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This Procurement Policy complies with the Annual Contribution Contract (ACC) between the Housing Authority of the City of Yuma (HACY) and HUD, Federal Regulations at 24 CFR 85.36, the procurement standards of the Procurement Handbook for the PHA's, HUD Handbook 7460.8, Rev 2, and applicable State and Local Laws. HACY adopted this procurement policy to cover procurement procedures under the American Recovery and Reinvestment Act (ARRA).

SECTION 1. GENERAL PROVISIONS

1.1 PURPOSE

The purpose of this Statement of Procurement Policy is: to provide for the fair and equitable treatment of all persons or firms involved in purchasing by the HACY; assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available to the HACY; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and assure that the HACY purchasing actions are in full compliance with applicable Federal standards, HUD regulations, and State and local laws.

1.2 APPLICATION

This Statement of Procurement Policy applies to all contracts for the procurement of supplies, services, and construction entered into by the HACY after the effective date of this Policy. It shall apply to every expenditure of funds by the HACY for public purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Policy shall prevent the HACY from complying with terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law. The term "procurement," as used in this Policy, includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of supplies and equipment.

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 LAW AND REGULATION

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 Arizona Freedom of Information Act.

1.7 PROCUREMENT PLANNING

Planning is essential to managing the procurement function properly. Hence, the HACY 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 HACY procurement costs; reduce HACY's 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.

1.8 PURCHASING METHODS

- A. **Petty Cash Purchases** Purchase under \$50 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 HACY shall ensure that security is maintained and only authorized individuals have access to the account. These accounts should be reconciled and replenished periodically. 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.
- B. **Small Purchase Procedures** For any amounts above the Petty Cash ceiling, but not exceeding \$100,000, the HACY may use small purchase procedures. Under small purchase procedures, the HACY shall obtain a reasonable number of quotes (preferably three); however, for purchase of less than \$2000, also known as Micro Purchases, only one quote is required provided the quote is considered reasonable. 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 HACY. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. The HACY 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: (1) permit use of the small purchase procedures or (2) avoid any requirements that applies to purchases that exceed the Micro Purchase threshold. A comparison with other 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 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.

SECTION 2. PROCUREMENT AUTHORITY AND ADMINISTRATION

2.1 AUTHORITY

All procurement transactions shall be administered by the Contracting Officer, who shall be the Executive Director or other individual he or she has authorized in writing. The Executive Director shall issue operational procedures to implement this Statement, which shall be based on HUD Handbook 7460.8, Rev 2. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described in Section 9 of this Policy consistent with State law.

2.2 EXECUTIVE DIRECTOR AND DESIGNEE

The Executive Director or his/her designee shall ensure that:

- A. procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
- B. contracts and modifications are in writing, clearly specifying the desired supplies, services, or construction, and are supported by sufficient documentation regarding the history of the procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price;
- C. for procurements other than simplified acquisition, public notice is given of each upcoming procurement at least ten (10) days before a solicitation is issued; responses to such notice are honored to the maximum extent practical; a minimum of 15 days is provided for preparation and submission of bids or proposals; and notice of contract award is made available to the public;
- D. solicitation procedures are conducted in full compliance with Federal standards stated in 24 CFR 85.36, or State and local laws that are more stringent, provided they are consistent with 24 CFR 85.36;
- E. an independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement above the simplified acquisition threshold limitation, and a cost or price analysis is conducted of the responses received for all procurements;
- F. contract award is made to the responsive and responsible bidder offering the lowest price (for sealed bid contracts) or contract award is made to the bidder whose proposal offers the greatest value to the HACY, considering price, technical, and other factors as specified in the solicitation (for contracts awarded based on competitive proposals); unsuccessful firms are notified within ten (10) days after contract award;
- G. there are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), work is inspected before payment, and payment is made promptly for contract work performed and accepted; and
- H. The HACY complies with applicable HUD review requirements, as provided in the operational procedures supplementing this Policy.

2.3 APPROVAL OF CHANGES

This policy and any later changes shall be submitted to the HACY Board of Commissioners for approval. The Board appoints and delegates procurement authority to the Executive Director and is responsible for ensuring that any procurement policies adopted are appropriate for the HACY.

SECTION 3. PROCUREMENT METHODS

3.1 SELECTION OF METHOD

If it has been decided that the HACY will directly purchase the required items, one of the following procurement methods shall be chosen, based on the nature and anticipated dollar value of the total requirement.

