



THE ROCHESTER HOUSING AUTHORITY

PROCUREMENT POLICY

**RATIFIED BY THE RHA BOARD OF
COMMISSIONERS MAY 2011**

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This Procurement Policy complies with the Annual Contributions Contract (ACC) between Rochester Housing Authority (RHA, Authority, or Agency) and the U.S. Department of Housing and Urban Development (HUD), Federal Regulations at **24 CFR 85.36**, and the procurement standards of the Procurement Handbook for PHAs - HUD Handbook 7460.8, Rev 2, and applicable State and Local laws.

1.0 General Provisions

1.1 General

The RHA 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 RHA; ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable value available to the RHA; promote competition in contracting; and assure that RHA purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws.

1.2 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 RHA 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.

1.3 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.

1.4 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.

1.5 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.

1.6 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 New York State Freedom of Information Law, {Article 6, Sections 84 – 90 of the New York States Public Officers Law}.

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2.0 DELEGATION OF CONTRACTING AUTHORITY

While the Executive Director is responsible for ensuring that the RHA's procurement actions comply with this Policy, the Executive Director, as Contracting Officer, may delegate all procurement authority as is necessary and appropriate to conduct the business of the Authority.

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, and local law.

3.0 ETHICS IN PUBLIC CONTRACTING

3.1 General

The RHA 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 and as adopted by the RHA Board of Commissioners on November 23, 1987.

3.2 Conflicts of Interest

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

- A. An employee, officer, Board member, or agent involved in making the award;
- B. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister);
- C. His/her partner; or
- D. An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

3.3 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 \$25 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.

3.4 Prohibition Against Contingent Fees

Contractors wanting to do business with the RHA 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.

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4.0 PROCUREMENT PLANNING

Planning is essential to managing the procurement function properly. The RHA 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 RHA's procurement costs; reduce RHA 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. 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.

4.1 *Independent Cost Estimate*

For all purchases above the Micro Purchase threshold, the RHA shall prepare an Independent Cost Estimate (ICE) prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item or service to be purchased.

4.2 *Funding Availability*

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

4.3 *Specifications*

All specifications shall be drafted to promote the overall economy for the purpose intended and to encourage competition in satisfying RHA 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.

4.4 *Limitations on Competition*

The following actions shall be avoided by the Authority in all procurement actions:

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

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.

4.5 *Solicitation and Advertising*

A. Method of Solicitation

1. **Petty Cash and Micro Purchases** - The RHA may contact only one source if the price is considered reasonable.

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2. **Small Purchases** - Quotes may be solicited from qualified sources orally, through fax, email, written, or by any other reasonable method.
3. **Sealed Bids and Competitive Proposals** - Contracts for demolition, excavation, construction, alteration, renovation in excess of twenty-five thousand dollars (\$25,000), shall be made utilizing the sealed bid method of procurement and in compliance with a public notice advertised at least once, not less than twenty days (20) before the date set for the receipt of bids. With respect to contracts for the purchase of materials, supplies, or services in excess of ten thousand dollars (\$10,000), the period of advertisement shall be not less than ten days (10) before the date set for the receipt of bids/proposals.
4. **Intergovernmental Agreements** – In addition to the process described above for the solicitation of bids, the RHA Procurement Office may acquire equipment and supplies utilizing intergovernmental agreements, including New York State contracts.

B. Advertisement Methods - The RHA must use one or more following advertising methods, provided that the method employed provides for meaningful competition.

1. Advertising in the official newspapers or other print mediums of local or general circulations.
2. Advertising in various trade journals or publications (for construction).
3. E-Procurement. The RHA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with **24 CFR 85.36**, State and local requirements, and the Authority's procurement policy.

C. Form - Advertisements should state, at a minimum: a statement of what the request is for, the place, date, and time that the bids or proposals are due, the place, date, and time for any pre-bid meeting or walk-through (if applicable), and contact information on how to obtain a copy of the request or additional information about the procurement.

