



**FOR CHANGES SEE PAGE 5, B-1 AND B-3, PAGE 6 C AND PAGE 11 A.  
SEE ATTACHED MEMORANDUM M-18-18 FROM OFFICE OF MANAGEMENT  
AND BUDGET DATED 6-20-18**

**PROCUREMENT POLICY  
HOUSING AUTHORITY OF FLORENCE  
EFFECTIVE JULY 1, 2007**

**SECTION I**

**GENERAL PROVISIONS**

**A. Purpose**

The purpose of this Procurement Policy is to provide for the fair and equitable treatment of all persons or firms involved in purchasing and contracting with The Housing Authority of Florence (HA) and all managing agencies; assure that quality supplies, services, and construction are procured efficiently, effectively and at the most favorable prices available to the HA; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and assure that the HA purchasing actions are in full compliance with applicable HUD, Federal and State of South Carolina standards.

This Procurement Policy complies with the Annual Contributions Contract (ACC) between Housing Authority (HA) and the HUD, Federal Regulations at **2 CFR Part 200**, the procurement standards of the Procurement Handbook for PHAs, HUD Handbook 7460.8, Rev 2, and applicable State and Local laws.

**B. Contracting Officer/Procurement Authority and Administration**

By approval of this policy the Board of Commissioners hereby appoint the Executive Director as Procurement/Contracting Officer for the Housing Authority.

The Executive Director shall be designated as the Contracting Officer for the Authority and shall execute all contract documents. The Executive Director shall be responsible for developing procedures to implement this Procurement Policy. The Executive Director shall be responsible as depository of all related records and may designate responsibility for small purchases and other procurement activities to appropriated staff as deemed necessary for the smooth operation of the Authority.

The Executive Director or his/her designee will ascertain that the following are met:

1. The yearly procurement are adequately planned.
2. The procurement documents clearly specify the desired products, constructions, and services, as well as the methods of award.
3. The solicitation procedures are conducted in full compliance with the federal regulations (or state and local laws whichever are more stringent).
4. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder as stated in 2 CFR 200.320 c (2) (iv)
5. There are sufficient unencumbered funds for each procurement to defray the cost of contracts.

This policy and any changes thereto shall be submitted to the Board for approval.

### **C. General**

The HA shall: provide for a procurement system of quality and integrity; provide for the fair and equitable treatment of all persons or firms involved in purchasing by the HA; ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to the HA; promote competition in contracting; and assure that HA purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws.

### **D. Application**

This Procurement Policy applies to all procurement actions of the Authority, regardless of the source of funds, except as noted under “exclusions,” below. However, nothing in this Policy shall prevent the HA 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.

### **E. 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, maintenance and consultant services.
3. Architectural and Engineering (A/E) services.
4. Social Services and other services.

#### **F. Exclusions**

This policy does not govern administrative fees earned under the Section 8 voucher program, the award of vouchers under the Section 8 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 Part 990. These excluded areas are subject to applicable State and local requirements.

#### **G. 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.

### **SECTION II**

#### **ETHICS IN PUBLIC CONTRACTING**

##### **A. 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 South Carolina (State) Freedom of Information Act (FOIA).

##### **B. General**

The HA hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct, etc., is consistent with applicable Federal, State, or local law.

##### **C. Conflicts of Interest/Code of Ethics**

No employee, officer, Board member, or agent of the HA 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. Nor shall any influence be brought by any officer or employee of the Housing Authority to the Contracting Officer which would grant favor to a personal or casual relationship who is in business which might profit from the housing authority or its tenants. This type of conflict would be when one of the persons listed below has a financial or any other type of interest in a firm competing for the award:

1. An employee, officer, Board member, or agent involved in making the award;
2. His/her relative (including father, mother, son, daughter, brother, sister, husband, wife, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister);
3. His/her partner; or
4. An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

Violations of the code of ethics by employees can result in suspension, termination of employment, and prosecution in the state court system. Violations of the code of ethics by Commissioners can result in their recall, dismissal from the Board and prosecution in the State Court System.

