

PALM BEACH COUNTY HOUSING AUTHORITY

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PERSONS TO WHOM POLICY APPLIES

PALM BEACH COUNTY HOUSING AUTHORITY PROCUREMENT POLICY



PALM BEACH COUNTY HOUSING AUTHORITY
3432 W 45TH Street West Palm Beach, FL 33407

PALM BEACH COUNTY HOUSING AUTHORITY
PROCUREMENT POLICY

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A. GENERAL PROVISIONS.

1. Compliance.

- a. This Procurement Policy complies with the:
 - i. Annual Contributions Contract (ACC) between Palm Beach County Housing Authority (PBCHA) and the U.S. Department of Housing and Urban Development (HUD);
 - ii. Federal Regulations at **2 CFR 200**;
 - iii. HUD Procurement Handbook for Public Housing Agencies (PHAs), 7460.8, Rev 2;
 - iv. Florida Public Bid Law (s. 287.057 and s. 255.20 Florida Statutes), as amended.
- b. The PBCHA shall provide for:
 - i. A procurement system of quality and integrity; provide for the fair and equitable treatment of all persons or firms involved in purchasing by the PBCHA.
 - ii. Ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to the PBCHA.
 - iii. Promote competition in contracting; and assure that PBCHA purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws.
- d. The PBCHA will establish its own Procurement Standard Operating Procedures to implement this policy which reflects applicable Federal, State and local laws and regulations and requirements, as applicable.

2. Application. This Procurement Policy applies to all procurement actions of the PBCHA, regardless of the source of funds. except as noted under “exclusions,” below. However, nothing in this Policy shall prevent the PBCHA from complying with the terms and condition of any grant, contract, gift or bequest that is otherwise consistent with 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

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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.

3. **Definition.** The term “procurement,” as used in this Policy, includes the procuring, purchasing, leasing, or renting of: goods, supplies, equipment, and materials, construction and maintenance; consultant services, Architectural and Engineering (A/E) services, Social Services, and other services, including but not limited to insurance and banking.
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.
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.
6. **Public Access to Procurement Information.** Most procurement information that is proprietary is a matter of public record and shall be available to the public to the extent provided in the Florida Freedom of Information Act (FOIA), Florida (s.119 Public Records) and will be made available upon request to the Public Records Custodian. A copy charge may be assessed in the amount determined by the number of pages requested.

B. ETHICS IN PUBLIC CONTRACTING.

1. **General.** The PBCHA 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 as well as 2 CFR 200 and the ACC.
2. **Conflicts of Interest/Code of Ethics**
 - a. No employee, officer, agent or Board Member of the PBCHA shall participate in the selection, award, or administration of any contract if a conflict of interest, financial or otherwise, real or apparent, would be involved. This type of conflict would be when one of the persons listed below has a financial or other interest in the firm selected for award or is involved or has a financial or other interest in or a tangible personal benefit from a firm considered:
 - i. An employee, officer, Board member, or agent involved in making the award;
 - ii. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law,

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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);

- iii. His/her partner; or
 - iv. An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.
- b. Neither the PBCHA nor any of its contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project if they have an interest, direct or indirect, during their tenure or for one year thereafter. 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:
- i. Any present or former member or officer of the governing body of the PBCHA, or any member of the officer's immediate family. There shall be exempt from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the PBCHA or a business entity.
 - ii. Any employee of the PBCHA who formulates policy or who influences decisions with respect to project(s), or any member of the employee's immediate family, or the employees' partner.
 - iii. Any public official, member of the local governing body, or State or local legislator, or any member of such individual's immediate family, who exercises any functions or responsibilities with respect to the project of the PBCHA.
- c. If the PBCHA has an affiliate, or subsidiary organization that is not state, local, government, or Indian tribe, the PBCHA must also maintain written standards of conduct covering organizational conflicts of interest.
- d. Organizational conflicts of interest means that because of relationship with the affiliate, or subsidiary organization, the PBCHA is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- e. Any member of the above classes of persons must disclose the member's interest or prospective interest to the PBCHA.
- f. The requirements of this section may be waived by HUD for good cause, if permitted under State and local law.

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3. **Other.**

- a. No person for whom a waiver is requested may exercise responsibilities or functions with respect to the contract to which the waiver permits.
- b. The provisions of this section shall not apply to the General Depository Agreement entered into with an institution regulated by a Federal Agency, or to utility service for which the rebates are fixed or controlled by a State or Local agency.
- c. Nothing in this section shall prohibit a tenant of the PBCHA from serving on the governing body of the PBCHA. The PBCHA will establish disciplinary actions to be applied for violations of these standards by its officers, employees, or agents.

