

PROCUREMENT POLICY

Adopted: 1/21/2010 Revised: 4/19/18 Resolution No.: 18-13

1.0 INTRODUCTION

1.1 General.

This Procurement Policy (Policy) established for the Housing Authority of the County of San Joaquin (Agency) by Action of the Agency Board of Commissioners (Board) on January 21, 2010, for the acquisition of goods, supplies, commodities, materials, professional services, maintenance and repair services, construction services, equipment, and insurance. This Procurement Policy (Policy) is in accordance with and subject to all federal, state and local laws, rules, codes and regulations including but not limited to the Annual Contributions Contract (ACC) between the Agency and the United States Department of Housing and Urban Development (HUD), Federal Regulations at 2 CFR §200.317 through §200.326, *Procurement Standards*, the procurement standards of the "Procurement Handbook for Public Housing Authorities", and HUD Handbook 7460.8, REV 2.

2.0 GENERAL PROVISIONS

2.1 Purpose. The purpose of this Policy is to:

- 2.1.1 Provide for a procurement system of quality and integrity;
- 2.1.2 Provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Agency;
- 2.1.3 Ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable and valuable prices available to the Agency;
- 2.1.4 Promote competition in contracting;
- 2.1.5 Assure that the Agency purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws.
- 2.1.6 Provide consistency and transparency in all procurement activities
- 2.1.7 Foster growth of small, minority and woman-owned businesses
- 2.1.8 Provide economic opportunities for extremely low, very-low and low income persons especially those residing in public housing, and
- 2.1.9 Ensure comprehensive planning for all procurements to include the

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drafting of scopes of work and specifications that are comprehensive in nature and address, to the greatest extent possible, all foreseeable issues.

- 2.2 Application.** This Policy applies to all procurement actions of the Agency, regardless of the source of funds, except as noted under “exclusions” below. 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). However, nothing in this Policy shall prevent the Agency from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. When both HUD and non-Federal grant funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, HUD procurement regulations shall be applied to the total project. If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the source of funding may be followed.
- 2.3 Definition.** The term “procurement,” as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials, (2) construction and maintenance; consultant services, (3) Architectural and Engineering (A/E) services, (4) Social Services, and (5) other services.
- 2.4 Exclusions.** This policy does not govern administrative fees earned under the Housing Choice Voucher (formerly Section 8) program, the award of vouchers under the Housing Choice Voucher program, the execution of landlord Housing Assistance Payments contracts under that program, or non-program income, e.g., fee-for-service revenue under 24 CFR §990. These excluded areas are subject to applicable State and local requirements.
- 2.5 Changes in Laws and Regulations.** In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.
- 2.6 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 California Freedom of Information Act.
- 2.7** This Policy shall not govern the following items: purchases or sale of real property, loan transactions and documents, employment contracts, limited

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partnership agreements, award of housing or other vouchers to non-profit agencies, and Housing Assistance Payment contracts.

- 2.8 **Delegated Authority.** In adopting this Policy, the Board of Commissioners authorizes the Executive Director, who shall be referred to as the Contracting Officer for the Housing Authority, to approve and implement appropriate procurement procedures that are consistent with this Policy. The Executive Director will ensure that procedures are implemented consistent with this Policy and all federal, state and local laws and ensure employees are held accountable for all violations of this Policy, laws, rules, regulations and the implemented procedures.

While the Board of Commissioners retains the authority to approve all contracts and all expenditures in excess of the Contracting Officer's delegated authority, the Contracting Officer or his/her designee is hereby authorized to enter into contracts or commit funds up to \$150,000 per contract.

3.0 ETHICS IN PUBLIC CONTRACTING

- 3.1 **General.** The Housing Authority shall adhere to this code of conduct regarding procurement issues and actions and shall establish a system of sanctions for violations, consistent with applicable Federal, State or local law.
- 3.2 **Conflicts of Interest.** No employee, officer, Board member, or agent of the Agency 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:
- 3.2.1 An employee, officer, Board member, or agent involved in making the award;
- 3.2.2 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);
- 3.2.3 His/her partner; or

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- 3.2.4 An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.
- 3.3 **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
- 3.4 **Gratuities, Kickbacks, and Use of Confidential Information.** No officer, employee, Board member, or agent of the Agency shall ask for or accept gratuities, favors, or anything of monetary value from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.
- 3.5 **Prohibition against Contingent Fees.** Contractors wanting to do business with the Authority must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

4.0 PROCUREMENT PLANNING

- 4.1 **General.** Procurement requirements are subject to a planning process to assure efficient and economical purchasing. Hence, the Agency will periodically review its record of prior purchases, as well as future needs, to:
- 4.1.1 Find patterns of procurement actions that could be performed more efficiently or economically;
- 4.1.2 Maximize competition and competitive pricing among contracts and reduce Agency administrative costs.