5.0 PURCHASING METHODS

WITH THE EXCEPTION OF PETTY CASH PURCHASES, ALL PURCHASES WILL BE PROCESSED THROUGH THE PROCUREMENT OFFICE.

5.1 Authorizing Approval of Procurement Actions

The following table describes the authorization levels required to approve any contract agreement above the petty cash limit. Staff approval will be confirmed by the appropriate number of signatures from individuals within the designated positions listed in the table on a purchase order. Approval by the Board of Commissioners will be confirmed by a majority vote.

ANTICIPATED ANNUAL CONTRACT AMOUNT	SIGNATURES REQUIRED	BUYER	DEPARTMENT SUPERVISORS	DIRECTORS	EXECUTIVE DIRECTOR	BOARD APPROVAL
\$0 to \$2,499	2	X	X	X		
\$2,500 to \$9,999	3	X	X	X		
\$10,000 to \$25,000	4	X	X	X	X	
\$25,000 and over	4 plus Board Approval	X	X	X	X	X

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Signatures may come from any number of employees within a designated position listed above provided that:

- there is never more than one buyer approving any purchase,
- the Executive Director approves all purchases over \$10,000, and
- the Board of Commissioners approves all contracts over \$25,000.

Temporary signing authority for approving contracts may be granted to other RHA employees, if there is expected to be an extended absence of a Director or other authorized personnel. The authorization must be in writing and it must include: the name(s) of the employee(s) authorized to sign, their signing authority limits, the time period in which the authority is valid, any possible restrictions of their signing authority, and the letter must be signed by the Executive Director.

5.2

A. *Petty Cash Purchases*

Purchases under \$50 may be handled through the use of a petty cash account. The Contracting Officer may approve a higher petty cash threshold when deemed applicable. 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 RHA shall ensure that security is maintained and only authorized individuals have access to the account. These accounts should be reconciled and replenished periodically. Petty cash may be used for the purchase of items essential to daily RHA operation.

The highest-ranking supervisor within each department that maintains a petty cash account shall be the designated custodian of that fund. The Director managing the Finance Department shall be responsible for administration of these funds, including purchases, proper documentation, and the collection of receipts. Petty cash funds shall be reimbursed by the Finance Department upon the submission of vouchers and receipts for all purchases subsequent to the most recent reimbursement.

B. *Credit (or Purchasing) Cards*

Credit card usage should follow the policy for all other purchases within the same dollar threshold. 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. The procedure for using any credit card will be by requisition only. Items to be purchased should be typed on the requisition with a not to exceed dollar amount. The requisition will then need to be approved by the appropriate Director. Procurement will then issue the card in exchange for the requisition. After purchasing the items, a signed receipt and the card will be returned to the Procurement Office. Procurement will then issue a PO.

When using credit cards, the RHA 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).

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5.3 *Micro Purchases*

For any amounts above the petty cash amount, but not exceeding \$2,000, the RHA Procurement Office may use micro purchase procedures. Under small purchase procedures, only one quote is required, provided the quote is considered reasonable. To the greatest extent feasible, and to promote competition, micro 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.

Price reasonableness shall be determined by comparing a recent price paid for the same or similar item, a current price list, or catalog list price. The signature of the RHA official completing the purchase action shall signify the determination of price reasonableness.

RHA shall not break down requirements aggregating more than the micro purchase threshold into several purchases that are less than the applicable threshold merely to: (1) permit use of the micro purchase procedures or (2) avoid any requirements that apply to purchases that exceed the micro purchase threshold.

5.4 *Small Purchases*

For any amounts above the micro purchase amount (\$2,000), but not exceeding \$10,000 for materials and services / or not exceeding \$25,000 for demolition, excavation, construction, alteration, renovation or maintenance the RHA may use small purchase procedures. Under small purchase procedures, the RHA shall obtain a reasonable number of quotes, preferably three (3).

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 lowest price to the RHA. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file.

Price reasonableness for small purchases will in general consist of a price analysis of the quotes obtained. If only one quote is received, the procurement file shall include a statement of cost reasonableness. Only for specialized services or non-commercial purchases would a cost analysis be required for non-competitive small purchases.

