



TACOMA HOUSING AUTHORITY

RESOLUTION 2016-12-14 (10)

DATE: December 14, 2016

TO: THA Board of Commissioners

FROM: Michael Mirra
Executive Director

RE: Authorization to Amend Procurement Policy

Purpose

This resolution will amend Tacoma Housing Authority's Policy PCI-01 governing procurement to comply with some new federal rules. The changes show in the attached redlined version of the policy.

Background

The Department of Housing and Urban Development ("HUD") requires all public housing authorities to update their procurement policies to comply with the federal procurement requirements of 2 CFR §200.317 through §200.326. HUD is required that we do this by December 26, 2016.

HUD is requiring this at the direction of the Office of Management and Budget (OMB). On December 26, 2013, OMB published (at 78 Federal Register 78590) final guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is codified at 2 CFR part 200. HUD restated its requirements at HUD Notice SD-2015-01. The purpose of 2 CFR part 200 is to streamline the Federal government's guidance on administrative requirements, cost principles, and audit requirements to more effectively focus Federal resources on improving performance and outcomes, while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders. The guidance includes requirements for procurements conducted by recipients of Federal funding. HUD adopted 2 CFR 200, including the procurement requirements, at 2 CFR part 2400.

These new rules supersede 24 CFR Part 85, which previously governed housing authority procurements. The old rules will govern federal awards made prior to December 26, 2014. Federal awards after December 26, 2014 must comply with the new rules. There are some (but not many) substantive differences between the old rules and the new rules. These are the main substantive changes:

- Ethics in Contracting, inserting language about Conflicts of Interest, Gratuities, Prohibition against Contingent Fees (Section 7.2);
- Procurement Authority Levels, increasing the Board's approval level from \$100,000 to \$150,000 (Section 7.4);

- Types of Contracts and requirements to justify the use of Cost Plus and Time and Materials contracts (Section 7.7);
- Required clauses to be used in all contracts using federal funds (Section 7.7.3 and Attachment A);
- Procurement of Recovered Materials as identified in EPA guidelines (Section 7.8)
- HUD review of procurements upon request of a federal funding awarding agency (Section 7.9);
- Documentation requirements including record retention according to the schedule established by the Washington State Archives Office (Section 7.12). Attached is a redlined version of the present policy showing the changes needed to conform to the new rules.

Please note that staff and THA's procurement attorney at Foster Pepper will be proposing further changes to this policy sometime in the next several months. We were hoping to do all these changes at the same time in time for the HUD deadline of December 26th for the legally required changes. We will need for time for the changes that HUD is not requiring.

Recommendation

Amend THA Policy PCI-01 in substantively the form set forth in the attached redlined version.



TACOMA HOUSING AUTHORITY

Tacoma Housing Authority 2016-12-14 (10) Amendment of Procurement Policy

A **RESOLUTION** approving amendments to the Tacoma Housing Authority's Procurement Policy

WHEREAS, The Housing Authority of the City of Tacoma (the "Authority") is the recipient of Federal funding through various instruments issued by the Department of Housing and Urban Development ("HUD"); and

WHEREAS, HUD has adopted 2 CFR 200, which includes certain administrative requirements, cost principles, audit requirements, and requirements for procurements conducted by recipients of Federal funding; and

WHEREAS, Public housing authorities, including the Authority, are required to amend their procurement policies to comply with the requirements of 2 CFR 200 by December 26, 2016; and

WHEREAS, Federal awards made prior to December 26, 2014, may continue to be governed by Part 85 as codified in the 2013 edition of the Code of Federal Regulations (CFR) or as provided under the terms of the Federal award, Federal awards after December 26, 2014 must comply with 2 CFR §200.317 through §200.326 in procurement matters; and

WHEREAS, Proposed amendments to the Procurement Policy that satisfy the requirements of 2 CFR 200 are attached as Attachment A; now, therefore be it

Resolved by the Board of Commissioners of the Housing Authority of the City of Tacoma, Washington, as follows:

1. The THA Policy PCI-01 is amended in substantially the form set forth in the attached redlined version of the policy.
2. Any actions of the Authority or its officers prior to the date hereof and consistent with the terms of this resolution are ratified and confirmed.
3. This resolution shall be in full force and effect from and after its adoption and approval.

Approved: December 14, 2016



Dr. Arthur C. Banks, Chair

CERTIFICATE

I, the undersigned, the duly chosen, qualified and acting Executive Director of the Housing Authority of the City of Tacoma (the "Authority") and keeper of the records of the Authority, CERTIFY:

1. That the attached Resolution No. 2016-12-14 (10) (the "Resolution") is a true and correct copy of the resolution of the Board of Commissioners of the Authority as adopted at a meeting of the Authority held on December 14, 2016, and duly recorded in the minute books of the Authority.

2. That such meeting was duly convened and held in all respects in accordance with law, and, to the extent required by law, due and proper notice of such meeting was given; that a quorum was present throughout the meeting and a majority of the members of the Board of Commissioners of the Authority present at the meeting voted in the proper manner for the adoption of the Resolution; that all other requirements and proceedings incident to the proper adoption of the Resolution have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this Certificate.

IN WITNESS WHEREOF, I have hereunto set my hand on December 14, 2016.

HOUSING AUTHORITY OF THE CITY OF
TACOMA

By: _____
Michael Mirra, Executive Director

1. Purpose

The purposes of this Procurement Policy are to:

1. Promote efficient, competitive, and cost-effective procurement practices. Situations considered to be restrictive of competition include but are not limited to:
 - (a) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - (b) Requiring unnecessary experience and excessive bonding;
 - (c) Noncompetitive pricing practices between firms or between affiliated companies;
 - (d) Noncompetitive contracts to consultants that are on retainer contracts;
 - (e) Organizational conflicts of interest;
 - (f) 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;
2. Ensure the legality and integrity of THA's contracting decisions;
3. Provide for the fair and equitable treatment of all persons or firms involved in procurements with THA;
4. To use THA's procurement to promote the hiring and economic advancement of low-income persons, especially those living in THA's public housing communities, to support qualified local small businesses, to ensure full and equitable access by firms certified to be owned by minorities and women, and generally to further the economic development of its communities.

2. Sources for Policy

- ▶ THA Board of Commissioners Resolution No.0506-1 (May 24, 2006)
- ▶ Chap. 35.82 RCW
- ▶ Title 39 RCW
- ▶ 24 C.F.R. Part 85-2 CFR. §200.317 through §200.326.
- ▶ 24 C.F.R. Part 135
- ▶ HUD Handbook 7460.8

- ▶ HUD Annual Contributions Contract
- ▶ Chap. 49.60 RCW

3. Scope of Policy

This Policy applies to all THA contracts and its direct procurement of supplies and services after the Policy's effective date. It shall apply to every expenditure of funds by THA for public purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Policy shall prevent the THA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law.

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4. Who is Responsible for Implementing Policy

Who	Responsibilities
Executive Director	The Executive Director is THA's Contracting Officer. The Contracting Officer, or his or her designee, signs all contracts or procurement documents.
Department Directors	Department Directors are responsible, in compliance with this policy, for initiating and managing procurement for their departments. They or their designee are also responsible for management of the contracts resulting from their department's procurement.
Finance Director	The Finance Director, or his or her designee, is responsible for procurement compliance and coordination. This means that he or she will ensure compliance by all departments with this policy and related procedures.

5. Definitions

CERTIFIED MINORITY-OWNED BUSINESS	A certified-minority-owned business or minority business enterprise is defined as a business that either the State of Washington or the North West Minority Business Council certifies to be at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to African Americans, Hispanic Americans, Native Americans, and Asian/Pacific Islander Americans
CERTIFIED WOMEN-OWNED BUSINESS	A certified-women-owned business or a women's business enterprise is defined as a business that either the State of Washington or the Women's Business Enterprise National Council certifies to be least 51% owned by a woman or women and who also control or operate the business.
CONTRACTING OFFICER	THA's Executive Director, or any person he or she may designate in writing, shall be the Contracting Officer.
DESIGN/BUILD	Design/Build means a construction project procurement where the contractor agrees to both design and build the facility, a portion of the facility, or other item specified in the contract.

ESTIMATED USEFUL LIFE	The estimated useful life of an item means the estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner.
GENERAL CONTRACTOR/ CONSTRUCTION MANAGER	General Contractor/Construction Manager means a firm selected to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase. Such services are contracted for using a maximum allowable construction cost to be guaranteed by the firm.
LABOR SURPLUS AREA BUSINESS	A labor surplus area business is defined as a business located within a jurisdiction that has been classified by the Assistant Secretary for Employment and Training, U.S. Department of Labor, as a labor surplus area in accordance with 20 CFR 654. Designated labor surplus areas are published by the Employment and Training Administration.
LIFE CYCLE COST	Life cycle cost means total cost of an item to THA over its estimated useful life, including costs of selection, acquisition, operation, maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life.
PROCUREMENT	The term procurement as used in this Policy includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of supplies and equipment.
SMALL BUSINESS	A small business means a business concern, including its affiliates, that is independently owned and operated, not an affiliate or subsidiary of a business dominant in its field of operation, and qualified as a small business under the criteria and size standards in 13 C.F.R. 121. Furthermore, a small business means a business concern that is considered small according to the Small Business Administration's established guidelines provided to such businesses.