4. **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.

5. **Prohibition Against Contingent Fees.** Contractors wanting to do business with the PBCHA 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.

C. PROCUREMENT PLANNING.

1. **General.** Planning is essential to managing the procurement function properly. The PBCHA will periodically review its record of prior purchases to avoid the acquisition of unnecessary or duplicative items.
2. **Annual Review.** Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. The annual review will also consider future needs, to:
 - a. Find patterns of procurement actions that could be performed more efficiently or economically;
 - b. Maximize competition and competitive pricing among contracts and decrease the PBCHA's procurement costs;
 - c. Reduce PBCHA administrative costs;
 - d. Ensure that supplies and services are obtained without any need for reprocurement, e.g., resolving bid protests; and
 - e. Minimize errors that occur when there is inadequate lead time.
3. **Considerations.** Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

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D. PROCUREMENT METHODS.

1. Small Purchase Procedures. There are three levels of small purchases:

- a. **Petty Cash.** Purchases 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 PBCHA shall ensure that security is maintained, and only authorized individuals have access to the account. These accounts should be reconciled and replenished not less than periodically.
- b. **Micro-Purchase.** Procurement by Micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$2,000 for construction contracts that are subject to the Davis-Bacon Act or \$10,000 or less for all other contracts, goods and services. The PBCHA may purchase the supplies or services without soliciting competitive quotations provided the price is considered reasonable.
- c. **Small Purchase.** For contracts above the micro-purchase level, the PBCHA may use small purchase procedures that are relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$60,000 for professional services or \$250,000 all other goods and services. This is known as “the small purchase threshold.”
 - i. If these small purchase procedures are used, the PBCHA must obtain price or rate quotes from an adequate number (normally at least 3) of qualified sources to the greatest extent feasible. To promote competition, all small purchases should be distributed among qualified sources. Quotes may be obtained orally (either in person or by phone), by fax, email, in writing, or through e-procurement. Award shall be made to the qualified vendor that provides the best value to the PBCHA.
 - ii. If the PBCHA fails to obtain adequate competition, will document the actions taken to obtain adequate competition.
 - iii. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file.
- d. **Splitting Requirements.** The PBCHA 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:
 - i. Permit use of the small purchase procedures or

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- ii. Avoid any requirements that applies to purchases that exceed the Micro-Purchase threshold.

2. Sealed Bid (formal advertising).

- a. **General.** Sealed bidding shall be used for all contracts that exceed Small Purchase Threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this document. Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, confirming with all of the material terms and conditions of the invitation for bids, is lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in this section apply.
- b. **Conditions for Using Sealed Bids.** PBCHA shall use the sealed bid method if the following conditions are present:
 - i. A complete, adequate, and realistic statement of work, specification, or purchase description is available;
 - ii. Two or more responsible bidders are willing and able to compete effectively for the work;
 - iii. The contract can be awarded based on a firm fixed price; and
 - iv. 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.
- c. **Solicitation and Receipt of Bids.** The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening of bids. The invitation for bids (IFB), which will include any specifications and pertinent attachments, must define the terms or services in order for bidders to properly respond. The IFB will include 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.
- d. **Bid Opening and Award.**
 - i. All bids shall be opened publicly at the time and place prescribed in the IFB.
 - ii. All bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection.

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- iii. If equal low bids are received from responsible from a responsible bidder, selection shall be made by drawing lots or other similar random method. The method for doing this shall be stated in the IFB.
 - iv. 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.
 - v. A firm fixed price contract will be made in writing to the lowest responsible and responsive bidder.
 - vi. Where specified in the bidding documents, factors such as discounts, transportation cost, and life cycle cost must be considered in determining which bid is the lowest. Payment discounts will only be used to determine the low bid where prior experience indicates that such discounts are usually taken advantage of.
 - vii. Any and all bids may be rejected if there is a sound documented reason.
- e. **Mistakes in Bids.**
- i. Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening.
 - ii. 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.
 - iii. 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.
 - iv. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer.
 - v. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the PBCHA or fair competition shall not be permitted.

