



## TACOMA HOUSING AUTHORITY

<b>Policy No.</b>	<b>PCI-01</b>
<b>Policy</b>	<b>PROCUREMENT POLICY</b>
<b>Date</b>	<b>June 7, 2021</b>

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Appendix 1 – Required Federal Clauses

Appendix 2 – Required Washington State Clauses

## **1.0 SOURCES OF AUTHORITY AND COMPLIANCE WITH LAWS; SELF-CERTIFICATION OF COMPLIANCE**

This policy derives its authority from and complies with the following laws and directives:

### **1.1 THA Board of Commissioners Resolutions**

THA Resolution 2018-06-27 (2)

### **1.2 Laws and Directives:**

- 12 U.S.C. § 1701u (Section 3 Requirements)
- 40 U.S.C. § 3141 et seq. (Davis-Bacon)
- Section 3 of the HUD Act of 1968
- Annual Contributions Contract (ACC) between THA and the United States Department of Housing and Urban Development (HUD)
- 2 C.F.R. § 200.317 through § 200.326, *Procurement Standards*
- Presidential Executive Orders 11625, 12138, and 12432
- HUD Handbook 7460.8, REV 2
- Chapter 35.82 RCW (THA Law)
- Chapter 39.04 RCW (Public Works/Procurement);
- Chapter 39.08 RCW (Performance and Payment Bonds)
- Chapter 39.10 RCW (Alternative Public Works/Procurement)
- Chapter 39.12 RCW (Washington Prevailing Wage)
- Chapter 39.24 RCW (Interlocal Cooperation Agreements) (“Piggybacking”)
- Chapter 39.26 RCW (Goods and Services); Chapter 30.30 RCW (Identification, Substitution of Subcontractors)
- Chapter 39.35A RCW (Performance Based Contracts for Water Conservation, Solid Waste Reduction and Energy Equipment)
- Chapter 39.80 RCW (Design Professionals)
- Chapter 42.56 RCW (Public Records Act)
- Chapter 49.28 RCW (Wage and Hour)
- Chapter 49.60 RCW (Discrimination Law)
- Chapter 49.70 (Right to Know Act)
- Chapter 60.28 RCW (Retainage)

### **1.3 State Law, Federal Law, and the Stricter Standard Principle.**

*1.3.1* When a project uses both federal and non-federal funds, the project, if feasible, should separate the work by funds to be used prior to procurement so the project can apply requirements appropriate to each fund source, if necessary.

*1.3.2* If it is not feasible to separate the funds, federal procurement regulations shall govern the total project unless state law requirements impose stricter requirements on THA, in which case the stricter state law requirements to the whole project must apply unless the federal requirements pre-empt them.

#### **1.4 Self-Certification of Compliance**

Tacoma Housing Authority (THA) self-certifies that this Procurement Policy and THA's procurement system comply with all applicable Federal regulations and, as such, THA is exempt from prior HUD review and approval of individual procurement action.

#### **1.5 Changes in Laws and Regulations.**

In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.

### **2.0 FORMS ASSOCIATED WITH THIS POLICY**

*[to be added]*

### **3.0 SCOPE OF THE POLICY (THA AND SEPARATE ENTITIES)**

#### **3.1 Introduction**

This Policy is not intended to be the only source of information about a THA procurement. These policies are intended to meet the requirements of applicable local, state and federal laws. However, it is possible that a provision of this Policy may be inconsistent with applicable federal, state or local requirements. In those situations, the provisions of applicable law will govern. This Policy is not a promise of specific process or procedure. THA reserves its rights to and may select the method and process for procurement that THA determines to be in the best interest of its mission, and in compliance with law. The terms of a procurement advertisement or announcement; selection; and, resulting contract will govern the specific procurement. Nothing in this Policy modifies or alters the terms of any written agreement that THA may enter into with a contractor or provider of goods or services.

#### **3.2 Definition of Procurement**

The term "procurement," as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, materials, and services (except A/E); (2) Building Engineering Systems; (3) Electronic Data Processing and Telecommunications; (4) Architectural and Engineering (A/E) services; and (5) construction and maintenance.

#### **3.3 Procurements by THA**

This Policy applies to all procurement THA does in its own name, as the owner of the project or acquiring goods and services for its own purpose, regardless of the source of funds. The type of availability procurement under this policy may depend on the source of funds. However, nothing in this Policy shall prevent THA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with the law.

#### **3.4 Procurements by Separate Entities Affiliated with THA**

THA holds interests in other entities and sometimes acts on their behalf, including tax credit LLLPs ("Separate Entities"). This policy does not govern procurements THA does for Separate Entities unless the project uses funds from the federal government, the state,

from any municipality, or from THA. In those cases, the procurement requirements of those funding sources shall govern as follows:

#### 3.4.1 *State Funds*

THA, acting for a Separate Entity that is conducting a “public work” (as defined in this Policy) must follow this policy, including pre-procurement planning and pricing, prevailing wages, the public works requirements of section 7.4, and general procurement requirements.

#### 3.4.2 *Federal Funds*

THA, acting for a Separate Entity that is conducting a construction project using federal funds, must follow this Policy, including pre-procurement planning and pricing, prevailing wages, public works procurement rules, and general procurement requirements. While a construction project funded without any state dollars, but with federal dollars, does not fit the definition of a “public work,” such project must follow the public work requirements of this Policy (except where expressly stated otherwise). Other non-construction-related procurements by Separate Entities using federal funds must comply with the rules governing the funding.

In any case, when THA procures for a Separate Entity and even if this policy does not apply, THA shall ensure an appropriate level of competition. It shall use this Policy as a guideline for that purpose.

### 3.5 **Exclusion**

This Policy does not govern procurements using 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 C.F.R. § 990. These excluded areas are subject to applicable State and local requirements.

## 4.0 **PRINCIPLES IN PROCUREMENT**

This policy seeks to infuse THA procurement with the following principles. THA shall consult them when interpreting this policy.

### 4.1 THA’s procurement practices will further its mission:

*THA provides high quality, stable and sustainable housing and supportive services to people in need. It does this in ways that help them prosper and help our communities become safe, vibrant, prosperous, attractive and just.*

### 4.2 The following parts of THA’s Statement of Values have a special pertinence to procurement:

#### ***Service***

*Work in service to others is honorable. We will do it honorably, effectively, efficiently, with pride, compassion and respect.*

### ***Integrity***

*We strive to uphold the highest standards of integrity and ethical behavior.*

### ***Stewardship***

*We will be careful stewards of the public and private financial and environmental resources entrusted to us.*

#### **4.3 Discrimination**

THA does not discriminate and does not do business with people or firms that discriminate on the basis of race, color, ethnicity, national origin, sex, gender identity, sexual orientation, disability, marital status, familial status or veteran status.

#### **4.4** THA seeks a procurement system that does the following:

- promotes work of high quality and integrity;
- provides for the fair and equitable treatment of all persons or firms involved in purchasing or procuring by THA;
- procures supplies and services (including construction) efficiently, effectively, and at the most favorable and valuable prices available to THA;

#### **4.5** THA seeks to promote competition in contracting. Practices that unduly restrict competition include the following:

- placing unreasonable requirements on firms in order for them to qualify to do business;
- requiring unnecessary experience and excessive bonding;
- noncompetitive or collusive pricing practices between firms or between affiliated companies;
- noncompetitive contracts to consultants that are on retainer contracts;
- organizational conflicts of interest;
- specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement;
- any arbitrary action in the procurement process.

#### **4.6 THA’s Procurement Mission:**

To the extent feasible for any project and consistent with this policy and governing laws, THA will procure in a way that makes Tacoma’s community stronger and that furthers THA’s mission to promote the prosperity of the Tacoma area’s low-income residents and

the equitable economic development of the Tacoma area through the use of (i) firms owned by persons or color or women; (ii) firms owned by low-income persons, (iii) firms that for the project in question hire participants in THA's housing programs or other low-income persons in the Tacoma area, and (iv) firms owned locally and that hire people within the Tacoma area.

- 4.7** THA seeks by its procurement to fully comply with applicable federal standards, HUD regulations, state, and local laws.

## **5.0 ETHICS IN PUBLIC CONTRACTING**

THA's procurement activities shall comply with THA Policy G-10 Ethics and Conflicts of Interest.

## **6.0 PRE-PROCUREMENT PLANNING AND PRICING**

### **6.1 Independent Cost Estimate (ICE)/Specifications**

#### *6.1.1 Independent Cost Estimate (ICE)*

For all procurements above the Micro Purchase threshold (\$3,000), THA shall prepare an ICE prior to solicitation. The level of detail shall be commensurate with the cost and complexity of services to be purchased. Specific requirements for public works projects are discussed below. THA shall conduct a wage determination analysis (see Prevailing Wages, Section 7) to prepare an ICE for all construction, maintenance and repair work.

#### *6.1.2 Specifications and Limitations on Specifications*

- (a) THA shall draft all specifications to promote overall economy for the purpose intended and to promote the procurement principles in section 4. THA shall review specifications 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. THA shall consider consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, THA should analyze whether a lease or purchase would be more economical. Specific requirements for public works projects are discussed in section 8.1.
- (b) THA should avoid the following types of specifications in its bid solicitations:
- (1) detailed product specifications;
  - (2) brand name specifications (the specifications should list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use);
  - (3) geographic restrictions not mandated or encouraged by applicable federal law: Except geographic preferences may be allowed in the

following instances: (1) for A/E contracts, which may include geographic location as a selection factor if adequate competition is available; (2) under section 10 for purposes of Section 3 contracting goals; and (3) geographic preferences for in-state bidders on public works in certain instances as allowed or required under section 7.5.1(h).

Nothing in this procurement policy shall preempt any state licensing laws.