6. Forms Associated with this Policy

[to be drafted]	Invitation to Bid Template
[to be drafted]	Request for Qualifications Template
[to be drafted]	Request for Proposals Template
[to be drafted]	Request for Quotes (Small Procurement) Template
[to be drafted]	Construction/Public Works Contract Template
[to be drafted]	Professional Services Contract Template
[to be drafted]	Request for Purchase Order Template
[to be drafted]	Material Request Template
[to be drafted]	Request for Payment Template
[to be drafted]	Request for Petty Cash Reimbursement Template
[to be drafted]	Legal Services Protocol Addendum

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7. Policy

7.1 ~~Public Access To Procurement Information~~

Procurement information shall be a matter of public record to the extent provided in the Washington Public Disclosure Act, Chapter 42.17 RCW, and shall be available to the public as provided in that statute.

7.2 ~~Ethics in Contracting~~

7.2.1 ~~General~~

~~THA hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct, etc., is consistent with applicable Federal, State, and local laws. THA employees found in willful non-compliance with this policy are subject to disciplinary action under the Employee Handbook up to and including dismissal.~~

7.2.2 ~~Conflicts of Interest~~

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

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

7.2.3 ~~Gratuities, Kickbacks, and Use of Confidential Information~~

~~No officer, employee, Board member, or agent of THA shall ask for or accept gratuities, favors, or items of more than nominal value (i.e. inexpensive hat with logo) from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.~~

7.2.4 Prohibition against Contingent Fees

—Contractors wanting to do business with THA must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

7.2.5 Organizational Conflict of Interest

—If THA has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, THA must avoid organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, THA is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. To that end, in the event of any dealing with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the following must occur:

- (a) The person responsible for the procurement consults with the Executive Director prior to commencing the procurement;
- (b) The Executive Director and the person conducting the procurement examine any potential organizational conflicts of interest; and

—Make written findings concerning whether such conflicts exist or not, and record such findings in the procurement file.

(c)

In the event there is no potential conflict, the procurement may proceed without any further screening. In the event of a potential conflict of interest, the Board must be made aware of the potential conflict before THA may proceed with the procurement. The Board must decide whether the procurement may proceed and, if so, what measures (if any) must be taken to mitigate the potential for organizational conflicts of interest.

7.27.3 Procurement Authority And Administration

7.2.17.3.1 Procurement Authority

The Board delegates procurement authority to the Executive Director.

7.2.27.3.2 Contracting Officer

All procurement transactions shall be administered by the Contracting Officer. The Executive Director may issue operational procedures to implement this Policy to supplement Section 8 below.

7.2.37.3.3 *General Procurement Administration*

- (a) Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing.
- (b) Contracts and modifications shall be in writing, clearly specify the desired supplies, services, or construction, and shall be supported by sufficient documentation regarding the history of the procurement, including at a minimum the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price.
- (c) Notice of contract awards shall be made available to the public;
- (d) For procurement activities subject to federal and/or state statutes and regulations, solicitation procedures shall comply with Federal standards stated in 2 CFR §200.317 through §200.326 ~~C.F.R. § 85.36~~, or state and local laws that are more stringent, provided they are consistent with 2 CFR §200.317 through §200.326 ~~C.F.R. § 85.36~~.
- (e) THA shall prepare or arrange the preparation of an independent cost estimate before issuing a solicitation above the small procurement limitation. THA shall analyze the cost or price of responses it receives for all procurements.

- (f) THA shall award contracts award to the offeror whose proposal, in THA's sole determination, offers the greatest value to THA, considering price, technical, and other factors as specified in the solicitation, and the purposes of this policy.
- (g) THA shall ensure that it has sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders).
- (h) THA shall inspect work before payment.
- (i) THA shall promptly pay for work performed and accepted.
- (j) THA shall comply with applicable HUD review requirements set forth in the procedures below.

7.37.4 — **Procurement Authority Levels**

7.3.17.4.1 *Procurements Not Exceeding \$5,000*

Department Directors are authorized to sign all procurement documents up to a maximum amount of \$5,000 for each order or contract.

7.3.27.4.2 *Procurements Not Exceeding \$25,000*

The Executive Director is authorized to sign all procurement documents up to a maximum amount of \$25,000 for each order or contract.

7.3.37.4.3 *Procurements Exceeding \$25,000 But Not Exceeding \$1~~50~~0,000*

The Executive Director is authorized to sign procurement documents for orders or contracts exceeding \$25,000 but not exceeding \$1~~50~~0,000, provided such orders or contracts are included in a budget previously approved by the Board of Commissioners of the THA.

7.3.47.4.4 *Procurements Exceeding \$1~~0500~~0,000*

All procurements in an amount greater than \$1~~50~~0,000 must be approved by the THA Board of Commissioners. The Board's approval can be given 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.

7.47.5 — **Costs**

All bidders, offerors, respondents or others participating in THA's procurement processes shall bear all costs of their participation in the selection process.

7.57.6 — Contractor Qualifications And Duties

7.5.17.6.1 Contractor Responsibility

Procurements shall be conducted only with responsible contractors, i.e., those who, in THA's sole discretion, have the technical and financial competence and other capacities to perform and who have a satisfactory record of integrity. Before awarding a contract, THA shall review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor, such as other public housing authorities), and financial and technical resources. If THA finds a prospective contractor to be nonresponsible, THA shall prepare a written determination of nonresponsibility and include it in the contract file. THA shall inform the prospective contractor of the determination and the reasons for it.

7.6.2 Ineligibility of Design Contractors.

—Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

7.5.27.6.3 Suspension And Debarment

THA shall not award contracts to entities or individuals that are debarred, suspended, or otherwise ineligible for public contracting as determined by any federal, state, or local government agency. As a precondition of any contract award, every contractor shall provide a written certification attesting that the contractor is not debarred, suspended, or otherwise ineligible for public contracting.

7.5.37.6.4 Qualified Bidder Lists

In its sole discretion, THA may maintain lists of businesses that have established themselves as qualified to perform certain procurements. Interested businesses shall be given an opportunity to be included on qualified bidder lists. Any prequalified lists of persons, firms, or products that are used in the procurement of supplies and services shall be kept current and shall include enough qualified sources to ensure competition. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but not be limited to, such prequalified suppliers. Inclusion on a qualified bidder list shall in no way eliminate or reduce the obligation of the listed entities to maintain their eligibility and responsibility for a given project as set forth in the project's solicitation documents and this Policy. THA shall maintain, amend or eliminate any such lists at its sole discretion.

7.67.7 — Types Of Contracts, Clauses, And Contract Administration

7.6.17.7.1 Contract Types

- (a) ~~Cost Plus a Percentage of Cost Contract.~~ For all cost reimbursement contracts, THA must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.
- (b) Time and Materials Contracts. THA may use a time and materials type contract only after a 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:
 - (i) The actual cost of materials; and
 - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

~~Since this 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. HA may use any type of contract that it determines, in its sole discretion, to be appropriate to the procurement and to promote THA's best interests.~~

- ~~(a)(c)~~ All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties. THA shall not use a cost reimbursement contract unless it is likely to be less costly or it is impracticable to satisfy THA's needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation (FAR), found in 48 CFR Chapter 1). THA shall ensure that each contract executed by THA that is funded in whole or in part by federal funds contains the required contract clauses detailed within 2 CFR §200.326 and Appendix II. THA may use a time and material contract only if the contract includes a guaranteed maximum price that the contractor exceeds at its own risk.

7.6.27.7.2 Options

With the exception of contracts awarded as a result of a sealed invitation to bid, contracts may contain options for additional quantities or performance periods, provided that: (i) the solicitation mentions the possibility of the option, (ii) the option is a unilateral and totally discretionary right of THA; (iii) the contract states a limit on the additional quantities and the overall term of the contract; (iv) THA considers the availability of options as part of its evaluation of the initial competition; (v) the contract states the period within which THA may exercise the option ; (vi) THA may exercise the option only at the price specified in or reasonably determinable from the contract; and (vii) THA shall have the sole discretion to determine if exercising the option is more advantageous to THA than conducting a new procurement.

7.6.37.7.3 Contract Clauses for Federally Funded Contracts

(a) Contract Pricing Arrangements. All contracts shall identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by THA.

(b) Required Forms. Additionally, the forms HUD-5369; 5369-A; 5369-B; 5369; 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.

(c) Required Contract Clauses. THA shall ensure that each contract executed by THA that is funded in whole or in part by federal funds contains the required contract clauses detailed within 2 CFR §200.326 and Appendix II, which are identified in Attachment A.