RHA shall not break down requirements aggregating more than the small purchase threshold into several purchases that are less than the applicable threshold merely to: (1) permit use of the small purchase procedures or (2) avoid any requirements that apply to purchases that exceed the small purchase threshold.

Note: HUD's small purchase maximum threshold is set at \$100,000. New York State Public Housing Law - Article 8, Section 151 sets the minimum sealed bidding/formal proposal thresholds of \$25,000 for materials and \$50,000 for construction.

5.5 *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.

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Under sealed bids, the RHA publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions of the Invitation for Bid (IFB), is the lowest in price. Sealed bidding is the preferred method for procuring supply and non-complex service contracts that are expected to exceed \$10,000 or construction and maintenance contracts expected to exceed \$25,000.

- A. **Conditions for Using Sealed Bids** - RHA shall use the sealed bid method if the following conditions are present:
- a complete, adequate, and realistic statement of work, specification, or purchase description is available;
 - two or more responsible bidders are willing and able to compete effectively for the work;
 - the contract can be awarded based on a firm fixed price; and
 - the selection of the successful bidder can be made principally on the lowest price.
- B. **Solicitation and Receipt of Bids** - An IFB is issued which includes the specifications, all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids received will be date and time-stamped and stored **unopened** in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.
- C. **Bid Opening and Award** - Bids shall be opened publicly. All bids received shall be recorded on 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 as determined by RHA. 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. The acceptance of any bid other than the lowest bid must be approved by the Executive Director for contracts under \$25,000 and by the Board of Commissioners for contracts over \$25,000.
- D. **Mistakes in Bids** - Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the RHA or fair competition shall not be permitted.

5.6 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; negotiation of 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.

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Award is normally made on the basis of the proposal that represents the best overall value to the RHA, 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.

- A. **Conditions for Use** - Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold.
- B. **Form of Solicitation** - Other than A/E services, competitive proposals shall be solicited through the issuance of a Request for Proposal (RFP). The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any 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 RHA may assign price a specific weight in the evaluation criteria or the RHA may consider price in conjunction with technical factors. In either case, the method for evaluating price shall be established in the RFP.
- C. **Evaluation** - The proposals shall be evaluated only on the criteria stated in the RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. Any member of the evaluation committee shall be required to disclose any potential conflicts of interest prior to beginning the review process. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.
- D. **Negotiations** - Unless negotiations are unnecessary, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award. 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. The purpose of negotiations shall be to seek clarification with regard to and advise offerors of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offeror shall be provided information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations.

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 RHA 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. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.

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- E. **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 RHA provided that the price is within the maximum total project budgeted amount established for the specific property or activity.
- F. **Architect/Engineer Professional Services** - All A/E professional services in the excess of the small purchase limitation (or less if required by State or local law) may be obtained by either the competitive proposals method or qualifications-based selection procedures, unless State law mandates a specific method. Sealed bidding, however, shall not be used to obtain architect/engineer services.

Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. Qualifications-based selection procedures shall not be used to purchase other types of services even though architect-engineer firms are potential sources.

5.7 *Noncompetitive Proposals*

- A. **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:
1. The item is available only from a single source, based on a good faith review of available sources;
 2. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the RHA, 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. Competitive procurement procedures must be followed once the emergency has been addressed;
 3. HUD authorizes the use of noncompetitive proposals; or
 4. After solicitation of a number of sources, competition is determined inadequate.
- B. **Justification** – For each procurement that is based on noncompetitive proposals, it shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:
1. Description of the requirement;
 2. History of prior purchases and their nature (competitive vs. noncompetitive);
 3. The specific exception in **24 CFR 85.36(d)(4)(i)(A)** through **(D)** which applies;
 4. Statement as to the unique circumstances that require award by noncompetitive proposals;

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5. 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.);
6. Statement as to efforts that will be taken in the future to promote competition for the requirement;
7. Signature by the Contracting Officer; and
8. Price Reasonableness - The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a price or cost analysis, as described in section 8 of this Policy.

