

# PROCUREMENT POLICY



## Housing Authority of the City of Laredo

September 22, 2025

The **Nelrod** Company®

**Housing Authority of the City of Laredo**  
Laredo, Texas

**PROCUREMENT POLICY**

**Adopted by PHA Board of Commissioners**

**Resolution No.:** 25-R-12

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**Procurement Policy**  
**Implementation Schedule**

**Staff Training Date, if needed:** \_\_\_\_\_

**Distribution to Functional Areas**

**This policy has been distributed to staff in the following departments:**

- Public Housing Managers
- Admissions/Occupancy Staff
- Financial Staff
- Maintenance Staff
- Other Specify: \_\_\_\_\_

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## **PROCUREMENT POLICY**

This Procurement Policy complies with the Annual Contributions Contract (ACC) between the Housing Authority of the City of Laredo and HUD, Federal Regulations at 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audits Requirements for Federal Awards), Federal Regulations at 2 CFR Part 184 (Buy American Preferences for Infrastructure Projects), the procurement standards of the Procurement Handbook for Public Housing Agencies, HUD Handbook 7460.8, REV 2, and applicable State and Local laws, or as amended.

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

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

The PHA is responsible for assuring compliance with all applicable procurement rules and regulations and will establish written procedures for implementation.

## **CHAPTER 1. GENERAL PROVISIONS**

The Housing Authority of the City of Laredo shall:

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

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

### **A. Applicability**

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

When both HUD and non-Federal grant funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary.

If it is not possible to separate the funds, HUD procurement regulations shall be applied to the total project. If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the source of funding may be followed.

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

### **B. Definition**

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

1. Good, supplies, equipment, and materials,
2. Construction and maintenance,
3. Consultant services,
4. Architectural and Engineering (A/E) services,
5. Social services, and

6. Other services

### **C. Exclusions**

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

### **D. Buy America Preference (BAP)**

The Buy America Preference means the “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials (*see Glossary for the definitions of these terms*) incorporated into the project are produced in the United States.

Unless the application of the BAP has been waived by HUD, the PHA is required to document compliance with the BAP where applicable and to ensure that the BAP is applied to all subgrantees and subrecipients of funding as well as other entities expending grant funds (including contractors and subcontractors paid with funding subject to the BAP), whether provided through contract, grant, loan, or other means, to which the BAP applies.

Federal Financial Assistance (FFA) includes all expenditures received by the PHA from a Federal agency for an Infrastructure Project (*see Glossary*), except that it does not include:

1. Expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act; or
2. Pre and post disaster or emergency response expenditures.
  - a. To mitigate the impact of an impending disaster (*e.g.* purchasing plywood to cover windows to protect them from being damaged by an approaching hurricane); or
  - b. To respond to a disaster or an emergency (*e.g.* purchasing a tarp to cover a damaged roof).

The PHA must ensure that all procurements entered into incorporate requirements to ensure application of the BAP, unless the BAP has been waived for funds utilized in connection with an Infrastructure Project. The PHA is prohibited from intentionally splitting an Infrastructure Project to avoid application of the BAP to the project. Safe Harbor procurement strategies for meeting this requirement include:

1. Designating BABA compliant products prior to procurement
2. Requiring bidders to submit both BABA compliant and non-BABA compliant proposals, thereby shifting the burden of doing the research to the contractors responding to solicitations.

#### Documentation of Compliance with BAP

The PHA must maintain adequate records to demonstrate that they complied with BABA requirements in purchasing products with funds subject to BABA. At a minimum, the records must:

1. Track product purchases in sufficient detail to identify the source of the funding for the purchase.
2. Demonstrate compliance with BABA:
  - a. For products purchased in compliance with the BAP, documentation that the product complied with BAP requirements; and
  - b. For products purchased pursuant to a waiver or other exemption from the BAP, adequate information to validate that the purchase was covered by a waiver or other exemption.

If the PHA is required to maintain a record of BABA compliance in product purchases, they must maintain those records in such a way as to cover all product purchases related to projects that are in the process of being completed and all projects completed until 3 years after Infrastructure Project completion at which point such records can be discarded.

For products purchased with funding from a grant or Infrastructure Project that is not subject to BABA, PHAs do not have to maintain product purchase records to comply with BABA where:

1. The grant is exempt from BABA requirements because expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act or pre and post disaster or emergency response expenditures; *Note that in instances where HUD has provided written/electronic confirmation that expenditures fall under the pre and post disaster emergency response exception, PHAs are to maintain copies of such confirmations for 3 years after completion of the expenditures covered by the confirmation.*

2. HUD has granted a waiver that authorizes all products purchased with the applicable grant funding to be exempt from the BAP (*e.g.*, the grant is less than the small purchase threshold and therefore is covered by HUD's "De Minimis waiver"), but PHAs must have documentary support that the waiver applies (*e.g.*, a copy of the grant agreement showing the size of the grant); or
3. Products were purchased with funding dedicated to a specific Infrastructure Project where HUD has granted a waiver that authorizes all products purchased within the boundaries of the Scope of the Infrastructure Project to be exempt from the BAP (*e.g.*, the Infrastructure Project is smaller than the small purchase threshold), but PHAs must have documentary support that the waiver applies (*e.g.*, a copy of the procurement contract showing the size of the procurement is less than the small purchase threshold).

#### Requesting Waivers of BAP

The PHA may request waivers of BAP in connection with any Infrastructure Project by submitting a request in accordance with the instructions published on HUD's BABA Webpage.

If the PHA seeks a waiver, the PHA shall be required to document compliance with the minimum search requirements enumerated in Chapter 6 including:

1. Copies of searches used (*e.g.*, PDF/JPEG copies of web pages showing search terms and results);
2. Copies of email correspondence with product makers;
3. Records of phone contacts with product makers, including:
  - a. Dates and times of phone communications;
  - b. Phone numbers used;
  - c. Whether the phone communication was successful in making it possible to reach a staff person for the product maker able to respond to questions about BABA compliance, or whether the attempt at communication was unsuccessful (*e.g.*, left a message, phone line was busy, or phone line was disconnected);
  - d. If the phone communication resulted in reaching someone, the name of the person contacted; and
  - e. Notes describing the substance of the conversation (*e.g.*, manufactured product is assembled in the U.S., but the manufacturer is uncertain whether 55% of the value of the materials/components are sourced in the U.S.).