~~All contracts paid in whole or in part with Federal funds shall include any clauses required by Federal statutes, executive orders, and their implementing regulations, as provided in 24 CFR 85.36(i), such as clauses pertaining to the following:~~

- ~~(1) Termination for convenience;~~
- ~~(2) Termination for default;~~
- ~~(3) Equal Employment Opportunity;~~
- ~~(4) Anti-Kickback Act;~~
- ~~(5) Davis-Bacon provisions of the United States Housing Act of 1937;~~

- ~~(6) — Contract Work Hours and Safety Standards Act, reporting requirements;~~
- ~~(7) — Patent rights;~~
- ~~(8) — Rights in data;~~
- ~~(9) — Examination of records by Comptroller General, retention of records for three years after closeout;~~
- ~~(10) — Clean air and water requirements;~~
- ~~(11) — Energy efficiency standards;~~
- ~~(12) — Bid protests and contract claims;~~
- ~~(13) — Value engineering; and~~
- ~~(14) — Prohibition of payment of funds to influence certain Federal transactions.~~

~~The operational procedures issued by the Executive Director shall contain the text of all clauses and required certifications (such as required non-collusive affidavits) used by the THA.~~

7.8 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 CFR 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.~~

7.9 HUD Review

~~—THA must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity 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 THA desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.~~

7.9.1 THA must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents,

such as requests for proposals or invitations for bids, or independent cost estimates, when:

- (i) THA's procurement procedures or operation fails to comply with federal procurement standards;
- (ii) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- (iii) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- (iv) 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
- (v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

7.77.10 Contract Administration

THA shall maintain a contract administration system designed to ensure that contractors perform in accordance with their contracts. The operational procedures set forth by the Executive Director shall contain guidelines for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters.

7.87.11 Specifications

THA shall draft all specifications so as to promote overall economy for the purposes intended, to encourage competition in satisfying the THA's needs, and to promote the purposes of this policy and THA's best interest, all as THA, in its sole discretion, determines them to be. Functional or performance specifications are preferred. Detailed product specifications should be avoided unless deemed necessary or appropriate by the THA. THA shall consider consolidating or breaking out procurements (without violating the unbundling requirements) to obtain a more economical purchase or to further the purposes of this policy. For equipment purchases, THA should analyze whether a lease or purchase is preferable.

7.11.1 ~~ffffmake this 7.11.1~~ Limitation.

-The following types of specifications shall be avoided:

- (a) Geographic restrictions not mandated or encouraged by applicable federal law (except for A/E contracts, which may include

geographic location as a selection factor if adequate competition is available);

- (b) Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).

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

7.12 Documentation

7.12.1 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.

7.12.2 Level of Documentation

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

7.12.3 Record Retention and Format

Records are to be retained 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 in~~ digital format, or a combination thereof. Hardcopy originals may not be replaced with scanned images unless they are Non-Archival 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.

7.97.13 Disputes and Claims

All disputes and claims must comply strictly with the procedures and timelines set forth in the solicitation, bidding documents, contracts, any legal requirement, and this section. No discussion or negotiation of claims by the THA or any representation or communication, whether verbal or in written, shall in any way constitute a waiver of these procedures or timelines or of THA's legal rights or defenses.

7.9.17.13.1 Resolution Policy and Exhaustion Requirement

- (a) It is the policy of the THA to resolve all contractual issues informally at the THA level, without litigation if possible and beneficial to the interests of THA.
- (b) Neither THA nor its contracting or bidding parties shall refer a dispute to any outside authority or arbiter, including but not limited to HUD.

~~, or file any suit or administrative complaint until and unless all administrative remedies under this policy and procedures have been exhausted.~~

- (b)(c) When appropriate, THA may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the differences. HUD will only review protests in cases of violations of Federal law or regulations and failure of the THA to review a complaint or protest.

7.9.27.13.2 Bid or Award Protests

- (a) Any protest concerning a solicitation must be in writing and received by THA's Contracting Officer before the due date for receipt of bids or proposals.
- (b) Any protest against the award of a contract must be in writing and received by THA's Contracting Officer within two business days after the bid opening PROVIDED THAT, the 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) 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.

- (d) The Contracting Officer or his or her designee may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.
- (e) 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.
- (f) 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.

7.9.37.13.3 *Contract Claims*

Unless otherwise provided for in a specific contract, the following claims process shall govern:

- (a) A contractor must submit its claim in writing to THA's Contracting Officer within ten (10) calendar days from the date it knew of or, in the exercise of reasonable diligence, should have known of the facts that support its claim.
- (b) All contract claims shall include at a minimum: (1) a detailed and clear statement of facts that the contracting party believes supports its position, (2) an identification of the terms from the contract and the legal authority that supports the claim, and (3) copies of pertinent documents or other materials pertaining to the claim.
- (c) 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.
- (d) THA's Contracting Officer shall issue a written decision to the concerned parties. His or her decision shall be final.

7.107.14 — **Assistance To Small And Other Businesses; Hiring of Low-Income Persons**

7.10.17.14.1 *Required Efforts*

~~This section complies with 24 C.F.R. § 85.36(e)~~

- (a) THA shall take all necessary affirmative steps to assure that, when possible and when in THA's sole discretion doing so would best advance THA's interests, it uses small and minority-owned

businesses, women's business enterprises, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of a THA project. Such efforts shall include, but shall not be limited to the following:

- (1) Including such firms, when qualified, on solicitation mailing lists;
 - (2) Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
 - (5) Using the services and assistance of the Washington State Office of Minority and Women's Business Enterprises, the William M. Factory Small Business Incubator, 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;
 - (6) Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns that are located in, or owned in substantial part by persons residing in the area of the project, as described in 24 CFR 135;
 - (7) Requiring prime contractors and subcontractors, when subcontracting is anticipated, to take the positive steps listed in this section;
- (b) In addition to the efforts stated in Section 7.149.1(a) above, THA may use the resources of the City of Tacoma to ensure that small businesses, minority-owned businesses, women's business enterprises, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of a THA project are used when possible. To the extent the City of Tacoma's Historically Under-Utilized Business Opportunity Program (the "HUB Program") and the City's HUB

Program Regulations (Chapter 10.26 Tacoma Municipal Code, and the implementing regulations adopted pursuant thereto) are consistent with this Policy, the THA may utilize the HUB Program and may follow the standards set forth in the HUB Program Regulations to further the goals in this Policy.

- (c) THA may establish goals for participation by small businesses, certified-minority-owned businesses, certified-women-owned businesses, and labor surplus area businesses in the THA's prime contracts and subcontracting opportunities. Promotion and implementation of these goals shall be conducted in accordance with and subject to the limitations of RCW 49.60.400 and other applicable federal and state statutes and regulations.
- (d) If explicitly permitted in the procurement and in the contract documents, a contractor may contract with a firm that is in the process of receiving its certification as a MWBE. However, the contractor will only be able to count the final contract value as MWBE when the firm has successfully received the appropriate MWBE certification.

7.10.27.14.2 *HUD Section 3 Program Policy*

This section shall comply with Section 3 of the HUD Act of 1968, as amended, 12 U.S.C. § 1701u, and 24 C.F.R. Part 135.

- (a) THA shall to the greatest extent feasible, use individuals or firms located in or owned in substantial part by persons residing in the area of a THA project. Such efforts should include, but not be limited to:
 - (1) directing small procurement that do not require competition to qualified Section 3 residents; or,
 - (2) including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing in the area of the project, as described in 24 CFR 135.
- (b) A business concern owned in substantial part by persons residing in the area of the project is one that is 51% or more owned by persons residing within the Section 3 covered project, owned by persons considered by the U.S. Small Business Administration (the "SBA") to be socially or economically disadvantaged, listed on

HUD's registry of eligible business concerns, and meet the definition of an SBA's small business.

- (c) THA may establish goals for participation of business concerns that are located in or owned in substantial part by persons residing in the area of the project.

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7.11.7.15 Federal Capital Fund Stimulus Grant Procurement Policy

Procurement activities for all THA projects funded by the federal government pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5 ("Recovery Act") or other federal stimulus grants shall be governed by this section.

7.11.7.15.1 Recovery Act Policy

All THA procurement activities for projects funded with federal stimulus grants shall be conducted in accordance and compliance with the procedures and requirements of 24 CFR 85 ("Part 85"), the Recovery Act, and any subsequent federal statutes and regulations applicable to federal stimulus grants. The procurement provisions of Part 85 shall be the sole governmental regulations utilized for THA's procurement activities on federal stimulus grant projects; state and local procurement laws and regulations shall not apply to those projects.

Any existing THA procurement standards or procedures that are contrary to the provisions or requirements of Part 85 or the Recovery Act shall not be utilized in federal stimulus grant projects.

