

SUBSECTION 401 STATEMENT OF PROCUREMENT POLICY

Housing Authority of the County of San Joaquin Statement of Procurement Policy established by Board action on August 20, 2009.

PART ONE - STATEMENT OF PROCUREMENT POLICY

This policy governing purchasing and contracts (Policy) complies with HUD's Annual Contributions Contract (ACC), HUD Handbook No. 7460.8 (REV 2) Procurement Handbook for Public Housing Agencies, and the procurement standards of 24 CFR 85.36.

I. GENERAL PROVISIONS

- A. **PURPOSE.** The purpose of this Policy is to provide a procurement system of quality and integrity, and ensure that the Housing Authority's purchasing actions are in full compliance with applicable Federal standards, HUD regulations, and State and local laws.

- B. **APPLICATIONS.** This Policy applies to all contracts entered into by the Housing Authority after the effective date of this Policy for the procurement of supplies, services, and construction. It shall apply to all expenditures of funds by the Housing Authority for public purchasing, regardless of the source of funds, including contracts which do not involve an obligation of funds (such as concession contracts). Nothing in this Policy shall prevent the Housing Authority from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law. The term "procurement" as used in this Policy encompasses both contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of supplies and equipment.

- C. **EXECUTIVE DIRECTOR RESPONSIBILITIES.** The Executive

Revised August 11, 2009
Approved August 20, 2009

Director or their designee shall ensure that:

1. Procurement requirements are subject to a planning process to assure efficient and economical purchasing;
2. Contracts and modifications are in writing, clearly specifying the desired supplies, services, or construction, and are supported by sufficient documentation regarding the history of the procurement, including as a minimum the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price; and that contracts and modifications are awarded only by Housing Authority employees designated in writing as Contracting officers.
3. For procurement other than small purchases, public notice is given of each upcoming procurement; an adequate time period is provided for preparation and submission of bids or proposals; and notice of contract awards is made available to the public;
 - a. The media used to provide public notice shall be suitable and consistent with the magnitude of the estimated dollar value of the procurement so as to reach qualified responsible bidders. This may include circular letters, posting in the office of the Director of General Services, publication in trade newspapers or a legal newspaper of general circulation in San Joaquin County, as may be deemed appropriate, singly or in combination.
4. Solicitation procedures are conducted in full compliance with Federal standards stated in 24 CFR 85.36, or State and local laws that are more stringent, provided they are consistent with 24 CFR 85.36;

Revised August 11, 2009
Approved August 20, 2009

5. All items procured for the Authority shall have been authorized as a part of an approved budget of the Authority, and the purchase or contract shall not exceed that amount.
6. Except in cases of emergency, the Director of General Services shall not issue any purchase order for supplies, equipment, maintenance services, and public projects unless there exists an unencumbered appropriation against which such purchase is to be charged.
7. An independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation, and a cost or price analysis is conducted of the responses received for all procurement;
8. Contract award is made to the responsive and responsible bidder offering the lowest price (for sealed bid contracts) or contract award is made to the offeror whose proposal offers the greatest value to the Housing Authority, considering price, technical, and other factors as specified in the solicitation (for contracts awarded based on competitive proposals); unsuccessful firms are notified within ten days [or other time period required by State or local law] after execution of the contract.
9. Work is inspected before payment, and payment is made promptly for contract work performed and accepted; and
10. The Housing Authority complies with applicable HUD review requirements, and any local procedures supplementing this Policy.

D. **CONTRACTOR RESPONSIBILITY.** The Housing Authority shall only contract with responsible contractors, i.e., those who

have the technical and financial competence to perform and who have a satisfactory record of integrity and completion of contracts of a similar nature. The Housing Authority shall review each proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Non-procurement Programs as published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor, such as other housing agencies), and financial and technical resources. Contracts shall not be awarded to debarred, suspended, or ineligible contractors.

- E. **QUALIFIED BIDDER'S LISTS**. Interested businesses shall be given an opportunity to be included on qualified bidder lists. Any lists of persons, firms, or products which are used in the procurement of supplies, contractors, or services shall be kept current and shall include enough qualified sources to ensure competition. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but are not limited to, such pre-qualified suppliers.