## **6.2 Cost and Price Analysis (CPA)**

### *6.2.1 General*

THA shall assure itself that, before entering into a contract, the price is reasonable. It shall seek this assurance in the following ways:

- (a) Petty Cash and Micro Purchases (≤\$10,000).  
No formal cost or price analysis is required for purchases costing \$10,000 or less. Rather, the Contracting Officer shall judge that the price is reasonable. He or she may judge this by relying on his or her experience or other factors. His or her execution of the contract Purchase Order or other documentation shall serve as his or her attestation that the price is reasonable.
- (b) Small Purchases Below Simplified Acquisition Threshold (≤\$250,000)  
For purchases \$250,000 or less a comparison with other offers shall generally be a sufficient determination of the reasonableness of price and no further analysis is required. If THA does not get a reasonable number of quotes to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.
- (c) Contracts Above the Simplified Acquisition Threshold (>\$250,000).  
For contracts, including contract modifications, costing more than \$250,000, THA must perform a cost or price analysis. The method and degree of analysis depends on the facts surrounding the particular procurement situation, but as a starting point, THA must make independent estimates before receiving bids or proposals.
- (d) Profit and Costs.
  - (1) **Profit**  
THA must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's



investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

**(2) Costs**

For federally-funded projects, costs or prices based on estimated costs are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable for the non-federal entity under 2 C.F.R. § 200, Subpart E—Cost Principles.

**(e) Contract Modifications.**

THA shall analyze costs, consistent with federal guidelines, for all contract modifications for projects 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 results in a total contract price in excess of the Simplified Acquisition Threshold.

**(f) Credit (or Purchasing) Cards**

Credit card usage should follow the rules for all other small purchases. For example, the Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level (\$10,000), the Contracting Officer should obtain a reasonable number of quotes before purchasing via a credit card. When using credit cards, THA shall adopt reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

## **7.0 METHODS OF PROCUREMENT**

### **7.1 Introduction**

State law authorizes THA to develop housing projects. Generally, most construction projects will employ a procurement procedure in which a separate designer and contractor are hired to complete the project. Under the traditional procedure, an Invitation for Bid will be advertised, competitive bids will be received, and the project will be awarded to the lowest responsive bid submitted by a responsible bidder (*see* section 7.7). THA may use all available procurement methods provided by state law or otherwise.

### **7.2 Alternative Procurement Methods: GC/CM and Design Build**

When the criteria in 2 CFR §200.320(c)(1) are not applicable, THA may elect to use alternative public works contracting procedures, including but not limited to Design-Build (“D/B”) and General Contractor/Construction Manager (“GC/CM”) procedures. In such situations, the Contractor’s price is evaluated along with other criteria relating to the

Contractor's ability to perform the contract. When federal dollars are involved, the standard form of solicitation is the RFP method discussed in section 7.8.

#### *7.2.1 Value Engineering*

Value engineering is the systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost. The use of value engineering is encouraged by federal law. THA may request that a Contractor perform value engineering on a contract.

### **7.3 Petty Cash Purchases (<\$150)**

THA may make purchases under \$150 through the use of a petty cash account. THA may establish petty cash accounts in an amount sufficient to cover small purchases made during a reasonable period, *e.g.*, one month. THA shall maintain the security of all petty cash accounts. Only authorized individuals shall have access to them. THA shall reconcile and replenish the account periodically by submitting a voucher to THA's Director of Finance or the Director's designee. The Director of Finance or his or her designee shall audit the accounts to validate proper use and to verify that the account total equals cash on hand plus the total of accumulated vouchers according to the agency's established petty cash procedures.

### **7.4 Micro Purchase Procedure ( $\leq$ \$10,000)**

For purchases of less than \$10,000, also known as Micro Purchases, only one quote is required, provided THA considers the quote to be reasonable.

### **7.5 Small Purchase Procedure ( $\leq$ \$250,000)**

For purchases between \$10,000 and \$250,000, THA should get or attempt to get quotes from three different qualified sources from the List of Qualified Vendors or other vendors.

#### *7.5.1 List of Qualified Vendors*

THA may maintain a list of qualified vendors for specific types of purchases or services. If it does this, it shall, at least twice per year, publish in The News Tribune a notice of the existence of such vendor lists and solicit the names of vendors for the lists. THA may also add or remove vendors to or from the list at other times of the year.

#### *7.5.2 Solicitation*

Whenever possible, THA may solicit at least three vendors to submit price quotations and other information related to qualifications. THA may obtain these submissions orally, by telephone, in writing, or by any combination thereof. THA may solicit vendors from the List of Qualified Vendors that THA may maintain pursuant to this Section. THA, however, may also solicit quotations from qualified vendors that are not listed on any such vendor list in order to assure price competition or an adequate array of qualifications or to further the purposes of this policy. THA may select from the respondents those it adds to the list. It shall make its selection based upon factors set forth in the solicitation.

#### *7.5.3 Award of Contract*

THA shall award the contract to the vendor that THA determines, in its sole discretion, will provide the greatest overall value to THA. If THA uses non-price factors to determine the greatest overall value, it shall disclose such factors to all those solicited. THA shall consider any preferences provided by law to Washington products and vendors and may take into consideration the quality of the articles proposed to be supplied, their conformity with specifications, the purposes for which required, and the times of delivery. Further, in addition to price, THA must consider the following factors:

- (a) the ability, capacity, and skill of the vendor to perform the contract or provide the service required;
- (b) the character, integrity, reputation, judgment, experience, and efficiency of the vendor;
- (c) whether the vendor can perform the contract within the time specified;
- (d) the quality of performance of previous contracts or services;
- (e) the previous and existing compliance by the vendor with laws relating to the contract or services;
- (f) which bid will best further the purposes of this policy;
- (g) the extent to which the bid furthers THA's procurement principles set forth in section 4;
- (h) such other information or factors as THA may deem to have a bearing on the decision to award the contract.

**NOTE: THA must provide copies of bids received within two days of a competitive bid opening, when requested by a bidder. An Award cannot occur until at least two full business days after such documents have been provided.**

#### *7.5.4 Life Cycle Costs.*

THA may judge that it can save money by using a "life cycle costing" technique when considering quotes for purchase, manufacture, or lease, and in determining the greatest overall value. In this technique, THA shall give first consideration to the quote or bid with the lowest life cycle cost which complies with the specifications. Nothing in this section shall prohibit THA from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

#### *7.5.5 Record Keeping*

THA shall record and maintain the names, addresses, and/or telephone numbers of the vendors and persons contacted, and the date and amount of each quotation. This information shall be open to public inspection, and available by telephone inquiry.

#### *7.5.6 Unbundling Prohibited*

THA shall not break down requirements aggregating more than the Simplified Acquisition 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.

## **7.6 Small Works/Limited Works Roster**

The Small Works or Limited Works Roster is a method for procuring certain smaller public works and non-public works projects, consistent with the restrictions below. It is generally faster and administratively easier to follow than other procurements. A small works roster is available for contracts worth up to either \$250,000 for federally funded contracts and up to \$350,000 for non-federally funded contracts. A limited works roster is available for contracts up to \$50,000, federally funded or not.

### *7.6.1 Two Ways to Create a Small Works/Limited Works Roster.*

THA has two ways to use a Small Works/Limited Works Roster. (i) It may create its own roster, as provided in the very next subsection; or (ii) THA may enter into a piggyback agreement with another agency to use the other agency's roster. THA has a host agreement with The Municipal Research and Services Center (MRSC).

### *7.6.2 Creating the Roster*

THA may establish a general Small Works/Limited Works Roster or multiple rosters for different specialties or categories of anticipated work. These rosters would list qualified contractors who have requested to be included on the roster and are properly licensed or registered to perform such work in the State of Washington. The following rules and guidelines apply to such a roster:

- (a) The roster may distinguish among contractors based on the nature of the work the contractor is qualified to perform and the geographic areas to be served.
- (b) THA may require eligible contractors desiring to be placed on the roster to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with THA as a condition of being placed on the Small Works Roster.
- (c) At least once every year, THA shall advertise in The News Tribune the existence of the Small Works Roster and may add to the roster(s) those contractors who request to be included on the roster(s). In addition, eligible contractors may be added to an appropriate roster(s) at any time they submit a written request and necessary records.
- (d) Prequalification onto the Small Works Roster  
THA shall use the following procedures to prequalify contractors for inclusion on the Small Works Roster and for securing telephone or written quotations from contractors on the Small Works Roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder:

- (1) THA shall check the background of each contractor requesting to be included on the roster. The purpose of checking is to verify that all license, bonding, and other applicable legal qualifications for conducting business with THA are current and unimpaired.
- (2) Contractors shall provide a current financial statement demonstrating the solvency of the business, and certify that the statement is accurate and complete;
- (3) Contractors shall provide references for previous contracts similar to the contracts to be sought from THA; THA shall verify these references; and,

THA will add to the roster those contractors who demonstrate legal compliance, fiscal solvency, and performance capability.

#### *7.6.3 Restrictions on Using the Small Works/Limited Works Roster*

- (a) Non-Federal Funding:( $\leq$ \$350,000):  
For public work projects funded entirely by non-federal dollars, THA may use the Small Works Roster for contracts less than or equal to **\$350,000** and the Limited Works Roster for contract less than or equal to \$50,000.
- (b) Federal Funding: ( $\leq$ \$250,000)  
For any projects funded in whole or in part by federal dollars, THA may only use the Small Works Roster for public works contracts less than or equal to **\$250,000**. The Limited Works Roster may be used for contracts less than \$50,000.

#### *7.6.4 Process to Procure from the Small Works Roster: $\geq$ \$250,000*

- (a) THA will use the following process to select from a Small Works Roster for dollar values below the caps showing in the previous section and no less than \$50,000:
  - (1) Whenever possible, THA shall solicit at least five quotations, confirmed in writing, from contractors in a manner that will equitably distribute opportunities among contractors on the Small Works Roster for the category of job type involved. In the event that there are not at least five contractors on the applicable roster, THA shall solicit quotations from each contractor on the applicable Small Works Roster. “Equitably distribute” means that THA may not favor certain contractors on the appropriate Small Works Roster over other contractors on the appropriate Small Works Roster who perform similar services.