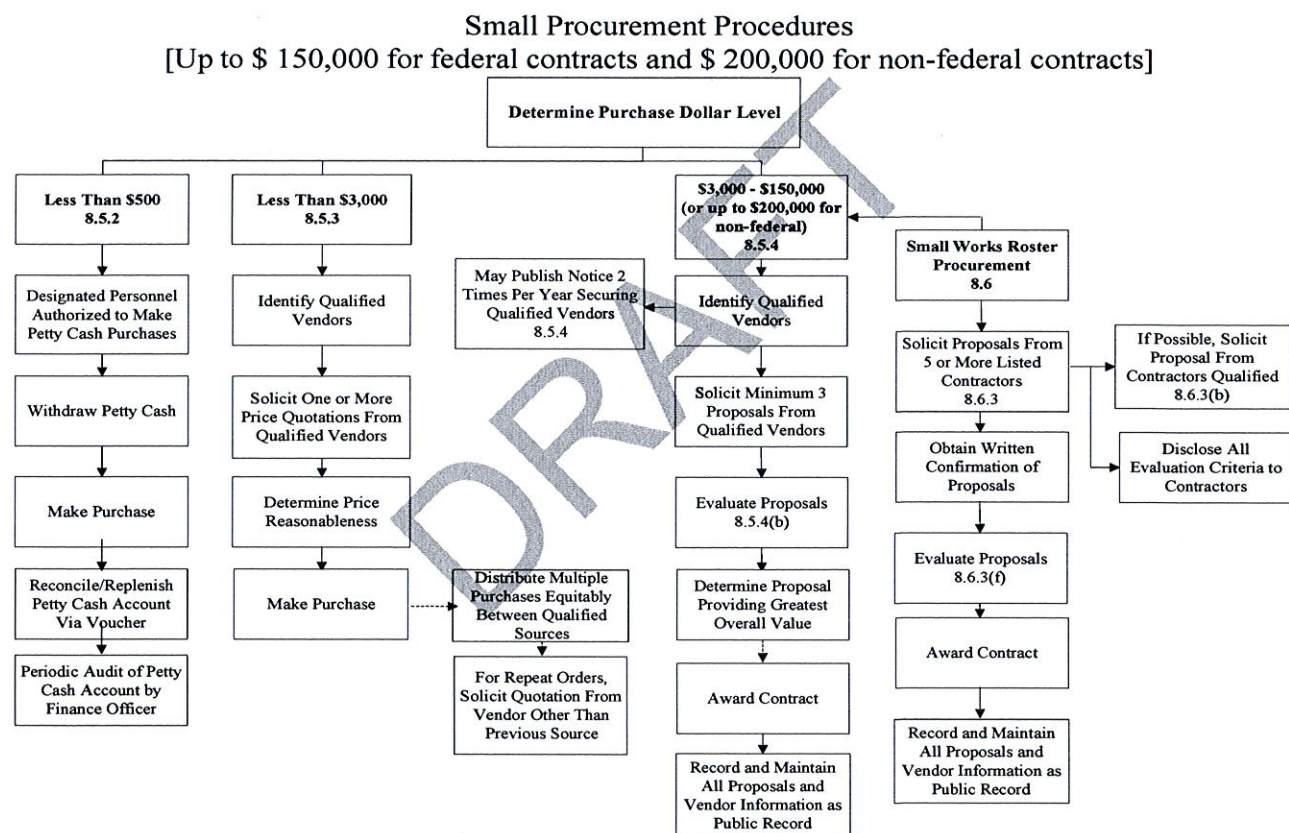
Where permitted by Part 85, THA procurement standards and procedures set forth in this Procurement Policy may be utilized to facilitate the contract administration process for federal stimulus grant projects, so long as the procedures are not contrary to the provisions of Part 85 or the Recovery Act.

THA procurement officers shall consult the HUD Procurement Handbook for Public Housing Agencies (7460.8 rev-2) for guidance on federal stimulus grant project procurements.

New

8. Procedures

8.1 Flow Charts



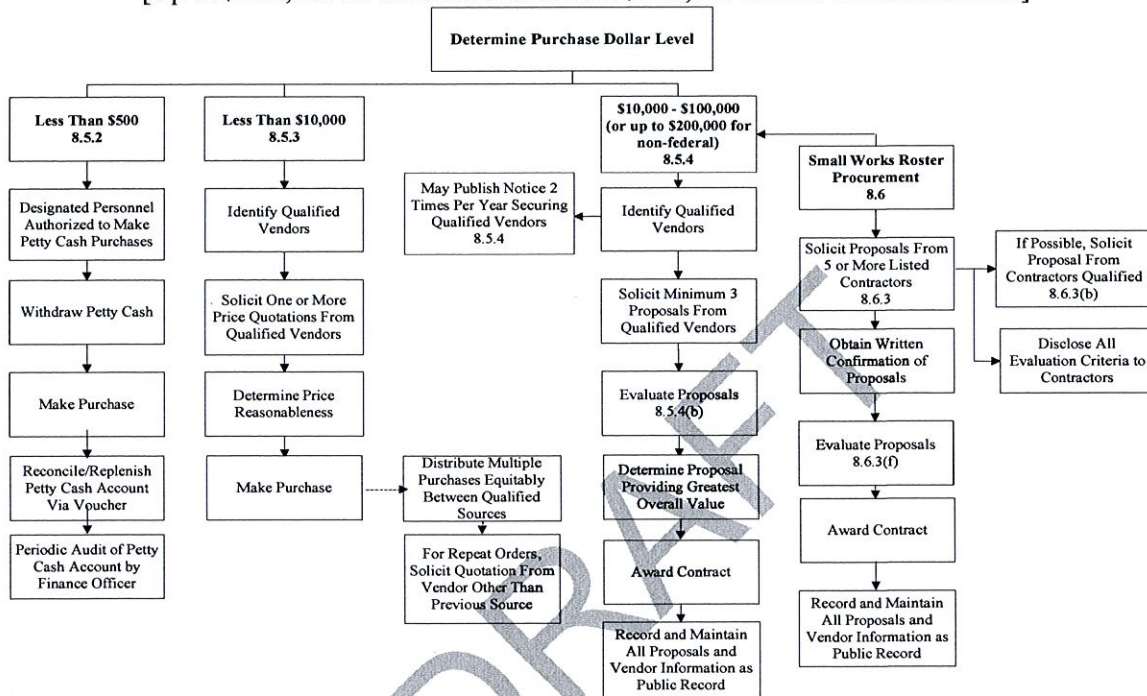
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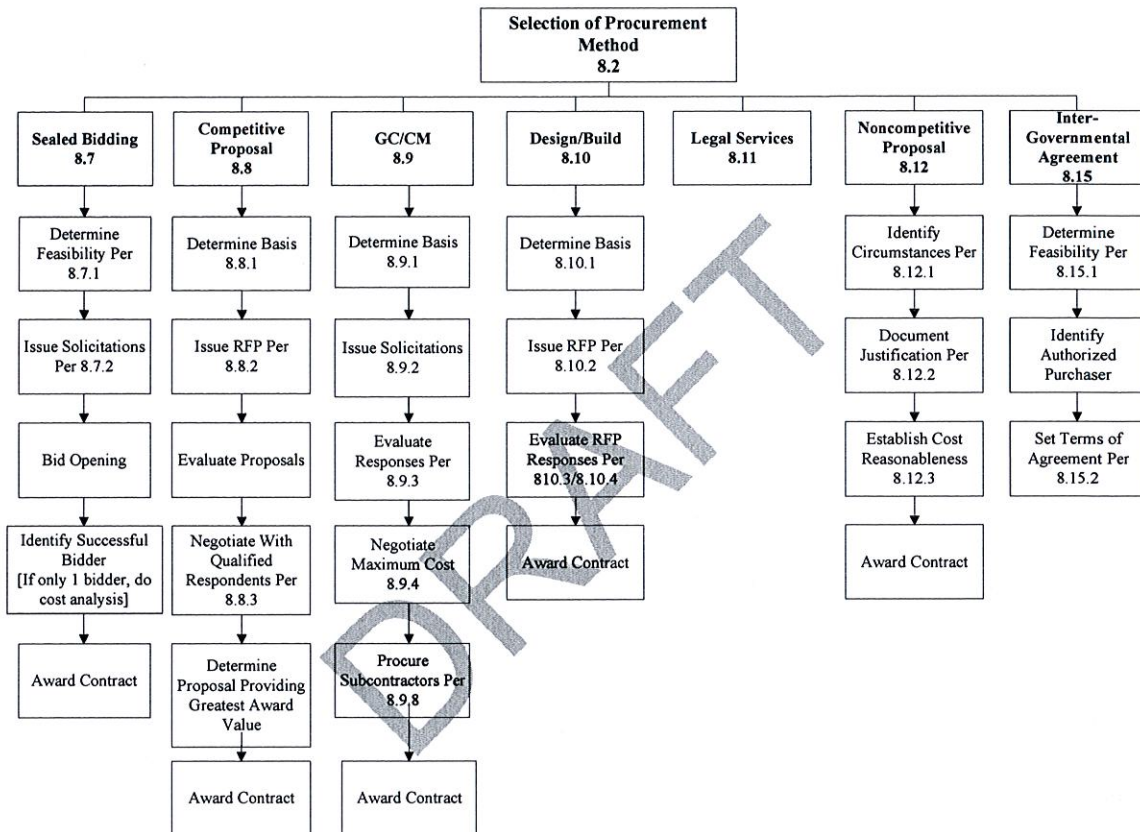
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Old

Small Procurement Procedures
[Up to \$ 100,000 for federal contracts and \$ 200,000 for non-federal contracts]



General Procurement Procedures



8.2 Selection Of Procurement Method

For each procurement, the Contracting Officer shall determine the method of procurement likely to produce the greatest value to THA, consistent with the requirements of federal and/or state law and the purposes of this policy. If THA elects to directly purchase, it shall choose one of the procurement methods listed in this section that it determines in its sole discretion to be most applicable based on the nature and anticipated dollar value of the total requirement and of most benefit to THA.

