

# Procurement POLICY

# TABLE OF CONTENTS

Section 1 Introduction	1
Section 2 General Provisions	1
Section 3 Ethics in Public Contracting	2
Section 4 Procurement Planning	3
Section 5 Procurement Methods	4
Section 6 Independent Cost Estimate (ICE)	9
Section 7 Cost and Price Analysis (CPA)	9
Section 8 Solicitation and Advertising	10
Section 9 Bonding Requirements	12
Section 10 Contractor Qualifications and Duties	13
Section 11 Contract Clauses	14
Section 12 Contract Administration	14
Section 13 Specifications	14
Section 14 Appeals and Remedies	15
Section 15 Assistance to Small and Other Businesses	16
Section 16 Board Approval of Procurement Actions	18
Section 17 Delegation of Contracting Authority	18
Section 18 Documentation	18
Section 19 Funding Availability	19
Section 20 Change Order Policy	19

## SECTION 1.0 - INTRODUCTION

### I. General

Established for the Houston Housing Authority (hereinafter, "HHA") by Action of the HHA Board of Commissioners (Board) on February 21, 2012, and revised on January 17, 2017, this Procurement Policy (the "Policy") complies with the Annual Contributions Contract (ACC) between the HHA and the United States Department of Housing and Urban Development (HUD), Federal Regulations at 2 CFR 200.317 – 200.326, the procurement standards of the Procurement Handbook for Public Housing Authorities (PHAs), HUD Handbook 7460.8, REV 2, and applicable State and Local laws.

*The Houston Housing Authority is a Fair Housing and Equal Employment Opportunity Agency. Individuals with disabilities may contact the 504/ADA Administrator at 713-260-0528, TTY 713-260-0547 or 504\_ADA@Housingforhouston.com to request reasonable accommodations.*

The statement above shall appear on all solicitations published by the Houston Housing Authority, as well as addendums, notifications and other public communications.

## SECTION 2.0 - GENERAL PROVISIONS

### I. General.

The HHA shall:

- A. Designate authority and administrative oversight of the procurement process to the Chief Executive Officer or his/her designee;
- B. Provide for a procurement system of quality and integrity;
- C. Provide for the fair and equitable treatment of all persons or firms wishing to sell products or services to HHA;
- D. Ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable and reasonable prices available to the HHA;
- E. Promote competition in contracting; and
- F. Assure that the HHA purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws.

### II. Application

This Policy applies to all procurement actions of the HHA, regardless of the source of funds, except as noted under "exclusions" below. However, nothing in this Policy shall prevent the HHA 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.

Property Management Companies shall follow the policy when taking procurement actions on behalf of the Houston Housing Authority and its properties.

### **III. Definition**

The term “procurement,” as used in this Policy, includes the procuring, purchasing, leasing, or renting of one or more of the following using funding sources that are not otherwise excluded from this policy pursuant to Section 2.0, Paragraph IV: (1) goods, supplies, equipment, and materials, (2) construction and maintenance; consultant services, (3) architectural and engineering (A/E) services, (4) social services, and (5) other services.

### **IV. Exclusions**

This policy does not govern procurements paid for using administrative fees earned under the Housing Choice Voucher (“HCV”) Program, the execution of landlord Housing Assistance Payments contracts under the HCV (tenant-based or project based) program, procurement of management agents or other goods or services at Project-Based Rental Assistance properties, procurements funded with COCC/business activities income, e.g., fee-for-service revenue under 24 CFR Part 990, procurements at Low Income Housing Tax Credit (“LIHTC”)-only properties that do not include any public housing or project-based HCV units, procurements for financing transactions ( e.g., those with lenders, underwriters, LIHTC syndicators or other sources of finance or credit enhancement) and/or procurements funded with non-federal funds. These excluded areas are subject to applicable State and local requirements.

### **V. Changes in Laws and Regulations**

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

### **VI. 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 for by the Texas Public Information Act.

## **SECTION 3.0 - ETHICS IN PUBLIC CONTRACTING**

### **I. General**

With respect to its implementation of this Policy, and any related procurement matters, the HHA shall, at a minimum, adhere to the code of conduct set forth in this section of the Policy, which code of conduct is consistent with applicable Federal, State, or local law.

**II. Conflicts of Interest**

No employee, officer, commissioner, or agent of the HHA 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:

- A. An employee, officer, commissioner, or agent involved in making the award;
- B. 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);
- C. His/her partner; or
- D. An organization or an individual which employs or is negotiating to employ, or has any financial arrangement concerning prospective employment of any of the above.