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

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5.0 PROCUREMENT METHODS

- 5.1 **General.** Any contract not exceeding \$150,000 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 Section 16.0 of this Policy).

Contracts for legal services for any private attorney contract in connection with litigation services, where the fee is expected to exceed \$100,000, shall be submitted to the HUD Regional Counsel for its prior written concurrence (see HUD Litigation Handbook Section 3-3(b)(3) and 5-4). The HUD Litigation Handbook also requires Housing Authorities to obtain the prior written concurrence of HUD for other litigation related actions, such as initiating any litigation, other than routine eviction actions, and approving all litigation settlements.

- 5.2 **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 Finance 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), that 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 \$500.00 or above, except in those instances specifically described herein. These accounts shall be reconciled and replenished periodically.
- 5.3 **Small Purchases of \$3,000 or less.** For small purchases below \$3,000 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.
- 5.4 **Small Purchases over \$3,000.** For small purchases in excess of \$3,000 but not exceeding \$150,000, the Agency shall obtain an adequate number of quotes (preferably three); however, for purchases of less than \$3,000 (except for construction procurements which is set at \$2,000), also known as Micro Purchases, only one quote is required provided the quote is considered

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reasonable. These quotes may be obtained orally (either in person or by phone) by fax or in writing, through e-procurement, or as allowed by State or local laws.

Award shall be made to the responsive and responsible 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 in the contract file (unless otherwise provided in State or local law).

- 5.5 **Sealed Bids.** Sealed bidding, also known as Invitation for Bids (IFB), shall be used for all contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this Policy. Under sealed bids, the Agency publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsive and responsible bidder whose bid, conforming with all the material terms and conditions of the IFB, is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$150,000. For professional services contracts, sealed bidding should not be used.

- 5.5.1 **Conditions for Using Sealed Bids.** Contracts exceeding \$150,000 shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic statement of work, specification, or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.

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.

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 \$150,000, shall be accompanied by a copy of the contract.

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- 5.5.2 **Solicitation and Receipt of Bids.** An IFB shall be issued which includes the 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 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.
- 5.5.3 **Bid Opening and Award.** Bids shall be opened publicly. All bids received shall be recorded on an abstract (tabulation) of bids, which shall then be made available for public inspection. If equal low bids are received from responsible bidders, award shall be made in accordance with the Housing Authority's policies unless otherwise provided in State or local law and stated in the IFB. 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.
- 5.5.4 **Mistakes in Bids.** 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 IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made.

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 IFB; sign the bid, provided that the unsigned bid is accompanied by other material indicating the bidder's intent

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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.

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 Agency or fair competition shall not be permitted.

5.6 Competitive Proposals. Unlike sealed bidding, the competitive proposal method, also known as Request for Proposals (RFP), permits: consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the Agency, 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.

5.6.1 Conditions for Use. Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold. As detailed within Section 7.2.B of HUD Procurement Handbook 7460.8 REV 2, "Only under limited circumstances would construction services be procured by competitive proposals;" accordingly, construction services will most typically be procured utilizing the sealed bid (IFB) or small purchase procedures (QSP). An adequate number of qualified sources shall be solicited (normally, at least 3).

5.6.2 Form of Solicitation. Other than Architect/Engineer (A/E) services, developer-related services and energy performance contracting (section 5.6.6 below), competitive proposals shall be solicited through the issuance of an RFP. The RFP shall clearly identify the relative importance of price and other evaluation factors and sub factors, including the weight given to each technical factor and sub factor. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the

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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.