8.3 [Reserved]

8.4 Public Notice of Upcoming Procurements; Dates of Bid Opening or Proposal Due Date

Except for small procurements made under Sections 8.5 and 8.6 of this Policy, solicitations for architect-engineer services made under Section 8.8 of this Policy and solicitations for legal services under Section 8.11, THA shall give public notice in a newspaper of general circulation in THA's area of operation for each upcoming procurement. When appropriate, THA shall also provide notice to Plan Centers, including the William M. Factory Small Business Incubator.

The notice shall state, at a minimum, the place, date, and time of the bid opening or proposal due date; the solicitation number; a point of contact for questions or requests for solicitations; and a brief description of the needed item(s). In general, THA shall publish the notice ten (10) days before the date the solicitation is issued, or such other time as THA deems reasonable for the particular solicitation.

8.5 Small Procurement Procedures

8.5.1 Applicability:

(a) Non-Federal Funds

Any contract for the procurement of services, supplies, or other property not exceeding \$200,000 that does not involve the use of any federal funds may be made in accordance with the small procurement procedures authorized in this section. Contracts for architect-engineering services, including contracts for those professional activities regulated under Chapters 18.08, 18.43, and 18.96 RCW (i.e., architects, engineers, land surveyors, and landscape architects), shall be made in accordance with the provisions of Section 8.8.5 of this Policy even if the amount is less than \$200,000.

(b) Federal Funds

Any contract for the procurement of services, supplies, or other property not exceeding \$1~~50~~0,000 may be made in accordance

with the small procurement procedures authorized in this section. Contracts for architect-engineering services, including contracts for those professional activities regulated under Chapters 18.08, 18.43, and 18.96 RCW (i.e., architects, engineers, land surveyors, and landscape architects), shall be made in accordance with the provisions of Section 8.8.5 of this Policy even if the amount is less than \$ ~~150~~0,000.

8.5.2 *Petty Cash Purchases: Up to \$ 500*

Subject to the Contracting Officer's approval, small procurements under \$500 that can be satisfied by local sources may be processed through the use of a petty cash account. The Contracting Officer shall ensure that: the account is established in an amount sufficient to cover small procurements made during a reasonable period (e.g., one week); security is maintained and only authorized individuals have access to the account; the account is periodically reconciled and replenished by submission of a voucher to THA's finance officer; and, the account is periodically audited by the finance officer or designee to validate proper use and to verify that the account total equals cash on hand plus the total of accumulated vouchers.

8.5.3 *Purchases Of \$~~310~~,000 Or Less*

For purchases in the amount of \$~~103~~,000 or less, only one quotation need be solicited if the price received is considered reasonable. Such purchases must be distributed equitably among qualified sources. If practicable, a quotation shall be solicited from other than the previous source before placing a repeat order.

8.5.4 *Purchases Over \$~~103~~,000 But Less Than \$~~1500~~,000 for Federal Funds and Less Than \$ 200,000 for Non-Federal Funds*

For purchases of materials, equipment, supplies, or services in excess of \$~~310~~,000, but not exceeding \$~~15000~~,000 (for use of federal funds) and \$200,000 (for use of non-federal funds), the THA may use the following procurement method:

(a) 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 a newspaper of general circulation within the THA's jurisdiction a notice of the existence of such vendor lists and solicit the names of vendors for the lists. 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 and the purposes of this policy. THA may also add or remove vendors to or from the list at other times of the year.

(b) Solicitation

Whenever possible, the THA shall 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. The 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.

(c) 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. The 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 shall consider the following factors:-

- (1) the ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- (2) the character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- (3) whether the bidder can perform the contract within the time specified;
- (4) the quality of performance of previous contracts or services;
- (5) the previous and existing compliance by the bidder with laws relating to the contract or services;
- (6) which bid will best further the purposes of this policy; and,
- (7) such other information or factors as THA may deem to have a bearing on the decision to award the contract: provided, that in considering bids for purchase, manufacture, or lease, and in determining the greatest overall value, whenever there is reason to believe that applying the "life cycle costing" technique to bid

evaluation would result in lowest total cost to the THA, THA shall give first consideration to the bid with the lowest life cycle cost which complies with the specifications. Nothing in this section shall prohibit the THA from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

(d) 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.

8.6 Small Works Roster: Contracts for Public Works Over ~~\$103,000~~ But Less Than ~~\$15000,000~~ for Federal Funds and Less Than \$ 200,000 for Non-Federal Funds

This section shall apply to contracts for public works over ~~\$3-10,000~~ but less than ~~\$-1500,000~~ for use of federal funds and less than \$ 200,000 for use of non-federal funds.

8.6.1 Definition of Public Works

Public works include all construction, alteration, repair, or improvement (other than ordinary maintenance) to property, executed at the cost of the state or federal government or an agency thereof.

8.6.2 Establishment of Small Works Roster

Pursuant to RCW 39.04.155, THA may establish a general small works roster or multiple small works rosters for different specialties or categories of anticipated work (the "Small Works Roster"), consisting of qualified contractors who have requested to be included on the Small Works Roster and are properly licensed or registered to perform such work in the State of Washington. The following shall apply to such a roster:

- (a) The Small Works Roster may distinguish between contractors based on the nature of the work the contractor is qualified to perform.
- (b) THA may require eligible contractors desiring to be placed on the Small Works 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 a newspaper of general circulation in THA's area of operation 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) 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) The background of each contractor requesting to be included on the roster shall be checked 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; these references shall be verified by THA.
 - (4) Contractors who demonstrate legal compliance, fiscal solvency, and performance capability will be included in the Small Works Roster.

8.6.3 *Selection Process*

THA may use the Small Works Roster set forth above or it may use contractors listed on an existing state roster. In either case, THA shall use the following selection process:

- (a) Whenever possible, the 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, the THA shall solicit quotations from each contractor on the applicable small works roster.
- (b) Whenever possible, the THA shall invite at least one proposal from qualified contractor(s) that covers each of the following categories:
 - (1) a certified-minority or a certified-woman contractor;
 - (2) a contractor that employs, or commits to employ, residents of housing owned or managed by THA;

- (3) a contractor that is participating in and in good standing with the William F. Factory Small Business Incubator of Tacoma, Washington.
- (c) Solicitation of quotations may be made by telephone, in writing, or by electronic means.
- (d) Such solicitations shall include an estimate of the scope and nature of the work to be performed, and materials and equipment to be furnished.
- (e) All quotes shall be confirmed in writing.
- (f) Award shall be made to the lowest responsible bidder. If non-price factors are used, they shall be disclosed to all those solicited.
- (g) THA shall record and maintain the names, addresses, and/or telephone numbers of the offerors and persons contacted, the date and amount of each quotation, and the bid selected.. This information shall be public record and available by telephone request.

8.7 Competitive Sealed Bid Process

8.7.1 Conditions for Use

At the sole discretion of the THA or as required by the funding terms of a particular procurement, THA may award contracts based on competitive sealed bidding if the following conditions are present:

- (a) a complete, adequate, and realistic specification or purchase description is available;
- (b) two or more responsible bidders are willing and able to compete effectively for the work;
- (c) the procurement lends itself to a firm fixed price contract; and,
- (d) the selection of the successful bidder can be made principally on the basis of price.

For procurements under the Capital Grant Program, whichever is applicable, sealed bidding may be used for construction and equipment contracts only if the amount exceeds the small procurement limitations. For professional services contracts, sealed bidding should not be used.

8.7.2 Invitation to Bid

THA shall issue an invitation to bid. *See* THA Form PCI XXX. It shall include specifications and contractual terms and conditions applicable to the procurement, including a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the

requirements of the invitation to bid. The invitation to bid shall state the time and place for both the receipt of bids and the public bid opening.

8.7.3 *Receipt of Bids*

THA shall time-stamp all bids received but leave them unopened and stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.

8.7.4 *Bid Opening and Award*

THA shall open bids publicly and in the presence of at least one witness. THA shall record an abstract of bids and the bids shall be available for public inspection. THA shall award the contract as provided in the invitation to bid by written notice to the successful bidder. If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method, unless otherwise provided in state or local law and stated in the invitation for bids. If only one responsive bid is received from a responsible bidder, THA shall not award the contract unless a cost or price analysis verifies the reasonableness of the price.

8.7.5 *Irregularities in Bidding*

THA, in its sole discretion, may waive irregularities in bids or the bidding process so long as to do so will not confer upon a bidder a substantial advantage or benefit not enjoyed by other bidders.

8.7.6 *Mistakes in Bids*

- (a) THA may, in its sole discretion, permit a bidder to correct or withdraw an inadvertently erroneous bid before bid opening by written or electronic notice received in the office designated in the invitation for bids prior to the time set for bid opening.
- (b) THA may, in its sole discretion, permit a bidder to correct a bid after bid opening only if the bidder can show by clear and convincing evidence that (i) a mistake of clerical character was made, (ii) what the nature of the mistake was; and (iii) the bid price actually intended.
- (c) 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.
- (d) All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or

other provisions of bids prejudicial to the interest of the THA or fair competition shall be permitted.