**III. Gratuities, Kickbacks, and Use of Confidential Information**

No officer, employee, Board member, or agent of the HHA shall ask for or accept gratuities, favors, or items of more than nominal value (i.e. inexpensive pen with logo) from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain. For purposes of this section, nominal value is \$25.00.

**IV. Prohibition against Contingent Fees**

Contractors wanting to do business with the HHA 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.

**SECTION 4.0 - PROCUREMENT PLANNING****I. General**

Planning is essential to managing the procurement function properly. Hence, the HHA 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 or economically;
- B. Maximize competition and competitive pricing among contracts and decrease the HHA's procurement costs;
- C. Reduce HHA administrative costs;

- D. Ensure that supplies and services are obtained without any need for re-procurement (i.e., resolving bid protests); and
- E. Minimize errors that occur when there is inadequate lead time.

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

## SECTION 5.0 - PROCUREMENT METHODS

### I. **Small Purchase Procedures**

For any amounts not exceeding \$50,000, the HHA may use small purchase procedures. Under small purchase procedures, the HHA shall obtain a reasonable number of quotes; however, for purchases of less than \$3,000 (\$2,000 for construction-related procurements), 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. The Houston Housing Authority shall obtain a minimum of three quotes for any procurements totaling \$3,000 (\$2,000 for construction-related procurements) in the aggregate. The HHA shall not procure the same commodity from the same vendor if the combined costs total more than \$3,000 (\$2,000 for construction-related procurements) in the aggregate within any one calendar year without following the small purchase rules of obtaining a minimum of three quotes.

Request for quotations for small purchases (RFQ) may be obtained orally (either in person or by phone), by fax, email or in writing as long as the proper oral quotation form is used. Award shall be made to the responsive and responsible vendor that submits the lowest cost to the HHA. The HHA shall not allow breaking down of purchases to less 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.

### II. **Sealed Bids**

Sealed bidding, also known as Invitation for Bids (IFB), 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 Policy. Under sealed bids, the HHA publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsive and 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 \$50,000.

**A. Conditions for Using Sealed Bids**

The HHA 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.

**B. Solicitation and Receipt of Bids**

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

**C. Bid Opening and Award**

Bids shall be opened publicly. All bids received shall be recorded on a tabulation of bids, which shall then be made available for public inspection in a timely manner. 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.

**D. 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 Purchasing Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the HHA or fair competition shall not be permitted.

**III. Competitive Proposals**

Unlike sealed bidding, the competitive proposal method, also known as Request For Proposals (RFP), 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 HHA, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staff, etc., set forth in the solicitation and not solely the lowest price.

**A. 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. As detailed within Section 7.2.B of HUD Procurement Handbook 7460.8 REV 2, "Only under limited circumstances would construction services be procured by competitive proposals."

**B. Form of Solicitation**

Other than A/E services, developer-related services and energy performance contracting, competitive proposals 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 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 HHA may assign price a specific weight in the evaluation factors or the HHA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

**C. Evaluation**

The proposals shall be evaluated only on the factors stated in the RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.

**D. Negotiations**

Negotiations shall be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between the HHA and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal, and shall be conducted with each offeror within the competitive range. The primary object of discussions is to maximize the HHA's ability to obtain best value, based on the



requirements and the evaluation factors set forth in the solicitation. The designated HHA representative shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as technical approach, past performance, and terms and conditions) that could be altered or explained to enhance materially the proposer's potential for award. The HHA representative may inform an offeror that its price is considered by the HHA 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 HHA'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.

#### **E. Award**

After evaluation of the revised proposals, if any, the contract shall be awarded by the President & CEO or the Board if over \$100,000 to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the HHA provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

#### **F. A/E Services**

The HHA shall contract for A/E services using Qualifications-based Selection (QBS) procedures, utilizing a Request for Qualifications. 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, other than Energy Performance Contracting and Developer services, though architectural/engineering firms are potential sources.

### **IV. Noncompetitive Proposals.**

#### **A. Conditions for Use**

Procurement by noncompetitive proposals (sole- or single-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 HHA, 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 deemed inadequate.

**B. Justification**

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 department, the Purchasing Officer and General Counsel or the President & CEO. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:

1. Description of the requirement;
2. The specific exception in 2 CFR 200.320(f)(1)-(4) which applies;
3. Statement as to the unique circumstances that require award by noncompetitive proposals;
4. 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.);
5. Approval signatures to include the Purchasing Officer, Requesting Department Head and the President & CEO
6. 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.