Minimum Due Diligence Search Requirements

The PHA is expected to initially seek BABA compliant products through the standard methods used in the past. If unable to find an available BABA compliant product using standard methods, further searching is required prior to seeking a waiver of the BABA requirements. The requirements for conducting a due diligence search are outlined in each section of the purchasing methods stated in this Policy.

**E. Changes in Laws and Regulations**

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

**F. Public Access to Procurement Information**

Most procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in the Texas Freedom of Information or Open Records Act.

## **CHAPTER 2. BOARD APPROVAL OF PROCUREMENT ACTIONS**

The Board of Commissioners is responsible for the approval of this Procurement Policy. Approval by the Board of Commissioners is required for any procurement action in the amount of \$100,000 or greater. It is the responsibility of the Board approved Contracting Officer, who will be the Executive Director/CEO unless otherwise appointed by the Board of Commissioners, to make sure that all procurement actions are conducted in accordance with the policies contained herein.

## **CHAPTER 3. ADMINISTRATION AND DELEGATION OF CONTRACTING AUTHORITY**

### **A. Authority and Delegation**

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

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

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

1. Use sound judgment in accomplishing the procurement activities of the PHA;
2. Ensure that bidders and contractors receive fair, impartial, and equitable treatment;
3. Ensure that contract actions comply with all applicable Federal, State and local laws and rules and with the PHA's approved Procurement Policy;
4. Seek the greatest overall benefit and best value for the PHA in response to the needs desired;
5. Ensure that procurement requirements follow an annual planning process to assure economical and efficient purchasing;
6. Verify that the procurement documents clearly specify the appropriate products, construction effort, and/or services, and the history of each procurement is fully documented; including the method of procurement, the selecting of contract type, rationale for selecting offers, and the basis for the contract price;
7. Ensure that solicitations run for a period of time sufficient to achieve effective competition, which, in the case of paid advertisements, will generally run not less than once each week for two consecutive weeks. State or local law may impose additional advertising requirements. See Chapter 9.
8. Ensure that solicitation procedures are conducted in full compliance with Federal standards or more stringent State and local laws in accordance with 2 CFR Part 200.319. Non-HUD related properties will follow appropriate State laws and other pertinent restrictions.
9. Ensure that an independent cost estimate (ICE) is prepared for all purchases above the Micro-Purchase threshold prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

10. Award contract to the responsive and responsible bidder offering the lowest price (in sealed bid situations); or to the offeror whose proposal offers the greatest value to the PHA, considering price and technical factors, as specified in the solicitation (competitive proposal situations);
11. Notify unsuccessful firms within seven (7) business days after contract award;
12. Ensure there are sufficient unencumbered funds available to cover the anticipated cost before a contract award or modification, work is inspected before payment, and payment is made promptly for work accepted;
13. Ensure that the PHA complies with applicable HUD review requirements; and
14. Ensure that PHA staff and responsible bidders comply with Section 3 requirements. Bidders and staff should refer to the PHA's adopted Section 3 Plan.

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

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

## **CHAPTER 4. ETHICS IN PUBLIC CONTRACTING**

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

### **A. Conflicts of Interest**

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

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 or is negotiating to employ or has an arrangement concerning prospective employment of any of the above.

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

1. Any present or former member or officer of the governing body of the PHA, or any member of the member/officer's immediate family.
2. "Immediate family member" means: the spouse, mother, father, mother-in-law, father-in-law, brother, sister, brother-in-law, sister-in-law, or child (whether related as full blood relative, or as a "half" or "step" relative).
3. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a Resident Corporation, and who otherwise does not occupy a policymaking position with the Resident Corporation, the PHA or a business entity.
4. Any employee of the PHA who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.

5. Any public official, member of the local governing body, State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) of the PHA.

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

**Note:** For additional important provisions, see HUD Form 53012 (08/31/2023).

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

No officer, employee, Board member, or agent shall ask for or accept gratuities, favors, or items exceeding \$25.00 in value from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

## **C. Prohibition Against Contingent Fees**

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

## **D. Affiliated Non-Profits**

If the Agency is affiliated with one or more non-profit entities, the Agency shall determine if the non-profit entity is an "affiliate or an instrumentality" per PIH Notice 2007-15 and 24 CFR Part 5.100 (definition of Public Housing Agency). All "instrumentality" non-profit must follow this procurement policy. Any conflicts of interest or potential conflicts of interests between Agency and/or the non-profit(s) must be reported to HUD by the Agency immediately upon discovery.

## **CHAPTER 5. PROCUREMENT PLANNING**

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

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

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

## CHAPTER 6. PURCHASING METHODS

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

### A. Petty Cash Purchases

Small purchases under \$500.00 that can be satisfied by local sources may be processed through the use of a Petty Cash Account and supported by receipts. The Executive Director or designee, shall ensure that:

1. The Petty Cash Account is established in an amount sufficient to cover small purchases made during a reasonable period, monthly or as needed.
2. Security is maintained and only authorized individuals have access to the account; and
3. The account is reconciled and replenished on a quarterly basis.

### B. Small Purchases

For purchases above the Petty Cash and Micro-Purchase ceiling but not exceeding state of Texas small purchase threshold of \$100,000, the PHA will use the Small Purchase procedures authorized in this section. Under Small Purchase procedures, the PHA shall obtain a reasonable number of quotes, preferably three.

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

Small Purchases must be distributed among qualified sources to the extent practicable and to promote competition. Small Purchase quotes may be obtained orally (either in person or by phone), by fax, in writing, or through e-procurement. Awards shall be made to qualified vendors that provide the best value to the PHA. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file.

Micro-Purchases: For purchases for supplies or services that aggregately do not exceed the PHA's small purchase threshold of \$5,000, or \$2,000 for construction services subject to Davis-Bacon Act, 2 CFR Part 200.320(a).