3.2 SIMPLIFIED ACQUISITION PROCEDURES

- A. **General.** Any contract not exceeding \$100,000 may be made in accordance with the **simplified acquisition** procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a **simplified acquisition** under this section (except as may be reasonably necessary to comply with Section 8 of this Policy).
- B. **Petty Cash Purchase.** **Simplified acquisition** under \$500 which can be satisfied by local sources may be processed through the use of a petty cash account. The Contracting Officer shall ensure that: the account is established in an amount sufficient to cover small purchases made during a reasonable period (e.g., one week); security is maintained and only authorized individuals have access to the account; the account is periodically reconciled and replenished by submission of a voucher to the HACY Finance Manager or his/her designee; and, the account is periodically

audited by the Finance Manager or his/her designee to validate proper use and to verify that the account total equals cash on hand plus the total of accumulated vouchers.

- C. **Simplified acquisitions** or Micro Purchase of \$2,000 or less. For **simplified acquisition** below \$2,000, only one quotation need be solicited if the price received is considered reasonable. Such purchases must be distributed equitable among qualified sources. If practicable, a quotation shall be solicited from other than the previous source before placing a repeat order.
- D. **Simplified acquisition** over \$2,000. For **simplified acquisition** in excess of \$2,000 but not exceeding \$100,000, no less than three bidders shall be solicited to submit price quotations, which may be obtained orally, by telephone, or in writing, as allowed by State or local laws.

Award shall be made to the bidder providing the lowest acceptable quotation, unless justified in writing based on price and other specified factors, such as for architect or engineer contracts. If non-price factors are used, they shall be disclosed to all those solicited. The names, addresses, and or telephone numbers of the bidders and persons contacted, the date and amount of each quotation shall be recorded and maintained as a public record (unless otherwise provided in State or local law.)

3.3 SEALED BIDS

- A. Condition for use. Contracts shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price. Sealed bidding is the preferred method for construction procurement. For procurements under the Capital Fund Program (CFP), sealed bidding shall be used for all construction and equipment contracts that exceed the **simplified acquisition** limitation. For professional services contracts, sealed bidding should not be used.
- B. Solicitation and Receipt of Bids. An invitation for bids shall be issued including specifications and all contractual terms and conditions applicable to the procurement; including a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the invitation for bids. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.
- C. Bid Opening and Award. Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and the bids shall be made available for public inspection. Award shall be made as provided in the invitation for bids by written notice to the successful bidder. If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method, unless otherwise provided in State or local law stated in the invitation for bids.

If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost or price analysis verifies the reasonableness of the price.

D. MISTAKES IN BIDS

- a. Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or telephone notice received in the office

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

- b. All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the HACY or fair competition shall be permitted.

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

- a. For construction contracts exceeding \$100,000 other than those specified in E (b) and E (c) of this section, contractors shall be required to submit the following, unless otherwise required by State or local laws or regulations:
 - i. a bid guarantee from each bidder equivalent to 5% of the bid price; and
 - ii. a performance bond for 100% of the contract price; and
 - iii. A payment bond for 100% of the contract price
- b. In the case of construction of conventional development projects pursuant to the U.S. Housing Act of 1937, the contractor shall be required to submit the following, unless otherwise required by State or local laws or regulations:
 - i. a bid guarantee from each bidder equivalent to 5% of the bid price; and
 - ii. one of the following:
 - 1. a performance and payment bond for 100% of the contract price; or
 - 2. a 20% cash escrow; or
 - 3. A 25% irrevocable letter of credit.
- c. In the case of construction under the Capital Fund Program (CFP) funded pursuant to the U.S. Housing Act of 1937, for any contract over \$100,000, the contractor shall be required to submit the following unless otherwise required by State or local laws or regulations:
 - i. a bid guarantee from each bidder equivalent to 5% of the bid price; and
 - ii. one of the following:
 - 1. a performance and payment bond for 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% and an irrevocable letter of credit.

3.4 COMPETITIVE PROPOSALS

- A. Conditions for use. Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the HACY determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited.
- B. Solicitation. The Request For Proposals (RFP) shall clearly identify the relative importance of price and other evaluation factors and subcontractors; including the weight given to each technical factor and subcontractors. 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 the disclosure of the number of bidders, identity of the bidders, and the contents of their proposals. The proposals shall be evaluated only on the criteria stated in the request for proposals.
- C. 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. The 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 offerors 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 range and are called discussions. Discussions are tailored to each offerors proposal, and shall be conducted by the contracting officer with each offeror with the competitive range. The primary object of discussions is to maximize the HACY's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The contraction offer 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 proposal's potential for award. 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.
- D. Award. After evaluation of proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the HACY.
- E. Architect or Engineer services. Architect or Engineer services in the excess of the simplified acquisition limitation (or less if required by State or local law) may be obtained by either the competitive proposals method or qualifications based selection procedures, unless State law mandates the specific method. Sealed bidding, however, shall not be used to obtain architect or engineer services. Under qualifications based selection procedures, competitor's 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 or engineer firms are potential sources.