- F. **COMPETITIVE SPECIFICATIONS**. The Housing Authority shall seek full and open competition in all of its procurement transactions. All specifications shall be drafted so as to promote overall economy for the purposes intended, and to encourage competition in satisfying the Housing Authority's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive and do not represent unnecessary or duplicative items. Functional or performance specifications shall be avoided whenever possible. Consideration shall be given to consolidation of or breaking out procurement to obtain a more economical purchase (see Part Six below). For equipment purchases, a "lease versus purchase" analysis should be performed to

determine the most economical form of procurement.

- G. **LIMITATIONS ON COMPETITION.** The following limitations should be avoided: (1) geographic restrictions not mandated or encouraged by applicable Federal law or not otherwise in the best interests of the Housing Authority (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available); (2) unnecessary bonding or experience requirements; (3) brand name specifications (unless a written determination is made that only the identified item will satisfy the Housing Authority's needs); and (4) brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use). Nothing in this Policy shall preempt any State licensing laws. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the Housing Authority's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).
- H. **COOPERATIVE PURCHASING.** The Housing Authority may enter into State and local inter-governmental agreements to purchase or use common goods and services. The decision to use an inter-governmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the inter-governmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The Housing Authority is encouraged to use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

2. TYPES OF PROCUREMENTS

For purposes of implementing this Policy, it is anticipated that the Housing Authority shall seek to acquire the following types of procurements:

- A. **“Purchases of Supplies”** shall include those procurements of expendable items which are continually needed by the Housing Authority. Supplies shall include, but are not limited to: office materials (paper, pens, pencils, staplers, and staples, paper clips, etc.), maintenance supplies and materials (paint and painting accessories, rakes, shovels, clippers and miscellaneous hand tools, fuel, oil and miscellaneous items for motorized vehicles and equipment, etc.), and other like items.
- B. **“Purchase of Equipment and Vehicles”** shall include those procurements in which the items are anticipated to have a life expectancy of more than one (1) year, including, but not limited to: motorized vehicles and equipment, office furniture, machines, and equipment (including desks, chairs, tables, photocopiers, FAX machines, file cabinets, telephone systems, computer hardware, typewriters, calculators and adding machines), and other like items.
- C. **“Construction Contracts”** shall include those contracts which provide for work on, or changes to, real property, and to improvements and fixtures on real property, which shall be performed by individuals or companies required to be licensed by the California State Contractors License Board.
- D. **“Contracts for Services”** shall include those contracts with individuals or companies where the expertise of the contracting party is a primary basis for awarding the contract. Such services include, but are not limited to: legal, accounting, auditing, architectural, engineering, real property acquisition, and miscellaneous consulting services.

- E. **“Acquisition of Real Property Interests”** shall include, but not be limited to: the receipt of real property by grant, purchase, gift, devise, lease, or by condemnation proceedings under eminent domain.

- F. **“Blanket Purchase Agreements”** may be used in the procurement of supplies or equipment (such as plumbing & electrical parts, painting supplies, motor vehicle and equipment parts and repairs, etc.) where the Housing Authority anticipates the need to acquire such items periodically over a period of time not exceeding twelve (12) months. For purposes of determining the steps to be followed in entering into such contracts in accordance with this Procurement Policy, the Housing Authority shall estimate financially its anticipated needs during the twelve (12) month period to be covered by said agreement. Blanket purchase agreements shall be for a period not exceeding twelve (12) months from their effective date.

PART TWO: PROCUREMENT METHODS

1. GENERAL PROVISIONS

- A. Construction Contracts shall contain all of the required provisions for construction work, whether the Housing Authority is proceeding under Sealed Bidding or under Small Procurement Procedures. Such provisions include the required Federal and State labor provisions and the required Federal and State contracting provisions. All construction contracts shall be entered into through a formal written agreement.

- B. Contract for Services shall be governed by the following provisions:
 - (1) Unless otherwise provided in paragraph 2 hereof, Contracts for Services shall only be entered into following the Competitive Proposals procedures (Part Two, paragraph 4) or the Noncompetitive Proposals procedure (Subsection 4.02, paragraph 5), whichever may be applicable.

 - (2) Contracts for Services may be entered into in accordance with the procedures for "Small Procurements over \$2,000" (Part Two, paragraph 2, D) if all of the following conditions are present: (a) the contract is expected to be under \$100,000; (b) the amount of the contract is under the amount included for such purpose in the HUD-approved Development Cost Budget or Operating Budget; (c) approval is not specifically required by Federal law or Executive Order; and (d) the services are not for legal or other services in connection with litigation.