- (2) If the estimated cost of the work is from **\$250,000** to **\$350,000** and THA chooses to solicit bids from less than all the appropriate contractors on the appropriate Small Works Roster, THA must also notify the remaining contractors on the appropriate Small Works Roster that quotations on the work are being sought. THA has the option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in The News Tribune; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means.

*7.6.5 Limited Small Works Roster Procurement: < \$50,000)*

THA will use the following process to select from a Small Works Roster for dollar values below \$50,000:

- (a) For limited public works and non-public works projects, which are estimated to cost less than \$50,000, THA must solicit electronic or written quotations from a minimum of three contractors from the appropriate Small Works Roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010.
- (b) After an award is made, the quotations shall be open to public inspection and available by electronic request.
- (c) THA shall attempt to distribute opportunities for limited public works and non-public works projects equitably among contractors willing to perform in the geographic area of the work.
- (d) THA shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works and non-public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded.

*7.6.6 MWBE/Section 3*

Whenever possible, THA shall invite at least one quotation from qualified contractor(s) that either (1) is a certified-minority or a certified-woman contractor; or employs, or (2) commits to employ, residents of housing owned or managed by THA. See Section 10. Assistance to Small and other Businesses (MWBE).

*7.6.7 Unbundling*

The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the Small Works Roster process or limited small works process.

## **7.7 Invitation For Bids (IFB) (also known as Sealed Bidding)**

### *7.7.1 Invitation for Bids (IFB)*

(a) The Invitation to Bid

Public works sealed bidding is used for Invitations for Bids (IFB). Under sealed bids, THA publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsive and responsible bidder whose bid, conforming with all the material terms and conditions of the IFB, is the lowest in price.

(b) Publication of IFB

THA shall publish the IFB not less than once a week for at least two consecutive weeks in the following places:

- (1) The News Tribune;
- (2) THA's web site; and
- (3) Other places likely to elicit responsive and responsible proposals, including proposals likely to further THA's principles set forth in section 4.

(c) Content of IFB

The IFB shall state at least the following:

- (1) a number or another unique identifier for the IFB;
- (2) the place, date, and time that the proposals are due. A minimum of 14 days shall generally be provided for preparation and submission of competitive proposals. However, the Executive Director may allow for a shorter period under extraordinary circumstances;
- (3) the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation;
- (4) the criteria for being a responsible bidder set forth in section 11;
- (5) the appeals process for bid contest set forth in section 14;
- (6) a contact that can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s);
- (7) Every invitation to bid on a prime contract that is expected to cost one million dollars or more for the construction, alteration, or repair of any THA building shall require each prime contract bidder to submit as part of the bid, or within one hour after the published bid

submittal time, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of: HVAC (heating, ventilation, and air conditioning); plumbing as described in chapter 18.106 RCW; and electrical as described in chapter 19.28 RCW, or to name itself for the work;

*Trenching – Safety Systems Required.* If trench excavation will exceed a depth of four feet, the contract will require safety systems for said trench excavation. This requirement shall be included in the cost estimates and bidding forms as a separate item. The costs of trench safety systems shall not be considered as incidental to any other contract item and any attempt to include the trench safety systems as an incidental cost is prohibited.

- *Bidder Responsibility Criteria.*  
The apparent lowest responsive bidder must satisfy the Mandatory Bidder Responsibility criteria set forth in Section 11.
- *Supplemental Criteria:* THA may include Supplemental Bidder Criteria in its IFB, as stated in Section 11.2.

- (8) a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation;
- (9) a description of the method THA will use to make a selection among equal low bids;
- (10) a contact that can provide a copy of, and information about, the solicitation.

(d) Receipt of Bids for an IFB

THA will stamp all bids received with the date and time of receipt. It will store all bids received unopened in a secure place until the public bid opening.

(e) Withdrawal of Bids

A bidder may withdraw the bid at any time prior to the bid opening.

(f) Bid Opening

THA shall open all bids publicly. It shall record all bids on an abstract (tabulation) of bids, which shall then be made available for public inspection.

(g) Public Works Award of IFB

THA may select the lowest responsive bid submitted by a responsible bidder (subject to adjustment for Resident Preference), unless the



solicitation should be cancelled (see below). The apparent low bidder may submit information concerning its responsibility after bid opening. If equal low bids are received from responsible bidders, THA will break the tie using the method for doing so stated in the IFB. If THA receives only one responsive bid from a responsible bidder, THA shall not award the contract unless it determines the price is reasonable, based on a cost or price analysis. Where specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs must be considered in determining which bid is lowest.

(h) Non-Public Works Award or Rejection of Contract or Cancellation of IFB

- (1) In the event of adequate competition, THA may select the lowest responsive bid submitted by a responsible bidder (See Section 11.0 below for Contractor Qualification Criteria) unless the solicitation should be cancelled (see below). Where specified in bidding documents, THA shall consider factors such as discounts, transportation costs, and life cycle costs in determining which bid is lowest.
- (2) If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The IFB shall state the method for doing this.

If THA receives only one responsive bid from a responsible bidder, THA shall not award the contract to that bidder unless THA in its sole discretion determines the price to be reasonable, based on a cost or price analysis. If THA determines that the price is unreasonable, the Contracting Officer may cancel the solicitation and either re-solicit using a Request for Proposal or 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 THA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.

(i) Resident Preference

In any bidding process for public works in which a bid is received from a nonresident contractor from a state that provides a percentage bidding preference, a comparable percentage disadvantage must be applied to the bid of that nonresident contractor.

- (1) "Nonresident contractor from a state that provides a percentage bid preference" means a contractor that:
  - Is from a state that provides a percentage bid preference to its resident contractors bidding on public works contracts; and,

- At the time of bidding on a public works project, does not have a physical office located in Washington.
- (2) The state of residence for a nonresident contractor is the state in which the contractor was incorporated or, if not a corporation, the state where the contractor's business entity was formed.
  - (3) This section does not apply to public works procured pursuant to the Small Works Roster or to those procurements exempt from competitive bidding.
- (j) Price Negotiations Generally Prohibited  
 In general, THA may not negotiate an adjustment to bid price of the low responsive bidder. It may do so based upon agreed changes to the contract plans and specifications, with a low responsive bidder only under the following conditions:
- (1) All bids for the public works project exceed the available funds, as certified by the Finance Director;
  - (2) The apparent low responsive bid does not exceed the available funds by: (a) Five percent on projects valued under one million dollars; (b) the greater of fifty thousand dollars or two and one-half percent for projects valued between one million dollars and five million dollars; or (c) the greater of one hundred twenty-five thousand dollars or one percent for projects valued over five million dollars; and,
  - (3) The negotiated adjustment will bring the bid price within the amount of available funds.
- (k) Mistakes in Bids  
 Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening. 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 ministerial character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a clerical mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document, but the intended bid is unclear, or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of THA or fair competition shall not be permitted.
- (l) Bid Protest  
 See Appeals and Remedies below. Section 14.

(m) Cancellation of Solicitation

THA in its sole discretion may cancel a solicitation and reject all bids if:

- (1) THA no longer needs the work as stated in the solicitation;
- (2) ambiguous or otherwise inadequate specifications were part of the solicitation;
- (3) THA failed to consider all factors of significance;
- (4) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (5) THA has reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or,
- (6) THA has a sound documented reason to cancel the solicitation.

**Note:** THA shall document the reasons for cancellation in the procurement file. This documentation shall be provided upon request. THA shall send a notice of the cancellation to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.

(n) If all otherwise acceptable bids received in response to an IFB are at unreasonable or unaffordable prices THA shall determine if there is a problem in either the specifications or THA's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable or unaffordable, the Contracting Officer may cancel the solicitation and either:

- (1) re-solicit; or,
- (2) if federally funded, complete the procurement by using the RFP competitive proposal method – this is not an option for public works projects conducted by THA without federal funding. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of THA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.

## **7.8 Request for Proposals (RFP)**

### *7.8.1 The RFP*

Unlike sealed bidding, the competitive proposal method, also known as Request for Proposals (RFP), permits:

- (a) consideration of technical factors other than price;
- (b) discussion with offerors concerning offers submitted;
- (c) negotiation of contract price or estimated cost and other contract terms and conditions;
- (d) revision of proposals before the final contractor selection; and,
- (e) the withdrawal of an offer at any time up until the point of award.

#### 7.8.2 *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 services that will exceed the Simplified Acquisition Threshold.

**Note:** The RFP process can be used with the GCCM Procurement Method when federal dollars are used.

#### 7.8.3 *Publication of RFP*

THA shall publish the RFP not less than once a week for at least two consecutive weeks in the following places:

- (a) The News Tribune;
- (b) THA's web site;
- (c) Other places likely to elicit responsive and responsible proposals, including proposals likely to further THA's procurement principles in section 4.

#### 7.8.4 *Content of RFP*

The RFP shall state, at a minimum

- (a) a number or another unique identifier for the RFP;
- (b) the place, date, and time that the proposals are due. A minimum of 14 days shall generally be provided for preparation and submission of competitive proposals. However, the Executive Director may allow for a shorter period under extraordinary circumstances;
- (c) the factors and subfactors, including and in addition to price, that THA will use to evaluate each proposal and state the relative importance of the factors; THA may assign a specific weight in the evaluation factors or THA may consider price in conjunction with technical factors and qualifications (Section 11.0) below for Contractor Qualification Criteria);
- (d) a brief description of the needed items(s) if a proposal is to be responsive;

- (e) a brief description of the process THA will use to fairly and thoroughly evaluate all proposals. Generally, THA shall convene an Evaluation Committee to conduct the evaluation;
- (f) the criteria for being a responsible bidder set forth in section 11;
- (g) the appeals process for bid contest set forth in section 14;
- (h) a name and contact information of a THA person who can provide a copy of, and information about, the solicitation.