**V. Cooperative Purchasing/Intergovernmental Agreements**

The HHA 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 HHA may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 CFR 200.317 – 200.326.

**SECTION 6.0 - INDEPENDENT COST ESTIMATE (ICE)****I. General**

For all purchases above the Micro Purchase threshold, the HHA 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. An ICE may be prepared by HHA staff or by a third-party with relevant subject matter knowledge. A third-party who prepares an ICE for use by the HHA is disqualified from being awarded any contract associated with the work for which the third-party prepared the ICE.

**SECTION 7.0 - COST AND PRICE ANALYSIS (CPA)**

**I. General.** The HHA shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions.

**A. Micro Purchases**

No formal cost or price analysis is required. Rather, the execution of a contract (through a Purchase Order) shall serve as the Purchasing Officer's determination that the price obtained is reasonable.

**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 Purchasing Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Purchasing Officer's 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 HHA cannot reasonably determine price reasonableness, the HHA 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 proposals are not received, the HHA 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 HHA 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 \$50,000.

**SECTION 8.0 - SOLICITATION AND ADVERTISING****I. Method of Solicitation****A. Micro Purchases**

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

**B. Small Purchases**

Three quotes may be solicited orally, through email, through fax, email, or by any other reasonable method.

**C. Sealed Bids and Competitive Proposals**

Solicitation must be done publicly. The HHA must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.

1. Advertising in newspapers or other print mediums of local or general circulations.
2. Advertising in various trade journals or publications (for construction).
3. Publishing to the HHA Website.
4. E-Procurement. The HHA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2 CFR 200.317 – 200.326, State and local requirements, and the HHA's procurement policy.

**II. Form**

Notices and advertisements should state, at a minimum, the place, date, and time that the bids or proposals 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 items(s).

**III. Time Period for Submission of Bids**

A minimum of 30 days shall generally be provided for preparation and submission of sealed bids and a minimum of 15 days for competitive proposals. However, a shorter period may be allowed under extraordinary circumstances upon Legal review and President & CEO approval.

**IV. Cancellation of Solicitations.**

- A.** An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:
1. The supplies, services or construction is no longer required;
  2. The funds are no longer available;
  3. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
  4. Other similar reasons.
- B.** A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
1. The supplies or services (including construction) are no longer required;
  2. Ambiguous or otherwise inadequate specifications were part of the solicitation;
  3. All factors of significance to the HHA were not considered;
  4. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
  5. There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
  6. For good cause of a similar nature when it is in the best interest of the HHA.
- C.** The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.
- D.** A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.
- E.** 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 HHA's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Purchasing Officer may cancel the solicitation and either
1. Re-solicit using an RFP; or

2. Complete the procurement by using the competitive proposal method. The Purchasing Officer must determine, in writing, that such action is appropriate, must inform all bidders of the HHA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.
- F. If problems are found with the specifications, the HHA should cancel the solicitation, revise the specifications and re-solicit using an IFB.

## SECTION 9.0 - BONDING REQUIREMENTS

### I. General

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 HHA 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 and Performance 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:

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 of Texas. 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.

**SECTION 10.0 - CONTRACTOR QUALIFICATIONS AND DUTIES****I. Contractor Responsibility**

- A.** The HHA shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:
1. Have adequate financial resources to perform the contract, or the ability to obtain them;
  2. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all of 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 Limited Deniability Participation (LDP).
- B.** 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.

**II. 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., Department of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings. Prior to issuance of a contract, HHA procurement staff shall, as detailed within Section 10.2.H.1 and 10.2.H.2 of HUD Procurement Handbook 7460.8 REV 2, conduct the required searches within the HUD Limited Denial of Participation (LDP) system, the U.S. General Services Administration (GSA) Excluded Parties Listing Service system, the State of Texas On-line Debarment List and the City of Houston Debarment List and place within the applicable contract file a printed copy of the results of each such search.

**III. 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.

**SECTION 11.0 - CONTRACT CLAUSES****I. Contract Pricing Arrangements**

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

**II. Required Forms**

Additionally, the forms HUD-5369, 5369-A, 5369-B, , 5370, 5370-C, 51915, and 51915-A, which contain all HUD-required clauses and certifications for contracts of more than \$50,000, as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by the HHA.

**III. Required Contract Clauses**

The HHA shall ensure that each contract executed by the HHA contains the required contract clauses detailed within 2 CFR 200.326 Appendix II.