 - (3) Contracts for legal services in connection with litigation, expected to exceed \$100,000, shall be submitted to the

HUD Regional Counsel for its prior written concurrence.

- C. "Purchases of Supplies" and "Purchases of Equipment and Vehicles" may be made by issuance of a Purchase Order if the purchase is made in accordance with the Small Procurement Procedures (Part Two, paragraph 2). All other purchases shall be made through a formal written agreement.
- D. Acquisition of interests in real property shall be made in accordance with the procedures set forth in Paragraph 6 of this Part Two. All such acquisitions shall be completed through a formal written contract
- E. All procurements completed in accordance with "Sealed Bidding" (Part Two, paragraph 3) and "Competitive Proposals" (Part Two, paragraph 4) shall be subject to the following:
 - (1) The Housing Authority shall prepare a complete set of Contract Documents and Specifications which shall set forth in detail all of the requirements of the Housing Authority in order for prospective bidders or proposers to be considered for an award of the contract.
 - (2) All bid documents shall be reviewed and approved by Legal Counsel prior to the issuance of a call for bids, except when the bid documents are in a form already approved by Legal Counsel and when there are no substantial changes or deviations. All bids, when the anticipated award exceeds \$100,000, shall be accompanied by a copy of the contract.
 - (3) Publication Procedures:
 - a. Media:

The media used in publishing a call for bids shall be suitable and consistent with the magnitude of

the estimated dollar value of the call for bids so as to reach the greatest number of qualified responsible bidders.

b. Means of Publication:

The means available to the Director of General Services for publication of a call for bids can encompass, singly or in combination, as may be deemed appropriate, the following: circular letters, posting in the office of the Director of General Services, trade and business associations and chambers of commerce, trade newspapers, journals, magazines, a legal newspaper of general circulation in San Joaquin County, and any other publications the Authority deems appropriate.

c. Factors to be Considered:

In composing an advertisement for bids, consideration shall be given to specifications, bid closing date, completion date, bid deposits, and the necessity that all bids shall be submitted in sealed envelopes marked "Sealed Bid".

d. Length of Publication:

Advertisements calling for bids in excess of \$100,000 shall be publicized not less than seven (7) calendar days from the date first advertised for bid submission, except under emergency conditions.

e. Length of Notice Prior to Opening:

All advertisements calling for bids shall allow a reasonable length of time, not less than seven (7) calendar days from the date first advertised, for

bid submission, except under emergency conditions.

2. SMALL PROCUREMENT PROCEDURES

A. General. Any contract not exceeding \$100,000 may be made in accordance with the small procurement procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small procurement under this section (except as may be reasonably necessary to comply with Part Six of this Policy).

1) B. Petty Cash Purchases. Small purchases under \$500.00 may be processed through the use of a petty cash account or through the use of a government credit card. The Director of General Services shall ensure that the petty cash account is established in an amount sufficient to cover small purchases made during a reasonable period (e.g., one week), security is maintained with only authorized individuals having access to the account, the account is periodically audited by the Director of Finance (or designee) to validate proper use and to verify that the account total equals cash on hand plus the total of accumulated vouchers. The use of a governmental purchasing card is a payment method, not a procurement method, and the use of such shall not preclude the requirement for obtaining a Purchase Order for procurements of \$500 or above, except in those instances specifically described herein.

- C. Small Procurements of \$2,000 or less. For small purchases below \$2,000 only one quotation is needed if the price received is considered reasonable. Such procurements must be distributed equitably among qualified sources. If practicable, a quotation shall be solicited from other than the previous source before placing a repeat order. Purchase orders shall not be required when making travel arrangements (i.e.: hotel reservations, rental car reservations, airfare purchase, or registration fees), or when the use of a governmental purchasing card is needed while travelling on official HACSJ business. The use of a governmental purchasing card is a payment method, not a procurement method, and the use of such shall not preclude the requirement for obtaining a Purchase Order for procurements of \$500 or above, except in those instances specifically described herein.
- D. Small Procurements over \$2,000. For small procurements in excess of \$2,000 but not exceeding \$100,000, at least three offerors shall be solicited to submit price quotations. These quotes may be obtained by fax or in writing, as allowed by State or local laws. Award shall be made to the offeror providing the lowest acceptable quotation, unless justified in writing based on price and other specified factors, such as for architect-engineer contracts. If factors other than price are used, they shall be disclosed to all those solicited. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record (unless otherwise provided in State or local law).