Violations shall be reported to the following: Executive Director, Board of Commissioners, HUD and the Housing Authority's Attorney of Record. Disposition of violations will be determined at the appropriate level and action taken according to the severity of the violation.

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

No officer, employee, Board member, or agent shall ask for or accept gratuities, favors, or items of more than \$50 in value from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

#### **E. Prohibition Against Contingent Fees**

Contractors wanting to do business with the HA 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.

#### **F. Procurement Planning**

Planning is essential to managing the procurement function properly. Hence, the HA will periodically review its record of prior purchases, as well as future needs, to: find patterns of procurement actions that could be performed more efficiently or economically; maximize competition and competitive pricing among contracts and decrease the HA's procurement costs; reduce HA administrative costs; ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and minimize errors that occur when there is inadequate lead time. Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

## **G. Procurement Documentation**

All procurement activities shall contain backup information which can include one or more of the following: internal requisition forms, quotations, purchase order, contract, receipts, invoices, shipping forms, and the appropriate method of information for monetary settlement upon completion of the transaction. This information is necessary for internal and external procedural audits as well as fiscal accountability.

### **SECTION III**

#### **PURCHASING METHODS**

##### **A. Petty Cash Purchases**

Purchases under \$75 may be handled through the use of a petty cash account. Petty Cash Accounts may be established in an amount sufficient to cover small purchases made during a reasonable period, e.g., one month. For all Petty Cash Accounts, the HA shall ensure that security is maintained and only authorized individuals have access to the account. These accounts should be reconciled and replenished periodically.

##### **B. Small Purchase Procedures (Mini Micro Purchase/Micro Purchase/ Small)**

1. For any amounts above the Micro Purchase of \$10,000 ceiling, but not exceeding \$250,000 the HA may use small purchase procedures. Under small purchase procedures, the HA shall obtain a reasonable number of quotes (preferably three).
2. Purchases of materials, supplies and other routine items between \$0 and \$500 may be purchased using the Mini Micro Purchase Procedure. The Deputy Director will act as a qualified agent of the Contracting Officer and shall be held accountable for all such purchases. All mini micro purchases must be funded through approved line item budget and properly documented. Only one quote is required provided the quote is considered reasonable.
3. For purchases between \$500 and, \$10,000 also known as Micro Purchases, only one quote is required provided the quote is considered reasonable.
4. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Quotes may be obtained orally (either in person or by phone), by fax, in writing, or through e-procurement. Award shall be made to the qualified vendor that provides the best value to the HA. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file.

5. The HA shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to:
  - a) Permit use of the small purchase procedures or,
  - b) To avoid any requirements that applies to purchases that exceed the Micro Purchase threshold.

### **C. Sealed Bids**

Sealed bidding 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 document. Under sealed bids, the PHA publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions of the IFB, is the lowest in price as stated in (2 CFR 200.320). Sealed bidding is the preferred method for procuring construction, supply, and noncomplex service contracts that are expected to exceed \$250,000.

1. **Conditions for Using Sealed Bids.** HA shall use the sealed bid method if the following conditions are present: a complete, adequate, and realistic statement of work, specification, or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.
2. **Solicitation and Receipt of Bids.** An IFB is issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids received will be date and time-stamped and stored **unopened** in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.
  - a) Any amendments to the invitation shall be in writing, and if it is necessary to issue an amendment within seven days of the bid opening, the bid opening may be postponed at the HA's sole discretion. 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/date-stamped, but not opened and shall be stored in a secure place until bid opening.
3. **Bid Opening and Award.** Bids shall be opened publicly. All bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The method for doing this shall be stated in the IFB. If only one responsive bid is received from a responsible

bidder, award shall **not** be made unless the price can be determined to be reasonable, based on a cost or price analysis.

4. **Mistakes in Bids.** Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening.
  - a) 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.
  - b) A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction and withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer.

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

Unlike sealed bidding, the competitive proposal method 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 PHA, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely on the lowest price.

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.
2. **Form of Solicitation.** Other than A/E services, competitive proposals shall be solicited through the issuance of a RFP. The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any subfactors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established **before** the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. The HA may assign price a specific weight in the evaluation criteria or the HA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

3. **Evaluation.** The proposals shall be evaluated only on the criteria stated in the RFP. Where not apparent from the evaluation criteria, the HA 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.
  