#### 7.8.5 *RFP: Handling of Responses*

THA shall handle the responses so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after the award.

#### 7.8.6 *Evaluation of Responses*

THA shall evaluate responses only on the factors stated in the RFP. Where not apparent from the evaluation factors, THA shall establish an Evaluation Plan for each RFP. Any person participating in the evaluation shall disclose any potential conflicts of interest. THA shall summarize the results of the evaluation prior to awarding the contract.

#### 7.8.7 *Negotiations Permitted*

- (a) THA shall negotiate with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless THA, in its sole discretion, determines that negotiations are not needed with any or all of the offerors. It shall determine this based on the relative score of the proposals as THA evaluated and rated them in accordance with the technical and price factors specified in the RFP. It shall treat offerors fairly and equally with respect to any opportunity for negotiation and revision of their proposals.
- (b) THA shall not give an offeror any information about any other offeror's proposal and shall not assist an offeror to bring its proposal up to the level of any other proposal.
- (c) THA may set a deadline for receipt of proposal revisions based on negotiations. If its negotiations are with two or more offerors, any such deadline shall apply to all such offerors.
- (d) Negotiations are exchanges (in either competitive or sole source environment) between THA 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.

- (e) When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions.
- (f) Discussions are tailored to each offeror's proposal and shall be conducted by the Contracting Officer with each offeror within the competitive range.
- (g) The primary object of discussions is to maximize THA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The contracting officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as 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.
- (h) The scope and extent of discussions are a matter of the Contracting Officer's sole discretion, but proposals shall be considered to the maximum extent practical. The Contracting Officer may inform an offeror that THA considers its price to be too high, or too low, and reveal the results of the analysis supporting that conclusion. THA may also indicate to all offerors the cost or price that THA'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.

#### 7.8.8 *Award*

After evaluation of the revised proposals, if any, THA shall award the contract to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to THA provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

#### 7.8.9 *Cancellation of RFP*

THA may cancel a RFP (where applicable) in the same manner as an IFB is cancelled. See section 7.5.1(n).

### **7.9 Qualifications Based Selection (QBS)**

Qualifications Based Selection is used primarily to procure Architectural and Engineering Services (A&E). It is a specialized form of a Request for Qualifications.

#### 7.9.1 *Qualification Based Selection*

The Housing Authority shall contract for Architectural and Engineering Services (A&E) services using Qualifications-Based Selection (QBS) procedures. This is a specialized form of a Request for Qualifications (RFQ). Sealed bidding shall not

be used for A/E solicitations. Under QBS procedures, the Housing Authority does not consider price. It evaluates competitors' qualifications and selects the most qualified competitor, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. THA may not use QBS procedures to purchase other types of services.

#### 7.9.2 *Publication*

THA shall publish in advance the requirement for such A&E services. It shall do so in the following places:

- (a) The News Tribune;
- (b) THA's web site;
- (c) Other places likely to elicit responsive and responsible proposals, including proposals likely to further THA's procurement principles in section 4.

THA may comply with this publication requirement by: publishing an announcement on each occasion when architect-engineer services are required; or announcing generally to the public once every three years its projected requirements for any category or type of architect-engineer services.

#### 7.9.3 *Content of Solicitation*

The announcement shall state at least the following information:

- (a) the general scope and nature of the project or work for which the services are required;
- (b) the factors THA will use to make its selection. Those factors will include the following:
  - (1) Evidence of the architect-engineer contractor's ability to perform the work, as indicated by profiles of the principals' and staff's professional and technical competence and experience and their facilities;
  - (2) Capability to provide professional services in a timely manner;
  - (3) Evidence that, where design work is involved, the architect-engineer contractor is currently registered in the State of Washington and carries Errors and Omissions insurance (if an architect-engineer contractor does not carry Errors and Omissions insurance, then any such contractor is disqualified from competition for the contract);
  - (4) Past performance in terms of cost control, quality of work, and compliance with performance schedule;
  - (5) Demonstrated knowledge of local building codes;

- (6) Projected ability to further the purposes of this Policy, including the purposes related to hiring of low-income persons, use of small businesses, business owned by low-income persons and MWBE firms; and,
  - (7) Ability of the firm to further THA's procurement principles in section 4;
  - (8) the criteria for being a responsible bidder set forth in section 11;
  - (9) Other factors THA determines to be appropriate.
- (c) the appeals process for bid contest set forth in section 14;
  - (d) the contact at THA who can provide further details.

THA shall encourage firms engaged in the lawful practice of their profession to submit **annually** a statement of qualifications and performance data.

#### 7.9.4 *Evaluation:*

- (a) THA will evaluate current statements of qualifications and performance data on file with the agency, together with those that other firms may submit. With one or more firms of its choosing, THA may discuss anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. THA shall select a firm based upon criteria established by THA (including those listed below).
- (b) Using the evaluation factors stated in the solicitation, THA will rank architect-engineer contractors under the Qualifications-Based Selection method.
- (c) If there are fewer than three architect-engineer contractors to be evaluated for a proposed project, THA shall analyze and document the reasons for the limited number of contractors. Depending on the results of the analysis, THA may either issue a revised solicitation or proceed to evaluate the eligible architect-engineer contractor(s).

#### 7.9.5 *Negotiation*

THA shall negotiate a contract with the most qualified firm for architectural and engineering services at a price which THA determines is fair and reasonable and which THA can afford. In these negotiations, THA may judge the estimated value (as opposed to just price) of the services to be rendered as well as the scope, complexity, and professional nature thereof.

#### 7.9.6 *Termination of Negotiations*

If THA is unable to negotiate a satisfactory contract with the firm selected at a price the THA determines to be fair and reasonable and affordable, it will formally terminate negotiations with that firm. It may then select other firms in accordance



with this policy and continue in accordance with this section until it reaches an agreement. It may also terminate the procurement.

#### *7.9.7 Piggybacking:*

- (a) THA may enter into a piggyback agreement for the joint utilization of architectural or engineering services if it complies with the piggybacking requirements listed above in Section 9.2.3(c) and in addition:
  - (1) The host agency contracting with the architectural or engineering firm complies with the requirements for contracting for such services under chapter 39.80 RCW; in determining the host agency's compliance, THA may reasonably rely on its assurances; and,
  - (2) The services to be provided to THA are related to, and within the general scope of, the services the architectural or engineering firm was selected to perform.
- (b) The piggyback agreement must have a specifically detailed scope of work for the services to be shared and must be entered into *before* commencement of procurement of such services under chapter 39.80 RCW.

### **7.10 Piggybacking**

#### *7.10.1 In General*

Under Chapter 39.34 RCW, local and state government agencies may make purchases of services, goods, or equipment (not construction), using another agency's purchasing contract, a process known as "piggybacking." Generally, smaller agencies piggyback on contracts awarded by larger "host" agencies, allowing the smaller agencies to save time and obtain better prices and terms than they might be able to on their own. THA may enter into agreements with State and/or local cooperative or intergovernmental entities (including those out of state so long the laws of such other state or of the United States permit such joint exercise or enjoyment), intergovernmental purchasing networks and associations to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. THA 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.

#### *7.10.2 Board Resolutions*

Prior to executing a piggyback contract THA and the other public body (the host agency) shall each pass appropriate resolutions allowing for such an agreement. In addition, the vendor must agree to the arrangement, either through the initial solicitation documents or through a request after the fact from THA. When authorized by board resolution, THA officials may arrange for and use other local and state government agency contracting.

#### *7.10.3 Compliance With Laws and Notices*

As a pre-condition to contracting, the host agency must be in compliance with all procurement laws applicable to its procurement. In addition, the host agency must have either (i) posted the bid or solicitation notice on a web site established and maintained by a public agency, purchasing cooperative, or similar service provider, for purposes of posting public notice of bid or proposal solicitations, or (ii) provided an access link on its website to the notice. The piggyback/Interlocal agreement itself must be posted on THA's website and, if required by its state's law, on the host's website. In determining the host agency's compliance with these requirements, THA may reasonably rely on the assurances of the host agency.

#### *7.10.4 Terms of the PiggyBacking Agreement*

The piggyback agreement must specify the following:

- (a) its duration;
- (b) its purpose or purposes;
- (c) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
- (d) warranties provided;
- (e) delivery terms;
- (f) amount and methodology of payment;
- (g) the manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking; and,
- (h) any other necessary and proper matters.

#### *7.10.5 New Entity*

In the event THA intends to create a new entity through an interlocal/piggyback agreement, it should consult legal counsel.

*7.10.6* Piggybacking with state agencies and the federal government is allowed, subject to specific requirements of those entities.

*7.10.7* Municipal Research and Services Center ("MRSC") facilitates various piggyback arrangements for consultant services. Piggyback agreements are frequently used for elevator service contracts.

### **7.11 Exceptions to Competitive Procurement**

THA need not use the competitive procurement procedures set forth in this policy when otherwise authorized by law, including but not limited to emergencies and sole source procurement when properly documented.

#### *7.11.1 Emergency Procurements.*

- (a) Application

In the event of an Emergency, THA is not required to follow competitive bidding requirements for public works, personal services, architectural and engineering services, and purchases. Other requirements under other laws may apply.

(b) **Definition**

“Emergency” means unforeseen circumstances beyond the control of THA that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. Examples of emergencies include natural disasters, fires, and instances of substantial water damage.

(c) **Written Findings**

If an emergency exists, the Executive Director, the Director of Administrative Services, or other person designated by THA to act in the event of an emergency may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of THA to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by THA and duly entered of record no later than two weeks following the award of the contract in accordance with Section 8.0.