3. SEALED BIDDING

- A. Conditions for Use. Contracts exceeding \$100,000 shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic

specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price. Sealed bidding is the preferred method for construction procurement.

For modernization projects, sealed bidding shall be used for all construction and equipment contracts exceeding the small purchase limitation. For professional services contracts, sealed bidding should not be used.

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

- C. **Bid Opening and Award.** Bids shall be opened publicly, and an abstract of bids shall be available for public inspection. If equal low bids are received from responsible responsive bidders, award shall be made in accordance with this Housing Authority's Policies unless otherwise provided in State or local law and stated in the invitation for bids. If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost or price analysis verifies the reasonableness of the price.

- D. **Mistakes in Bids.**
 - (1). Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid

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

- (2) The Contracting Officer may waive minor informalities or allow the bidder to correct them depending on which action is in the best interest of the Housing Authority. Minor informalities are matters of form rather than substance, evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to the other bidders; that is, the effect of price, quantity, quality, delivery, or contractual conditions is negligible. Examples include the failure of the bidder to: return the number of signed bids required by the invitation for bid (IFB); sign the bid, provided that the unsigned bid is accompanied by other material indicating the bidder's intent to be bound (e.g., a signed cover letter or a bid guarantee); complete one or more certifications; or acknowledge receipt of an amendment to the IFB, provided that it is clear from the bid that the bidder received the amendment and intended to be bound by its terms, or the amendment had a negligible effect on price, quantity, quality, or delivery.
3. All decisions to allow corrections or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer. After bid opening, no

changes in bid prices or other provisions of bids prejudicial to the interest of the Housing Authority or fair competition shall be permitted.

E. Bonds. In addition to the other requirements of this Statement, the following requirements apply:

- 1) For construction contracts exceeding \$100,000, other than those specified below, contractors shall be required to submit the following, unless otherwise required by State or local laws or regulations.
 - a. A bid guarantee from each bidder equivalent to 5% of the bid price; and
 - b. A performance bond for 100% of the contract price; and
 - c. A payment bond for 100% of the contract price.

- (2) In the case of construction under the Comprehensive Grant Program funded pursuant to the U.S. Housing Act of 1937, for any contract over \$100,000, the contractor shall be required to submit the following, unless otherwise required by State or local laws or regulations:.
 - a. A bid guarantee from each bidder equivalent to 5% of the bid price; and
 - b. One of the following:
 - (i) A performance and payment bond for 100% of the contract price; or
 - (ii) Separate performance and payment bonds, each for 50% or more of the contract price; or

(iii) A 20% cash escrow; or

(iv) A 25% irrevocable letter of credit.

4. COMPETITIVE PROPOSALS

- A. **Conditions for Use.** Competitive proposals (including turn-key proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the Housing Authority determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited (normally, at least 3).
- B. **Solicitation.** The request for proposals (RFP) shall clearly identify the relative importance of price and other evaluation factors and subfactors, including the weight given to each technical factor and subfactor. A mechanism for fairly and thoroughly evaluating the technical and price proposals 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. The proposals shall be evaluated only on the criteria stated in the request for proposals.
- C. **Negotiations.** Unless there is no need for negotiations with any of the offerors, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and advise offerors of the

deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offeror shall be provided 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. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.

- D. Award. After evaluation of proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the Housing Authority.

- E. Architect/Engineer Services. Architect/engineer services in the excess of the small purchase limitation (or less if required by State or local law) may be obtained by either the competitive proposals method or qualifications-based selection procedures, unless State law mandates the specific method. Sealed bidding, however, shall not be used to obtain architect/engineer services. Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. Qualifications-based selection procedures shall not be used to purchase other types of services even though architect-engineer firms are potential sources.

5. NONCOMPETITIVE PROPOSALS

- A. Conditions for use. Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase

procedures, sealed bids, or competitive proposals, and one of the following applies:

- (1). The item is available only from a single source, based on a good faith review of available sources;
- (2) An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the Housing Authority, as may arise by reason of a flood, epidemic, earthquake, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency;
- (3) HUD authorizes the use of noncompetitive proposals; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

B. **Justification**. Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures.

C. **Price Reasonableness**. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described in paragraph 5 below.

6. ACQUISITION OF INTEREST IN REAL PROPERTY

A. **Purchase of Real Property**. The purchase of real property shall be in accordance with the provisions of the Uniform

Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs (49 CFR Part 24, Subpart B).