4. **Negotiations.** Negotiations shall be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between the PHA and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal, and shall be conducted by the contracting officer with each offeror within the competitive range. The primary object of discussions is to maximize the HA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The contracting officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the contracting officer's judgment. The contracting officer may inform an offeror that its price is considered by the PHA to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that the government's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.
  
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 HA provided that the price is within the maximum total project budgeted amount established for the specific property or activity.



6. **A/E Services.** The HA must contract for A/E services using QBS procedures, utilizing a RFQ. Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures **shall not** be used to purchase other types of services, though architectural/engineering firms are potential sources.

## **E. Noncompetitive Proposals**

1. **Conditions for Use.** Procurement by noncompetitive proposals (sole-source) may be used **only** when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, **and** if one of the following applies:

- a) The item is available only from a single source, based on a good faith review of available sources;
- b) An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the HA, 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;
- c) HUD authorizes the use of noncompetitive proposals; or
- d) After solicitation of a number of sources, competition is determined inadequate.

2. **Justification.** Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:

- a) Description of the requirement;
- b) History of prior purchases and their nature (competitive vs. noncompetitive);
- c) The specific exception in **2 CFR 200.320(f)(1)** through **(4)** which applies;

- d) Statement as to the unique circumstances that require award by noncompetitive proposals;
- e) 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.);
- f) Statement as to efforts that will be taken in the future to promote competition for the requirement;
- g) If the Contracting Officer is other than the Executive Director, Signature by the Contracting Officer's supervisor is required. and
- h) Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

#### **F. Multi-Step Bids**

PHA may use Multi-step bid where appropriate and in accordance with Handbook 7460.8 REV 2.

#### **G. Cooperative Purchasing/Intergovernmental Agreements**

The HA 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 HA 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 200.320.36**.

Equipment, supply and installation, which are available through CCHRCO's – CPC shall be ordered from the CPC Contractor who was the lowest bidder listed in the CPC Catalog. Selecting other than the lowest priced item from the CPC Catalog shall be supported by sound technical justification attached to the file copy of the purchase order or contract. All purchases made through CPC must have CPC number on purchase order/contract and a copy forwarded to the CPC Committee. A copy of the CPC price sheets for all bidders shall be attached to the purchase order or contract with the cost comparison. All other regulations regarding contract administration and Davis Bacon compliance shall apply to contracts issued through the CPC Program. Purchases may be made through CPC without regard to

values established under small purchase procedures and sealed bidding procedures, since the CPC Program is an indefinite quantity sealed bid process, which is advertised nationally and bid as a sealed bid annually by the CPC consortium. However, any purchase using the CPC Program shall be preceded by a cost estimate and an analysis of the pricing to ensure that the choice of the CPC Program is the most advantageous to the Authority. The Authority may consider the ability of a contractor to work in occupied units with a minimum of disruption to the tenants in the evaluation of reasonableness of pricing and the value to the Housing Authority.

## **SECTION IV**

### **ICE OR COST ANALYSIS**

#### **A. Purchases**

For all purchases above the Micro Purchase threshold of \$10,000, the HA shall prepare an ICE or Cost Analysis prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

1. Software to be used to create a cost analysis shall be one of the following or like software that has over 25,000 individual cost items from which to create cost estimates:
  - a) Housing Rehab Pro.
  - b) R S Means Data.
  - c) PlanSwift.
  - d) Sage Estimating.
  - e) Pro Construction Estimating.
2. **Regardless of the cost, ALL CONSTRUCTION CONTRACTS SHALL HAVE AN ICE OR COST ANALYSIS PRIOR TO SOLICITATION.**
3. **ALL CHANGE ORDERS SHALL HAVE AN ICE OR COST ANALYSIS PRIOR TO BEING APPROVED.**

## **SECTION V**

### **SOLICITATION AND ADVERTISING**

#### **A. Method of Solicitation**

1. **Petty Cash and Micro Purchases.** The HA may contact only one source if the price is considered reasonable.
2. **Small Purchases.** Quotes may be solicited orally, through fax, or by any other reasonable method.
3. **Sealed Bids and Competitive Proposals.** Solicitation must be done publicly. The HA must use one or more of the following solicitation methods, provided that the method employed provides for meaningful competition.
  - a) Advertising on the HA website.
  - b) Advertising in newspapers or other print mediums of local or general circulations.
  - c) Advertising in various trade journals or publications (for construction).
  - d) E-Procurement. The HA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with **2 CFR 200.320**, State and local requirements, and the Authority's procurement policy.