- 5.6.3 **Evaluation.** The proposals shall be evaluated only on the factors stated in the RFP. Where not apparent from the evaluation factors, the Agency 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 award of a contract.
- 5.6.4 **Negotiations.** Unless there is no need for negotiations with any of the offerors, negotiations shall be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors specified in the RFP. Such offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their 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 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. 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.
- 5.6.5 **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 Agency.
- 5.6.6 **Architect/Engineer Services.** Architect/Engineer (A/E) services in excess of the small purchase limitation (or less if required by State or local law) may be obtained by either the competitive proposal method or Qualifications-based Selection (QBS) procedures, utilizing a Request for Qualifications (RFQ), unless State law mandates the specific method. Sealed bidding, however, shall not be used to obtain A/E services. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is

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selected, subject to 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 other than developer-related services and energy performance contracting, though A/E firms are potential sources.

5.7 Noncompetitive Proposals.

5.7.1 Conditions for Use. Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive (sole- or single-source) may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, and if one of the following applies:

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

5.7.1.2 An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the Agency, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency;

5.7.1.3 HUD authorizes the use of noncompetitive proposals; or

5.7.1.4 After solicitation of a number of sources, competition is determined inadequate.

5.7.2 Justification. Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification, to be included in the procurement file, should include the following information:

5.7.2.1 Description of the requirement;

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- 5.7.2.2 Statement as to the unique circumstances that require award by noncompetitive proposals;
- 5.7.2.3 Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
- 5.7.2.4 Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
- 5.7.2.5 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 this Policy.

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

6.0 INDEPENDENT COST ESTIMATE (ICE)

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

7.0 COST AND PRICE ANALYSIS (CPA)

7.1 General. Some form of cost or price analysis shall be performed for all procurement actions, including contract modifications. The degree of analysis shall depend on the facts surrounding each procurement.

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

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- 7.1.1 **Petty Cash and Micro Purchases.** No formal cost or price analysis is required. Rather, the execution of a contract by the Contracting Officer (through a Purchase Order or other means) shall serve as the Contracting Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.
- 7.1.2 **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.
- 7.1.3 **Sealed Bids.** The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the ICE, and where the Agency cannot reasonably determine price reasonableness, the Agency must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.
- 7.1.4 **Competitive Proposals.** The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient proposals are not received, the Agency must compare the price with the ICE. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, the Agency must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.
- 7.1.5 **Contract Modifications.** A cost and price analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of \$150,000.

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8.0 SOLICITATION AND ADVERTISING

8.1 Method of Solicitation.

8.1.1 **Petty Cash and Micro Purchases.** The Agency may contact only one source if the price is considered reasonable.

8.1.2 **Small Purchases.** Quotes may be solicited orally (either in person or by phone), by fax or in writing, through e-procurement, or by any other reasonable method.

8.1.3 **Sealed Bids and Competitive Proposals.** 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. 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". Solicitation must be done publicly. The Agency must use one or more following solicitation methods, provided that the method utilized provides for meaningful competition.

8.1.3.1 Advertising in newspaper(s) or other print mediums of local or general circulations.

8.1.3.2 Advertising in various trade journals or publications (for construction).

8.1.3.3 E-Procurement. The Agency may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2 CFR §200.317 through §200.326, and State and local requirements.

8.2 **Time Frame.** For purchases of more than \$150,000, the public notice should run not less than once each week for two consecutive weeks, except under emergency conditions.

8.3 **Form.** Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact that can provide a copy of and information about the solicitation, a

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brief description of the needed items(s) and the necessity that all bids shall be submitted in sealed envelopes marked "Sealed Bid".

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

8.5 Cancellation of Solicitations.

8.5.1 An IFB, RFP, or other solicitation may be cancelled *before* bids/offers are due if:

8.5.1.1 The supplies, services or construction is no longer required;

8.5.1.2 The Housing Authority can no longer reasonably expect to fund the procurement;

8.5.1.3 Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or

8.5.1.4 Other similar reasons in the sole discretion of the Housing Authority.

8.5.2 A solicitation may be cancelled and all bids or proposals that have *already been received* may be rejected if:

8.5.2.1 The supplies or services (including construction) are no longer required;

8.5.2.2 Ambiguous or otherwise inadequate specifications were part of the solicitation;

8.5.2.3 All factors of significance to the Agency were not considered;

8.5.2.4 Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

8.5.2.5 There is reason to believe that bids or proposals may not have been independently determined in open

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competition, may have been collusive, or may have been submitted in bad faith; or

8.5.2.6 For good cause of a similar nature when it is in the best interest of the Agency.

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

8.5.4 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.