- (1) Voluntary Acquisition. A voluntary acquisition of real property shall comply with all of the following provisions:
 - a. No specific site or property needs to be acquired, although the Authority may limit its search for alternative sites to a general geographic area; if the Authority wishes to acquire more than one site within a geographic area, all owners are to be treated similarly.
 - b. The property to be acquired is not part of an intended, planned or designed project area where all or substantially all of the property within the designated area is to be acquired within specific time limits.
 - c. The Authority will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so notified in writing.
 - d. The Authority will inform the owner of what it believes to be the fair market value of the property.
- (2) Other than Voluntary Acquisition. The Housing Authority shall follow the basic acquisition policies, set forth herein, in connection with all acquisitions of real property other than voluntary acquisitions.

- a. The Housing Authority shall make every reasonable effort to acquire the real property expeditiously by negotiations.
- b. The Housing Authority shall notify the owner as soon as feasible of (i) the Housing Authority's interest in acquiring the real property and (ii) the Housing Authority's obligations toward the owner.
- c. Before the initiation of negotiations, the Housing Authority shall obtain an appraisal of the real property. The property owner shall be given the opportunity to accompany the appraiser and shall receive a copy of the appraisal when completed.
- d. Before the initiation of negotiations, the Housing Authority shall establish an amount which it believes to be just compensation for the real property; such amount shall not be less than the approved appraisal.
- e. The Housing Authority shall advise the owner of the real property in writing of the following:
 - (i) A statement of the amount offered as just compensation separately stating any compensation for damages to the owner's remaining property.
 - (ii) A description and the location of the real property and the interest therein to be acquired.

- (iii) A statement identifying such buildings, fixtures and other improvements included in the fair market value offered for the real property and identifying such buildings, fixtures and other improvements not being acquired by the Housing Authority.
- (iv) The Housing Authority shall make reasonable efforts to negotiate the purchase of the real property with the owner.
- (v) If the information supplied by the owner of the real property indicates the need for a new or updated appraisal, or a significant delay has occurred since the time of the appraisal, the Housing Authority shall have the appraisal(s) updated or obtain a new appraisal.
- (vi) The purchase price for the Real property may exceed the amount offered as just compensation and the Housing Authority approves an administrative settlement, when reasonable, prudent and in the public interest. A written justification shall be prepared which indicates that available information supports such a settlement.
- (vii) If the Housing Authority intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings.

- B. **Lease/Rent of Real Property.** In the event that the Housing Authority intends to acquire a leasehold interest in any real estate, the Housing Authority shall take the following steps:
- (1) **Establish Needs:** The Housing Authority shall establish its needs, including, but not limited to, general location, size, amenities (i.e., parking, room dimensions, etc.).
 - (2) **Survey:** The Housing Authority shall survey the availability of such parcels of real property which may satisfy its established needs.
 - (3) **Property Analysis:** The Housing Authority shall select one or more of such parcels that will satisfy its established needs and perform a cost analysis to establish (i) the rental, (ii) the cost of tenant improvements, and (iii) the terms of any lease or rental agreement.
 - (4) **Negotiation of Terms:** The Housing Authority shall then negotiate the terms of a lease or rental agreement which will meet the requirements of the Housing Authority.

5. COST AND PRICE ANALYSIS

- A. **General.** Some form of cost or price analysis shall be performed for all procurement actions, including contract modifications, using the procedures described in HUD Handbook 2210.18. The degree of analysis shall depend on the facts surrounding each procurement.
- B. **Submission of Cost or Pricing Information.** If the procurement is based on noncompetitive proposals, or when

only one offer is received, or for other procurements as deemed necessary by the Housing Authority, the offeror may be required to submit:

- (1) A cost breakdown showing projected costs and profit;
- (2) Commercial pricing and sales information, sufficient to enable the Housing Authority to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public; or
- (3) Documentation showing that the offered price is set by law or regulations.

C. **Cost Analysis**. Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted: a cost analysis shall be performed of the individual cost elements; the Housing Authority shall have a right to audit the contractor's books and records pertinent to such costs; and profit shall be analyzed separately. Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, 48 CFR Chapter 1). In establishing profit, the Housing Authority shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the area for similar work.

D. **Price Analysis**. For competitive procurements in which cost or pricing information is not required of contractors, the Housing Authority shall perform a comparison of prices received in relation to the independent cost estimate, to ensure that the price being paid is reasonable.