3. Competitive Proposals.

- a. **General.** For contracts that exceed the Small Purchase Threshold, the PBCHA may procure using the competitive proposals method. The technique of competitive proposals is normally conducted with more than one source

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submitting an offer, and either a firm fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. Unlike sealed bidding, the competitive proposal method permits:

- i. Consideration of technical factors other than price;
 - ii. Discussion with offerors concerning offers submitted;
 - iii. Negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and
 - iv. Withdrawal of an offer at any time up until the point of award.
 - v. Award normally made based on the proposal that is most advantageous with price and other factors considered, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.
- b. **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.
- c. **Solicitation.**
- i. For other than A/E services discussed below, requests for proposals (RFP) must be published and clearly identify all evaluation factors and subfactors including price and their relative importance.
 - ii. Any response to publicized RFP must be considered to the maximum extent practical. Proposals must be solicited from an adequate number of sources.
 - iii. A mechanism for fairly and thoroughly evaluating the technical and price proposals and for selecting recipients shall be established before the solicitation is issued.
 - iv. 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.
 - v. The PBCHA may assign price a specific weight in the evaluation criteria or PBCHA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

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d. **Evaluation.**

- i. The proposals shall be evaluated only on the criteria stated in the RFP.
- ii. Where not apparent from the evaluation criteria, the PBCHA shall establish an Evaluation Plan for each RFP.
- iii. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement.
- iv. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.

e. **Negotiation.**

- i. After evaluation of proposals, the PBCHA has the option to make an award without discussions with the offerors or engage offerors in discussions and negotiations regarding the content of their proposals.
- ii. If the PBCHA chooses to have 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.
- iii. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal.
- iv. 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 PBCHA 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.
- v. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal and shall be conducted by

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the contracting officer with each offeror within the competitive range. The primary object of discussions is to maximize the PBCHA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation.

- vi. The contracting officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award.
 - vii. 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 PBCHA to be too high, or too low, and reveal the results of the analysis supporting that conclusion.
 - viii. 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.
- f. **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 PBCHA provided that the price is within the maximum total project budgeted amount established for the specific property or activity.
- g. **Architectural and Engineering (A/E) Services.** The PBCHA must contract for A/E services using Qualifications Based Selection (QBS) procedures. The solicitation for QBS will be a Request for Qualifications (RFQ). Sealed bidding shall not be used for A/E services. Under QBS procedures, competitors' qualifications are evaluated, and most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures shall not be used to purchase other type of services, though architectural/engineering firms are potential sources.

4. Noncompetitive Proposals.

- a. **Conditions for Use.** Procurement by noncompetitive proposals (aka, sole-source) is procurement through solicitation of a proposal from only one source and may only be used when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing or competitive proposals and one or more of the following circumstances apply:

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- i. The item is available only from a single source, based on a good faith review of available sources;
- ii. A public exigency or emergency exists for the requirement will not permit a delay resulting from competition;
 1. An exigency or emergency is an event that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the PBCHA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event.
 2. 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;
- iii. HUD authorizes the use of noncompetitive proposals; or
- iv. After solicitation of a number of sources, competition is determined inadequate.

b. Justification.

- i. Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method.
- ii. The justification shall be approved in writing by the responsible Contracting Officer.
- iii. Poor planning or lack of planning is not justification for emergency or sole-source procurements.
- iv. 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 2 CFR 200.320(f) 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's supervisor (or someone above the level of the Contracting Officer); and
8. Price Reasonableness. The reasonableness of the price for all procurement based on noncompetitive proposals shall be determined by performing a cost analysis, as described in this Policy.

5. Intergovernmental or Interagency Agreement.

- a. To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the PBCHA is encouraged to enter into state and local intergovernmental or common or shared goods and services.
- b. 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.
- c. The PBCHA may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 CFR 200.

E. INDEPENDENT COST ESTIMATES.

For all purchases above the micro-purchase threshold, the PBCHA shall prepare an ICE prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

F. COST AND PRICE ANALYSIS.

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The PBCHA shall require assurance that, before entering into a contract above the small purchase threshold, the price is reasonable, in accordance with the following instructions:

1. **Petty Cash and Micro-Purchases.** No formal cost or price analysis is required. Rather, the execution of a contract by the Contracting Officer (through a Purchase Order or other means) shall serve as the Director, Office of Procurement and Contracts' determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.
2. **Small Purchases.** A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes are not obtained to establish reasonableness through price competition, the Director, Office of Procurement and Contracts shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Director, Office of Procurement and Contracts' personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.
3. **Sealed Bids.** The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the ICE, and where the PBCHA cannot reasonably determine price reasonableness, the PBCHA must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.
4. **Competitive Proposals.** The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, the PBCHA must compare the price with the ICE. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, the PBCHA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.
5. **Contract Modifications.** A cost analysis, consistent with 2 CFR 200, 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 the PBCHA's small purchase threshold.

G. SOLICITATION AND ADVERTISING.

1. Method of Solicitation.

- a. Petty Cash and Micro Purchases. The PBCHA may contact only one source if the price is considered reasonable.