*7.11.2 Other Exceptions to Public Bidding/Competitive Proposals.*

In addition to emergency procurements, THA is not required to follow competitive bidding requirements in the following cases:

(a) **Procurement Funded Wholly or Partly with State Dollars:**

- (1) purchases that are clearly and legitimately limited to a single source of supply;
- (2) purchases involving special facilities or market conditions; or,
- (3) purchases of insurance or bonds.

(b) **Procurements Funded Entirely with Federal Dollars**

- (1) HUD authorizes the use of noncompetitive proposals; or
- (2) after solicitation of a number of sources, THA determines that the competition is inadequate.

*7.11.3 Justification*

The Executive Director of THA, or his or her designee, shall justify in writing each noncompetitive procurement. Poor planning or lack of planning should not be an adequate justification for emergency or sole-source procurements although THA is

not obliged to make an emergency worse by using a procurement method that does not address the situation. The justification, to be included in the procurement file, should include the following information:

- (a) description of the requirement;
- (b) history of prior purchases and their nature (competitive vs. noncompetitive);
- (c) the specific exception above 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 Executive Directors or his/her designee (or someone above the level of the Contracting Officer); and,
  
- (h) the reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

## 8.0 CHOOSING METHOD FOR PROCUREMENT

As Section 7 discusses, THA has various methods of procurement available to use. Their availability to THA vary depending on whether THA is procuring for itself or for another entity, the source of the funding for the project, the dollar value of the contract, and the type of service the procurement seeks. This chart summarizes the available choices for various procurement types and amounts:

Contract Funding, Type and Amount	Petty Cash	Micro Purchase Procedures	Small Purchase Procedures	Small Works or Services Roster (either THA's or that of other's through piggybacking)	IFB	RFP (including GCCM & D/B with federal dollars, but no CPARB approval needed)	QBS	GCCM& D/B (without Federal Dollars use with CPARB approval )	Piggy Back
<i>See Section</i>	<i>7.3</i>	<i>7.4</i>	<i>7.5</i>	<i>7.6</i>	<i>7.7</i>	<i>7.8</i>	<i>7.9</i>	<i>7.2</i>	<i>7.10</i>
• With some federal funds									
< \$50,000				✓					
< \$250,000				✓	✓	✓			
> \$250,000					✓	✓			
• With no federal funds									
≤ \$350,000				✓	✓				
> \$350,000					✓			✓	
• With some federal funds									
< \$250,000				✓	✓	✓			
> \$250,000					✓	✓			
• With no federal funds									
≤ \$350,000				✓	✓	✓			
> \$350,000					✓	✓			
< \$ 150	✓								
≤ \$ 10,000		✓							
≤ \$ 250,000			✓	✓					
\$250,000 - \$300,000				✓	✓	✓			✓
> \$300,000					✓	✓			✓
<b>Architectural and Engineering (Section 8.4)</b>							✓		✓

<b>Contract Funding, Type and Amount</b>	<b>Petty Cash</b>	<b>Micro Purchase Procedures</b>	<b>Small Purchase Procedures</b>	<b>Small Works or Services Roster (either THA's or that of other's through piggybacking)</b>	<b>IFB</b>	<b>RFP (including GCCM &amp; D/B with federal dollars, but no CPARB approval needed)</b>	<b>QBS</b>	<b>GCCM&amp; D/B (without Federal Dollars use with CPARB approval )</b>	<b>Piggy Back</b>
<i>See Section</i>	<i>7.3</i>	<i>7.4</i>	<i>7.5</i>	<i>7.6</i>	<i>7.7</i>	<i>7.8</i>	<i>7.9</i>	<i>7.2</i>	<i>7.10</i>
<b>Building Engineering Systems and Performance Based Contracts for Water Conservation , Solid Waste Reduction and Energy Equipment (Section 8.5)</b>					✓	✓			✓
<b>Electronic Data Processing and Telecommunications Systems (Section 8.6)</b>					✓	✓			✓
<b>Third Party Property Managers (Section 8.7)</b>					✓	✓			✓

## 8.1 Construction: Public Works

### 8.1.1 Methods for Public Works Procurement

Public works procurement may use the following methods:

Contract Funding, Type and Amount	Petty Cash	Micro Purchase Procedures	Small Purchase Procedures	Small Works or Services Roster (either THA's or that of other's through piggybacking)	IFB	RFP (including GCCM & D/B with federal dollars, but no CPARB approval needed)	QBS	GCCM & D/B (without Federal Dollars use with CPARB approval)	Piggy Back
See section	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.2	7.10
• With some federal funds									
< \$50,000				✓					
≤ \$250,000				✓	✓	✓			
> \$250,000					✓	✓			
• With no federal funds									
< \$350,000				✓	✓				
> \$350,000					✓			✓	

### 8.1.2 Definition of Public Works

(a) What a Public Work Is:

The following types of work are public work unless exempted by the exclusions that show below in section 8.1.2(b):

- (1) All work, construction, alteration, enlargement, improvement, repair, and/or demolition that is executed by contract, purchase order, or any other legal agreement and that is executed at the cost of the state of Washington (including at THA's cost) or of any municipality. Accordingly, any such project that is funded by a grant of any public body of the state of Washington is a public work, including those projects so funded by and performed by Separate Entities.
- (2) Any project is a public work if it is funded with a loan made by any public body of the state of Washington that either (a) is not a Housing Trust Fund Loan as provided in Department of Commerce Memorandum dated July 12, 2016, or (b) does **not** meet the following minimum loan requirements:

- (i) Provide for 1% interest, compounding;

- (ii) Payments can be deferred for the initial 29 years, but interest accrues during this time;
- (iii) In year 20, the accrued interest is added to the principal and the loan is amortized over the remaining 30 years of the loan term;
- (iv) Starting in year 20, the borrower must make (at a minimum) interest payments based on this amortization that is done in year 20; and,
- (v) Balloon payment in year 50 at maturity.

**Note:** If a loan does meet these requirements, under Department of Labor & Industries informal opinion, prevailing wages will not be required. But this informal opinion may be revoked at any time and this approach/test has never been judicially approved.

- (3) All work, construction, alteration, enlargement, improvement, repair, and/or demolition which, by law, constitutes a lien or charge on any property of the state or of a municipality;
  - (4) Maintenance when performed by contract (i.e., by a vendor) on properties owned or leased by THA in its own name. Maintenance is defined as keeping existing facilities in good usable, operational condition and includes landscaping;
  - (5) Janitorial and building service maintenance as defined by WAC 296-127-023, when performed by contract, on public buildings and/or assets. This covers only work performed by janitors, waxers, shampooers, and window cleaners; and,
  - (6) The fabrication and/or manufacture of nonstandard items produced by contract specifically for a public works project;
  - (7) All work, construction, alteration, repair, or improvement, other than ordinary maintenance, performed by a private party that THA (together with any other public body) negotiates through a contract to rent, lease, or purchase *and* that contracted work constitutes *at least* fifty percent or more of the entire project being performed by the private party.
- (b) A “public work” is *not* any of the following:
- (1) Work, construction, alteration, enlargement, improvement, repair, demolition, and/or maintenance, for which no wage or salary compensation is paid i.e., work completed by a volunteer);



- (2) Ordinary maintenance, which is defined as work not performed by contract and that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually, but not less frequently than once per year), to service, check, or replace items that are not broken; or work not performed by contract that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary;
- (3) All work, construction, alteration, repair, or improvement, other than ordinary maintenance, performed by a private party that THA (together with any other public body) negotiates through a contract to rent, lease, or purchase and that work constitutes less than fifty percent of the entire project being performed;
- (4) All work, construction, alteration, repair, improvement, and ordinary maintenance, that is funded entirely without any dollars of a Washington public entity, and THA is not a party to the contract.
- (5) Loans and Grants by a City or Town (RCW 35.21.685). Housing constructed with loans or grants made under RCW 35.21.685 shall not be considered public works or improvements subject to competitive bidding or a purchase of services subject to the prohibition against advance payment for services: PROVIDED, that whenever feasible the borrower or grantee shall make every reasonable and practicable effort to utilize a competitive public bidding process. Counsel must be consulted in securing the appropriate loans or grants.

Under RCW 35.21.685, a city or town may assist in the development or preservation of publicly or privately-owned housing for persons of low income by providing loans or grants of general municipal funds to the owners or developers of the housing. The loans or grants shall be authorized by the legislative authority of the city or town. They may be made to finance all or a portion of the cost of construction, reconstruction, acquisition, or rehabilitation of housing that will be occupied by a person or family of low income. As used in this Section, "low income" means income that does not exceed eighty percent of the median income for the standard metropolitan statistical area in which the city or town is located.

*8.1.3 Large Public Works: Additional Requirements*  
(>\$350,000 for Non-Federally Funded Projects ;)  
(>\$250,000 for Federally Funded Projects)

In addition to the requirements in section 7, all public works projects that do not meet the requirements of the Small Works Roster (and Limited Works Roster) are subject to the requirements of this section.

(a) Pre-construction Approval Requirements.

- (1) Whenever THA determines that a public work is necessary, it shall cause plans and/or specifications and an estimate of the cost of such work to be made and presented to the Board.
- (2) The plans, specifications, and estimates of cost must be approved by the Board and the original draft or a certified copy filed in the project file before further action is taken. Whenever plans and specifications shall have been filed, the work to be done shall be executed in accordance with such plans and specifications unless supplemental plans and specifications of the alterations to be made therein shall be made and filed in the office where the original plans and specifications are filed.
- (3) If later during construction the probable cost of executing such work in accordance with the supplemental plans and specifications shall be increased or decreased from the estimated cost as shown by the original estimate to an amount in excess of ten percent of such estimate, then a supplemental estimate shall be made of the increased or decreased cost of executing the work in accordance with the supplemental plans and specifications and filed in the original file.
- (4) Original cost estimates must be created and show in detail the estimated cost of the work; the estimated quantities of each class of work; the estimated unit cost for each class; the estimated total cost for each class; the time limit, allowed for the completion of the work and the estimated dates of commencement and completion.