3.5 NON COMPETITIVE PROPOSALS

- A. Conditions for use. Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using simplified acquisition procedures, sealed bids, or competitive proposals, and 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 HACY, 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 other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary 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.
- B. Justification. Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification, to be included in the procurement file, should include the following information:
- a. Description of the requirement;
 - b. History of prior purchases and their nature (competitive vs. noncompetitive proposals);
 - c. The specific exception 24 CFR 85.36(d)(4)(i)(A) through (d) 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. Signature by the Contracting Officers supervisor (or someone above the level of the contracting Officer); 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.

- C. Price reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described in paragraph 3-6 of this policy.

3.6 COST AND PRICE ANALYSIS

- A. General. A cost or price analysis shall be performed for all procurement actions, including contract modifications. The method of analysis shall depend on the facts surrounding each procurement.
- B. Submission of Cost or Pricing Information. If the procurement is based on noncompetitive proposals, or when only one offer is received, or for other procurements as deemed necessary by the HACY (e.g., when contracting for professional, consulting, or architect or engineer services) the bidder shall be required to submit:
 - a. a cost breakdown showing projected costs and profit:
 - b. commercial pricing and sales information, sufficient to enable the HACY to verify the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public: or
 - c. (3) documentation showing that the offered price is set by law or regulation.
- C. Cost Analysis. Cost analysis shall be performed if a bidder or contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted: a cost analysis shall be performed of the individual cost elements; the HACY shall have a right to audit the contractor's books and records pertinent to such costs; and profit shall be analyzed separately. Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, 48 CFR Chapter 1) In establishing profit, the HACY shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the area for similar work.
- D. Price Analysis. A comparison of prices shall be used in all cases other than described in 3-6 (C) of this policy.

3.7 CANCELLATION OF SOLICITATIONS

- A. An invitation for bids, request for proposals or other solicitation may be cancelled before offers are due if: the HACY no longer requires the supplies, services or construction; the HACY can no longer reasonably expect to fund the procurement; proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or similar reasons.
- B. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if: the supplies, services, or construction are no longer required; ambiguous or otherwise inadequate specifications were part of the solicitation; the solicitation did not provide for consideration of all factors of significance to the HACY; prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or for good cause of a similar nature when it is in the best interest of the HACY.

- 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 to any bidder solicited
- D. A notice of cancellation shall be sent to all bidders solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any resolicitation or future procurement of similar items.
- E. If all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, the HACY shall cancel the solicitation and either:
 - a. resolicit using a request for proposals; or
 - b. complete the procurement by using the competitive proposals method, following paragraphs 3-4 (c) and 3-4 (D) of this policy (when more than one otherwise acceptable bid has been received), or by using the noncompetitive proposals method and following paragraph 3-5 (B) of this policy (when only one bid is received at an unreasonable price); provided, that the Contracting Officer determines in writing that such action is appropriate, all bidders are informed of the HACY's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

3.8 COOPERATIVE PURCHASING

The HACY may enter into State and local intergovernmental agreements to purchase or use common goods and services. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the intergovernmental 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 HACY will be encouraged to use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

SECTION 4. CONTRACTOR QUALIFICATIONS AND DUTIES

4.1 CONTRACTOR RESPONSIBILITY

Procurements shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform and who have satisfactory record of integrity.

Before awarding a contract, the HACY shall review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Non-procurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor, such as other PHA's) and financial and technical resources. If a prospective contractor is found to be non responsible, a written determination of non responsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for determination.

4.2 SUSPENSION AND DEBARMENT

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by HUD in accordance to HUD regulations (24 CFR Part 24) when necessary to protect the HACY in its business dealings.

4.3 QUALIFIED BIDDERS LIST

Interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any prequalified lists of persons, firms, or products which are used in the procurement of supplies and services shall be kept current and shall include enough qualified sources to ensure competition. Firms shall not be precluded from qualifying during the

solicitation period. Solicitation mailing lists of potential contractors shall include, but not be limited to such prequalified suppliers.

SECTION 5. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

5.1 CONTRACT TYPES

Any type of contract which is appropriate to the procurement and which will promote the best interests of the HACY may be used, provided that the cost-plus a-percentage-of-cost and percentage of construction cost methods are prohibited. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the HACY's needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, FAR, found in 48 CFR Chapter 1.)