1. Quote: Only one quote is required provided the quote is considered reasonable.
2. Minimum Due Diligence Search Requirements for BABA compliant products if purchase meets BABA requirements:
  - a. Must search for the required product using one of the top five most used Internet search engines or the website of one of the top five home improvement retailers while using one of the following search terms: "made in America" or "made in the USA;"

- b. If none of the top 10 results of the search indicate that the product is made in America, the PHA is not required to search further prior to submitting a waiver request;
- c. If one or more of the search results indicate the product is made in America, the PHA must take the additional step of contacting the maker(s) of the product by email or by phone to confirm that the product meets the BABA requirements for the product. If the product maker either confirms that the product is not BAB compliant or that BABA compliance is uncertain, or if the product maker fails to respond to the inquiry within two business days, the PHA is not required to search further prior to submitting a waiver request.
- d. No formal cost or price analysis is required for Petty Cash or Micro-Purchases. The Contracting Officer's execution of a contract, Purchase Order or other means shall serve as the determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.

Small Purchases: Purchases that do not exceed state of Texas small purchase threshold of \$100,000.

1. Quotes: The PHA must obtain price or rate quotations from an adequate number of qualified sources quotes (preferably three or more).
2. Minimum Due Diligence Search Requirements for BABA compliant products if purchase meets BABA requirements:
  - a. Must search for the required product using at least two search attempts either using one of the top five most used Internet search engines or the website of one of the top five home improvement retailers while using one of the following search terms: "made in America" or "made in the USA;"
  - b. If none of the top 20 results of the search indicate that the product is made in America, the PHA is not required to search further prior to submitting a waiver request;
  - c. If one or more of the search results indicate the product is made in America, the PHA must take the additional step of contacting the maker(s) of the product by email or by phone to confirm that the product meets the BABA requirements for the product. If the product maker either confirms that the product is not BAB compliant or that BABA compliance is uncertain, or if the product maker fails to respond to the inquiry within two business days, the PHA is not required to search further prior to submitting a waiver request.
  - d. Award shall be offered, providing lowest acceptable quotation, unless justified in writing based on price and other specific factors. If non-price factors are used, they shall be made known to all those solicited.

Purchase Orders:

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

1. The Purchase Order will contain information regarding scope of work/service to be provided, price, delivery, method of payment, inspection, and acceptance. Additional terms and conditions may be added depending on the nature and complexity of the work requested.
2. Mandatory provisions may be found in HUD's Mandatory Forms listed in Chapter 24 of this policy. The PHA will ensure that all necessary contract clauses are included in its Purchase Orders or in its Request for Quotes, providing the latter are referenced, and made part of the Purchase Order.
3. All purchases shall be made by standard purchase order. Purchase orders exceeding \$5,000 shall be stamped or signed by the or designee, to verify that sufficient and unencumbered funds are available for payment.
4. The names, addresses, and/or telephone numbers of the firms/persons contacted, the date and amount of each quote received, shall be recorded and maintained as a public record unless otherwise provided in State or local law.

**C. Sealed Bids**

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

Conditions for Using Sealed Bids. The PHA shall use the sealed bid method if the following conditions are present:

1. A complete, adequate, and realistic statement of work, specification, or purchase description is available;
2. 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
3. The selection of the successful bidder can be made principally on the lowest price.

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

1. Minimum Due Diligence Search Requirements for BABA compliant products if purchase meets BABA requirements:
  - a. Must search for the required product using at least three search attempts either using one of the top five most used Internet search engines or the website of one of the top five home improvement retailers while using one of the following search terms: "made in America" or "made in the USA;"
  - b. If none of the top 30 results of the search indicate that the product is made in America, the PHA is not required to search further prior to submitting a waiver request;
  - c. If one or more of the search results indicate the product is made in America, the PHA must take the additional step of contacting the maker(s) of the product by email or by phone to confirm that the product meets the BABA requirements for the product. If the product maker either confirms that the product is not BAB compliant or that BABA compliance is uncertain, or if the product maker fails to respond to the inquiry within five business days, the PHA is not required to search further prior to submitting a waiver request.

Bid Opening and Award. Bids shall be opened publicly. All bids received shall be recorded on an abstract (tabulation) of bids and then made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The method of doing this shall be stated in the IFB. If only one responsive bid is received from a responsible bidder, the award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis. No commitment or statement regarding the contract award should be made to any bidder at the bid opening.

Mistakes in Bids.

1. Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written notice received in the office designated in the IFB prior to the time set for bid opening.
2. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended.
3. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document, but the intended bid is unclear, or the bidder submits convincing evidence that a mistake was made.

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

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

Competitive proposals are the preferred method for procuring professional services and can also be used for other goods and services that will exceed the state of Texas Small Purchase threshold of \$100,000 and where conditions are not appropriate for the use of sealed bidding.

The competitive proposal method, unlike sealed bidding, allows:

1. Consideration of technical factors other than price;
2. Discussion with offerors concerning offers submitted;
3. Negotiation of contract price or estimated cost and other contract terms and conditions;
4. Revision of proposals before the final contractor selection; and
5. The withdrawal of an offer at any time up until the point of award.

Awards are normally made on the basis of the proposal that represents the best overall value to the PHA, considering price and other factors (*e.g.*, technical expertise, past experience, quality of proposed staffing, etc.) set forth in the solicitation and not solely the lowest price.

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

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

Evaluation. Proposals shall be evaluated **only** on the criteria stated in the RFP. The PHA shall establish an Evaluation Plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed *Evaluation Committee*. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared **prior** to the award of a contract.

Negotiations. Negotiations are exchanges (in either Competitive or Sole Source environment) between the PHA and offerors that are undertaken with the intent of allowing the offeror to revise its proposal.

1. 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.
2. These negotiations may include bargaining that includes:
  - a. Persuasion,
  - b. Alteration of assumptions and positions,
  - c. Give-and-take,
  - d. May apply to price, schedule, technical requirements, type of contract, or
  - e. Other terms of a proposed contract.