8. **CANCELLATION OF SOLICITATIONS.** An invitation for bids, request for proposals, or other solicitation may be canceled before offers are due if: (a) the Housing Authority no longer requires the supplies, services, or construction; or (b) the Housing Authority can no longer reasonably expect to fund the procurement; or (c) proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or (d) similar reasons in the sole discretion of the Housing Authority. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited.

PART THREE: AWARD OF BIDS

1. **AWARD OF BID.** It is required that the awarding of bids be handled as follows:
 - A. **Bids Under \$100,000:** The Contracting Officer or his designee can award to the lowest responsible, responsive, and qualified bidder, all bids not exceeding \$100,000.
 - B. **Bids Over \$100,000:** Bids in excess of \$100,000 can only be awarded by the Board of Commissioners.
 - C. **Abstract of Bids:** The Purchasing Agent shall prepare an abstract on all bids between \$2,000 and \$100,000 and the Director of Finance or their designee shall co-sign said abstract as a witness to the opening of bids. Such abstract shall be maintained in the bid file of the purchasing section.
2. **PROTEST PROCEDURES:** A qualified bidder may file a protest regarding the awarding of any bid. The protest must be written and filed with the Housing Authority's Executive Director within five (5) working days after the opening of the bids. This protest will be reviewed by Executive Director and a decision rendered within five (5) working days after the protest is filed.
3. **RETENTION OF BIDDING DOCUMENTS AS PUBLIC RECORDS:** In order that the records of the Authority will clearly reveal the basis for awarding all contracts and purchases, a bid summary shall be prepared listing the firms or individuals contacted pursuant to making each award, together with the price or response, if any, received from such firms or individuals. In accordance with the California Public Records Act and with the Authority's Disposition of Records Policy, said records shall be maintained and shall be open to public inspection and shall become matters of public record,

Revised August 11, 2009
Approved August 20, 2009

upon award of a contract or rejection of all bids.

4. **MONTHLY REPORT:** In order that the Commission may be kept currently informed on major purchases and contracts awarded under the authority granted herein, a report listing all purchases and contracts in amounts from \$2,000 to \$100,000, together with the names of the persons or firms to whom the awards were made, shall be transmitted to the Executive Director monthly, and shall thereafter be made available to the Commissioners. Said report shall clearly identify negotiated awards made to other than the lowest bidder and shall adequately set forth the reasons therefore.

PART FOUR: TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

1. **CONTRACT TYPES.** Any type of contract which is appropriate to the procurement and which will promote the best interests of the Housing Authority may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties. A cost reimbursement contract shall not be used unless: it is likely to be less costly or it is impracticable to satisfy the Housing Authority's needs otherwise; the proposed contractor's accounting system is adequate to allocate cost in accordance with applicable cost principles (for commercial firms, see HUD Handbook 210.18); and the contractor is paid only allowable costs. A time and material contracts may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

2. **OPTIONS.** Options for additional quantities or performance periods may be included in contracts, provided that: (i) the option is contained in the solicitation; (ii) the option is a unilateral right of the Housing Authority; (iii) the contract states a limit on the additional quantities and the overall term of the contract; (iv) the options are evaluated as part of the initial competition; (v) the contract states the period within which the options may be exercised; (vi) the options may be exercised only at the price specified in or reasonably determinable from the contract; and (vii) the options may be exercised only if determined to be more advantageous to the Housing Authority than conducting a new procurement.

2. **CONTRACT CLAUSES.** In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by Federal and State statutes, executive orders, and their

Revised August 11, 2009
Approved August 20, 2009

implementing regulations, including, but not limited to the following:

A. FEDERAL PROVISIONS (24 CFR 85.36(i)):

- (1) Termination for convenience,
- (2). Termination for default,
- (3) Equal Employment Opportunity,
- (4) Anti-Kickback Act,
- (5) Davis-Bacon Act,
- (6) Contract Work Hours and Safety Standards Act,
- (7) Reporting requirements,
- (8) Patent rights,
- (9) Rights in data,
- (10) Examination of records by Comptroller General, and retention of records for three years after closeout,
- (11) Clean air and water,
- (12) Energy efficiency standards,
- (13) Bid protests and contract claims,
- (14) Value engineering, and
- (15) Payment of funds to influence certain Federal transactions.