A time and material contracts may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

5.2 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 an unilateral right of the HACY; (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 the HACY than conducting a new procurement.

5.3 CONTRACT CLAUSES

In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations, as provided in 24 CFR85.36 (i), such as the following:

- A. Termination for convenience,
- B. Termination for default,
- C. Equal Employment Opportunity,
- D. Anti-Kickback Act,
- E. Davis-Bacon Act,
- F. Contract Work Hours and Safety Standards Act, reporting requirements,
- G. Patent rights,
- H. Rights in data,
- I. Examination of records by Comptroller General, retention of records for three years after closeout,
- J. Clean air and water,
- K. Energy efficiency standards,
- L. Bid protests and contract claims,

- M. Value engineering, and
- N. Payment of funds to influence certain Federal transactions.

The operational procedures required by section 2-1 of this policy shall contain the text of all clauses and required certifications (such as required non-collusive affidavits) used by the HACY.

5.4 CONTRACT ADMINISTRATION

A contract administration system designed to insure that contractors perform in accordance with their contracts shall be maintained.

The operational procedures required by Section 2-1 of this policy shall contain guidelines for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters. For cost reimbursement contracts with commercial firms, costs are allowable only to the extent that they are consistent with the cost principles in FAR Subpart 31.2.

SECTION 6. SPECIFICATIONS

6.1 GENERAL

All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the HACY's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Functional 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 (but see Section 8 of this policy.) For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

6.2 LIMITATIONS

The following specification limitations shall be avoided: geographic restrictions not mandated or encouraged by applicable Federal law (except for architect or engineer contracts, which may include geographic location as a selection factor if adequate competition is available); unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy the HACY's needs); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use.)

Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the HACY's computer needs and then allowing the consultant to compete for the subsequent contract for the computers.)

SECTION 7. APPEALS AND REMEDIES

7.1 GENERAL

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

7.2 BID PROTESTS

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

7.3 CONTRACT CLAIMS

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

SECTION 8. ASSISTANCE TO SMALL AND OTHER BUSINESSES

8.1 REQUIRED EFFORTS

- A. Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, the HACY shall make efforts to ensure that small and minority-owned businesses, women business enterprises, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of a project are used when possible. Such efforts shall include, but shall not be limited to:
- a. Including such firms, when qualified, or solicitation mailing lists;
 - b. Encouraging their participation through direct solicitation mailing lists;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
 - e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
 - f. Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing in the area of the project, as described in 24 CFR 135;
- B. Goals may be established by the HACY periodically for participation by small businesses, minority owned businesses, women business enterprises, labor surplus area businesses, and business concerns which are located in, or owned in substantial part by persons residing in the area of the project, in which the HACY's prime contracts and subcontracting opportunities.

8.2 DEFINITIONS

- A. A small business is defined as a business which is: independently owned; not dominant in its field of operation; and not affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR 121 shall be used, unless the HACY determines that their use is inappropriate.

- B. A minority owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to 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 women or women who are U.S. Citizens and who also control or operate the business.
- D. 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 U.S. Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment Training Association.
- E. A business concern located in the area of the project, is defined as an individual or firm located within the relevant Section 3 covered project area, as determined pursuant to 24 CFR 135.15, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above. A business concern owned in substantial part by persons residing in the area of the project is defined as a business concern which is 51% or more owned by persons residing with the Section 3 covered project owned by persons considered by U.S Small Business Administration to be socially or economically disadvantaged, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above.

SECTION 9. ETHICS IN PUBLIC CONTRACTING

9.1 GENERAL

The HACY shall adhere to the following code of conduct, consistent with applicable State or local law.

9.2 CONFLICT OF INTEREST

No employee, officer or agent of the HACY shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:

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

9.3 GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION

HACY officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain.

9.4 PROHIBITION AGAINST CONTINGENT FEES

Contractors shall not retain a person to solicit or secure a HACY contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial selling agencies.

SECTION 10. RECOVERY ACT PROCUREMENT AMENDMENT & ADDENDUM

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. The Recovery Act has provided for the exception from state and local procurement laws and regulations and to act to amend this procurement Policy.

ADDENDUM TO REFLECT THE RECOVERY ACT PROCUREMENT REQUIREMENTS

Attachments: Notice PIH 2009-31 (HA)

Implementation Guidance for the Buy American Requirement of the American Recovery and Reinvestment Act 2009 including Process for Applying Exceptions.

Cross Reference: Section 1605 of Title XVI of Publication L. 111-5

2 CFR part 176

24 CFR parts 85, 905, 941, and 968