**SECTION 12.0 - CONTRACT ADMINISTRATION****I. General**

The HHA 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.

**SECTION 13.0 - SPECIFICATIONS****I. General**

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying the HHA'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. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

In order to ensure objective contractor performance and eliminate unfair competition advantage, contractors that develop or draft specifications, requirements, statements of work,



and invitations for bids or requests for proposals must be excluded from competing for such procurements.

## **II. Limitation**

The following types of specifications shall be avoided:

- A.** 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);
- B.** 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.

## **SECTION 14.0 - APPEALS AND REMEDIES**

### **I. General**

It is HHA 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.

### **II. Informal Appeals Procedure**

The HHA 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 Purchasing Officer.

### **III. Formal Appeals Procedure**

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

#### **A. 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 Purchasing Officer, or designee, who shall issue a written decision on the matter. The Purchasing Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.

#### **B. 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 HHA. Contractor claims shall be governed by the Changes clause in the form HUD-5370.

## **SECTION 15.0 - ASSISTANCE TO SMALL AND OTHER BUSINESSES**

### **I. Required Efforts**

Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, the HHA shall take all necessary affirmative steps to assure that small businesses, minority-owned businesses, women's business enterprises, and labor area surplus firms are used for HHA procurements when possible. Such affirmative steps by the HHA shall include, but not necessarily be limited to:

- A.** Placing qualified small and minority businesses and women's business enterprises on solicitation lists for HHA procurements;
- B.** Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential vendor sources for HHA procurements;
- C.** Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;;
- D.** Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises
- 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, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in 24 CFR Part 135 (Section 3 businesses); and
- G.** Requiring prime contractors, when subcontracts are to be let, to take the positive steps listed above.

### **II. Goals**

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 HHA prime contracts and subcontracting opportunities.

**III. Definitions**

- A.** 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.
- B.** 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.
- C.** 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.
- D.** A "Section 3 business concern" is as defined under 24 CFR Part 135.
- E.** A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the DOL in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

**IV. Scoring for Competitive Proposals**

- A.** A response to a procurement by competitive proposals (e.g., a RFP or QBS) that does not document a respondent's best efforts to meet the HHA's goal for subcontracting with minority businesses and women's business enterprises ("M/WBE(s)") shall be considered non-responsive and ineligible for an award absent being cured by an addendum to the response, which addendum must be provided by the respondent prior to the HHA's selection of a vendor for the respective RFP or QBS. For purposes of scoring a response to a competitive procurement, the fact that the response documents the respondent's best efforts to subcontract with M/WBEs shall not, standing alone, result in any points being awarded to the respondent in the M/WBE scoring category (or otherwise).
- B.** If a respondent to a competitive proposal is a minority business or a women's business enterprise, as certified to by the respondent on HUD Form 5369-A, then the respondent's proposal will be awarded a minimum of five percent of the total points available for the scoring of the respective proposal. Respondents may also obtain points in the M/WBE scoring category for a respective procurement if their proposal reflects that a minority owned business or women's business enterprise is a firmly committed partner of, or subcontractor to, the respondent. If a respondent's proposal reflects no firm commitments with M/WBEs, either through a partnership or subcontracting, and the respondent is not itself a M/WBE,

then no points shall be awarded to the respondent in the M/WBE scoring category (a respondent's commitment to use its best efforts to subcontract with M/WBEs shall not, standing alone, entitle the respondent to points during the scoring of proposals).

## **SECTION 16.0 - BOARD APPROVAL OF PROCUREMENT ACTIONS**

### **I. Authority**

The Board appoints and delegates procurement authority to the Purchasing Officer/Procurement Manager in the amount not to exceed \$25,000 and is responsible for ensuring that any procurement policies and procedures adopted are appropriate for the HHA. For purchases and contracts in the amount of \$25,001 to \$100,000, the General Counsel, as executive-level leader of the Procurement Department, must also approve prior to purchase or contract execution. All procurements that exceed \$100,000 must have approval from the Board prior to award and/or contract execution.

## **SECTION 17.0 - DELEGATION OF CONTRACTING AUTHORITY**

### **I. Delegation**

While the Procurement Manager is responsible for ensuring that the HHA's procurements comply with this Policy, the President & CEO may delegate in writing all procurement authority as is necessary and appropriate to conduct the business of the HHA.

### **II. Procedures**

In accordance with this delegation of authority, the Purchasing Officer/Procurement Manager shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The Procurement Manager, in conjunction with the President & CEO and the Legal Department, shall also establish a system of sanctions for violations of the ethical standards described in Section 3.0 herein, consistent with Federal, State, or local law.