8.5.5 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 Agency'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

8.5.5.1 Re-solicit using an RFP; or

8.5.5.2 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 Agency's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.

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

8.6 **Credit (or Purchasing) Cards.** Credit card usage should follow the rules for all other small purchases. For example, the Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Contracting Officer would generally need to have obtained a reasonable number of quotes before purchasing via a credit card. When using credit cards, the Agency shall adopt reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types

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of purchases or the amount of purchases that are permitted with credit cards).

9.0 BONDING REQUIREMENTS

9.1 **General.** The standards under this section apply to construction contracts that exceed \$150,000. There are no bonding requirements for small purchases or for competitive proposals. The Agency may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

9.1.1 **Bid Bonds.** For construction contracts exceeding \$150,000, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.

9.1.2 **Payment Bonds.** For construction contracts exceeding \$150,000, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four:

9.1.2.1 A performance and payment bond in a penal sum of 100% of the contract price; or

9.1.2.2 Separate performance and payment bonds, each for 50% or more of the contract price; or

9.1.2.3 A 20 % cash escrow; or

9.1.2.4 A 25 % irrevocable letter of credit.

These bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State of California. 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.

10.0 CONTRACTOR QUALIFICATIONS AND DUTIES

10.1 Contractor Responsibility

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10.1.1 The Authority 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:

10.1.1.1 Have adequate financial resources to perform the contract, or the ability to obtain them;

10.1.1.2 Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all of the bidder's/offeror's existing commercial and governmental business commitments;

10.1.1.3 Have a satisfactory performance record;

10.1.1.4 Have a satisfactory record of integrity and business ethics;

10.1.1.5 Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;

10.1.1.6 Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,

10.1.1.7 Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed Limited 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.

10.2 **Suspension and Debarment.** Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (2 CFR §200.317 through §200.326) or by other Federal agencies, e.g., Department of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings. Prior to issuance of a contract, Agency staff shall, as detailed within Section 10.2.H.1 and 10.2.H.2 of HUD Procurement Handbook 7460.8 REV 2, conduct the required searches within the HUD Limited Denial of Participation (LDP) system and the U.S.

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General Services Administration System for Award Management (SAM) and placed within the applicable contract file a printed copy of the results of each such search.

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

11.0 CONTRACT PRICING ARRANGEMENTS

- 11.1 Contract Types.** Any type of contract which is appropriate to the procurement and which will promote the best interests of the Agency 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 the Agency. 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 contractors 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.

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

- 11.2.1 The option is contained in the solicitation;
- 11.2.2 The option is a unilateral right of the Agency;
- 11.2.3 The contract states a limit on the additional quantities and the overall term of the contract;
- 11.2.4 The options are evaluated as part of the initial competition;
- 11.2.5 The contract states the period within which the options may be exercised;

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- 11.2.6 The options may be exercised only at the price specified in or reasonably determinable from the contract; and
- 11.2.7 The options may be exercised only if determined to be more advantageous to the Agency than conducting a new procurement.

12.0 CONTRACT CLAUSES

- 12.1 **Contract Pricing Arrangements.** In addition to containing a clause identifying the contract type, all contracts shall identify the contract pricing arrangement and include any clauses required by Federal and State statutes, executive orders, and their implementing regulations as determined by the Agency.

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.

- 12.2 **Required Forms.** Additionally, the forms HUD-5369; 5369-A; 5369-B; 5369; 5370; 5370-C (Sections I and II); 51915; and 51915-A, which contain all HUD-required clauses and certifications for contracts of more than \$150,000, as well as any forms/clauses as required by HUD for small purchases, shall be used, as applicable, in all corresponding solicitations and contracts issued by the Agency.
- 12.3 **Required Contract Clauses:** The Agency shall ensure that each contract executed by the Agency contains the required contract clauses detailed within 2 CFR §200.326.