8.7.7 Bonds

In addition to the other requirements of this Policy, the following requirements apply:

- (a) For construction contracts exceeding \$1~~500~~0,000, other than those specified in paragraphs (b) and (c) below, contractors shall be required to submit the following, unless otherwise required by state or local laws or regulations:
 - (1) a bid guarantee from each bidder equivalent to 5% of the bid price; and,
 - (2) a performance bond for 100% of the contract price; and,
 - (3) a payment bond for 100% of the contract price.
- (b) In the case of construction of conventional development projects funded pursuant to the U.S. Housing Act of 1937, the contractor shall be required to submit the following:
 - (1) a bid guarantee from each bidder equivalent to 5% of the bid price; and,
 - (2) one of the following:
 - (i) a performance and payment bond for 100% of the contract price; or
 - (ii) a 20% cash escrow; or
 - ~~(iii) -A 10% irrevocable letter of credit with terms acceptable to HUD; or~~
 - ~~(iv) -Any other payment method acceptable to HUD.~~
 - ~~(iii) -25% irrevocable letter of credit.~~
- (c) In the case of construction under the Capital Grant Program, whichever is applicable, funded pursuant to the U.S. Housing Act of 1937, for any contract over \$25,000, the contractor shall be required to submit the following:
 - (1) a bid guarantee from each bidder equivalent to 5% of the bid price; and
 - (2) one of the following:
 - (i) a performance and payment bond for 100% of the contract price; or
 - (ii) separate performance and payment bonds, each for 50% or more of the contract price; or
 - (iii) 20% cash escrow; or
 - (iv) a 25% irrevocable letter of credit.

8.8 Competitive Proposal Process

8.8.1 Conditions for Use

Competitive proposals (including but not limited to General Contractor/Construction Manager proposals, Design/Build proposals, and turnkey proposals for development) may be used where THA determines, in its sole discretion, that this method is likely to produce the greatest overall value for the THA.

In using competitive proposals, THA must solicit a number of qualified sources that it determines to be adequate for purposes of competition.

8.8.2 Solicitation

THA shall issue a Request for Proposals (RFP). See THA Form PPCI XXX. It shall clearly identify the relative importance of price and other evaluation factors and subfactors, including the weight given to each technical factor and subfactor. THA shall establish a mechanism for fairly and thoroughly evaluating the technical and price proposals before issuing the solicitation. THA shall handle proposals so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals. THA shall evaluate the proposals only on the criteria stated in the request for proposals.

8.8.3 Negotiations

Unless there is no need for negotiations with any of the offerors, THA shall negotiate with offerors who submit proposals and whom THA determines to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. THA shall accord such offerors fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and advise offerors of the deficiencies in both the technical and price aspects of their proposals, to assure full understanding of and conformance to the solicitation requirements, and to ensure that proposals provide maximum utility and value for THA. A common deadline shall be established for receipt of proposal revisions based on negotiations.

8.8.4 Award

After THA's evaluates proposal revisions, if any, it shall award the contract to the responsible firm whose qualifications, price, and other factors, in THA's sole discretion, are the most advantageous to THA.

8.8.5 *Qualification-Based Selection Process: Architect/Engineer Services*

Contracts for architect-engineer services, including contracts for those professional activities regulated under Chapters 18.08, 18.43, and 18.96 RCW (i.e., architects, engineers, land surveyors, and landscape architects), shall be made in accordance with the provisions of Chapter 39.80 RCW as set forth in this section. Qualifications-Based Selection procedures shall not be used to purchase other types of services even though architect-engineer firms are potential sources. THA shall use the following procurement method in soliciting and negotiating any contract for architect-engineer services:

- (a) THA shall contract for architect-engineer services by negotiating a contract for such services under the Qualifications-Based Selection method as specified in Chapter 39.80 RCW.
- (b) THA shall publish in advance the requirement for such services. The announcement shall state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of THA who can provide further details. 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 its projected requirements for any category or type of architect-engineer services.
- (c) THA shall encourage architect-engineer contractors to submit annually a statement of qualifications and performance data. THA shall evaluate current statements of qualifications and performance data on file, together with those that may be submitted by other architect-engineer contractors regarding a proposed project, and shall conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.
- (d) Under the Qualifications-Based Selection method, THA shall request technical qualifications statements from prospective architect-engineer contractors. THA shall evaluate the contractors' qualifications and, in its sole discretion, rank the contractors technically. THA will then negotiate with the top-rated contractor to reach agreement on a fair and reasonable price for the solicited services. If agreement cannot be reached with the top-rated contractor, THA will negotiate with the next highest rated contractor, and so on until a fair and reasonable price is obtained or the process is terminated. At its sole discretion, THA may elect to contract with more than one architect-engineer contractor.

- (e) If there are fewer than three architect-engineer contractors to be evaluated for a proposed project, the THA shall analyze and document the reasons for the limited number of contractors. Depending on the results of the analysis, the THA may either issue a revised solicitation or proceed to evaluate the eligible architect-engineer contractor(s)
- (f) THA will use the following evaluation factors in ranking architect-engineer contractors under the Qualifications-Based Selection method:
 - (1) evidence of the architect-engineer contractors' 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 a 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) other factors determined to be appropriate by the THA.

8.8.6 *Procurement of Electronic Data Processing and Telecommunications Equipment: Competitive Negotiation Process*

Pursuant to RCW 39.04.270, the THA may acquire electronic data processing or telecommunications equipment, software, or services through competitive negotiation rather than through competitive bidding. "Competitive Negotiation" shall include, as a minimum, the following requirements:

- (a) THA shall prepare a Request for Proposal. See THA Form PCI XXX. It shall submit it to an adequate number of qualified sources, as THA may, in its sole discretion, determine to permit reasonable competition consistent with the requirements of the procurement. THA shall publish the notice of the request for the proposal in a newspaper of general circulation in THA's area of operation at least thirteen days before the last date upon which proposals will be received. The request for proposal shall identify significant evaluation factors, including price, and their relative importance.
- (b) The THA shall provide reasonable procedures for technical evaluation of the proposals received, identification of qualified sources, and selection for awarding the contract.
- (c) The award shall be made to the qualified bidder whose proposal, in THA's sole determination, is most advantageous to THA with price and other factors considered. THA may in its sole discretion reject any and/or all proposals and request new proposals.

8.9 General Contractor/Construction Manager (GC/CM) Procurements

8.9.1 Use of GC/CM

The THA may use the general contractor/construction manager procedure of contracting for construction projects when it, in its sole discretion, determines that:

- (a) Implementation of the project involves complex scheduling requirements; or
- (b) The project involves construction at an existing facility which must continue to operate during construction; or
- (c) The involvement of the general contractor/construction manager during the design stage is critical to the success of the project.

8.9.2 Process

- (a) THA shall award contracts for the services of a general contractor/construction manager under this section through a competitive process, initiated by a public solicitation of proposals for general contractor/construction manager services.
- (b) The public solicitation of proposals shall include:
 - (1) A description of the project, including programmatic, performance, and technical requirements and specifications when available;
 - (2) the reasons for using the general contractor/construction manager procedure;
 - (3) a description of the qualifications to be required of the offeror;
 - (4) a description of the evaluation and selection process, including evaluation factors and the relative weight of factors;
 - (5) the form of the contract to be awarded;
 - (6) the estimated maximum allowable construction cost; and,
 - (7) the bid instructions to be used by the general contractor/construction manager finalists.

8.9.3 *Factors in the Evaluation of Proposals*

THA shall evaluate proposals for GC/CM based upon its determination of which proposal best serves the interests of THA. In making this evaluation, THA shall use factors that include, but shall not be limited to, the following:

- (a) Proposal Price;
- (b) Qualifications of professional personnel;
- (c) Past performance in negotiated and complex projects,
- (d) Ability to meet time and budget requirements;
- (e) Scope of work the general contractor/construction manager proposes to self-perform and its ability to perform it;
- (f) Location and availability of the firm;
- (g) Current and projected work loads of the firm; and
- (h) 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.
- (i) The nature, scope, and quality of the proposal.

After evaluating the proposals, the Contracting Officer shall select the finalists he or she determines to be the most qualified finalists and request from them submission of final proposals, to include final cost and fee. The Contracting Officer shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public solicitation of proposals.

8.9.4 *Guaranteed Maximum Price Negotiation*

The Contracting Officer may negotiate with the selected firm for the guaranteed maximum price for the project after the scope of the project is adequately determined to establish a guaranteed contract cost for which the general contractor/construction manager will provide a performance and payment bond for 100% of the contracted amount. The guaranteed maximum price contract includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the percent fee on the negotiated maximum allowable construction cost, and sales tax.

If the Contracting Officer is unable to negotiate a satisfactory guaranteed maximum price with the firm selected, negotiations with that firm may be terminated and the Contracting Officer may negotiate with the next highest scored firm and continue until an agreement is reached or the process is terminated.

8.9.5 *Subcontract Work*

The GC/CM shall procure subcontract work through the method deemed by the Contracting Officer to provide the greatest overall value to the

THA. The Contracting Officer may consult with the general contractor/construction manager to determine subcontractor bidding eligibility for the project.