**NOTE: When** negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions.

Discussions are tailored to each offeror's proposal and shall be conducted by the Contracting Officer with each offeror within the competitive range. The primary object of discussions is to maximize the PHA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation.

The Contracting Officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the Contracting Officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the Contracting Officer's judgment.

The Contracting Officer may inform an offeror that its price is considered by the PHA to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that the government's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.

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

Architectural/Engineering Services. The PHA shall contract for A/E services using Qualifications Based Selection (QBS) procedures, utilizing an RFQ. Sealed bidding **shall not** be used for A/E solicitations. Under QBS procedures, competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures **shall not** be used to purchase other types of services, though Architectural/Engineering firms are potential sources or offerors.

## **E. Noncompetitive Proposals**

Conditions for Use. Procurement by Noncompetitive Proposals (Sole Source) may be used only when the award of a contract is not feasible using Small Purchase procedures, Sealed Bids, Cooperative Purchasing, or Competitive Proposals, and if one of the following applies, per CFR Part 200.320(c):

1. **The acquisition of property or services, the aggregate dollar amount of which does not exceed the PHA's Micro-Purchase threshold of \$5,000.**
2. The item is available only from a single source, based on a good faith review of available sources;
3. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the PHA personnel or residents, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar events. 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;
4. HUD authorizes the use of Noncompetitive Proposals; or
5. After solicitation of a number of sources, competition is determined inadequate.

Justification. Each procurement based on Noncompetitive Proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer. **Poor planning or lack of planning is not justification for emergency or sole-source procurements.**

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

1. Description of the requirement;
2. History of prior purchases and their nature (competitive vs. noncompetitive);

3. Statement as to the unique circumstances that require award by Noncompetitive Proposals;
4. 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.);
5. Statement as to efforts that will be taken in the future to promote competition for the requirement;
6. Signature by the Contracting Officer's Supervisor (or someone above the level of the Contracting Officer); and
7. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

#### **F. Cooperative Purchasing/Intergovernmental Agreements/GSA**

The PHA may enter into Federal, State and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. The interagency agreement, if used, shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The PHA may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 CFR Part 200.317 – 200.326.

#### **G. General Services Administration (GSA) Purchasing**

The PHA may utilize Cooperative Purchasing, subject to any limitations that may be established under State and local laws and procedures, to purchase certain items offered through the GSA under "GSA Schedule 70". Purchases are limited to the following automated data processing equipment: firmware, software, supplies, support equipment, and services. Other GSA Government Wide Acquisition Contracts (GWACs) are not authorized for use by Public Housing Agencies.

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

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

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

If a reasonable number of quotes, bids, or proposals are not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer's personal knowledge at the time of purchase, comparison to the Independent Cost Estimate (ICE), or any other reasonable basis.

## CHAPTER 7. PROCUREMENT FOR LEGAL SERVICES

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

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

### A. Procurement Methods for Legal Services

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

Small Purchase Procedures. Price or rate quotations will be obtained from an adequate number of qualified sources if relatively simple and informal small purchase methods are used 2 CFR Part 200.320(a)(2).

Competitive Proposals. This is the generally preferred method when procuring professional services because it allows for the consideration of technical quality or other factors (in addition to hourly rates) for securing services estimated. Either a fixed-price or cost reimbursement type contract may be awarded. If this method is used, the conditions in 2 CFR 200.320(b)(2) must be followed.

Noncompetitive Proposals. Are not recommended.

### B. Types of Legal Contracts

Time and Materials Contracts. Legal services can be procured on an hourly basis using a type of contract known as time-and-materials (or sometimes, "labor-hour") contracts. The contractor's services are pre-priced in the contract (usually, in terms of hours) and the PHA orders services in unit amounts (e.g., hours) as needed until the funds in the contract are exhausted. *PHAs may use this type of contract only after the PHA determines that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.* 2 CFR Part 200.318(j)

Obtaining Legal Services by Procurement or Employment Methods. PHAs may employ an attorney directly (House Counsel) in accordance with the PHA's Personnel Policy, or the PHA may enter into a procurement contract with an attorney or law firm. The procurement of legal services shall follow the procedures previously outlined under "Procurement Methods for Legal Services", this section 2 CFR Part 200.459.

PHA House Counsel is ineligible to receive procurement contracts for legal services. All services of the PHA House Counsel would be part of his/her employment contract and are not to be procured separately. Where legal services are desired outside of the scope of services provided by the PHA House Counsel, PHAs may use one of the procurement procedures previously described.

### **C. Contracts for Litigation Services**

General Requirements and HUD Regional Counsel Approval. PHA must submit to HUD Regional Counsel, for prior written concurrence, any litigation service contract where the fee is expected to exceed \$100,000 with a private attorney involving PHA program, project, or activity receiving loan, grant, or other subsidy assistance from HUD with the exception of litigation involving a PHA acting as a Section 8 private developer. Such contracts shall make provisions for reasonable fees and reimbursement of necessary expenses. If additional funding or budget revision will be required to cover the cost of litigation services, the PHA shall consult appropriate Field and Regional Offices staff.

Contract Addendum – Legal Services Protocol. The PHA shall include contract provisions as recommended by HUD into all legal service contracts executed and/or administered by PHAs, unless no Federally provided funds will be used to administer the contract.

## CHAPTER 8. COST AND PRICE ANALYSIS

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

### A. Petty Cash and Micro Purchases

Neither a formal cost nor price analysis is required. The execution of a contract by the Contracting Officer (through a Purchase Order, or other means, shall serve as the Contracting Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.

### B. Small Purchases

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

### C. Sealed Bids

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

### D. Competitive Proposals

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

**E. Cost and Price Analysis in Excess of \$100,000 (State of Texas Small Purchase Threshold)**

In accordance with Federal regulations, the PHA must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$100,000) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the PHA must make independent estimates before receiving bids or proposals.

The PHA must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performances, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs for contracts under a federal award are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable for the PHA. The PHA may reference its own cost principles that comply with Federal cost principals.

The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

**F. Contract Modifications**

A cost analysis, consistent with Federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of \$100,000.

