on vendor mailing lists. Any pre-qualified list of persons, firms or products which are used in the procurement of supplies and services will be kept current and will include enough qualified sources to ensure competition. Firms will not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors will include, but not be limited to, such pre-qualified suppliers.

**VI. Types of Contracts, Clauses, and Contract Administration****A. Contract Types**

Any type of contract which is appropriate to the procurement and which will promote the best interest of the Agency may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. All procurements will include the clauses and provisions necessary to define the rights and responsibilities of the parties. For all cost reimbursement contracts the Agency 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 time and material contract may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at his own risk.

**B. 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 Agency;
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 with which the options may be exercised;
6. The options may be exercised only at the price specified in or reasonably determinable from the contract; and
7. The options may be exercised only if determined to be more advantageous to the Agency than conducting a new procurement.



### **C. Contract Clauses**

1. All contracts shall identify the contract pricing arrangements as well as other pertinent terms and conditions, as determined by the Agency.
2. Required forms. Additionally, the forms HUD-5369; 5369-A;5369-B; 5370; 5370-C (Section I & II); 51915 and 51915-A, which contain all HUD required clauses and certification for contracts of more than \$150,000, as well as any forms/clauses as required by HUD for small purchases, shall be used, as applicable in all corresponding solicitations and contracts.
3. In addition the Agency shall ensure that each contract executed by the Agency contains the required contract clauses detailed within 2 CFR 200.326 and Appendix II to 2 CFR 200.

### **D. Contract Administration**

The Agency 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.

## **VII. Specifications**

### **A. General**

All specifications will be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the Agency's needs. Specifications will be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Functional or performance specifications are preferred. Detailed product specifications will be avoided whenever possible. Consideration will 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. Limitations**

The following specifications limitations will be avoided: 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); unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy the Agency's needs); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use). Nothing in this Procurement Policy will preempt any State licensing laws. Specifications will be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the PHA's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).



## VIII. Appeals and Remedies

### A. General

It is the Agency's policy to resolve all contractual issues informally at the PHA level 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 Agency shall adopt an informal bid protest/appeal procedure for contracts of \$150,000 or less. Under these procedures, the bidder/contractor may request to meet with the appropriate Contracting Officer.

### C. Formal Appeals Procedure

**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 receipt of bids or proposals, and any protest against the award of a contract must be received within ten calendar days after contract award, or the protest will not be considered. All bid protests will be in writing, submitted to the Contracting Officer or designee, who will issue a written decision on the matter. The Contracting Officer may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

### D. Contract Claims

All claims by a contractor relating to performance of a contract will be submitted in writing to the Contracting Officer or designee for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision will inform the contractor of its appeal rights to a higher level in the Agency, such as the Executive Director or a designated Board Member, or a Procurement Appeals Board. Contractor claims shall be governed by the Changes clause in the relevant HUD-5370

## IX. Assistance to Small and Other Businesses

### A. Required Efforts

1. Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, the Agency will make efforts to ensure that small and minority-owned businesses, women's business enterprises, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of a HACM project are used when possible. Such efforts will include, but will not be limited to:
  - a. Including such firms, when qualified, on solicitation mailing lists;
  - b. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
  - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
  - d. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;



- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
  - f. Including in contracts a clause requiring contractors, to the greatest extent feasible, 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 are located in, or owned in substantial part by persons residing in the area of the project, as described in 24 CFR 135;
  - g. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps above.
2. Goals may be established by the Agency periodically for participation by small businesses, minority-owned businesses, women's business enterprises, labor surplus area businesses, and business concerns which are located in, or owned in substantial part by persons residing in the area of the project, in the Agency's prime contracts and subcontracting opportunities.

## **B. Definitions**

1. A small business is defined as a business which 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 121 will be used, unless the Agency determines that their use is inappropriate.
2. 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 the 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 and Asian Indian Americans, and Hasidic Jewish Americans.
3. 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 also control or operate the business.
4. 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 underemployed 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.
5. A business concern located in the area of the project, is defined as an individual or firm located within the relevant Section 3 covered project area, as determined pursuant to 24 CFR 135.15, listed on HUD's registry of eligible business concerns, and meeting the definitions of small business above. A business concern owned in substantial part by persons residing in the area of the project is defined as a business concern which is 51% or more owned by persons residing within the Section 3



covered project, 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.

## **X. Ethics in Public Contracting**

### **A. General**

The Agency will adhere to the following code of conduct, consistent with applicable State or local law.

### **B. Conflict of Interest**

No employee, officer, Board member or agent of this Agency will participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:

1. An employee, officer, Board member or agent involved in making the award;
2. 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);
3. His/her partner, or;
4. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

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

Agency officers, Board members, employees or agents will not solicit or accept gratuities, favors, or anything of more than nominal value (i.e. inexpensive hat with logo) from contractors, potential contractors, or parties to contracts or subcontracts, and will not knowingly use confidential information for actual or anticipated personal gain.

### **D. Prohibition against Contingent Fees**

Contractors will not retain a person to solicit or secure an Agency contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial selling agencies.

### **E. Nondiscrimination in Employment**

All contracts, subcontracts and purchase orders involving labor in the property or facilities of the Authority will include a provision that the contractor or subcontractor(s) will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, marital status, age, or handicap.

### **F. Penalties**

To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Agency's officers, employees, or agents, or by contractors or their agents.

Any contract that is influenced by conflict of interest will be declared void.