8.10 Design/Build Procurements

8.10.1 Use of Design/Build

The THA may use the Design/Build procedure for construction projects when it, in its sole discretion, determines that:

- (a) The construction activities or technologies to be used are highly specialized and a design-build approach is critical in developing the construction methodology or implementing the proposed technology; or
- (b) The project design is repetitive in nature and is an incidental part of the installation or construction; or
- (c) The utilization of the design-build procedure will provide the greatest overall value to the THA for the project at issue.

8.10.2 Request for Proposal

THA shall award contracts for Design/Build services through a competitive process utilizing public solicitation of proposals for design-build services. The request for proposal documents shall include but not be limited to:

- (a) A detailed description of the project including programmatic, performance, and technical requirements and specifications, functional and operational elements, minimum and maximum net and gross areas of any building, and, at the discretion of the THA, preliminary engineering and architectural drawings;
- (b) The maximum allowable construction cost;
- (c) The reasons for using the design-build procedure;
- (d) A description of the qualifications to be required of the offeror;
- (e) A description of the process used to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors.
- (f) The form of the contract to be awarded; and
- (g) Other information relevant to the project.

8.10.3 Evaluation factors shall include but not be limited to:

- (a) Proposal price;
- (b) Qualifications of professional personnel;
- (c) Past performance in negotiated and complex projects;
- (d) Ability to meet time and budget requirements;
- (e) Scope of work the general contractor/construction manager proposes to self-perform and its ability to perform it;
- (f) Location and availability of the firm;
- (g) Current and projected work loads of the firm;
- (h) 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
- (i) The nature, scope, and quality of the proposal.

8.10.4 Evaluation Process

THA shall award the Design/Build contracts using the following procedures:

- (a) Best and final proposals shall be evaluated and scored based on the factors, weighting, and process identified in the initial request for proposals.
- (b) The Contracting Officer may score the proposals using a system that measures the quality and technical merits of the proposal on a unit price basis.
- (c) The Contracting Officer shall initiate negotiations with the firm submitting the highest scored best and final proposal.
- (d) If the Contracting Officer is unable to execute a contract with the firm submitting the highest scored best and final proposal, negotiations with that firm may be suspended or terminated and the Contracting Officer may proceed to negotiate with the next highest scored firm, and continue with this procedure until a contract agreement is reached or the selection process is terminated.
- (e) If the Contracting Officer determines that all finalists are capable of fulfilling project requirements, the contract shall be awarded to the firm that submits the responsive best and final proposal that, in THA's sole discretion, provides the greatest overall value to the THA.

- (f) The THA may, in its sole discretion, reject all proposals.

8.10.5 Performance and Payment Bond

The firm awarded the contract shall provide a performance and payment bond for the contracted amount.

8.11 Legal Services

All THA procurements of legal services that are funded in whole, or in part, with HUD grant funds subject to 2 CFR §200.317 through §200.326 ~~24 CFR part 85 (e.g., Operating Fund subsidies and Capital Fund)~~ shall be made in accordance with the provisions of this section. In its discretion, THA may also use this process for procurements of legal services on other occasions.

NOTE: This section does not pertain to the procurement of counsel for legal services paid for by insurance carriers or similar arrangements.

8.11.1 Standards for Legal Services Procurements

- (a) Procurement of legal services that will be paid for with HUD funds are subject to the requirements set forth in 2 CFR §200.317 through §200.326 ~~24 CFR Part 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," in particular, 24 CFR § 85.36.~~
- (b) ~~The In accordance with 24 CFR § 85.22, the~~ costs of legal services incurred under HUD grants (including those obtained under contract) must be reasonable and necessary. ~~Section 85.22(b) incorporates the Office of Management and Budget (OMB) Circular A-87, which contains a set of cost principles that must be used for determining the allowability of legal costs incurred under Federal grants and provides guidance in their use.~~
- (c) Contracts for litigation services must also meet the requirements of the HUD Litigation Handbook 1530.1 REV-5 dated May 18, 2004 (the "Litigation Handbook").

8.11.2 Methods of Procurement

~~24 CFR Section 85.36(d) permits THA to use all of the following contracting methods for procuring legal services and~~ THA shall choose the method of procurement which, in its sole discretion, is most reasonable and advantageous based on the particular legal services need.

- (a) Small procurement procedures, for services that do not cost more than \$1590,000.

- (b) Sealed bids. This method is normally not appropriate for securing legal services, and may only be used when it is possible to quantify the costs of the required services (e.g., number of hours) to permit the submission of firm bids and award a firm fixed-price contract to the lowest responsive and responsible bidder considering only price and price-related factors.
- (c) Competitive proposals. This method is generally preferred when procuring professional services. If this method is used, the conditions in 2 CFR §200.317 through §200.326 ~~24 CFR § 85.36(d)(3)~~ must be followed.
- (d) Noncompetitive proposals. This method may only be used when the other methods of procurement are not feasible. 2 CFR §200.320. ~~and the circumstances described in 24 CFR § 85.36(d)(4) are applicable~~ (e.g., legal services are available from only a single source; public exigency or emergency for the requirements will not permit a delay resulting from competitive solicitation; after solicitation of a number of sources, competition is determined inadequate; or HUD authorizes the use of noncompetitive proposals.)
- (e) Time and Materials Contracts. Legal services can be procured on an hourly basis using time-and- materials (or “labor- hour”) contracts. This type of contract should only be used after it is determined that no other contract is suitable; and, if the contract includes a ceiling price that the contractor exceeds at its own risk.

8.11.3 *Contracts for Litigation Services*

- (a) Except when involved in litigation where THA is acting as a section 8 private developer, THA must submit to HUD Regional Counsel for prior written concurrence any litigation service contract where the fee is expected to exceed \$1~~500~~0,000 with a private attorney involving a THA program, project, or activity receiving loan, grant or other subsidy assistance from HUD.
- (b) Such contracts shall make provision for reasonable fees and reimbursement of necessary expenses. If additional funding or budget revision will be required to cover the cost of litigation services, THA shall consult HUD Field and Regional Offices staff.
- (c) THA shall ensure that the dollar amount of the legal services contract does not exceed the rates prevailing in the same or similar localities for the same or similar services, unless special

circumstances that require payment of a higher amount are demonstrated.

8.11.4 Contract Addendum – Legal Services Protocol

Legal services procurement contracts shall incorporate the Legal Services Protocol Addendum referenced in this Policy, unless no federal funds are involved in the contract.

8.12 Noncompetitive Proposals

8.12.1 Conditions for use

Procurements shall be conducted competitively to the maximum extent possible. THA may use noncompetitive procurement only when, in THA's sole discretion, the award of a contract is not feasible using small procurement procedures, sealed bids, or competitive proposals, and one of the following applies:

- (a) The item is available only from a single source, based on a good faith review of available sources;
- (b) An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the THA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency;
- (c) HUD authorizes the use of noncompetitive proposals;
- (d) Purchases involving special facilities or market conditions as provided under RCW 39.04.280(1)(b);
- (e) Purchases of insurance or bonds as provided under RCW 39.04.280(1)(d); or
- (f) After solicitation of a number of sources, competition is determined inadequate.

8.12.2 Justification

Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the Contracting Officer.

8.12.3 *Price reasonableness*

The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described in Section 8.13 of this Policy.

8.13 **Cost And Price Analysis**

8.13.1 *General*

THA shall analyze the cost or price of all procurement actions, including contract modifications. The various methods of analysis are set forth below. THA, in its sole discretion, shall determine the degree of analysis by considering the facts surrounding each procurement.

8.13.2 *Submission of Cost or Pricing Information*

If the procurement is based on noncompetitive proposals, or when only one offer is received, or for other procurements as deemed necessary by the THA (e.g., when contracting for professional, consulting, or architect/engineer services) THA shall require the offeror to submit the following:

- (a) a cost breakdown showing projected costs and profit;
- (b) commercial pricing and sales information, sufficient to enable the THA to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public; or
- (c) documentation showing that the offered price is set by law or regulation.

8.13.3 *Cost Analysis*

THA shall analyze costs if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted: THA shall analyze the individual cost elements. THA shall have a right to audit the contractor's books and records pertinent to such costs; and profit shall be analyzed separately. Costs shall be allowable only to the extent that they are consistent with applicable federal cost principles under 48 CFR §200, Subpart E—Cost Principles. ~~(for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, 48 CFR Chapter 1).~~ In establishing profit, THA shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the area for similar work.

8.13.4 Price Analysis

THA shall compare prices in all cases other than those described in paragraph 8.13.3 above.

8.13.5 Project Cost Savings

- (a) After the award of contracts for construction and throughout the term thereof, THA shall encourage close cooperation between the project owners, contractors, architect, and other project participants to identify and implement cost savings opportunities (such as, without limitation, purchase versus rental of equipment, resale of temporary materials or surplus or recyclable consumables, value analysis of and selection of building systems and materials and equipment and component systems and construction means and methods, scheduling, energy conservation, operation and maintenance, first cost, life cycle cost, quality, constructability, and product availability).
- (b) As part of their contractual responsibilities, contractors may be requested to provide such value engineering services on an ongoing basis, including without limitation conducting formal value engineering workshops at regularly-scheduled times with appropriate members of the project team (e.g. Owners, architect, and other project participants). Contractors may further be requested to involve their subcontractors in this value engineering process as appropriate to achieve maximum cost-effectiveness and progress efficiencies during the course of construction.