## CHAPTER 9. SOLICITATION, ADVERTISING AND FAIR COMPETITION

### A. Fair and Open Competition

The Agency Contracting Officer(s) shall promote and provide for fair, full, and open competition in soliciting offers and awarding Agency contracts. Contracting Officer(s) shall provide fair, full, and open competition through the use of competitive methods and procedures contained in this policy and the Agency's Procurement Procedures Manual. The competitive bidding process must be fair and open. "Fair" means that all bidders are treated the same and that no bidder/proposer/offeror has advance knowledge of the project information. "Open" means there are no secrets in the process – such as information shared with one bidder, but not with others – and that all bidders know what is required of them.

The Agency is prohibited from using State or local geographical preferences in evaluating bids or proposals (except where applicable Federal statutes expressly mandate or encourage geographical preferences, such as HUD's Section 3 requirements in 24 CFR Part 75 and 2 CFR Part 200.319. When contracting for Architectural and Engineering (A/E) design services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

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

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

### B. Method of Solicitation

#### Petty Cash and Micro Purchases.

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

Small Purchases. Quotes may be solicited orally, through fax, email, or by any other reasonable method.

Sealed Bids and Competitive Proposals. Solicitation must be carried out publicly. The PHA must use one or more of the 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); and/or
3. E-Procurement. The PHA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise comply with 24 CFR Part 200.317 – 200.326, State and local requirements, and the Authority's procurement policy.

### **C. Time Frame**

For purchases of more than \$100,000, public notice will run not less than once each week for two consecutive weeks. State or local law may impose additional advertising requirements.

### **D. Time Period for Submission of Bids or Proposals**

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

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

### **E. Composition or Form**

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

1. Place;
2. Date;
3. Time (that the bids or proposals are due);
4. Solicitation number;
5. The name of a contact who can provide a copy and information about the solicitation; and
6. A brief description of the needed item(s) or services.

### **F. Cancellation of Solicitations**

An Invitation for Bids (IFB), Request for Proposal (RFP), or other solicitation may be cancelled before bids/offers are due if:

1. The supplies, services or construction are 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.

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 PHA 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 PHA.

The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.

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.

If all otherwise acceptable bids received in response to an IFB are at unreasonable prices, an analysis should be conducted to see if there is a problem in either the specifications or the PHA's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Contracting Officer may cancel the solicitation and either:

1. Re-solicit using an RFP; or
2. Complete the procurement by using the competitive proposal method. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of the PHA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.

If problems are found with the specifications, PHA should cancel the solicitation, revise the specifications and re-solicit using an IFB.

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

Credit (or Purchasing P-Cards): Purchasing cards including debit or credit cards are actually a payment method and not necessarily a method of procurement as defined by HUD. However, the PHA has adopted reasonable safeguards to ensure that credit cards are used only for intended purposes, such as limiting the types of purchases or the amount of purchases that are permitted with credit cards, as well as methods for selecting merchants/vendors, tracking purchases, and credit card payment/dispute and settlement procedures. Credit/Purchasing card usage will follow the rules for all other small purchases under this Procurement Policy. Also see Credit Card Policy.

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

1. The Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable.
2. For amounts above the Micro Purchase level, the Contracting Officer would generally need to obtain a reasonable number of quotes before purchasing via a credit card.

## CHAPTER 10 BONDING REQUIREMENTS

There are no bonding requirements for small purchases or for competitive proposals per Federal guidelines. (2 CFR Part 200.326) The standards under this section apply to construction contracts that exceed the Simplified Acquisition Threshold of \$350,000 per Federal regulations. **State guidelines must be followed if stricter than Federal regulations.** The PHA may require bonds in other circumstances when deemed appropriate. However, non-construction contracts should generally not require bid bonds.

Bid Bond/Guarantee. For construction contracts exceeding \$350,000 (Federal threshold), bidders must submit a Bid Bond/Guarantee from each bidder equivalent to 5 percent of the bid price.

1. The Bid Bond/Guarantee must consist of a firm commitment such as a bid bond, certified check, U. S. Government Bonds at par value, Federal bank's irrevocable letter of credit, bank draft, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
2. Texas Law requires that for construction contracts exceeding \$100,000 bidders must submit a Bid Bond/Guarantee from each bidder equivalent to 5% of the bid price.

Performance and Payment Bonds. For construction contracts exceeding \$350,000 (Federal threshold), the PHA must require the successful bidder (contractor) to execute the following Performance and Payment Bonds before beginning the work:

1. A Performance Bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

The PHA requires a Performance Bond on the part of the contractor for 100 percent of the contract price for construction contracts exceeding \$100,000 per Texas Law.

2. A Payment Bond on the part of the contractor for 100 percent of the contract price. A "Payment Bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in contract.

The PHA requires a Payment Bond on the part of the contractor for 100 percent of the contract price for construction contracts exceeding \$100,000 per Texas Law.

These bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State where the work is to be performed.

Individual sureties shall not be considered. U. S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business.

**Use of companies on this circular is mandatory.**

## CHAPTER 11. CONTRACTOR QUALIFICATIONS AND DUTIES

### A. Contractor Responsibility

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

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

If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

### B. Suspension and Debarment

The PHA shall not award contracts to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (2 CFR Part 200.213) or by other Federal agencies, *e.g.*, Department of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings.

### C. Vendor Lists

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

#### **D. Equal Employment Opportunity (EEO)**

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

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

1. The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, age (40 or older), disability and genetic information (including family medical history). The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated properly during employment, without regard to their race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, age (40 or older), disability and genetic information (including family medical history). Such action shall include, but is not limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post notices, to be provided by the PHA, setting forth the provisions of this equal opportunity clause in conspicuous places, available to employees and applicants for employment.
2. The contractor shall state in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, age (40 or older), disability and genetic information (including family medical history).
3. The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the PHA advising the labor union or workers' representative of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965 (as amended July 21, 2014), and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor shall furnish all information and reports required by Executive Order No. 11246, and by rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and shall permit access to his books, records, and accounts by the Government and the Secretary for Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

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

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

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

## CHAPTER 12. CONTRACT PRICING ARRANGEMENTS

### A. Contract Types

Any type of contract which is appropriate to the procurement, and which will promote the best interests of the PHA may be used, **provided the cost -plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used.** All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and PHA.