5.8 Cooperative Purchasing/Intergovernmental Agreements

The RHA 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 RHA 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 **24 CFR 85.36**.

5.9 After Hours Purchases

A primary goal of the Rochester Housing Authority is to provide affordable, safe and sanitary housing for its tenants. As a result there may be a requirement to purchase goods or services to sustain a housing unit(s) at times when the Procurement Office is not open. In those instances the need to obtain required goods or services through the Procurement Office will be waived. The purchaser will be required to report the emergency purchases to the Procurement Office and the process appropriate paperwork on the next day of business.

6.0 RECORD KEEPING FOR PROCUREMENT FILES

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

- A. Rationale for the method of procurement (if not self-evident);
- B. Rationale of contract pricing arrangement (if not self-evident);
- C. Reason for accepting or rejecting the bids or offers (if not self-evident);
- D. Basis for the contract price;
- E. A copy of the contract documents awarded or issued and signed by the Contracting Officer;
- F. Basis for contract modifications; and
- G. Related contract administration actions.

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

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

7.0 CANCELLATION OF SOLICITATION

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

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

8.0 COST AND PRICE ANALYSIS

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

8.1 Cost Analysis

A cost analysis is an evaluation of the separate elements that make up a contractor's total cost proposal to determine if the prices are allowable and reasonable. Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, 48 CFR Chapter 1). In establishing profit, RHA shall consider factors such as the complexity and risk of the work involved the contractor's investment and productivity, the amount of sub-contracting, the quality of past performance, and industry profit rates in the area for similar work. The degree of a cost analysis shall depend on the facts surrounding the procurement using the procedures described in HUD Handbook 2210.18.

8.2 Price Analysis

A price analysis is a comparison of proposed prices received in response to a solicitation or a comparison to some type of current market rate.

8.3 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.

8.4 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.

8.5 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 RHA cannot reasonably determine price reasonableness, the RHA must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

8.6 Competitive Proposals

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, the RHA must compare the price with the ICE.

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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 RHA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

8.7 Contract Modifications

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

9.0 CONTRACTOR QUALIFICATIONS AND DUTIES

9.1 Contractor Responsibility

Contract awards for sealed bids and quotes will be awarded to the responsive and responsible bidder offering the lowest price. Competitive proposal awards are based on whose proposal offers the greatest value to RHA, considering price, technical, and other factors as specified in the solicitation. RHA 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:

- A. Have adequate financial resources to perform the contract, or the ability to obtain them;
- B. 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;
- C. Have a satisfactory record of integrity and business ethics, including a satisfactory performance record;
- D. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- E. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- F. 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 list.

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.

9.2 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.

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9.3 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.

The Executive Director, at his or her discretion, may declare a bidder or contractor ineligible to bid on Authority contracts for a period not to exceed three years for any of the following grounds:

- A. Two or more claims of computational error in bid submission in a two-year period;
- B. Unjustified refusal to provide or execute contract documents;
- C. Unsatisfactory performance of a contract;
- D. Unjustified refusal to perform or complete contract work or warranty performance;
- E. Unjustified failure to honor obligations or legal requirements pertaining to a contract;
- F. Conviction under State or Federal statutes for fraud, bribery, theft, falsification or destruction of records, receiving stolen property, or of any other similar crime or offense indicating a lack of business integrity and which would directly affect the reliability and credibility of performance of such a vendor or contractor with future contracts with the Commission; or
- G. Based on the limited debarment by another governmental agency.

The bidder or contractor shall be provided notice and an opportunity to present evidence and show cause before RHA, why such ineligibility shall not be declared.

9.4 Appeals and Remedies

- A. **General** - It is RHA 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. **Bid Protest** - Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contractor receives notice of the contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.
- C. **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 RHA. Contractor claims shall be governed by the Changes clause in the form HUD-5370.