## **B. Time Frame**

For purchases of more than \$150,000, the public notice should run not less than once each week for two consecutive weeks.

## **C. 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 who can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s).

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

15 to 30 days shall generally be provided for preparation and submission of sealed bids. However, the Executive Director may allow for a shorter period under extraordinary circumstances.

## **E. Cancellation of Solicitations**

1. An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:
  - a) The supplies, services or construction is no longer required;



6. If problems are found with the specifications, HA should cancel the solicitation, revise the specifications and resolicit using an IFB.

## **SECTION VI**

### **BONDING**

#### **A. Bonding Requirements**

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 HA may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

1. **Bid Guarantee.** For construction contracts exceeding \$150,000, offerors shall be required to submit a bid guarantee with each bid equivalent to 5% of the bid price.
  - a) Bid guarantee can be in the form of a bid bond, certified check or a letter of irrevocable credit from a bank that is specified for the particular job, equivalent to 5% of the bid price and in accordance with the approved method set forth in the solicitation.
2. **Payment Bonds.** For construction contracts exceeding \$150,000, the successful bidder shall furnish an assurance of completion. Upon notice of contract the contractor has fourteen (14) calendar days in which to provide a **PAYMENT AND PERFORMANCE BOND FOR 100% OF THE TOTAL CONTRACT PRICE.**
3. These bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State where the work is to be performed. Individual sureties shall not be considered. U. S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website: <http://www.fms.treas.gov/c570/index.html>.

## **SECTION VII**

### **CARD USAGE**

#### **A. 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 HA should adopt reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

The credit card shall be in the custody of the Director of Finance and the Executive Director shall be authorized to approve all use of the credit card and all such usage shall be subject to the annual IPA Audit. The Executive Director may approve usage of the credit card for any of the following: travel reservations, registrations and the payment of travel expenses, small purchases made with a vendor with which there is no established account, internet purchases, small purchases of a sporadic nature from a wholesale supplier such as maintenance material suppliers, office materials suppliers or other vendor supplying materials, repairs and/or equipment needed by the Housing Authority.

## **SECTION VIII**

### **CONTRACTOR QUALIFICATIONS AND DUTIES**

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

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

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

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

## **B. Suspension and Debarment**

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (**24 CFR Part 24**) or by other Federal agencies, e.g., Dept of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings.

## **C. Vendor Lists**

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

# **SECTION IX**

## **CONTRACT PRICING ARRANGEMENTS**

### **A. Contract Types**

Any type of contract which is appropriate to the procurement and which will promote the best interests of the HA 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 HA.

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

### **B. Options**

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

1. The option is contained in the solicitation;
2. The option is a unilateral right of the Authority;
3. The contract states a limit on the additional quantities and the overall term of the contract;



4. The options are evaluated as part of the initial competition;
5. The contract states the period within which the options may be exercised;
6. The options may be exercised only at the price specified in or reasonably determinable from the contract; and
7. The options may be exercised only if determined to be more advantageous to HA than conducting a new procurement.

### **C. CONTRACT CLAUSES**

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

Additionally, the forms HUD-5369, 5369-A, 5369-B, 5369, 5370, 5370-C, 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 in all corresponding solicitations and contracts issued by this Authority.

### **D. CONTRACT ADMINISTRATION**

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

## **SECTION X**

### **SPECIFICATIONS**

#### **A. General**

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

#### **B. Limitation**

The following types of specifications shall be avoided:

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

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

## **SECTION XI**

### **APPEALS AND REMEDIES**

#### **A. General**

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

#### **B. Informal Appeals Procedure**

The HA 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.