8.14 Cancellation Of Solicitations

8.14.1 Prior To or After Deadline For Bids

THA may cancel an invitation for bids, request for proposals, or other solicitation before offers are due if, in THA's sole discretion, it determines that it no longer requires the supplies, services or construction, it can no longer reasonably expect to fund the procurement, proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or the best interest of the THA requires cancellation (based on a sound documented reason).

8.14.2 Bids In Excess Of Budget

If all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, THA shall cancel the solicitation and either:

- (a) resolicit using a request for proposals; or
- (b) complete the procurement by using the competitive proposals method, following the procedures set forth in Section 8.8 above

(when more than one otherwise acceptable bid has been received), or by using the noncompetitive proposals method set forth in Section 8.12 above (when only one bid is received at an unreasonable price); provided, that the Contracting Officer determines in writing that such action is appropriate, all bidders are informed of the THA's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

8.14.3 Notice of Cancellation

A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any resolicitation or future procurement of similar items.

8.14.4 Nothing in this section shall impair the absolute right and discretion of the THA to cancel a procurement entirely or in part if cancellation is deemed to be in the best interest of the THA.

8.15 Intergovernmental Agreements For Cooperative Purchasing

8.15.1 Use of Intergovernmental Agreements

The THA may enter into state and local intergovernmental agreements to purchase or use common goods and services. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy, efficiency, and the needs and best interests of the THA.

8.15.2 Contents of Cooperative Purchasing Agreements

If used, the intergovernmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. Any cooperative purchasing agreement should address following areas

- (a) identification of parties;
- (b) effective date;
- (c) any prohibition on displacement of public employees;
- (d) basic purpose of the agreement;
- (e) procedures for providing lists of needed items;
- (f) description of items to be purchased;
- (g) identification of lead party for procurement;
- (h) rules to be followed in procurement (e.g., State procurement regulations as set forth under Chapter 43.19 RCW);
- (i) delivery terms;
- (j) type of contract (e.g., definite or indefinite quantity);
- (k) warranty terms;

- (l) any fees to be paid to lead party;
- (m) procedures for resolving disputes with contractors;
- (n) any provisions for meetings on specification issues;
- (o) non-exclusivity clause (i.e., right to conduct separate procurements, notwithstanding the existence of a cooperative purchasing agreement); and
- (p) authorized signatures and titles.

8.15.3 Federal and State Excess and Surplus Property

THA may use federal or state excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

8.16 Authority to Sign Procurement Documents and Contracts

Only the Contract Officer, or his or her designate, has the authority to sign procurement documents and contracts.

8.17 Contract Management

THA shall administer each contract to ensure maximum value and efficiency for THA. As part of the ongoing commitment to process improvement and quality within the organization, THA personnel responsible for contracting shall manage and monitor contracts utilizing best practices for a given procurement and incorporating the procedures set forth in this section

8.17.1 Procurement Coordinator [Reserved]

8.17.2 Contract Management Roles & Responsibilities

- (a) For each contract, the Executive Director or authorized delegate shall designate a specific individual as its Contract Manager.
- (b) The Contract Manager shall be responsible for implementation of this policy and for all contract management activities, either directly or by overseeing the work of others, including the development and maintenance of contract files and records.

8.17.3 Contract Management Tools

- (a) The Contract Manager shall document key contract data and contractual requirements in the THA contracts database.
- (b) Key contract data that shall be tracked includes:
 - (1) Contract Start and End Dates

- (2) Contract deadlines, including those for performance, renewal, and termination;
 - (3) Contract Amount and Expenditures
 - (4) Contractor Personnel
 - (5) Contract Deficiencies
 - (6) Contract Deliverables and Services, including:
 - (i) Deliverable Due Date/Required Milestones
 - (ii) Deliverable Submittal Date
 - (iii) Acceptance or Rejection Date
 - (iv) Rationale for Rejection, if applicable
 - (7) Potential and actual withholds, claims, and/or liquidated damages, if applicable.
- (c) For contracts involving construction, the Contract Manager shall maintain a project file composed of the following sections:
- (1) Index/fact sheets/checklist/schedules
 - (2) Predesign/planning correspondence
 - (3) Consultant selection/award
 - (4) Consultant selection/award
 - (5) Consultant payment/agreements
 - (6) Design correspondence
 - (7) Right of way/legal descriptions/easements
 - (8) Environmental review and permits
 - (9) Special studies
 - (10) Bonding/financing
 - (11) Estimates, calculations and sketches
 - (12) Grant and loan correspondence/payments receipts
 - (13) Specifications, project manual
 - (14) Bids
 - (15) Contracts and Modifications/Addenda
 - (16) Insurance certificates
 - (17) Notice to proceed
 - (18) Construction correspondence
 - (19) Contractor payments
 - (20) Change orders
 - (21) Force account records
 - (22) Certified payroll//affidavit of wages
 - (23) Weekly statement of working days
 - (24) Material sources/approvals/material testing
 - (25) Material quantities ledger/delivery tickets/scaleman's reports

- (26) Operation and maintenance manuals
- (27) Punchlists
- (28) Final project close out/acceptance/warranties

Contract Managers may supplement this list with additional sections as appropriate for a given project.

8.17.4 Contractor Orientation

- (a) Prior to the beginning of the contract period, the Contract Manager shall inform contractors of the specific administrative procedures the contractor is to follow in dealing with THA, including invoicing, deliverable submission, status reporting, and administrative requirements.
- (b) The Contract Manager shall provide the contractor an orientation to the most efficient means of coordinating with THA for contract requirements, including the processes to be followed for communication, meeting scheduling, and document management.

8.17.5 Contract Tracking and Oversight

- (a) The Contract Manager shall oversee the execution of the contract and shall monitor the contract requirements for compliance and completion.
- (b) The contractor's project plan and the contract shall be used as the basis for overseeing the progress of the contract.

8.17.6 Deliverable Management

- (a) The Contract Manager shall track all planned and actual contractor deliverables and services, including their due dates and actual submission dates.
- (b) Where appropriate, evaluations shall be performed on in-progress work and provided to the contractor.
- (c) The Contract Manager shall facilitate the review and evaluation of all contractor deliverables and services to ensure the appropriate requirements have been met (as documented in the solicitation document and/or contract.) Actual review and evaluation of contractor deliverables and services may be conducted by other project staff, who will recommend to the Contract Manager whether the specific deliverable/service should be approved or rejected.

- (d) The decision to accept or reject a deliverable shall be made based on the results of the evaluation and compliance with the specified requirements.

8.17.7 Invoice Management

- (a) The Contract Manager shall coordinate with the appropriate project team members (e.g. architects, inspectors, finance officers) to ensure contractor invoices are only paid if the deliverable(s) and/service(s) for the invoiced period have been received and approved.
- (b) The Contract Manager shall track all expenditures and financial penalties associated with the contract.
- (c) The Contract Manager shall retain all supporting documentation associated with the invoices for historical and auditing purposes.

8.17.8 Performance Management

- (a) The Contract Manager shall meet periodically (or as set forth in the contract) with the contractor to discuss performance and expectations to date on the contract.
- (b) The Contract Manager shall track the actual cost and schedule values against the budgeted cost and schedule from the contractor's plan.
- (c) If it is determined during the course of the contract that the actual values for cost or schedule vary from the budget by more than 10 percent, the Contract Manager shall discuss with the contractor the reason for the variance and determine if corrective actions are warranted.
- (d) If the products or services are not approved or if contractor performance is not meeting expectations, the Contract Manager shall discuss with the contractor the corrective actions required to address the issue.
- (e) The Contract Manager shall monitor and track the results of contractor corrective actions and report monthly to the Project Manager if the actions are achieving the desired results.

8.17.9 Contract Change Control

- (a) Changes to the contract (including but not limited to changes to the scope of work, contract dates, contract cost, or contract terms) require a contract amendment.

- (b) Amendments shall be made in writing and processed through the appropriate procedures dictated by the contract.
- (c) Changes to contractor personnel shall be handled via the process described in the contract.
- (d) Clarifications to tasks and work products already described in the solicitation document shall be documented in a Work Order, in accordance with the procedures included in the solicitation document.

8.17.10 *Contract Closeout*

- (a) When a contract is complete or is terminated, the Contract Manager shall complete a written evaluation of the contractor's performance.
- (b) The Contract Manager shall audit the contract files to ensure all deliverables and services have been received and that all work has been approved prior to authorizing payment for the final invoice.

9. THA's Intent to Comply

9.1 General

—THA has established this Procurement Policy, maintains a procurement system, supporting policies and procedures with the intent to comply with all applicable federal regulations and, as such, THA is exempt from prior HUD review and approval of individual procurement action, subject to 2 CFR §324.

END OF PROCUREMENT POLICY

Attachment A – Federal Clauses

- Contracts for more than the Simplified Acquisition Threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- All contracts in excess of \$10,000 must address termination for cause and for convenience by THA, including the manner by which it will be effected and the basis for settlement.
- Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded THA must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. THA must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. THA must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. THA must report all suspected or reported violations to the Federal awarding agency.
- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by THA in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR

Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires THA to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not, and has not, used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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