## **SECTION 18.0 - DOCUMENTATION**

### **I. Required Records**

The HHA 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:

- A.** Rationale for the method of procurement (if not self-evident);
- B.** Rationale of contract pricing arrangement (also if not self-evident);
- C.** Reason for accepting or rejecting the bids or offers;
- D.** Basis for the contract price;

- E. A copy of the contract documents awarded or issued and signed by the President & CEO;
- F. Basis for contract modifications; and
- G. Related contract administration actions.

**II. Level of Documentation**

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

**III. Record Retention**

Records are to be retained for a period of at least four years after final payment and all matters pertaining to the contact are closed.

## **SECTION 19.0 - FUNDING AVAILABILITY**

**I. General**

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

## **SECTION 20.0 - CHANGE ORDER POLICY**

**I. General**

**A. Definitions**

Change Order — a written modification to an executed contract approving a change to the original plans, specifications, price, deliverables, or other performance measures of the contract.

Change Order Clause — The contact language between Houston Housing Authority (“HHA”) and the contractor controlling the terms of any change orders to the contract. Specifically, for contracts that use the HUD Form 5370, this would refer to paragraphs 28 and 29 as amended from time to time.

**B. Background**

The Change Order is an agreement between the contractor and HHA approving the terms of the modifications that is binding once properly executed with authorized signatures. The Change Order is within the scope of the contract and modifies existing work contemplated, or addresses unforeseen circumstances and bid under a solicitation, it is not intended to add additional work to a contract that would more appropriately be bid through a new solicitation. A Change Order is not a task order or purchase order under a master agreement or indefinite quantity contract.

C. Application

This change order policy is intended to apply to all affiliates and instrumentalities of HHA in the same manner that it applies to HHA.

**II. Contract Modifications**

A. General. Occasionally, it is necessary to modify a contract or purchase order to reflect changes in the required effort, period of performance, or price. Contract and purchase order modifications shall be issued in writing.

B. Process. A change order is issued by the Contracting Officer after the award of a contract in any of the contract terms, including specifications, completion time, description of the work, etc., within the scope of the contract. Change orders/modifications must include at least the following: a detailed description of the proposed change in work, a reference to the applicable working drawings and specifications, when applicable, a price (credit, debit, or no change) for the change in contract work, estimate of additional time, if any, required to complete the work, the contractor's itemized breakdown of the cost of materials and labor and an itemized breakdown for any applicable subcontractors, and the change indicate on the architectural or engineering drawings, if applicable.

C. Limitations on Change Orders. The Changes clause contained in the Contract and General Conditions, prescribes the specific circumstances in which a change order may be issued. For example, adding the construction of a new building to a modernization contract would not be considered within the scope of the contract or within the authority of the Changes clause but should be considered a new contract (and subject to competition). No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

1. For contracts under \$100,000 The original contract price may not be increased under this section by the lesser of the board approved amount or 25 percent.
2. For contracts greater than 100,000 to \$1,000,000 the original contract price may not be increased under this section by the lesser of the board approved amount or 20 percent.
3. For contracts greater than \$1,000,000 the original contract price may not be increased under this section the lesser of the board approved amount or 10 percent .
4. For contracts greater than \$5,000,000 the original contract price may not be increased under this section the **greater** of the board approved amount or 5 percent.

D. Approvals. A contract change order will not become effective until approved by the authorized PHA official as set forth below.

1. Department Heads may approve change orders, which when accumulated with prior change orders approved by the Department Head, total an amount less than \$20,000.

2. Change orders which individually or when accumulated with prior change orders approved by the Department Head, exceed \$20,000, require approval by the President and CEO.
3. Individual change orders exceeding \$100,000 require approval by the President and CEO who shall report such action and the reasons therefor to the Board of Commissioners in writing as soon thereafter as is practical. The dollar amounts of change orders approved by HHA which pre-date such change order approval by the HHA, shall not be counted in computing the accumulated change order amount subject to the limit set forth above for the Board of Commissioners reporting
4. In the case where the original contract amount was below \$100,000 and therefore was not required to be approved by the Board. Any change orders that would increase the amount of the contract to an amount greater than \$100,000 will be reported to the Board of Commissioners in writing.

**III. Recordkeeping.**

- A. The PHA shall maintain accurate records and documentation regarding contract modifications by including a modification register or other record in each contract file. This register is required to provide a permanent record of all actions taken in connection with each contract.