For all cost reimbursement contracts, PHA must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.

### B. Options

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

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

## **CHAPTER 13. CONTRACT CLAUSES**

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

Additionally, forms HUD-5369, 5369-A, 5369-B, 5370, 5370-C, 5370-EZ, and 51915-A, contain all HUD-required clauses and/or certifications that shall be used in all corresponding solicitations and contracts issued by this PHA. All contracts shall contain a termination clause which complies with Form HUD-5370 or Form HUD-5370-C. Mandatory clauses and applicable wage decisions may be included in bid specifications and contracts by either one or any combination of methods as follows: attachment of the applicable HUD form(s) and/or wage decision, incorporation of the applicable HUD form and wage decision into other documents (*e.g.*, PHA's own forms); or by incorporation by specific reference to the applicable forms and the location of where they may be accessed. The PHA must provide hard copies of any references, clauses, forms, and/or wage decisions upon request. The PHA should check HUDCLIPS (<https://www.hud.gov/guidance>) for currently prescribed forms. Some forms may be considered obsolete but may still be used to comply with regulations until such time they are replaced by the Office of Management and Budget (OMB).

## **CHAPTER 14. CONTRACT ADMINISTRATION**

The PHA shall maintain a system of contract administration designed to ensure that contractors perform in accordance with their contracts. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters. For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in conjunction with 2 CFR Part 200 Subpart E.

## **CHAPTER 15. SPECIFICATIONS**

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

### **A. Limitation**

The following types of specifications shall be avoided:

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

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

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

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

### A. Informal Appeals Procedure

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

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

### B. Formal Appeals Procedure

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

Bid Protest. Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contractor receives notice of the contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.

Contractor Claims. All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision. The contractor may request a conference on the claim.

The Contracting Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in PHA. Contractor claims shall be governed by the Changes clause in form HUD-5370.

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

### **A. Required Efforts**

Consistent with Presidential Executive Orders 11625, 12138, and 12432, 24 CFR 200.321, and Section 3 of the HUD Act of 1968, as amended. The PHA shall make all feasible efforts to ensure that Small and Minority Business Enterprises (MBEs), Women's Business Enterprises (WBEs), labor surplus area businesses, and other individuals or firms located in or owned in substantial part by persons residing in the area of the PHA project are used when possible. Such efforts shall include, but are not limited to:

1. Including such firms, when qualified, on solicitation mailing lists;
2. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;
6. Including in a clause in contracts requiring contractors and subcontractors to provide opportunities for training and employment to the greatest extent feasible 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 75 (Section 3 businesses); and
7. Requiring all contractors and sub-contractors, to comply with Section 3 regulations.

### **B. Definitions**

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

A Minority-Owned Business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

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

A "Section 3 Business Concern" is as defined under 24 CFR Part 75.

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

### **C. Resident-Owned Businesses**

A Resident-Owned Business is any business concern that is at least 51% owned and controlled by one or more current public housing residents. "Controlled" means whose management and daily business operations are controlled by one or more such individuals. HUD strongly encourages PHAs to contract with resident-owned businesses to the maximum extent feasible.

#### Alternative Procurement Process (not a requirement)

1. The regulation at 24 CFR Part 963 allows PHAs to use an alternative procurement process when contracting with businesses owned in substantial part by PHA residents (resident-owned businesses) for public housing services, supplies, or construction. The alternative procurement process must comply with procedures and requirements set forth in HUD's procurement regulations at 2 CFR Part 200.320, except that solicitations are limited to resident-owned businesses.
2. The alternative procurement process under 24 CFR Part 963 follows. The PHA will:
  - a. Prepare an Independent Cost Estimate (ICE) for the procurement.
  - b. Select the appropriate method of procurement (small purchase, sealed bidding, competitive proposals, or noncompetitive proposals).
  - c. Solicit a bid, proposal, or offer from one or more resident-owned businesses.
  - d. Receive offer(s) from one or more resident-owned businesses and ensure that:
    - 1) The offeror has submitted the required certification described in 24 CFR Part 963 regarding previous contracts received under the alternative procurement process and the total amount of such previous contracts is less than \$1,000,000;
    - 2) The PHA performs a cost or price analysis of the offer(s) received and determines that the price is reasonable, *i.e.*, the price that normally would be paid for comparable supplies, services, or construction in the project area;
    - 3) Will make an award to the responsive and responsible bidder/respondent whose bid/offer/proposal is most advantageous overall to the PHA, consistent with the evaluation factors stated in the solicitation. The resident-owned business must be capable of performing satisfactorily; and

- 4) Will document the procurement file and comply with all other procurement requirements of 2 CFR Part 200.320, including the requirement for economy and efficiency.

#### **D. Contracting with a Resident Management Corporation (RMC)**

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

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

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

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

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

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

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

## **E. Goals**

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

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

## **F. Contract and Subcontract Activity Report**

The PHA shall report all contract and subcontract activities semi-annually in a format and method prescribed by HUD, currently HUD-4710.

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

## **G. Section 3 of the Housing and Urban Development Act of 1968, as amended (24 CFR Part 75)**

The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance, shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

(See Glossary for definition.)

Covered Programs. Section 3 requirements apply to:

1. A PHA's utilization of funds for public housing development, operations, management assistance, modernization programs, and mixed-finance development projects, regardless of whether the project is fully or partially assisted with public housing assistance; and
2. Certain Notifications of Funding Availability (NOFA) and grant agreements governing assistance to PHAs may contain Section 3 requirements.
3. Section 3 requirements do not apply to Section 8 programs.

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

Mandatory Section 3 Contract Provisions. PHAs must include language in any agreement or contract to apply Section 3 to contractors; ensure that contractors include language in any contract or agreement to subcontractors; and require contractors and subcontractors to meet Section 3 requirements regardless of whether Section 3 language is included in the contracts.