#### **B. Formal Appeals Procedure**

A formal appeals procedure shall be established for solicitations/contracts of more than \$150,000.

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 the facts presented so warrant.
2. **Contractor Claims.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in

HA. Contractor claims shall be governed by the Changes clause in the form HUD-5370.

## SECTION XII

### ASSISTANCE TO SMALL AND OTHER BUSINESSES

#### **A. 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 HA are used when possible. Such efforts shall include, but shall not be limited to:

1. Including such firms, when qualified, on solicitation mailing lists;
2. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
5. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
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 Part 135** (so-called Section 3 businesses); and
7. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.

Positive efforts shall be made to use small businesses, minority owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in HA prime contracts and subcontracting opportunities.

#### **B. Definitions**

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 Part 121** should be used to determine business size.
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 more such individuals. Minority group members include, but are not limited to African Americans, Latino Americans, Native American Indians, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

3. A **women’s business enterprise** is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.
4. A **“Section 3 business concern”** is as defined under **24 CFR Part 135**.
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 Part 654**, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

### **SECTION XIII**

#### **APPROVAL OF PROCUREMENT ACTIONS**

##### **A. BOARD APPROVAL**

Other than approval of this Procurement Policy, approval by the Board of Commissioners is not required for any procurement action under, \$250,000 as permitted under State and local law. The Board of Commissioners must approve any contracts that exceed \$250,000. It is the responsibility of the Executive Director to make sure that all procurement actions are conducted in accordance with the policies contained herein.

### **SECTION XIV**

#### **DELEGATION OF CONTRACTING AUTHORITY**

##### **A. AUTHORITY**

While the Executive Director is responsible for ensuring that the HA’s procurements comply with this Policy, the Executive Director may delegate all procurement authority as is necessary and appropriate to conduct the business of the Agency.

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 III below, consistent with Federal, State, or local law.

##### **B. DOCUMENTATION**

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

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

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

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

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

## **SECTION XV**

### **DISPOSITION OF SURPLUS PROPERTY**

#### **A. SURPLUS PROPERTY**

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

## **SECTION XVI**

### **FUNDING AVAILABILITY**

#### **A. FUNDING**

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

## **SECTION XVII**

### **SELF-CERTIFICATION**

#### **A. CERTIFICATON**

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



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL  
FINANCIAL MANAGEMENT

June 20, 2018

M-18-18

MEMORANDUM FOR CHIEF FINANCIAL OFFICERS AND HEADS OF SMALL EXECUTIVE AGENCIES

FROM:

Tim Soltis

Deputy Controller, Office of Federal Financial Management

SUBJECT:

Implementing Statutory Changes to the Micro-Purchase and the Simplified Acquisition Thresholds for Financial Assistance

In accordance with recent statutory changes set forth in the National Defense Authorization Acts (NDAA) for Fiscal Years 2017 and 2018, this memorandum raises the threshold for micro-purchases under Federal financial assistance awards to \$10,000, and raises the threshold for simplified acquisitions to \$250,000 for all recipients. Further, it implements an approval process for certain institutions that want to request micro-purchase thresholds higher than \$10,000. Agencies are required to implement these changes in the terms and conditions of their awards, and recipients of existing Federal financial assistance awards may implement them in their internal controls.

**Background**

This memorandum applies to all Federal agencies, as defined at 5 U.S.C. § 551(1), that award grants or cooperative agreements. It implements changes to the micro-purchase and simplified acquisition thresholds for financial assistance under the NDAA for Fiscal Year (FY) 2017 and FY2018. The micro-purchase threshold refers to purchases of supplies or services using simplified acquisition procedures, not to exceed an established amount pursuant to the Office of Management and Budget (OMB) Governmentwide Guidance for Grants and Agreements ("Uniform Guidance") at 2 C.F.R. § 200.67 (Micro-purchase). The simplified acquisition threshold refers to purchases of property or services using small purchase methods not to exceed an established amount pursuant to 2 C.F.R. § 200.88 (Simplified acquisition threshold). For Federal financial assistance awards, these purchases are acquired for use by a Federal program. The NDAA for FY2017 increased the micro-purchase threshold from \$3,500 to \$10,000 for institutions of higher education, or related or affiliated nonprofit entities, nonprofit research organizations or independent research institutes (41 U.S.C. § 1908). The NDAA for FY2018 increases the micro-purchase threshold to \$10,000 for all recipients and also increases the simplified acquisition threshold from \$100,000 to \$250,000 for all recipients.