(b) Certified Copy of Engineers' Certificate Must be Filed

- (1) Within sixty days after the completion of the work, THA shall file a certified account by the Executive Director or his or her designee, a certified account of the costs of executing such work. (The filing goes to the same place as the original plans and specifications.)
- (2) The engineer or other officer having charge of the execution of such work shall execute a certificate which shall be attached to and filed with such certified account, certifying that such work was executed in accordance with the plans and specifications on file and the times of commencement and completion of such work. If the work is not in accordance with such plans and specifications, he or she shall set forth the manner and extent of the variance therefrom.

#### 8.1.4 *Procurement of Recovered Materials*

THA and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

#### 8.1.5 *Public Works Bonding and Retainage Requirements*

All public works projects are subject to the bonding and retainage requirements of this section.

(a) Bid Bonds

For construction contracts exceeding the Simplified Acquisition Threshold, bidders shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price (not required for Small Works Roster).

(b) Performance and Payment Bonds

A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. The following bond requirements shall apply:

- (1) Except for public works contracts costing less than \$250,000, the successful bidder shall furnish performance and payment bonds, each, for 100% or more of the contract price.
- (2) For public works projects which cost less than \$250,000, THA may, in lieu of the performance and payment bond, retain ten percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue, the employment security department, and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later.

**Note:** While accepting 10% retainage is an option, it usually will expose THA to greater risk than accepting a payment and performance bond.

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

(c) Retainage Bonds

The contractor may elect to procure a retainage bond in lieu of withholding 5% retainage as required below.

(d) Retainage

Unless a retainage bond has been secured or THA has chosen to accept 10% retainage in lieu of a performance and payment bond, THA must reserve a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: (i) The claims of any person arising under the contract; and (ii) the state with respect to taxes, increases, and penalties imposed pursuant to Titles 50, 51, and 82 RCW which may be due from such contractor. The following rules apply:

(1) Every person performing labor or furnishing supplies toward the completion of a public improvement contract has a lien upon moneys reserved by THA under the provisions of a public improvement contract. However, the notice of the lien of the claimant must be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(2) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project as follows:

(i) After completion of all contract work other than landscaping, the contractor may request that THA release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter THA must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.

(ii) Sixty days after completion of all contract work THA must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW, including the right to withhold for certain THA losses.

- (3) At any time prior to final formal acceptance of the project, a subcontractor may request the contractor to submit a bond to the public owner for that portion of the contractor's retainage pertaining to the subcontractor in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The contractor may withhold the subcontractor's portion of the bond premium. Within thirty days of receipt of the request, the contractor shall provide and the public body shall accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it, the bond is not commercially available, or the subcontractor refuses to pay the subcontractor's portion of the bond premium and to provide the contractor with a like bond..
- (4) The moneys reserved by THA, at the option of the contractor, must be:

  - (i) Retained in a fund by THA;
  - (ii) Deposited by THA in an interest-bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by THA under the provision of a public improvement contract must be paid to the contractor;
  - (iii) Placed in escrow with a bank or trust company by THA. When the moneys reserved are placed in escrow, THA must issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check must be converted into bonds and securities chosen by the contractor and approved by THA and the bonds and securities must be held in escrow. Interest on the bonds and securities must be paid to the contractor as the interest accrues.
- (5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor must pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

- (6) If after a substantial portion of the work has been completed, THA finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this Section must be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this Section, THA may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and supersede all provisions and regulations in conflict herewith.

## 8.2 Construction: Non-Public Works

Non-public works procurement for Construction projects may use the following methods:

Contract Funding, Type and Amount	Petty Cash	Micro Purchase Procedures	Small Purchase Procedures	Small Works or Services Roster (either THA's or that of other's through piggybacking)	IFB	RFP (including GCCM & D/B with federal dollars, but no CPARB approval needed)	QBS	GCCM & D/B (without Federal Dollars use with CPARB approval)	Piggy Back
<i>See section</i>	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.2	7.10
• With some federal funds									
< \$250,000				✓	✓	✓			
> \$250,000					✓	✓			
• With no federal funds									
< \$350,000				✓	✓	✓			
> \$350,000					✓	✓			

### 8.3 Goods, Personal Services (Except Architectural and Engineering Services), and Equipment.

Procurement for goods and personal services may use the following methods:

Contract Funding, Type and Amount	Petty Cash	Micro Purchase Procedures	Small Purchase Procedures	Small Works or Services Roster (either THA's or that of other's through piggybacking)	IFB	RFP (including GCCM & D/B with federal dollars, but no CPARB approval needed)	QBS	GCCM & D/B (without Federal Dollars use with CPARB approval)	Piggy Back
<i>See section</i>	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.2	7.10
< \$ 150	✓								
≤ \$ 10,000		✓							
≤ \$ 250,000			✓	✓					
\$250,000 - \$350,000				✓	✓	✓			✓
> \$350,000					✓	✓			✓

### 8.4 Architectural and Engineering Services: (QBS)

THA will use the Qualification Based Selection or piggyback method to procure architectural and Engineering services.

Contract Funding, Type and Amount	Petty Cash	Micro Purchase Procedures	Small Purchase Procedures	Small Works or Services Roster (either THA's or that of other's through piggybacking)	IFB	RFP (including GCCM & D/B with federal dollars, but no CPARB approval needed)	QBS	GCCM & D/B (without Federal Dollars use with CPARB approval)	Piggy Back
<i>See section</i>	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.2	7.10
Architectural and Engineering (Section 8.3)							✓		✓

## 8.5 Building Engineering Systems and Performance Based Contracts for Water Conservation, Solid Waste Reduction, and Energy Equipment

THA may use either the Invitation for Bids, the Request for Proposal or the piggybacking methods to procure building Engineering Systems and Performance Based Contracts for Water Conservation, Solid Waste Reduction, and Energy Equipment.

Contract Funding, Type and Amount	Petty Cash	Micro Purchase Procedures	Small Purchase Procedures	Small Works or Services Roster (either THA's or that of other's through piggybacking)	IFB	RFP (including GCCM & D/B with federal dollars, but no CPARB approval needed)	QBS	GCCM & D/B (without Federal Dollars use with CPARB approval)	Piggy Back
<i>See section</i>	<i>7.3</i>	<i>7.4</i>	<i>7.5</i>	<i>7.6</i>	<i>7.7</i>	<i>7.8</i>	<i>7.9</i>	<i>7.2</i>	<i>7.10</i>
<b>Building Engineering Systems and Performance Based Contracts for Water Conservation, Solid Waste Reduction and Energy Equipment (Section 8.4)</b>					✓	✓			✓

Here are some additional details specific to procuring these systems and contracts.

### 8.5.1 Definitions:

- (a) **“Building engineering systems”** means those systems where contracts for the systems customarily have been awarded with a requirement that the contractor provide final approved specifications, including fire alarm systems, building sprinkler systems, pneumatic tube systems, extensions of heating, ventilation, or air conditioning control systems, chlorination and chemical feed systems, emergency generator systems, building signage systems, pile foundations, and curtain wall systems.
- (b) **"Energy equipment and services"** means energy management systems and any equipment, materials, or supplies that are expected, upon installation, to reduce the energy use or energy cost of an existing building or facility, and the services associated with the equipment, materials, or supplies, including but not limited to design, engineering, financing, installation, project management, guarantees, operations, and maintenance. Reduction in energy use or energy cost may also include reductions in the use or cost of water, wastewater, or solid waste.



- (c) **"Performance-based contract"** means one or more contracts for water conservation services, solid waste reduction services, or energy equipment and services between a municipality and any other persons or entities, if the payment obligation for each year under the contract, including the year of installation, is either: (a) set as a percentage of the annual energy cost savings, water cost savings, or solid waste cost savings attributable under the contract; or (b) guaranteed by the other persons or entities to be less than the annual energy cost savings, water cost savings, or solid waste cost savings attributable under the contract.

8.5.2 *The IFB or RFP*

THA may award contracts of any value for the design, fabrication, and installation of building engineering systems or performance-based contracts for water conservation, solid waste reduction or energy equipment by either of the following methods:

- (a) Using a competitive bidding process or RFP process as discussed in Section 7 where bidders are required to provide final specifications and a bid price for the design, fabrication, and installation of building engineering systems, with the final specifications being approved by an appropriate design, engineering, and/or public regulatory body; or,
- (b) Using a competitive bidding process where bidders are required to provide final specifications for the final design, fabrication, and installation of building engineering systems as part of a larger project with the final specifications for the building engineering systems portion of the project being approved by an appropriate design, engineering, and/or public regulatory body.

**8.6 Electronic Data Processing and Telecommunications Systems**

THA may use either the IFB or the Request for Proposal or a piggybacking option to procure an electronic data processing or telecommunication system.

Contract Funding, Type and Amount	Petty Cash	Micro Purchase Procedures	Small Purchase Procedures	Small Works or Services Roster (either THA's or that of other's through piggybacking)	IFB	RFP (including GCCM & D/B with federal dollars, but no CPARB approval needed)	QBS	GCCM & D/B (without Federal Dollars use with CPARB approval)	Piggy Back
<i>See section</i>	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.2	7.10
<b>Electronic Data Processing and Telecommunications Systems (Section 8.5)</b>					✓	✓			✓

## 8.7 Third Party Property Managers and Their Procurements

THA may procure third party property managers using a RFP or a piggybacking option.