13.0 CONTRACT ADMINISTRATION

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

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14.0 COMPETITIVE SPECIFICATIONS

- 14.1 **General.** All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying the Agency's needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Functional or performance specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase (as outlined in Section 16.0; Assistance to Small and Other Businesses). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.
- 14.2 **Limitations on Competition.** The following types of specifications shall be avoided:
- 14.2.1 Geographic restrictions not mandated or encouraged by applicable Federal law or not otherwise in the best interests of the Housing Authority (except for A/E contracts, which may include geographic location as a selection factor if adequate competition is available);
 - 14.2.2 Unnecessary bonding or experience requirements;
 - 14.2.3 Brand name specifications (unless a written determination is made that only the identified item will satisfy the Housing Authority's needs); and
 - 14.2.4 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 (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).

15.0 APPEALS AND REMEDIES

- 15.1 **General.** It is Agency policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to HUD unless all administrative remedies have been exhausted at the local Housing Authority level. When appropriate, the Housing Authority may consider the use of

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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.

- 15.2 Informal Appeals Procedure.** The Agency shall adopt an informal bid protest/appeal procedure for contracts of \$150,000 or less. Under these procedures, the bidder/contractor may request to meet with the appropriate Contract Officer.
- 15.3 Formal Appeals Procedure.** A formal appeals procedure shall be established for solicitations/contracts of more than \$150,000.

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

15.3.2 Contractor 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 to the next higher level of authority in Agency. Contractor claims shall be governed by the "Changes" clause in the relevant form HUD-5370.

16.0 ASSISTANCE TO SMALL AND OTHER BUSINESSES

- 16.1 Required Efforts.** Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, all feasible efforts shall be made to ensure that small and minority-owned businesses, women's business enterprises, and other individuals or firms located in or owned in substantial part by persons residing in the area of the of the Housing Authority

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developments are used when possible. Such efforts shall include, but shall not be limited to:

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

16.2 Definitions.

- 16.2.1 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 §121 should be used to determine business size, unless the Housing Authority determines that their use is inappropriate.
- 16.2.2 A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or

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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.

- 16.2.3 A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.
- 16.2.4 A "Section 3 business concern" as defined under 24 CFR §135, is defined as an individual or firm located within the relevant Section 3 covered development area, listed on HUD's registry of eligible business concerns, and meeting the definitions of a 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.
- 16.2.5 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 §654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

17.0 BOARD APPROVAL OF PROCUREMENT ACTIONS

- 17.1 **Authority.** The Board appoints and delegates procurement authority to the Executive Director in the amount not to exceed \$150,000 and is responsible for ensuring that any procurement policies and procedures adopted are appropriate for the Agency. All procurements that exceed \$150,000 must have approval from the Board prior to award and/or contract execution.

18.0 DELEGATION OF CONTRACTING AUTHORITY

- 18.1 **Delegation.** While the Executive Director is responsible for ensuring that the Agency's procurements comply with this Policy, the Executive Director may delegate in writing all procurement authority as is necessary and appropriate to conduct the business of the Agency.

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18.2 **Procedures.** Further, and in accordance with this delegation of authority, the Executive Director shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described in Section 3.0 herein, consistent with Federal, State, or local law.

19.0 DOCUMENTATION

19.1 **Required Records.** The Agency 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:

19.1.1 Rationale for the method of procurement (if not self-evident);

19.1.2 Rationale of contract pricing arrangement (also if not self-evident);

19.1.3 Reason for accepting or rejecting the bids or offers;

19.1.4 Basis for the contract price (as prescribed in this handbook);

19.1.5 A copy of the contract documents awarded or issued and signed by the Contracting Officer;

19.1.6 Basis for contract modifications; and

19.1.7 Related contract administration actions.

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

19.2 **Retention of Bidding Documents as Public Records.** In order that the records of the Agency 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 Housing 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, upon award of a contract or rejection of all bids.

Monthly Report: In order that the Board may be kept currently informed on major purchases and contracts awarded under the authority granted herein, a

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report listing all purchases and contracts in amounts from \$3,000 to \$150,000 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.

- 19.3 **Record Retention.** Records are to be retained for a period of three years after final payment and all matters pertaining to the contract are closed.

20.0 DISPOSITION OF SURPLUS PROPERTY

- 20.1 **General.** Property no longer necessary for the Agency's purposes (non-real property) shall be transferred, sold, or disposed of in accordance with applicable Federal, state, and local laws and regulations.

21.0 FUNDING AVAILABILITY

- 21.1 **General.** Before initiating any contract, the Agency shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or modification.