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- b. Small Purchases. Quotes may be solicited orally, through fax, or by any other reasonable method.
 - c. Sealed Bids and Competitive Proposals. Solicitation must be done publicly. The PBCHA must use one or more following solicitation methods, provide that the method employed provides for meaningful competition.
 - i. Advertising in newspaper or other print mediums of local or general circulations.
 - ii. Advertising in various trade journals or publications (for construction).
 - iii. E-Procurement. The PBCHA may conduct its public procurement through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2 CFR 200, State and local requirements, and the PBCHA's procurement policy.
2. **Time Frame.** For purchases exceeding the Small Purchase Threshold, the public notice should run not less than once each week for two consecutive weeks.
3. **Form.** Notices/advertisements should state, at minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact who can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s).
4. **Time Period for Submission of Bids.** A minimum of 30 days shall generally be provided for preparation and submission of sealed bids and competitive proposals. However, the Executive Director may allow for a shorter period under extraordinary circumstances.
5. **Cancellation of Solicitations.**
- a. An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:
 - i. The supplies, services or construction is no longer required;
 - ii. The funds are no longer available;
 - iii. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
 - iv. Other similar reasons.
 - b. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
 - i. The supplies or services (including construction) are no longer required;

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- ii. Ambiguous or otherwise inadequate specifications were part of the solicitation;
- iii. All factors of significance to the PBCHA were not considered;
- iv. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - v. 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
 - vi. For good cause of a similar nature when it is in the best interest of the PBCHA.
- 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 resolicitation 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 PBCHA'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
 - i. Re-solicit using an RFP; or
 - ii. 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 PBCHA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.
- f. If problems are found with the specifications, PBCHA should cancel the solicitation, revise the specifications and resolicit using an IFB.

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6. Credit (or Purchasing).

- a. Use of an PBCHA credit card is not a procurement method. It is only a payment method.
- b. Use of an PBCHA credit card should follow the rules for all other small purchases. For example, the Contracting Officer may use a credit card for Micro-Purchase without obtaining additional quotes provided the price is considered reasonable.
- c. For amounts above the Micro-Purchase level, the Contracting Officer would generally need to obtain a reasonable number of quotes before purchasing.
- d. When using PBCHA credit cards, the PBCHA must adopt reasonable safeguards to assure that they are used only for intended purpose (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards) and for eligible program expenses based on the source of funds used.

H. BONDING REQUIREMENTS.

1. **General.** The standards under this section apply to construction contracts that exceed the small purchase threshold. There are no bonding requirements for small purchases or for competitive proposals. The PBCHA may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.
2. **Bid Bond.** For construction contracts exceeding small purchase threshold, a bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid assurance that the bidder will, upon acceptance of the bid, execute such a contractual document as may be required within the specified time.
3. **Assurance of Completion.** For construction contracts exceeding the small purchase threshold, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four:
 - a. A performance and payment bond in a penal sum of 100% of the contract price; or
 - b. Separate performance and payment bonds, each for 50% or more of the contract price; or
 - c. A 20 % cash escrow; or

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d. A 25% irrevocable letter of credit.

4. **Acceptable Bonds.** Any bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State where the work is to be performed. Individual sureties shall not be considered. U. S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory.

I. CONTRACTOR QUALIFICATIONS AND DUTIES.

1. **Contractor Responsibility.** The PBCHA 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 performance record;
 - d. Have a satisfactory record of integrity and business ethics;
 - e. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
 - f. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them;
 - g. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspend, debarred or under a HUD-imposed Limited Denial of Participation (LDP).
 - h. 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.
2. **Suspension and Debarment.** Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulation (24 CFR Part 24) or by other Federal agencies, e.g. Dept of Labor for violation of labor

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regulations, when necessary to protect housing authorities in their business dealings.

3. **Vendor Lists.** All interested businesses shall be given the opportunity to be included in vendor mailing lists. Any lists of persons, firm, 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.

J. CONTRACT PRICING ARRANGEMENTS.

1. **Contract Types.**

- a. Any type of contract which is appropriate to the procurement and which will promote the best interests of the PBCHA 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 PBCHA.
- b. For all cost reimbursement contracts, PBCHA 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.

2. **Options.**

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

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3. **Contract Term.** The term or length of a contract must be clearly stated in the contract. The maximum length of any PBCHA contract, including all options if exercised, is 5 years.