Contract Funding, Type and Amount	Petty Cash	Micro Purchase Procedures	Small Purchase Procedures	Small Works or Services Roster (either THA's or that of other's through piggybacking)	IFB	RFP (including GCCM & D/B with federal dollars, but no CPARB approval needed)	QBS	GCCM & D/B (without Federal Dollars use with CPARB approval)	Piggy Back
<i>See section</i>	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.2	7.10
<b>Third Party Property Managers (Section 8.6)</b>					✓	✓			✓

### 8.7.1 Services of Property Managers

Procurement of Professional Services Agreements with Property Managers will conform to the procurement method for personal services in Section 8.3.

### 8.7.2 Repairs and Maintenance at THA Properties

Third party property managers contracting directly with vendors for repair and maintenance services must comply with the Small Public Works Roster provisions of Section 7.4 and annually file an affidavit and intent with the Department of Labor and Industries. If THA is a party to such contracts, it must procure the services through the Small Public Works Roster provisions of Section 7.4, and it must file the required intent and affidavit forms with the Department of Labor and Industries, provided that Davis-Bacon may apply to federally funded contracts.

### 8.7.3 Repairs and Maintenance at LLLP Properties, LLC Properties and LP Properties

For repairs and maintenance services at LLLP Properties, THA as agent for the LLLP should determine first whether the project is a public work as defined in Section 8.1. If the project is federally funded, it may trigger Davis-Bacon wage rates. If the project is a public work, follow the same process outlined in Section 9.0. If the project is not a public work, prevailing wages do not apply, and no intents or affidavits are necessary.

## 9.0 PREVAILING WAGES

### 9.1 Prevailing Wage Determination

Prior to procuring a contractor for construction, repair or maintenance work, THA will determine what prevailing wages it will require the contractor to pay, as this may greatly affect pricing. This section will govern that determination.

## 9.2 Minimum Wages Paid as Required by Law

When performing certain construction, repair, or maintenance work, THA or Separate Entity is required by law to pay to workers, laborers, and mechanics and others a minimum wage. Such minimum wages may be State prevailing wages (established by Washington's Department of Labor & Industries), HUD-determined wages, federal Davis-Bacon prevailing wages (established by the Department of Labor), or the higher of either of these state or federal wages, unless the federal wages pre-empt the state wages.

## 9.3 THA Commitment

THA has determined as a matter of its own policy that the payment of a minimum wage to workers, laborers and mechanics is important when feasible. Accordingly, THA and Separate Entities will voluntarily pay minimum wages to workers, laborers, and mechanics, using the Washington State Department of Labor and Industries' **residential wage rates, on all new construction projects**, when feasible (as determined in THA's sole discretion), even when there is no legal requirement to pay a minimum prevailing wage. The filing of Intent to Pay Prevailing Wages and Affidavits of Wages Paid with the Department of Labor and Industries is not required in such instances, but THA must ensure its contracts for such work include audit rights of the contractor's accounts and records to confirm residential rates have been duly paid.

## 9.4 State Prevailing Wages

Workers, laborers, and mechanics must be paid, at a minimum, the prevailing rate of wages, as determined by the Department of Labor and Industries, when performing a "**public work**" except when the federal Davis-Bacon wages pre-empt state prevailing wages. See Section 8.1.2 for the definition of "Public Work".

## 9.5 Davis-Bacon Wages (and related requirements) and HUD-Determined Wages

The following are the most common funding mechanisms used by THA where Davis-Bacon wages apply.

### 9.5.1 *Public Housing*

Irrespective of the funding source, Davis-Bacon wages must be paid to all laborers and mechanics, including to THA's own employees, employed in the construction (including adding accessibility modifications) and repair of public housing, if the work costs over \$2,000 (Davis-Bacon threshold amount). In addition, HUD-determined wages must be paid for all maintenance of public housing and to designers involved in the "development" of public housing, which includes design work related to substantial repairs.

### 9.5.2 *Project-Based Vouchers (PBV, including RAD PBV)*

Davis-Bacon wages must be paid for the development (including substantial repairs) of a project that is occupied within eighteen months of the effective date of a new Housing Assistance Payment contract for the project-basing of THA vouchers into **nine** or more units.

### 9.5.3 *Housing and Community Development Block Grant (CDBG)*

CDBG loan proceeds used to finance “construction work”, in whole or in part, on a rehabilitation or new construction project containing **eight** or more residential units triggers an obligation to pay Davis-Bacon wages to the laborers of the contractors and subcontractors, even when they are working on units not funded by CDBG. THA’s own employees do not have to be paid such wages.

CDBG loans used to finance acquisition of land, the procurements of design services and non “construction work” (e.g., acquisition of land) do **not** trigger Davis-Bacon requirements.

### 9.5.4 *HOME Investment Partnership Act*

Davis-Bacon is applicable to contracts for the construction of affordable housing with **twelve** or more HOME-assisted units. Unlike CDBG, applicability depends on how many HOME-assisted units are under the contract as opposed to the number of total units within the entire property. In addition, unlike CDBG, Davis-Bacon is triggered whether or not the assistance pays for “construction work” or other development activities (such as acquisition and design services). Once Davis-Bacon is triggered, all laborers of the contractors and subcontractors must be paid Davis-Bacon wages, even when working on units not funded by HOME.

## 9.6 **Payment When Both State Prevailing Wages and Federal Wages Apply**

When a public works project is subject to both Washington State prevailing wage laws *and* the Federal Davis-Bacon and related acts, the contractor and every subcontractor on that project must pay the higher of the two applicable rates to its workers, laborers and mechanics. **Exception.** With respect to work on public housing, Davis-Bacon and HUD-determined rates preempt state law and therefore Washington state prevailing rates will not apply if they are higher.

## 10.0 ASSISTANCE TO SMALL AND OTHER BUSINESSES (MWBE)

### 10.1 Definitions

10.1.1 A **small business** is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 C.F.R. § 121 should be used to determine business size.

10.1.2 A **minority-owned business** is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

10.1.3 A **women’s business enterprise** is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.

10.1.4 A “**Section 3 business concern**” is defined under 24 C.F.R. § 135.

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

## 10.2 Required Efforts

Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, THA shall make all feasible efforts, and shall require its contractors and their subcontractors to make all feasible efforts, 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 THA projects are used when possible. Such efforts shall include, but shall not be limited to:

- Including such firms, when qualified, on solicitation mailing lists;
- Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- Using the services and assistance of the Washington State Office of Minority and Women’s Business Enterprises, the Northwest Minority Business Council, the Women’s Business Enterprise National Council, Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- 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 C.F.R. § 135 (so-called Section 3 businesses); and,
- Encouraging prime contractors, when subcontracting is anticipated, to take the positive steps listed above and considering a contractor’s ability to do that as a factor in assessing the responsiveness and competitiveness of any proposal.

## 11.0 CONTRACTOR QUALIFICATIONS/DISBARMENT/INELIGIBILITY.

All procurements must fulfill the following requirements.

### 11.1 Winning Bidders Must Be Responsible

#### 11.1.1 Responsibility Required

THA shall not award any contract until it determines that the prospective contractor is responsible.

#### 11.1.2 Definition of Being a Responsible Bidder:

Being a responsible bidder/offeror means satisfying at least the following criteria:

- (a) does not discriminate on the basis of race, color, ethnicity, national origin, sex, gender identity, sexual orientation, disability, marital status, familial status or veteran status;
- (b) have adequate financial resources to perform the contract, or the ability to obtain them;
- (c) be able to comply with the required or proposed delivery or performance schedule, taking into consideration all of the bidder's/offeror's existing commercial and governmental business commitments;
- (d) have a satisfactory performance record;
- (e) have a satisfactory record of integrity and business ethics;
- (f) have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- (g) have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them;
- (h) Public Works:  
Being a responsible bidder for a public works procurement also means the following:
  - (1) Before THA awards a public works contract, a bidder must submit to the Housing Authority a signed statement in accordance with RCW 9A.72.085 verifying under penalty of perjury that the bidder has not willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.32 (minimum wage, labor standards).

- (2) In addition, before award of a public works contract, a bidder must be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended or disbarred under federal or state law (RCW 39.06.010 or 39.12.06A5(3)).
- (3) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;
- (4) Have a current state unified business identifier number;
- (5) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;
- (6) If the bidding on a public works project is subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;
- (7) Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.32.
- (8) Bidder must have received training on prevailing wage and public works requirements or claim exemption from this training because they have completed three or more public works projects and have had a valid Washington business license for three or more years in compliance with RCW 39.04.350. This verification is required by the Housing Authority awarding a contract for prevailing wage and public works projects.

### *11.1.3 Supplemental Criteria of Responsibility*

- (a) THA may create additional contractor criteria defining responsibility, typically referred to as supplemental bidder criteria.

- (b) In a timely manner before the bid submittal deadline, a potential bidder may request that THA modify the supplemental criteria. THA must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, THA must issue an addendum to the bidding documents identifying the new criteria.

## **11.2 Process for Determining Responsibility of Bidder**

*11.2.1* If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, THA may base its determination of responsibility upon any available information related to the criteria or may find the bidder not responsible.

*11.2.2* If THA finds a prospective contractor to be non-responsible, it shall state its finding in writing providing the reasons for the finding. It shall include the writing in the official contract file.

*11.2.3* THA shall give the prospective contractor in question the following:

- (a) copy of the written determination of non-responsibility;
- (b) criteria defining responsibility (which should be in the solicitation);
- (c) the process for contesting the determination, with deadlines for doing so. The original solicitation shall also contain this information.

### *11.2.4 Appeal of Determination of Non-Responsibility*

If the bidder appeals a determination of non-responsibility in a timely and appropriate way under the procedures for doing so, THA must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, THA may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

## **11.3 Suspension and Debarment**

*11.3.1* Prior to issuance of a contract, or a purchase order greater than \$25,000, including for furniture and equipment, THA shall, as detailed within Section 10.2.H.1 and 10.2.H.2 of HUD Procurement Handbook 7460.8 REV 2, conduct the required searches within the HUD Limited Denial of Participation (LDP) system and the U.S. General Services Administration System for Award Management (SAM) and place within the applicable contract file a printed copy of the results of each such search.