Reporting. Unless otherwise provided, PHAs must report annually to HUD in a manner consistent with reporting requirements for the applicable HUD program.

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

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

### **A. Davis-Bacon Act**

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

### **B. Contract Work Hours and Safety Standards Act**

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

### **C. Solicitations and Contracts**

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

## **CHAPTER 19. ENERGY EFFICIENCY**

The PHA shall procure an Energy Audit (EA) conducted by a certified and/or licensed professional no less than once every five years in accordance with HUD requirements (24 CFR 965.302). Due to industry best practices and fiscal efficiencies, the PHA plans to include a Physical Needs Assessment (PNA) as part of its strategic planning process and as encouraged by HUD.

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

## **CHAPTER 20. DOCUMENTATION AND AUDITS**

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

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

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

Records shall be kept in safe and secure location and readily available for PHA procured independent auditors or authorized government auditors (2 CFR Part 200.336). Records are to be retained for a period of three (3) years after final payment and all matters pertaining to the contract are closed (2 CFR Part 200.334). However, per 24 CFR Part 990.325, the PHA shall retain all documents related to all financial management and activities funded under the Operating Fund for a period of five (5) fiscal years after the fiscal year in which the funds were received.

## **CHAPTER 21. DISPOSITION OF SURPLUS PROPERTY**

Property no longer necessary for the PHA's purposes (non-real property) shall be transferred, sold, or disposed of in accordance with applicable Federal, state, local laws and regulations and PHA policy. (2 CFR Part 200, Subpart D 200.311, 200.313 and 200.314)

## **CHAPTER 22. FUNDING AVAILABILITY**

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

## **CHAPTER 23. SELF-CERTIFICATION**

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

## CHAPTER 24. MANDATORY HUD FORMS

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

Further information may be found in the PHA's Procurement Procedures.

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

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

### Acceptable Methods of Incorporation

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

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

The following is a current listing of **mandatory** HUD forms for various types of procurement. The PHA should review forms found in HUDCLIPS (<https://www.hud.gov/guidance>) for available forms listed in the table below. This list is subject to changes imposed by HUD.

<b>HUD-5369</b>	Instructions to Bidders for Contracts
<b>HUD-5369-A</b>	Representations, Certifications, and Other Statements of Bidders Public and Indian Housing Programs
<b>HUD-5369-B</b>	Instructions to Offerors Non-Construction
<b>HUD-5369-C</b>	Certifications and Representations of Offerors Non-Construction Contract
<b>HUD-5370</b>	General Conditions of the Contract for Construction Public and Indian Housing
<b>HUD-5370-A</b>	<i>Replaced by HUD-5370-C</i>
<b>HUD-5370-C</b>	General Contract Conditions Non-Construction
<b>HUD-5370-C1</b>	General Conditions for Non-Construction Contracts - Section I
<b>HUD-5370-C2</b>	General Conditions for Non-Construction Contracts - Section II
<b>HUD-5370-EZ</b>	General Contract Conditions for Small Construction/Development Contracts
<b>HUD-51915</b>	Model Form of Agreement Between Owner and Design Professional
<b>HUD-50071</b>	Certification of Payments to Influence Federal Transactions
<b>SF-LLL</b>	Disclosure of Lobbying Activities

## **Definitions**

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

### **Acceptance:**

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

### **Annual Contributions Contract (ACC):**

Entered into between HUD and the PHA, setting forth terms and conditions for the operation, modernization, and development of public housing. The current version of the ACC (form HUD-53012, 0/31/2023) does not actually contain any specific language governing PHA procurement activity but incorporates by reference regulations promulgated by HUD at Title 24 of the Code of Federal Regulations, as well as all applicable laws and Executive Orders, and regulations.

### **Amendment:**

Written revision or clarification made to a solicitation.

### **Anti-Competitive Practices:**

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

### **Architect/Engineer (A/E):**

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

### **Bid:**

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

### **Bidder's List:**

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

**Build America, Buy America Act Definitions:**

**Buy America Preference (BAP):**

The “domestic content procurement preference” set forth in section 70914 of BABA, which requires the head of each Federal agency to ensure that none of the funds made available for Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

**Component:**

An article, material, or supply, whether manufactured or unmanufactured, incorporated directly into: a manufactured product; or, where applicable, an iron or steel product.

**Construction Materials:**

Articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

A. The listed items are:

1. Non-ferrous metals;
2. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
3. Glass (including optic glass);
4. Fiber optic cable (including drop cable);
5. Optical fiber;
6. Lumber;
7. Engineered wood; and
8. Drywall.

B. Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

**Covered Materials:**

Includes the following when used in connection with an Infrastructure project:

1. all iron and steel;
2. all Manufactured Products; and
3. all Construction Materials.

**Infrastructure:**

Encompasses public infrastructure projects in the United States, which includes, at a minimum: the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

**Infrastructure Project:**

Means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project.

**Iron or Steel Products**

Means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both

**Manufactured Products**

Means:

1. Articles, materials, or supplies that have been:
  - a. Processed into a specific form and shape; or
  - b. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
2. If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.

**Manufacturer:**

Means the entity that performs the final manufacturing process that produces a manufactured product

**Predominantly of Iron or Steel or a Combination of Both:**

Means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as

bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

**Produced in the United States:**

Means:

1. In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; and
2. In the case of manufactured products:
  - a. The product was manufactured in the United States; and
  - b. The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. The costs of components of a manufactured product are determined according to 2 CFR 184.5.
3. In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. See 2 CFR 184.6 for more information on the meaning of "all manufacturing processes" for specific construction materials.

**Section 70917(c) Materials:**

Means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives

**Change Order:**

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

**Changed Conditions:**

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

**Competitive Proposals:**

Also called contracting by negotiation, a method of procurement using the solicitation, evaluation, and negotiation of proposals instead of sealed bids (see Chapter 7 in HUD Procurement

Handbook 7460.8 REV 2). The competitive proposal method is used for requirements exceeding the PHA's small purchase threshold when conditions are not appropriate for sealed bidding. (Note: Under the Qualifications-Based Selection method only, a Request for Qualifications (RFQ) is used in place of the RFP.)