**Implementing the NDAA for FY2017**

Section 217(b) of the NDAA for FY2017 raises the micro-purchase threshold to \$10,000 for procurements under grants and cooperative agreements for institutions of higher education, or related or affiliated nonprofit entities, nonprofit research organizations or independent research institutes.<sup>1</sup>

<sup>1</sup> Pub. L. No. 114-328 (codified at 41 U.S.C. § 1902(a)(2)).

The NDAA for FY2017 also establishes an interim uniform process by which these recipients can request and Federal agencies can approve requests to apply a higher micro-purchase threshold. Specifically, the 2017 NDAA allows a threshold above \$10,000 if approved by the head of the relevant executive agency. For purposes of this approval, the institution's cognizant Federal agency for indirect cost rates will be the relevant executive agency as defined in 2 C.F.R. § 200.19 (Cognizant agency for indirect costs). To receive a higher threshold, the institution must either have "clean single audit findings" (*i.e.*, in accordance with 2 C.F.R. § 200.520 - Criteria for a low-risk auditee), have an acceptable internal institutional risk assessment, or the higher threshold must be consistent with State law for public institutions.

Agencies should reflect this change through policy or terms and conditions in awards for those institutions. The effective date for this change was when the NDAA for FY2017 was signed into law on December 23, 2016. OMB intends to revise the Uniform Guidance to conform with the law.<sup>2</sup>

#### **Process for Requesting a Higher Threshold Under the NDAA for FY2017**

Requests for approval should be submitted to the institution's cognizant Federal agency for indirect cost rates; however, institutions should contact the agency before sending the request to determine the correct point of contact. The cognizant Federal agency will assign review of the request to the appropriate office within the agency to determine whether to approve, and will maintain records and justification of all approvals. The request should include the threshold level being requested and the justification(s) for it based on the criteria above per Section 217(b) of the NDAA for FY2017.

#### **Implementing the NDAA for FY2018**

This memorandum also implements provisions of the NDAA for FY 2018, Pub. L. No. 115-91, which became law on December 12, 2017. Specifically, section 806 raised the micro-purchase threshold from \$3,500 to \$10,000, and section 805 raised the simplified acquisition threshold from \$100,000 to \$250,000. Pursuant to 2 C.F.R. § 200.67 (Micro-purchase) and 2 C.F.R. § 200.88 (Simplified acquisition threshold), these higher thresholds are not effective until implemented in the Federal Acquisition Regulation (FAR) at 48 C.F.R. Subpart 2.1 (Definitions).<sup>3</sup>

In order to allow maximum flexibility for grant recipients in light of the changes to the NDAA for FY2018, OMB is granting an exception allowing recipients to use the higher threshold of \$10,000 for micro-purchases and \$250,000 for simplified acquisitions in advance of revisions to the FAR at 48 C.F.R. Subpart 2.1 and the Uniform Guidance. Pursuant to 2 C.F.R. § 200.102 (Exceptions), OMB may allow exceptions to the Uniform Guidance when exceptions are not prohibited by statute. The exception takes effect upon the date of issuance of this memo. Agencies should apply this exception to all recipients. Recipients should document any change based on this exception in accordance with 2 C.F.R. § 200.318 (General procurement standards).

If you have any questions regarding this memorandum, please contact Mary Tutman at [Mary.E.Tutman@omb.eop.gov](mailto:Mary.E.Tutman@omb.eop.gov) or Gil Tran at [Hai\\_M.\\_Tran@omb.eop.gov](mailto:Hai_M._Tran@omb.eop.gov).

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<sup>2</sup> The American Innovation and Competitiveness Act, Pub. L. No. 114-329, § 207(b) (2017) states that the Uniform Guidance shall be revised to conform with the requirements concerning the micro-purchase threshold.

<sup>3</sup> Codified at 41 U.S.C. § 1902(f).