11.3.2 Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (2 C.F.R. § 200.317 through § 200.326), by other federal agencies, e.g., Department of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings, or by state law. RCW 39.06.010 or 39.12.065(3).

11.3.3 THA shall not award any contract to a contractor on the debarred contractor list created by the Washington State Department of Labor & Industries.

#### **11.4 Ineligibility of Firms Who Helped Prepare the Solicitation**

Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for the procurement for the proposals they worked on.

### **12.0 RESTRICTED CONTRACTS, CONTENT OF CONTRACTS, CONTRACT ADMINISTRATION**

#### **12.1 Restriction on Contract Pricing Arrangements**

##### *12.1.1 Application*

The following are requirements for all construction contracts (Public works, federally-funded but not public works, and private construction).

##### *12.1.2 Restricted Contract Types*

(a) Cost Plus a Percentage of Cost Contract

THA may use contracts paying cost plus a percentage of costs, but only if THA includes in the contract file a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.

(b) Time and Materials Contracts

THA may use a time and materials type contract only after its determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to THA is the sum of the following:

- (1) The actual cost of materials; and,
- (2) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since these contract formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. THA must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

### *12.1.3 Options*

The THA may include contractual options for it to add additional quantities or performance periods, provided that:

- (a) the option is contained in the solicitation;
- (b) the option is a unilateral right of THA;
- (c) the contract states a limit on the additional quantities and the overall term of the contract;
- (d) THA evaluate the options as part of the initial competition;
- (e) the contract states the period within which the options may be exercised;
- (f) the options may be exercised only at the price specified in or reasonably determinable from the contract; and,
- (g) the options may be exercised only if THA, in its sole discretion, determines it to be more advantageous to THA than conducting a new procurement.

## **12.2 Required Contract Clauses**

### *12.2.1 Contract Pricing Arrangements*

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

### *12.2.2 Federal Forms*

The forms HUD-5369; 5369-A; 5369-B; 5370; 5370-C (Sections I and II); 51915; and 51915-A, which contain all HUD-required clauses and certifications for contracts of more than the Simplified Acquisition Threshold, as well as any forms/clauses as required by HUD for small purchases, shall be used, as applicable, in all corresponding solicitations and contracts issued by THA. These forms do not govern THA procurements on behalf of Separate Entities.

### *12.2.3 Required Federal Contract Clauses*

THA shall ensure that each contract executed by THA or Separate Entity that is funded in whole or in part by federal funds contains the required contract clauses detailed within 2 C.F.R. § 200.326 (and Appendix II of 2 C.F.R. § 200), which are identified in Appendix I of this Policy. Appendix I must also be included in any construction project conducted by a Separate Entity that is federally funded.

**Note:** Appendix I must be modified each time it is used in order to identify which wages are to be paid for the project. Appendix I should be reviewed to ensure no modifications are appropriate based on the nature of the project.

#### *12.2.4 Washington Public Works Clauses*

THA or Separate Entity shall ensure that each contract that is funded in whole or in part by state funds, and which fits the definition of public works, contains the required contract clauses detailed in Appendix II of this Policy. Appendix II should be reviewed to ensure no modifications are appropriate based on the nature of the project.

### **12.3 Contract Execution by Executive Director of Designee**

THA Executive Director or his designee pursuant to THA Policy G-05 signs all contracts.

## **13.0 AUTHORITY FOR PROCUREMENT ACTIONS**

### **13.1 Procurements Not Exceeding \$20,000.**

Except for the execution of the contract, Department Directors are authorized to sign all procurement documents up to a maximum amount of \$20,000 for each order or contract.

### **13.2 Procurements Not Exceeding \$50,000**

The Executive Director and Deputy Executive Director are authorized to sign all procurement documents up to a maximum amount of \$50,000 for each order or contract.

### **13.3 Procurements for Amounts Exceeding \$50,000 But Not More than \$150,000 And Within Previously Board Authorized Budgets**

The Executive Director is authorized to sign procurement documents for orders or contracts exceeding \$50,000 but not exceeding \$150,000, provided such orders or contracts are included in a budget previously approved by the Board of Commissioners of THA.

### **13.4 Procurements Exceeding \$50,000 Not Previously Authorized by Board Approved Budget**

THA Board must approve all procurement in an amount greater than \$50,000, not previously authorized by a Board approved budget.

### **13.5 Procurements Exceeding \$150,000 Previously Authorized by a Board Approved Budget**

All procurements in an amount greater than \$150,000 must be approved by THA Board of Commissioners. The Board's approval can show as part of an approved budget or as a specific item approval. After receiving Board approval for any such procurement, the Chair or Vice Chair of the Board or the Executive Director may sign the related procurement documents.

### **13.6 Real Estate Transactions**

Any real-estate transactions and purchases which do or may cause THA to incur new debt must have Board approval

### **13.7 Delegated Authority to Executive Director**

The Board appoints and delegates the necessary procurement authority to the Executive Director (ED) for all routine purchases and contracts included in THA's adopted budgeted, to make purchases and execute contracts in emergency situations where health and safety are of immediate concern, and as otherwise pre-approved by the Board.

### **13.8 Funding Availability**

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

### **13.9 Executive Director or Designee Signs All Contracts**

Only the Executive Director or his or her designee pursuant to THA Policy G-05 (Exercise and Delegation of Authority) has the authority to sign contracts or contract amendments.

## **14.0 APPEALS AND REMEDIES**

### **14.1 General.**

It is THA policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to HUD. When appropriate, THA, in its sole discretion, may use a mediator to help resolve differences.

### **14.2 Formal Appeals Procedure for Bid Protests**

THA shall use the following formal appeals procedure for solicitations/contracts of more than the Simplified Acquisition Threshold of \$250,000.

*14.2.1* Any protest must be in a writing and received by THA's Contracting Officer before the earliest of the following deadlines:

- (a) If the protest challenges the solicitation, before the due date for receipt of bids or proposals.
- (b) If the protest challenges an award of a contract, within two business days after the bid opening PROVIDED THA's Contracting Officer must receive the protest before THA signs a contract with the successful bidder, even if that occurs within two business days of the bid opening.
- (c) If the protest challenges a bidder's responsibility, please see Section [11.2.4].

*14.2.2* All bid or award protests shall include at a minimum: (1) a detailed and clear statement of facts that the protesting party believes supports its position, (2) an identification of the terms from the procurement solicitation and/or the legal authority that supports the protest, and (3) copies of pertinent documents or other materials pertaining to the protest.

14.2.3 The Contracting Officer or his or her designee may, at his or her sole discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

14.2.4 The contractor or THA's Contracting Officer may request that the parties confer to discuss the claim. Upon the receipt of such a request, the parties shall convene for that purpose within a reasonable period of time.

14.2.5 The Contracting Officer shall issue a written decision on the matter to all concerned parties. His or her decision shall be final. State law shall govern any court action concerning a protest.

## **15.0 DOCUMENTATION AND PUBLIC ACCESS TO DOCUMENTATION**

### **15.1 Required Records**

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

- (a) Rationale for the method of procurement (if not self-evident);
- (b) Rationale of contract pricing arrangement (also if not self-evident);
- (c) Reason for accepting or rejecting the bids or offers;
- (d) Basis for the contract price (as prescribed in this policy);
  
- (e) A copy of the contract documents awarded or issued and signed by the Contracting Officer;
  
- (f) Basis for contract modifications; and
- (g) Related contract administration actions.

### **15.2 Extent and Detail of Documentation**

The extent and detail of documentation should be commensurate with the value of the procurement.

### **15.3 Record Retention and Format.**

THA shall retain procurement records pursuant to the appropriate records retention schedule established by the Washington State Archives Office. THA may maintain procurement records in the format that provides the most efficiency in the creation, maintenance, retrieval and storage so long as the complete record is available for access and retention without undue burden according to THA's Records Officer. This may include paper or digital format or a combination thereof. Hardcopy originals may not be replaced with scanned images unless they are records to be archived under federal and/or state law, including RCW 40.14.060 AND have been reviewed and approved for destruction by THA's Records Officer AND are replaced by images managed according to the State Archives requirements.

#### **15.4 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 Public Records Act (PRA) pursuant to Chapter 42.56 RCW and THA's Public Records Request and Disclosure Policy.

#### **15.5 U.S. Department of Housing and Urban Development (HUD) Review For projects receiving HUD funds:**

*15.5.1* THA must make available upon HUD's request technical specifications on proposed procurements where HUD believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if HUD desires to have the review accomplished after a solicitation has been developed, HUD may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

*15.5.2* THA will make available procurement documents available upon HUD's request, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- (a) THA's procurement procedures or operation fails to comply with the procurement standards in this part;
- (b) the procurement is expected to exceed the Simplified Acquisition Threshold (\$250,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- (c) the procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- (d) the proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or,
- (e) a proposed contract modification changes the scope of a contract or increases the contract amount above the Simplified Acquisition Threshold.

### **16.0 PERIODIC REVIEW OF PROCUREMENT PRACTICES**

THA will periodically review its record of prior procurements, as well as future needs. It will do this for the following purposes:

- find patterns of procurement actions that could be performed more efficiently or economically;
- maximize competition and competitive pricing among contracts and decrease THA's procurement costs, including using value engineering for construction projects of sufficient size;

- reduce THA administrative costs;
- ensure that supplies and services are obtained without any need for re-procurement (i.e., resolving bid protests);
- minimize errors, including those that happen there is inadequate lead time;
- more effectively promote THA's procurement principles and goals set forth in section 4.