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9.5 *Three (3) contractor limit, dollar threshold limit, shared interest in multiple businesses, and shared insurance for multiple businesses*

The RHA, in accordance with HUD regulations and HUD Handbook 7460.8 Rev. 2, awards construction contracts to the lowest Responsible, Responsive bidder whose bid conforms to the solicitation. The RHA will qualify an apparent low bidder to determine if they are Responsible and Responsive. The RHA may require statements of business, sub-business and/or financial records of contractors as part of the qualifying process. Per HUD 24 CFR 85.36 (b) (9) and HUD 5369 (d), RHA may reject any and all bids for any reason. Some of the reasons RHA may reject a bid by way of example are as follows:

The RHA may reject a contractor's bid and disallow them from contract award for performing more than three (3) separate contracts for RHA at one time.

The RHA may reject a contractor's bid and disallow them from contract award if their current contracted dollar amount of work with RHA exceeds \$1,000,000.00.

The RHA may reject a contractor's bid and disallow them from contract award if RHA believes that an individual has an interest in more than one of the bidding companies. This would include a company in which a bidder is part owner, an employee of, has an employee that is bidding as a separate entity, or is a/has a family member in another bidding company. This may also include bidders that have performed work as a subcontractor within the last three months for another bidding firm.

The RHA may reject a contractor's bid if two different contractors have two separate RHA contractor accounts with one insurance certificate listing them both.

The RHA may reject a successful bidder hiring a competing bidder as a subcontractor or employee on any RHA jobs in which both companies submitted a bid.

Any company meeting any of the criteria listed above and could have a contract rejected, may submit a written request to the RHA Procurement Department (prior to the bid submission date) to request that RHA consider their bid. The request should state why RHA should consider the bid, the relationship and/or business history between the two parties, and/or why the company feels that there is not a conflict of interest between the two parties bidding on the same work. A determination will be made by the RHA Contracting Officer or his/her designee before the bid submission deadline whenever possible. The RHA may not accept any written requests for consideration after the bid submission deadline.

(Section update approved by RHA Board and added to Procurement Policy – May 25, 2011)

10.0 BONDING REQUIREMENTS

The standards under this section apply to construction contracts that exceed \$100,000. RHA may determine the necessity for bonding requirements for small purchases or for competitive proposals when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

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- A. Bid Bond - For construction contracts exceeding \$100,000, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.
- B. Performance and Payment Bonds - For construction contracts exceeding \$100,000, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four:
 - 1. A performance and payment bond in a penal sum of 100% of the contract price; or
 - 2. Separate performance and payment bonds, each for 50 % or more of the contract price; or
 - 3. A 20 % cash escrow; or
 - 4. A 25 % irrevocable letter of credit.

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.

11.0 CONTRACT ARRANGEMENTS

11.1 Contract Types

Any type of contract which is appropriate to the procurement and which will promote the best interests of the RHA 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 RHA. RHA may enter into an agreement for up to five years. Contracts for more than five years will require written approval from HUD.

Cost reimbursement contracts shall not be used unless it is likely to be more cost effective to do so. To utilize a cost reimbursement contract, RHA 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 and only allowable costs according to current Federal guidelines are paid for.

Time and material contracts may only be used if a written determination is made that no other contract type is suitable and the contract includes a maximum not to exceed amount that the contractor exceeds at their own risk.

11.2 Contract Clauses

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

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 \$100,000, 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.

11.3 Contract Options

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

- A. The option is contained in the solicitation;
- B. The option is a unilateral right of the Authority;
- C. The contract states a limit on the additional quantities and the overall term of the contract;
- D. The options are evaluated as part of the initial competition;
- E. The contract states the period within which the options may be exercised;
- F. The options may be exercised only at the price specified in or reasonably determinable from the contract; and
- G. The options may be exercised only if determined to be more advantageous to RHA than conducting a new procurement.

11.4 Contract Administration

The RHA 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. Contract administration shall be the responsibility of the department supervisors that requested the services.

12.0 ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES

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

- A. Including such firms, when qualified, on solicitation mailing lists;
- B. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- E. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- F. Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project

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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

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

Goals shall be established periodically for participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in RHA prime contracts and subcontracting opportunities.

12.2 Definitions

- A. A **small business** is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in **13 CFR Part 121** should be used to determine business size.
- B. A **minority-owned business** is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals.

Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

- C. A **women's business enterprise** is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.
- D. A **Section 3 business concern** is as defined as a business:
1. That is at least 51 percent or more owned by Section 3 residents, or
 2. Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents, or
 3. That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to a Section 3 business concern.

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

- F. The following is a list of resources recommended by HUD to assist in increasing the participation of SMWBE and Section 3 businesses:

- To view a list of over 800 Trade Associations and similar organizations, visit the HUD OSDBU website at: www.HUD.gov/offices/OSDBU

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- To locate local SBA District/Field offices, SBDC and other resources, visit SBA's website at: www.SBA.gov/regions/states.html
- To locate local MBDA regional offices, MBDCs and other resources, visit MBDA's website at: www.MBDA.gov
- The SBA, DOD, the Office of Management & Budget and GSA created an integrated database of small businesses called Central Contractor Registration (CCR). CCR can provide you with listings of small businesses that offer the products and services that you procure. Visit www.ccr.gov
- To facilitate searches for small businesses in particular industries, refer to the North American Industry Classification System (NAICS). Visit the website at: <http://naics.com>
- To assist you in advertising your contracting opportunities, include your upcoming contracting requirements in MBDA's "Opportunity Database" called Phoenix. Phoenix matches MBE's with contracts and other business opportunities via e-mail at: www.MBDA.gov

13.0 DISPOSITION OF SURPLUS PROPERTY

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

Property shall not be sold or exchanged for less than a fair market value. Personal property of the value of \$1,500 or more, which is to be sold to other than a public body for a public use, shall be sold at public sale.

Sales of excess personal property shall be made in the following manner:

- A. If the estimated value of personal property offered for sale is less than \$1,500, the Executive Director or his designee may negotiate a sale in the open market. The estimated value obtained for sale must be written and obtained from reliable sources. The sale shall also be documented by an appropriate bill of sale. Items being disposed of having a value of less than \$1,500.00 shall be approved in writing by the Executive Director.
- B. Sales of \$1,500 or more and the award of such contract shall be made only after advertising for formal bids. Such advertising shall be at least 15 days prior to award of the sales contract and shall be by advertisement in newspapers or circular letters to all prospective purchasers.

In addition, notices shall be publically posted. Bids shall be opened publicly at the time and place specified in the advertisement. A tabulation of all bids received shall be prepared and filed with the contract as a part of the permanent record. The award shall be made to the highest bidder as to price.

- C. The sale of personal property to a public body for public use may be negotiated at its fair value subject to prior approval of the Board. The transfer shall be documented by an appropriate bill of sale.

The Executive Director or his designee shall make every effort to dispose of personal property as outlined above.

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If any property has no scrap or salvage value and a purchaser cannot be found, a statement shall be prepared by the Executive Director listing the prospective bidders solicited and all other efforts made to sell the property, together with recommendations as to the manner of disposition.

All sales relative under this policy are to be made for cash, as long as it is in the best interest of the Authority. All sales are as is, where is, with no warranty of any kind.

Proceeds from the sale of any asset(s) which was originally purchased with government funds will be remitted back to the business that initially funded the purchase as either a 'proceed from the sale of an asset', or as 'miscellaneous income' if the item sold was too small to be classified as a fixed asset of the Authority. As an example, if the asset was originally purchased from funds given to the Authority for operating its Low Income Public Housing program, proceeds from the asset sale must be shown as revenue to the Low Income Public Housing program.

14.0 SELF-CERTIFICATION

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

RHA will comply with all applicable HUD review requirements.

15.0 AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

In accordance with the American Recovery and Reinvestment Act of 2009 (ARRA), RHA has the right to exclude State and local procurement regulations when utilizing funds provided under the ARRA. RHA will be required to follow current Federal procurement guidelines and specifically the Buy American requirements when utilizing ARRA funds. The most stringent governing regulations will be adhered to when a project will combine funds from the ARRA and either; the RHA Operating Fund, Capital Fund program, or any other funding source utilized by RHA whose revenues resulted from restricted Federal sources.