B. STATE PROVISIONS

- (1) State Prevailing Wage Rates
- (2) State Labor Provisions
- (3) State Subcontracting Provisions
- (4) Noncollusion Affidavit
- (5) Performance and Payment Bonds
- (6) Workers' Compensation Certification
- (7) Withheld Contract Funds

C. In the event that there is a conflict between the required Federal and State provisions, the contract shall provide that the contractor shall comply with the provision that is most stringent on the contractor, unless there is a provision in the law or regulations that permits the contract to disregard one of the provisions.

4. **CONTRACT ADMINISTRATION.** A contract administration system designed to insure that contractors perform in accordance with their contracts shall be maintained. The system shall include procedures for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters.

A. **CONTRACT MODIFICATIONS.** Subject to a cost and price analysis (Part Two, paragraph 7 of this Policy), the Contracting Officer is authorized to approve contract modifications not to exceed 10% of the original contract amount, provided the total contract price, with modifications, does not exceed the approved project budget.

PART FIVE: APPEALS AND REMEDIES

1. **GENERAL.** It is the Housing Authority's policy to resolve all contractual issues informally at the local Housing Authority level, without litigation. Disputes shall not be referred to HUD until all administrative remedies have been exhausted at the local Housing Authority level. When appropriate, the Housing Authority may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the differences. HUD will only review protests in cases of violations of Federal law or regulations and failure of the Housing Authority to review a complaint or protest.

2. **BID PROTEST.** Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for receipt of bids or proposals, and any protest against the award of a contract must be received within five calendar days after 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 or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented

3. **CONTRACT CLAIMS.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer, or designee, for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights.

PART SIX: ASSISTANCE TO SMALL AND OTHER BUSINESSES

1. **REQUIRED EFFORTS.** Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, the Housing Authority shall make efforts to ensure that small and minority-owned businesses, women's business enterprises, and individuals or firms located in or owned in substantial part by persons residing in the area of the Housing Authority development are used when economically possible. Such efforts shall include, but shall not be limited to:
 - A. Including such firms, when qualified, on solicitation mailing lists;
 - B. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
 - C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
 - D. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
 - E. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
 - F. Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the development area and to award subcontracts for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing in the area of the development, as described in 24 CFR 135;

Revised August 11, 2009
Approved August 20, 2009

- G. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed in A through F above.

2. DEFINITIONS

- A. "Small business" is defined as a business which is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR 121 shall be used, unless the Housing Authority determines that their use is inappropriate.
- B. A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans, and Hasidic Jewish Americans.
- C. "Women's business enterprise" is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who also control or operate the business.
- D. A business concern located in the area of the development, is defined as an individual or firm located within the relevant Section 3 covered development area, as determined pursuant to 24 CFR 135.15, listed on HUD's registry of eligible business concerns, and meeting the definitions of small business above. A business concern owned in substantial part by persons residing in the area of the development is defined as a business concern which is 51% or more owned by persons residing within the Section 3 covered development area owned

by persons considered by the U.S. Small Business Administration to be socially or economically disadvantaged, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above.

PART SEVEN: ETHICS IN PUBLIC CONTRACTING

1. **GENERAL.** The Housing Authority shall adhere to the following code of conduct and shall establish a system of sanctions for violations, consistent with applicable State or local law.

2. **CONFLICT OF INTEREST.** No Commissioner, officer, employee, or agent of this Housing Authority shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:
 - A. An employee, officer or agent involved in making the award;

 - B. A relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister);

 - C. His/her partner; or,

 - D. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

3. **RESTRICTION ON INTEREST BY COMMISSIONER OR EMPLOYEE.** A Commissioner or employee of an Authority shall not acquire any direct or indirect interest in any housing project or in any property included or planned to be included in any project, nor shall he/she have any direct or indirect interest in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If he/she owns or controls a direct or indirect interest in any such property, he/she shall

immediately make a written disclosure of it to the Authority and the disclosure shall be entered upon its minutes. Failure to so disclose his interest shall constitute misconduct in office.

4. **GRATUITIES, KICKBACK, AND USE OF CONFIDENTIAL INFORMATION.** Housing Authority Commissioners, officers, employees, or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain.
5. **PROHIBITION AGAINST CONTINGENT FEES.** Contractors shall not retain a person to solicit or secure a Housing Authority contract for a commission, percentage, brokerage, or contingent fee, except for bona-fide established commercial selling agencies.