K. CONTRACT CLAUSES.

1. **General.** All contracts shall identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined appropriate by the PBCHA.
2. **Federal Mandatory Clauses.** All contracts will include mandatory contract clauses as required by 2 CFR 200, 24 CFR 135, the Davis Bacon Act for construction contracts over \$2,000, U.S. Housing Act of 1937 for maintenance contracts over \$2,000 and other applicable required clauses.
3. **HUD Forms.** The PBCHA must use all HUD standard forms that contain mandatory clauses including but not limited to: forms HUD-5369, 5369-A, 5369-B, 5369, 5370, 5370-C, 5370-EZ, 51915, or successor forms as well as any forms/clauses as required by HUD.

L. CONTRACT ADMINISTRATION.

1. **General.** The PBCHA shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
2. **Oversight.** The PBCHA 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 reposting 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 2 CFR 200.

M. SPECIFICATIONS.

1. **General.**
 - a. All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying PBCHA needs.
 - b. 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.
 - c. Detailed product specifications shall be avoided whenever possible.

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- d. Consideration shall be given to consolidating or breaking out procurement 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.
2. **Limitation.** The following types of specifications shall be avoided:
- 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. 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.

N. APPEALS AND REMEDIES.

1. **General.** It is PBCHA 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.
2. **Informal Appeals Procedure.** The PBCHA shall adopt an informal bid protest/appeal procedure for contracts or less than the small purchase threshold. Under these procedures, the bidder/contractor may request to meet with the appropriate Contract Officer.
3. **Formal Appeals Procedure.** A formal appeals procedure shall be established for solicitations/contracts of more than the small purchase threshold.
4. **Bid Protest.** Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contract receives notice of the contract award, or the protest will not be considered. All bids protests shall be in writing, submitted to the Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.
5. **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

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

O. ASSISTANCE TO SMALL AND OTHER BUSINESSES.

1. **Required Efforts:** Consistent with 2 CFR 200, Presidential Executive Orders 11625, 12138, and 12432, Section 3 of the HUD Act of 1968 and HUD implementing regulations at 24 CFR 135, 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 PBCHA 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 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.

2. **Goals.** The PBCHA shall establish goals annually for participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in PBCHA prime contracts and subcontracting opportunities. The goals for Section 3 will reflect those provided in 24 CFR 135.

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3. 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 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 under 24 CFR Part 135.5.
- 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.

P. BOARD APPROVAL OF PROCUREMENT ACTIONS.

1. **Board of Commissioners.** Other than approval of this Procurement Policy, approval by the Board of Commissioners is needed for contracts in excess of \$100,000 or more is required for any procurement action. The Contracting Officer or Director, Office of Procurement and Contracts will maintain a log of all executed change orders of Board approved awards indicating the amount and purpose of the change and report the information to the Board of Commissioners on a quarterly basis.
2. **Executive Director.** It is the responsibility of the Executive Director to make sure that all procurement actions are conducted in accordance with the policies contained herein and to report to the Board of Commissioners, as required.

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Q. DELEGATION OF CONTRACTING AUTHORITY.

1. **Delegation.** The Executive Director is delegated the authority to undertake and approve all PBCHA procurement actions and execute all PBCHA contracts. The Executive Director is responsible for ensuring that the PBCHA's procurements comply with Federal, State requirements as well as this Policy.
2. **Sub-Delegation.** The Executive Director may delegate all or a portion of this procurement authority as is necessary and appropriate to conduct the business of the Agency. Such delegation will be in writing, included in the PBCHA Procurement Standard Operating Procedures and be specific as to PBCHA position and limits of the delegation.
3. **Procurement Standard Operating Procedures.** The Executive Director shall establish Procurement Standard Operational Procedures (such as a procurement manual or similar document) to implement this Policy. The Procedures shall contain a system of sanctions for violations of the ethical standards described in this Policy, consistent with Federal, State, or local law.

R. DOCUMENTATION.

1. **Records.** The PBCHA 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. Rational for the selection of the contract type;
 - c. Rationale of contract pricing arrangement (also if not self-evident);
 - d. Rational for contractor selection or rejection;
 - e. Basis for the contract price (as prescribed in this HUD Handbook 7460.8REV2 or successor version);
 - f. A copy of the contract documents awarded or issued and signed by the Contracting Officer;
 - g. Basis for contract modifications; and
 - h. Related contract administration actions.
2. **Detail.** The level of documentation should be commensurate with the value of the procurement.

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

S. DISPOSITION OF SURPLUS PROPERTY.

1. **Federal Regulations.** Property no longer necessary for the PBCHA's purpose (non-real) shall be transferred, sold or disposed of in accordance with applicable Federal regulation 2 CFR 200.
2. **PBCHA Disposition.** The PBCHA may include disposition of surplus property (non-real) guidance (e.g., public sale) in the PBCHA Standard Operating Instructions.

T. FUNDING AVAILABILTY.

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

END OF DOCUMENT.