**Competitive Range:**

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

**Consortia:**

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

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

**Contracting Officer:**

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

**Contract Administration:**

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

**Contract Modification:**

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

**Contractor:**

An Offeror who is awarded a contract.

**Contract Pricing Arrangements:**

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

**Cost Analysis:**

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

**Cost-Reimbursement Contract:**

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

**Cure Notice:**

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

**Excusable Delay:**

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

**Federal Small Purchase Threshold:**

The maximum dollar amount for individual small purchases (see Chapter 5 of the HUD Procurement Handbook 7460.8 REV 2). The threshold is currently set at \$350,000 (41 U.S.C. 403(11)). PHAs may establish lower thresholds. **Special Note:** State law may set different thresholds and follow stricter limits.

**Firm Fixed Price Contract:**

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

**Independent Cost Estimate (ICE):**

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

**Inspection:**

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

**Instrumentality:**

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

**Intergovernmental or Interagency Agreement:**

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

**Internal Controls:**

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

**Invitation for Bids (IFB):**

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

**Joint Venture Partner:**

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

**Labor Surplus Area Business:**

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

**Level-of-Effort Contract:**

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

**Major Change:**

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

**Material Supply Contract:**

A contract for the purchase of products and materials, including but not limited to, lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies.

**Micro Purchases:**

Small purchases under \$10,000, or \$2,000 for construction work subject to the Davis-Bacon Act, (or lower threshold established by the PHA; see paragraph 5.2.B of the HUD Procurement Handbook 7460.8 REV 2).

**Minority-Owned Business:**

A business which is at least fifty-one percent (51%) owned by one or more minority group members; or, in the case of a public-owned business, one in which at least fifty-one percent (51%) of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

**Negotiation:**

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

**Noncompetitive Proposals:**

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

**Offer:**

A response to a solicitation (IFB or RFP) that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids", responses to requests for proposals negotiation) are offers called ("proposals";

however, responses to requests for quotations (small purchases) are “quotations,” not offers. Small purchases become binding contracts once the vendor accepts the order (*e.g.*, by signature or substantial performance of the order). Offers submitted under the Qualifications-Based Selection (QBS) method are called “qualifications” (see paragraph 7.3.A of the HUD Procurement Handbook 7460.8 REV 2).

**Offeror:**

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

**Price Analysis:**

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

**Procurement:**

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

**Proposal:**

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

**Qualification Based Selection (QBS):**

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

**Quotation:**

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

**Request for Proposals (RFP):**

Solicitation method used under both competitive and non-competitive methods of procurement. Proposal evaluation and contractor selection are based on the evaluation criteria and factors for award as stated in the RFP. Contract award is based on the best proposal responsive to the

requirements of the statement of work resulting in the greatest benefit and best value to the PHA, which may not necessarily be primarily determined based on price

**Responsible Bidder:**

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

**Responsive Bid:**

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

**Sanctions:**

Measures that may be invoked by HUD to exclude or disqualify contractors, PHA staff or agents acting on behalf of a PHA from participation in HUD programs (such as limited denial of participation or debarment), or measures the PHA may take regarding employees, officers, agents, or others who violate the ethical standards of the policies of the PHA (such as dismissal, reassignment, removal from position, etc.). In the case of violations, HUD would exercise any available remedy under the ACC, Federal regulations and statutes, and grant agreements, including the U.S. Housing Act of 1937 as amended, 24 CFR Parts 84 and 85 (2013 edition) for Federal awards made prior to December 26, 2014, 2 CFR Part 200 for Federal awards made after December 26, 2014 and sections 17 and 19 of the ACC.

**Sealed Bidding:**

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

**Section 3 Terminology:**

**Section 3 Business:**

A business that meets at least one of the following criteria, documented within the last six-month period:

1. Is at least 51% owned and controlled by low- or very low-income persons;
2. Over 75% of the labor hours performed for the business over the prior three-month period is performed by Section 3 workers; or

3. Is a business at least 51% owned and controlled by current public housing residents or residents who currently reside in housing assisted by Section 8.

**Section 3 Projects:**

Housing rehabilitation and construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from HUD's Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970, the Lead-Based Paint Poisoning Prevention Act, and the Residential Lead-Based Paint Hazard Reduction Act of 1992.

**Section 3 Worker:**

Any work, for both public housing financial assistance and housing and community development assistance, who currently fits, or when hired within the past five years fit, at least one of the following categories, as documented:

1. The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
2. The worker is employed by a Section 3 business concern.
3. The worker is a YouthBuild participant.

**Targeted Section 3 Worker:**

In the context of public housing financial assistance, means a Section 3 worker who is:

1. A worker employed by a Section 3 business concern; or
2. A worker who currently fits, or when hired fit, at least one of the following categories, as documented within the past five years
  - a. A resident of public housing or Section 8-assisted housing;
  - b. A resident of other projects managed by the PHA that is providing the assistance; or
  - c. A YouthBuild participant.

**Show Cause Letter:**

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

**Small Business:**

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 unless the PHA determines that their use is inappropriate.

**Small Purchase Procedures:**

A simplified method for acquiring supplies, materials, and services (including construction) that do not exceed the PHA's small purchase threshold. (The current Federal simplified acquisition threshold is \$350,000.) PHAs are limited to this or a lower amount as specified in applicable State or local law or dictated by the PHA's Procurement Policy or imposed by HUD due to PHA's procurement performance. (2 CFR Part 200.320). *(The Texas State threshold is state of PHA's small purchase threshold of \$100,000)*

**Small Purchase Threshold:**

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

**Solicitation:**

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

**Solicitation Provisions:**

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

**Specifications or Scope:**

Description of the technical requirements of a contract.

**Statement of Work (SOW):**

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

**Subsidiary:**

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

**Supplemental Agreement:**

A type of contract modification to which both parties agree.

**Termination for Cause:**

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

**Termination for Convenience:**

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

**Time Delay:**

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

**Women's Business Enterprise:**

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

**Vendor:**

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

**Vendor List:**

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

## **NOTICE**

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

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